Western Australia

Planning and Development Act 2005

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Planning and Development Act 2005

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Defined terms

Western Australia

Planning and Development Act 2005

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

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Planning and Development Act 2005*.

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Purposes and interpretation of this Act

(1) The purposes of this Act are to —

(a) consolidate the provisions of the Acts repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* (the *Metropolitan Region Town Planning Scheme Act 1959*, the *Town Planning and Development Act 1928* and the *Western Australian Planning Commission Act 1985*) in a rewritten form; and

(b) provide for an efficient and effective land use planning system in the State; and

(c) promote the sustainable use and development of land in the State.

(2) If —

(a) the *Metropolitan Region Town Planning Scheme Act 1959*, the *Town Planning and Development Act 1928* or the *Western Australian Planning Commission Act 1985* expressed an idea in a particular form of words; and

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

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

4. Terms used

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

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

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

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

board means the board referred to in section 9;

chairperson means the chairperson of the board;

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

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

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

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

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;

(b) the carrying out on the land of any excavation or other works;

(c) in the case of a place to which a protection order made under the *Heritage Act 2018* Part 4 Division 1 applies, any act or thing that —

(i) is likely to change the character of that place or the external appearance of any building; or

(ii) would constitute an irreversible alteration of the fabric of any building;

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

Development Assessment Panel or ***DAP*** means a Development Assessment Panel established under section 171C(1);

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

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

EP Act means the *Environmental Protection Act 1986*;

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

Government agreement has the meaning given in the *Government Agreements Act 1979* section 2;

Heritage Council means the Heritage Council of Western Australia established by the *Heritage Act 2018*;

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

improvement scheme means an improvement scheme that has effect under Part 8 Division 2;

improvement scheme area has the meaning given in section 122A(2);

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

land includes —

(a) land, tenements and hereditaments; and

(b) any interest in land, tenements and hereditaments; and

(c) houses, buildings, and other works and structures;

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

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

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

lot means a defined portion of land —

(a) depicted on a plan or diagram available from, or deposited with, the Authority and for which a separate Crown grant or certificate of title has been or can be issued; or

(b) depicted on a diagram or plan of survey of a subdivision approved by the Commission; or

(c) which is the whole of the land the subject of —

(i) a Crown grant issued under the *Land Act 1933* [1]; or

(ii) a certificate of title registered under the *Transfer of Land Act 1893*; or

(iii) a survey into a location or lot under section 27(2) of the *Land Administration Act 1997* or a certificate of Crown land title the subject of such a survey; or

(iv) a part-lot shown on a diagram or plan of survey of a subdivision deposited with the Authority; or

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

but does not include a lot as defined in the *Strata Titles Act 1985* section 3(1);

member means a member of the board;

metropolitan region means the region described in Schedule 3;

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

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

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

officer of the Commission means either of the following —

(a) the Secretary to the Commission appointed under section 21(1);

(b) a public service officer referred to in section 22;

planning code means a planning code approved by the Minister under regulations made under section 32B(1);

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

planning scheme means a local planning scheme, region planning scheme or improvement scheme that has effect under this Act, or the Swan Valley Planning Scheme that has effect under the *Swan Valley Planning Act 2020*, and includes —

(a) in the case of a local planning scheme, region planning scheme or improvement scheme that has effect under this Act — the provisions of the scheme being —

(i) the provisions set out in the scheme; and

(ii) any planning code that, with any modifications set out in the scheme, has effect under section 77(2)(b) as part of the scheme; and

(iii) any provisions that have effect under section 257B(2) as part of the scheme;

and

(aa) in the case of the Swan Valley Planning Scheme — the provisions of the scheme being —

(i) the provisions set out in the scheme; and

(ii) any provisions of a kind referred to in the *Swan Valley Planning Act 2020* section 11 that, with any modifications set out in the scheme, have effect under that section as part of the scheme;

and

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

public authority means any of the following —

(a) a Minister of the Crown in right of the State;

(b) a department of the Public Service, State trading concern, State instrumentality or State public utility;

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

public work includes the following —

(a) any public work as defined in the *Public Works Act 1902* section 2;

(b) development in any area to which a region planning scheme applies if the development is of a class or kind designated as public work under the scheme;

(c) development in any area to which a local planning scheme applies if the development is of a class or kind designated as public work under the scheme;

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

region planning scheme means either of the following —

(a) the Metropolitan Region Scheme;

(b) a planning scheme continued under section 33(2) or of effect under Part 4;

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

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

responsible authority, except as provided in regulations made under section 171A(2)(a) or (ba), means —

(a) in relation to a local planning scheme or local interim development order, the local government responsible for the enforcement of the observance of the scheme or order, or the execution of any works which under the scheme or order, or this Act, are to be executed by a local government; and

(b) in relation to a region planning scheme, regional interim development order or planning control area, the Commission or a local government exercising the powers of the Commission; and

(c) in relation to an improvement scheme or the Swan Valley Planning Scheme, the Commission;

road means a public thoroughfare for vehicles (as defined in the *Road Traffic (Administration) Act 2008* section 4) or pedestrians, and includes structures or other things appurtenant to the road that are within its limits, and a thoroughfare is not prevented from being a road only because it is not open at each end;

State planning policy means a planning policy approved by the Governor or Minister, as the case requires, under regulations made under section 28(1);

subdivision includes amalgamation;

Swan Valley has the meaning given in the *Swan Valley Planning Act 2020* section 3;

Swan Valley Planning Scheme has the meaning given in the *Swan Valley Planning Act 2020* section 3;

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

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

(2) In this Act, unless the contrary intention appears, a reference to —

(a) "the preparation of a local planning scheme" or "the amendment of a local planning scheme" includes a reference to the adoption of a local planning scheme or amendment;

(b) "a local planning scheme prepared by a local government" or "an amendment prepared by a local government" includes a reference to a planning scheme or amendment adopted by it,

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

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

[Section 4 amended: No. 60 of 2006 s. 147(2); No. 77 of 2006 Sch. 1 cl. 127(1); No. 21 of 2008 s. 690; No. 28 of 2010 s. 4, 41 and 52; No. 8 of 2012 s. 161; No. 22 of 2018 s. 186(2); No. 30 of 2018 s. 161; No. 26 of 2020 s. 6, 11 and 59; No. 45 of 2020 s. 57; No. 9 of 2022 s. 424; No. 4 of 2023 s. 143; No. 34 of 2023 s. 4 and 8; No. 34 of 2023 s. 37.]

5. Crown bound

(1) Except as provided in section 6 this Act binds the Crown.

(2) A region planning scheme binds the Crown.

(3) An improvement scheme binds the Crown.

[Section 5 amended: No. 28 of 2010 s. 5.]

6. Act does not interfere with public works

(1) Subject to subsections (2) to (4), nothing in this Act interferes with the right of the Crown, or the Governor, or a public authority, or a local government —

(a) to undertake, construct or provide any public work; and

(b) to take land for the purposes of that public work.

(2) Rights referred to in subsection (1) are to be exercised having due regard to —

(a) the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the right is exercised; and

(b) the orderly and proper planning, and the preservation of the amenity, of that locality at that time; and

(c) any advice provided by the responsible authority in the course of the consultation required under subsection (3) in respect of the exercise of the right.

(3) At the time when a proposal for any public work, or for the taking of land for a public work, is being formulated, the responsible authority is to be consulted as to whether the undertaking, construction or provision of, or the taking of land for, the public work will be consistent with the matters referred to in subsection (2)(a) and (b).

(4) This section does not affect —

(a) the application of section 5(2) and (3); or

(b) the application of a region planning scheme or an improvement scheme in relation to anything done, or proposed to be done, by a public authority that is not an agency of the Crown.

[Section 6 amended: No. 28 of 2010 s. 6; No. 26 of 2020 s. 12.]

Part 2 — The Western Australian Planning Commission

Division 1 — Establishment and management

7. Commission established

(1) A body called the Western Australian Planning Commission is established.

(2) The Commission is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Commission in its corporate name.

8. Status

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

9. Board of management

(1) The Commission is to have a board of management.

(2) The board is the governing body of the Commission.

(3) The board, in the name of the Commission, is to perform the functions of the Commission under this Act or any other written law.

10. Membership of board

(1) The board is to consist of 7 to 9 members appointed by the Minister.

(2) The Minister must appoint 1 of the members to be the chairperson.

(3) The Minister may appoint 1 or more other members to be deputy chairpersons.

(4) A member cannot be a public service officer.

(5) The terms and conditions of a member's appointment are to be determined by the Minister, subject to —

(a) any regulations made for the purposes of section 11(1); and

(b) section 12.

(6) The Minister must ensure that, taken together, the members have what the Minister considers to be a suitable level of knowledge, expertise and experience in the following fields —

(a) urban and regional planning;

(b) subdivision of land;

(c) property development;

(d) planning and management of infrastructure;

(e) economic, social and environmental policy;

(f) public sector governance and administration.

(7) In addition to the requirement of subsection (6), the Minister must ensure the following —

(a) that the chairperson, and at least 1 other member, each has what the Minister considers to be —

(i) extensive knowledge, expertise and experience in the field of urban and regional planning; and

(ii) a suitable professional qualification or accreditation in that field;

(b) that at least 1 member has what the Minister considers to be extensive experience in local government administration as either or both of the following —

(i) a member of the council of a local government;

(ii) an employee of a local government;

(c) that at least 1 member has what the Minister considers to be extensive experience of living and working in regions other than the following —

(i) the metropolitan region;

(ii) the region referred to in item 6 of Schedule 4.

[Section 10 inserted: No. 34 of 2023 s. 38.]

11. Board's constitution and proceedings

(1) Regulations may make provision in relation to the constitution and proceedings of the board.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision in relation to any of the following —

(a) the appointment of members, including method of recruitment and terms and conditions of appointments;

(b) circumstances that cause vacancies in offices of members and the filling of vacancies;

(c) circumstances in which a member can be removed from office and the process for removing a member;

(d) the granting of leave of absence for a member;

(e) the role of the chairperson and any deputy chairpersons;

(f) procedures of the board.

(3) Subject to regulations made for the purposes of subsection (1), the board must determine its own procedures.

(4) The board may invite representatives of public sector bodies (as defined in the *Public Sector Management Act 1994* section 3(1)) to participate in meetings or other proceedings of the board as if they were members.

(5) An invitation under subsection (4) —

(a) is subject to any conditions or other limitations specified by the board; and

(b) does not enable the representative to vote or to do anything else that is binding on the board.

[Section 11 inserted: No. 34 of 2023 s. 38.]

12. Remuneration and allowances

A member must be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

[Section 12 inserted: No. 34 of 2023 s. 38.]

Division 2 — Functions and powers

13. Introduction to Commission's role

The Commission is the State's leading body for land use planning and, as such, must perform its functions having regard to the following —

(a) the need to provide leadership to local governments, public authorities and other persons or bodies in relation to their roles in land use planning;

(b) the need to promote the following —

(i) an efficient and effective land use planning system in the State;

(ii) the integrated and sustainable development of land in the State;

(c) the need to act expertly;

(d) the need to act impartially, subject to this Act and any other written law;

(e) if the Commission makes a decision that affects a local government, public authority or other person or body — the need to ensure that the Commission's reasons for the decision are available to the local government, public authority or other person or body.

[Section 13 inserted: No. 34 of 2023 s. 39.]

14. Functions

The Commission's functions are as follows —

(a) to advise the Minister in relation to the coordination and promotion of planning for integrated and sustainable development in the State;

(b) to advise and assist the Minister in relation to the administration, revision and reform of legislation relating to development and planning for development;

(c) to prepare and maintain the following as a basis for coordinating and promoting planning for integrated and sustainable development in the State and to provide guidance for public authorities and local governments on those matters —

(i) a planning strategy for the State to be approved by the Minister;

(ii) planning strategies for the parts of the State to which region planning schemes apply;

(iii) other planning strategies as agreed between the Minister and the Commission;

(iv) State planning policies under Part 3;

(v) planning codes under Part 3A;

(vi) other documents, including plans, policies, guidance and operational documents;

(d) to plan for the coordinated provision of transport and infrastructure to support development;

(e) to undertake research, and to prepare planning methods and models, relating to the following —

(i) integrated and sustainable development;

(ii) planning for such development;

(iii) other matters relating to such development;

(f) to provide advice and assistance to local governments and other persons or bodies in relation to development

and planning for development, including advice and assistance in relation to the following —

(i) planning schemes;

(ii) functions that are under planning schemes or that otherwise relate to development and planning for development, including functions that relate to referring, consulting on or advertising applications for approval of development or instruments made under this Act or planning schemes;

(g) to prepare, maintain and administer region planning schemes under Part 4;

(h) to prepare, maintain and administer interim development orders under Part 6;

(i) to declare planning control areas and administer those areas under Part 7;

(j) to prepare, maintain and administer improvement plans and improvement schemes under Part 8;

(k) to prepare, maintain and administer the Swan Valley Planning Scheme under the *Swan Valley Planning Act 2020*;

(l) to provide advice and assistance to the Minister in relation to the matters referred to in paragraphs (g) to (k);

(m) to provide advice and assistance to the Minister in relation to local planning schemes, and amendments to those schemes, made or proposed under Part 5;

(n) to acquire land for the purpose of implementing region planning schemes, improvement schemes and the Swan Valley Planning Scheme;

(o) to develop, maintain and manage land held by the Commission for the purpose of implementing a region planning scheme, an improvement scheme or the Swan

Valley Planning Scheme, including carrying out works and providing facilities on the land that are —

(i) incidental to the development, maintenance or management of the land; or

(ii) conducive to the use of the land for any purpose for which the land is reserved;

(p) to deal with matters relating to subdivisions of land under Part 10;

(q) to deal with development applications under Parts 11B and 17;

(r) to do all things that are necessary for the purpose of carrying out this Act, region planning schemes, improvement schemes and the Swan Valley Planning Scheme;

(s) any other functions conferred on the Commission under this Act, the *Swan Valley Planning Act 2020* or any other written law.

[Section 14 inserted: No. 34 of 2023 s. 39.]

15. Powers

(1) The Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), the Commission may, for the purpose of performing a function —

(a) subject to this Act, acquire, hold and dispose of real and personal property; and

(b) enter into an agreement with any person under which that person may acquire a lease of, a licence in respect of, or any other estate or interest in, any land mentioned in section 14(o); and

(c) develop and turn to account any technology, software or other intellectual property that relates to the function,

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

(d) enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, in the State or elsewhere) —

(i) for the supply of equipment by that person or body; or

(ii) to provide consultancy or advisory services to that person or body; or

(iii) for the commercial exploitation of the knowledge, expertise and resources of the Commission and the rights referred to in paragraph (c);

and

(e) subject to subsection (3), enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, in the State or elsewhere) for the performance by that person or body of any work or the supply of services; and

(f) on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and

(g) act in conjunction with a person, a firm, a local government or a department of the Public Service, or other agency or instrumentality, of the State, another State or Territory or the Commonwealth.

(3) The Commission is not to enter into a contract or arrangement referred to in subsection (2)(e) unless —

(a) the Minister has approved; and

(b) the contract or arrangement is entered into in such circumstances and for such periods as the Minister may from time to time specify by written notice given to the Commission.

(4) For the purposes of subsection (2)(f) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.

(5) In this section —

business arrangement means a company, a partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship;

participate includes form, promote, establish, enter into, manage, dissolve, wind up, and do anything incidental to the participating in a business arrangement.

[Section 15 amended: No. 34 of 2023 s. 40.]

16. Delegation by Commission

(1) The Commission may, by resolution, delegate to a person or body referred to in subsection (3) any function of the Commission under this Act or any other written law, except this power of delegation.

(2) A delegation under subsection (1) takes effect on the day after the day on which the resolution is made or on a later day specified in the resolution.

(2A) The Commission must publish a copy of a resolution under subsection (1) on a website maintained by, or on behalf of, the Commission (but a failure to do this does not invalidate the delegation).

(3) A delegation under subsection (1) may be made to —

(a) a member; or

(b) a committee established under Schedule 2, or a member of such a committee; or

(c) an officer of the Commission; or

(d) a public authority or a member or officer of a public authority; or

(e) a local government, a committee established under the *Local Government Act 1995* or an employee of a local government.

(4) The reference to functions in subsection (1) extends, without limitation or restriction, to all of the powers, privileges, authorities, discretions, duties and responsibilities vested in or imposed on the Commission by this Act or any other written law.

(5) Without limiting the generality of subsection (1), a delegation may be expressed as a delegation of every function of the Commission within a specified class (subject to any specified exceptions).

(6) Except as provided in subsection (7A), a delegate must not further delegate any function.

(7A) If the Commission delegates a function of the Commission to the Metropolitan Redevelopment Authority established under the *Metropolitan Redevelopment Authority Act 2011*, the Authority may subdelegate the exercise or performance of the function to any land redevelopment committee established under that Act.

(7B) A subdelegation under subsection (7A) takes effect on the day after the day on which the subdelegation is made or on a later day specified in the terms of the subdelegation.

(7BA) The Metropolitan Redevelopment Authority must publish a copy of the terms of a subdelegation under subsection (7A) on a website maintained by, or on behalf of, the Authority (but a failure to do this does not invalidate the subdelegation).

(7C) Subsections (4), (5) and (7) and the *Interpretation Act 1984* sections 58 and 59 apply to a subdelegation of a function under this section in the same way as they apply to a delegation of a function.

(7D) A subdelegate must not further delegate any function subdelegated under subsection (7A).

(7) A delegate exercising or performing a function as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(8) Nothing in this section limits the ability of the Commission to act through an officer or agent.

(9) This section does not apply to the execution of documents but authority to execute documents on behalf of the Commission can be given under section 24.

(10) This section does not affect the operation of section 171B.

[Section 16 amended: No. 28 of 2010 s. 42; No. 45 of 2011 s. 141(2) and (3); No. 34 of 2023 s. 41.]

17. Minister may give Commission directions

(1) The Minister may give written directions to the Commission with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Commission is to give effect to any such direction.

(1A) However, the Minister cannot give a direction under subsection (1) in relation to the following —

(a) a particular application made to, or to be determined by, the Commission under any of the following —

(i) a planning scheme;

(ii) Part 10, 11B or 17;

(iii) another provision of this Act;

(iv) another written law;

(b) a particular development or a particular proposed development, including any approval of a particular development or a particular proposed development.

(2) The Minister is to cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (3), within 14 days after the direction is given.

(3) If —

(a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

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

(4) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.

(5) The laying of a copy of a direction that is regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

(6) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.

(7) Nothing in this section applies to a direction of the Minister given under section 26(1), 32A(1), 51(1), 51(2), 52(2), 62A(1), 63(1) or 67(1).

[Section 17 amended: No. 77 of 2006 Sch. 1 cl. 127(2); No. 26 of 2020 s. 21 and 61; No. 34 of 2023 s. 42.]

18. Minister to have access to information

(1) The Minister is entitled —

(a) to have information in the possession of the Commission; and

(b) if the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

(a) request the Commission to give information to the Minister; and

(b) request the Commission to give the Minister access to information; and

(c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and give it to the Minister.

(3) The Commission has to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

document includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

information means information specified, or of a description specified, by the Minister that relates to the functions of the Commission.

19. Committees of Commission

(1) Schedule 2 has effect in relation to committees of the Commission.

(2) A member of a committee of the Commission must be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

(3) Regulations may make provision in relation to committees of the Commission.

(4) Without limiting subsection (3), regulations made for the purposes of that subsection may make provision in relation to any of the following —

(a) the constitution and membership of committees;

(b) the establishment of subcommittees;

(c) the functions and procedures of committees;

(d) the discharge, alteration or reconstituting of committees;

(e) the Commission's functions in relation to committees.

(5) Regulations made for the purposes of subsection (3) may do the following —

(a) limit the Commission's powers under Schedule 2 or otherwise regulate the exercise of those powers;

(b) limit a committee's power under Schedule 2 clause 1(6) or otherwise regulate the exercise of that power.

(6) Regulations made for the purposes of subsection (3) may supplement, but not override or otherwise limit, any requirements of —

(a) Schedule 2 clauses 3 and 4; or

(b) the *Swan Valley Planning Act 2020* Part 4.

[Section 19 inserted: No. 34 of 2023 s. 43.]

20. Fees for Commission's services

(1) The Minister may by notice published in accordance with the *Interpretation Act 1984* section 41(1)(a) set fees to be charged in respect of anything done under this Act or the *Swan Valley Planning Act 2020* and services provided by the Commission in connection with its functions.

(2) Fees set under subsection (1) are payable by the person at whose request or on whose application the act is done.

[Section 20 amended: No. 45 of 2020 s. 61; No. 34 of 2023 s. 9.]

Division 3 — Administration

21. Secretary

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

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

22. Staff

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

23. Use of staff and facilities of public authorities

(1) The Commission may, by arrangement made between it and the relevant employer, make use, either full-time or part-time, of the services of any officer or employee employed —

(a) in the Public Service; or

(b) in a State agency; or

(c) otherwise in the service of the State.

(2) The Commission may by arrangement with —

(a) a department of the Public Service; or

(b) a State agency,

make use of any facilities of the department or agency.

(3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

Division 4 — Miscellaneous

24. Execution of documents

(1) The Commission is to have a common seal.

(2) A document is duly executed by the Commission if —

(a) the common seal of the Commission is affixed to it in accordance with subsections (3) and (4); or

(b) it is signed on behalf of the Commission by a person or persons authorised to do so under subsection (5).

(3) The common seal of the Commission is not to be affixed to any document except as authorised by the Commission.

(4) The common seal of the Commission is to be affixed to a document in the presence of the chairperson and another member, or the chairperson and an officer of the Commission authorised by the Commission either generally or in any particular case to be so present, and each of them is to sign the document to attest that the common seal was so affixed.

(5) The Commission may, by writing under its common seal, authorise a member or members or an officer or officers of the Commission to sign documents on behalf of the Commission, either generally or subject to such conditions or restrictions as are specified in the authorisation.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

(7) A document executed by a person under this section without the common seal of the Commission is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.

(8) When a document is produced bearing a seal purporting to be the common seal of the Commission, it is to be presumed that the seal is the common seal of the Commission until the contrary is shown.

Part 3 — State planning policies

25. Statements of planning policy under repealed Act, effect of

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

(a) continues in force as a State planning policy under this Act; and

(b) has effect accordingly.

26. Preparation and content of State planning policy

(1) The Commission may, with the agreement or on the direction of the Minister, prepare State planning policies.

(2) A State planning policy is to be directed primarily towards broad general planning and facilitating the coordination of planning throughout the State by local governments and public authorities.

(3) Despite subsection (2), a State planning policy may make provision for any matter which may be the subject of a local planning scheme.

(4) A State planning policy may be prepared so as to apply —

(a) generally or in a particular class of matter or in particular classes of matter; and

(b) throughout the State or in a specified portion or specified portions of the State, whether or not a planning scheme has been prepared or is being prepared in that portion or those portions of the State.

[Section 26 amended: No. 28 of 2010 s. 8; No. 26 of 2020 s. 62.]

27. Matters to be considered when preparing State planning policy

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

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

(b) conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purposes; and

(c) characteristics of land; and

(d) characteristics and disposition of land use; and

(e) amenity, design and environment; and

(f) communications; and

(g) developmental requirements of public authorities; and

(h) risks associated with natural hazards and other hazards,

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

[Section 27 amended: No. 26 of 2020 s. 63.]

28. Process for preparation and approval of State planning policy

(1) The Governor may make regulations prescribing any matter relating to the preparation, submission, approval, amendment or repeal of State planning policies.

(2) Without limiting subsection (1), regulations under that subsection may provide for the following —

(a) the form and content of a proposed State planning policy or amendment to a State planning policy (***proposed State planning policy or amendment***);

(b) a proposed State planning policy or amendment to be approved by —

(i) in the case of a proposed State planning policy or amendment to which subparagraph (ii) does not apply — the Governor; and

(ii) in the case of a proposed amendment to a State planning policy that the Commission considers does not constitute a substantial alteration — the Minister;

(c) requirements for consultation with any person or body in relation to a proposed State planning policy or amendment;

(d) requirements for advertisement for public inspection and public submissions in relation to a proposed State planning policy or amendment;

(e) a process by which the Minister may require the Commission to make modifications to a proposed State planning policy or amendment.

(3) Regulations made under subsection (1) —

(a) may provide that the Commission may refer a proposed State planning policy or amendment to the EPA; and

(b) must, in relation to a proposed State planning policy or amendment that is referred to the EPA, make provision for —

(i) matters relating to the process under the EP Act Part IV; and

(ii) advertisement and submissions as referred to in subsection (2)(d).

[Section 28 inserted: No. 26 of 2020 s. 64.]

29. Persons and bodies performing functions to have due regard to State planning policies

A person or body performing a function under this Act must have due regard to any State planning policy to the extent that the policy is relevant to the function.

[Section 29 inserted: No. 26 of 2020 s. 64.]

*[**30-32.** Deleted: No. 26 of 2020 s. 64.]*

Part 3A — Planning codes

[Heading inserted: No. 26 of 2020 s. 65.]

32A. Planning codes

(1) The Commission may, with the agreement or on the direction of the Minister, prepare planning codes that make provision for any matter that may be the subject of a local planning scheme.

(2) The purpose of a planning code is to set out, in relation to any matter referred to in subsection (1), provisions that may be incorporated into a local planning scheme or improvement scheme.

[Section 32A inserted: No. 26 of 2020 s. 65.]

32B. Process for preparation and approval of planning code or amendment

(1) The Governor may make regulations prescribing any matter relating to the preparation, submission, approval by the Minister, amendment or repeal of planning codes.

(2) Without limiting subsection (1), regulations made under that subsection may provide for the following —

(a) matters to be taken into account in preparing a proposed planning code or amendment to a planning code (***proposed planning code or amendment***);

(b) the form and content of a proposed planning code or amendment;

(c) requirements for consultation with any person or body in relation to a proposed planning code or amendment;

(ca) requirements for advertisement for public inspection and public submissions in relation to a proposed planning code or amendment;

(d) a process by which the Minister may require the Commission to make modifications to a proposed planning code or amendment.

(3) Regulations made under subsection (1) —

(a) may provide that the Commission may refer a proposed planning code or amendment to the EPA; and

(b) must, in relation to a proposed planning code or amendment that is referred to the EPA, make provision for —

(i) matters relating to the process under the EP Act Part IV; and

(ii) advertisement and submissions as referred to in subsection (2)(ca).

[Section 32B inserted: No. 26 of 2020 s. 65; amended: No. 34 of 2023 s. 23.]

32C. Effect of planning code

(1) A planning code approved by the Minister under regulations made under section 32B(1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) Despite subsection (1), a planning code has effect only to the extent that it is incorporated, with or without modifications —

(a) into a local planning scheme by a provision of the scheme under section 77(1)(b); or

(b) into an improvement scheme by a provision of the scheme under section 77(1)(b) (as that section applies under section 122B(1)); or

(c) into the Swan Valley Planning Scheme under the *Swan Valley Planning Act 2020* section 11(1)(a).

[Section 32C inserted: No. 26 of 2020 s. 65; amended: No. 45 of 2020 s. 62.]

Part 4 — Region planning schemes

Division 1 — Continuation and formulation of region planning schemes

33. Schemes under repealed Act, effect of

(1) The Metropolitan Region Scheme in force under the *Metropolitan Region Town Planning Scheme Act 1959* immediately before this section comes into operation —

(a) continues in force as a region planning scheme under this Act; and

(b) has effect as if it were enacted by this Act.

(2) Any regional planning scheme in force under the *Western Australian Planning Commission Act 1985* immediately before this section comes into operation —

(a) continues in force as a region planning scheme under this Act; and

(b) has effect as if it were enacted by this Act.

34. Region planning schemes, preparation and content of

(1) If, in the opinion of the Commission or the Minister, matters of State or regional importance so require, the Commission is to prepare such region planning schemes, and amendments to region planning schemes, as may be necessary for the purposes of this Act.

(2) A region planning scheme may be prepared for all or any of the objects, purposes, provisions, powers or works referred to in section 69(1) and may provide for planning, replanning or reconstructing the whole or any part of a region.

35. Commission may resolve to prepare or amend region planning scheme

(1) Subject to section 36, the Commission may resolve to prepare a region planning scheme or an amendment to a region planning scheme.

(2) Immediately after resolving to prepare a region planning scheme, the Commission is to ensure compliance with the relevant procedures set out in Divisions 2 and 3.

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

36. Restrictions on making or amending region planning scheme for metropolitan region

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

(a) in a manner that is contrary to or inconsistent with —

(i) the *Swan and Canning Rivers Management Act 2006* Part 5; or

(ii) any amendment made to the Metropolitan Region Scheme by the *Acts Amendment (Swan River Trust) Act 1988* section 14, 15 or 17; or

(iii) any amendment made to the Metropolitan Region Scheme by the *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006* section 21;

or

(b) in a manner that is contrary to or inconsistent with any protection order made under the *Heritage Act 2018* Part 4 Division 1, except in so far as may be ordered on

an application or referral made under section 62 of that Act to the State Administrative Tribunal; or

(c) except as provided in the *Metropolitan Redevelopment Authority Act 2011* section 58 and without limiting section 51 of that Act, to make any provision in respect of any land to which an approved redevelopment scheme that is in operation under that Act applies; or

(d) without limiting section 23 of the *Hope Valley-Wattleup Redevelopment Act 2000*, to make any provision in respect of land in the redevelopment area as defined in that Act; or

(e) without limiting the *Swan Valley Planning Act 2020* section 9, to make any provision in respect of any land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under that Act.

[Section 36 amended: No. 52 of 2006 s. 6; No. 45 of 2011 s. 141(4); No. 22 of 2018 s. 186(3); No. 45 of 2020 s. 63.]

37. Region planning scheme may be amended or repealed

(1) A region planning scheme may be amended under this Act.

(2) A region planning scheme may be repealed by —

(a) a subsequent region planning scheme; or

(b) an instrument of repeal prepared by the Commission, approved by the Minister and published in the *Gazette*.

Division 2 — Relevant considerations in preparation or amendment of region planning scheme or amendment and requirement to advertise

[Heading inserted: No. 26 of 2020 s. 22.]

38. Referral of proposed scheme or amendment to EPA

(1) As soon as practicable after preparing a proposed region planning scheme or a proposed amendment to a region planning

scheme, the Commission must refer the proposed scheme or amendment to the EPA by giving to the EPA —

(a) a copy of the proposed scheme or amendment; and

(b) any other written information about the proposed scheme or amendment that is necessary to enable the EPA to comply with the EP Act section 48A in relation to the proposed scheme or amendment.

(2) Subsection (1) applies to a proposed amendment to a region planning scheme whether or not the amendment constitutes a substantial alteration to the scheme.

(3) Despite subsections (1) and (2), a proposed region planning scheme or amendment to a region planning scheme of a class prescribed by regulations under the EP Act section 48AAA(2) is not required to be referred to the EPA.

[Section 38 inserted: No. 26 of 2020 s. 23.]

39. Environmental review of proposed scheme or amendment

(1) In this section —

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

(2) When the EPA has acted under section 48C(1)(a) of the EP Act in relation to a proposed region planning scheme or amendment to a region planning scheme referred to the EPA under section 38, the Commission, if it wishes to proceed with that scheme or amendment, is to undertake an environmental review of that scheme or amendment in accordance with the relevant instructions.

(3) The Commission is not to advertise the proposed region planning scheme or amendment under section 43 until —

(a) the Commission has forwarded the environmental review to the EPA; and

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

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

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

(b) request the Minister to consult the Minister for the Environment and, if possible, agree with the Minister for the Environment on whether or not the review has been undertaken in accordance with those instructions.

(5) If the Minister, having complied with a request under subsection (4), and the Minister for the Environment —

(a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision is final and without appeal or review; or

(b) cannot so agree, section 48J of the EP Act applies.

[Section 39 amended: No. 26 of 2020 s. 24.]

*[**40.** Deleted: No. 45 of 2020 s. 64.]*

[Division 3 heading deleted: No. 26 of 2020 s. 26.]

*[**41, 42.** Deleted: No. 26 of 2020 s. 27.]*

43. Advertising proposed scheme or amendment

(1) After preparing a proposed region planning scheme or a proposed amendment to a region planning scheme, and complying with sections 38 and 39 (if applicable) in relation to

the proposed scheme or amendment, the Commission must, in accordance with the regulations —

(a) advertise the proposed scheme or amendment for public inspection; and

(b) consider public submissions made on the proposed scheme or amendment.

(2) The Commission is not required to comply with subsection (1) in relation to a proposed amendment to a region planning scheme if —

(a) the proposed amendment is a proposed minor region planning scheme amendment (as defined in section 56A) of a class that regulations provide is not required to be advertised; and

(b) either —

(i) the proposed amendment was not referred to the EPA under section 38 because of section 38(3); or

(ii) the EPA has informed the Commission under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA.

[Section 43 inserted: No. 26 of 2020 s. 27; amended: No. 34 of 2023 s. 74.]

*[**44.** Deleted: No. 26 of 2020 s. 27.]*

45. Commission's duties if proposed scheme or amendment is to be assessed under EP Act

(1) In this section —

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

(2) When the Commission has been informed under section 48A(1)(b)(i) of the EP Act that a proposed scheme or proposed amendment referred to the EPA under section 38

should be assessed by the EPA under Part IV Division 3 of the EP Act, the Commission is to —

(a) as soon as practicable, but in any event within 7 days after the expiry of the period during which the proposed scheme or proposed amendment is advertised under section 43, transmit to the EPA a copy of each submission —

(i) made during that period; and

(ii) relating wholly or in part to environmental issues raised by the proposed scheme or proposed amendment;

and

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

[Section 45 amended: No. 26 of 2020 s. 28.]

*[**46.** Deleted: No. 26 of 2020 s. 29.]*

*[**47.** Deleted: No. 45 of 2020 s. 65.]*

Division 3 — Submission and approval of region planning schemes or amendment other than minor amendments

[Heading inserted: No. 26 of 2020 s. 31.]

47A. Region planning scheme or non-minor amendment to be submitted and approved under this Division

A proposed region planning scheme, or a proposed amendment to a region planning scheme (other than a proposed amendment

to be submitted and approved under Division 4), must be submitted and approved in accordance with this Division.

[Section 47A inserted: No. 26 of 2020 s. 32.]

48. Proposed scheme or amendment and public submissions to be submitted to Minister

After complying with the applicable requirements of Division 2 in relation to a proposed region planning scheme or a proposed amendment to a region planning scheme, the Commission, unless the proposed scheme or amendment has been withdrawn under section 62A, is to submit to the Minister —

(a) the proposed scheme or amendment, with the modifications, if any, the Commission thinks fit to make, including as a result of public submissions made under regulations made for the purposes of section 43; and

(b) a copy of each of those submissions; and

(c) a report by the Commission on those submissions.

[Section 48 inserted: No. 26 of 2020 s. 33.]

*[**49.** Deleted: No. 26 of 2020 s. 33.]*

50. When Minister may submit proposed scheme or amendment for Governor's approval

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

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

(b) the Minister has received a statement under section 48F(2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that scheme or amendment is subject; or

(c) the period of 28 days referred to in section 48A(1)(b)(i) of the EP Act has expired without the EPA having informed the Commission under that section,

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

51. Minister may direct proposed scheme or amendment to be republicised

(1) Before presenting the scheme or amendment to the Governor for consideration, if the Minister is of the opinion that any modification made to the scheme or amendment by the Commission is of such a substantial nature as to warrant such action, the Minister may direct the Commission to again advertise the scheme or amendment as so modified, or that portion of the scheme or amendment which is so modified, for public inspection at such time and at such places as the Minister directs.

(2) The Minister may direct the Commission to publish such notices in connection with the scheme or amendment as the Minister thinks appropriate.

(3) The Commission is to comply with the directions.

[Section 51 amended: No. 26 of 2020 s. 34.]

52. Modifications to proposed scheme or amendment, procedure on

(1) A person who desires to make a submission on modifications made by the Commission may notify the Minister in writing in the form approved by the Commission.

(2) The Minister is to direct the Commission to consider and report on the submission to the Minister in accordance with the procedure set out in the regulations.

[(3) deleted]

[Section 52 amended: No. 26 of 2020 s. 35.]

53. Approval of Governor

(1) If the Minister has not withdrawn the scheme or amendment under section 62A, the Minister is to present the scheme or amendment to the Governor.

(2) The Governor may approve the scheme or amendment with or without such modifications as the Minister may recommend and the Governor thinks necessary to make and the Governor is by this subsection authorised to make such modifications.

[Section 53 amended: No. 26 of 2020 s. 36.]

54. Publicising approved scheme or amendment

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

(a) the scheme or amendment, or the scheme or amendment as so modified, but not including any maps, plans or diagrams, is to be published in the *Gazette*; and

(b) the maps, plans and diagrams are to be open for public inspection at such times and such places as the Minister determines.

55. Revoking approval of scheme or amendment

(1) The Governor may, on the recommendation of the Minister and at any time before the scheme or amendment has effect, revoke his or her approval of the scheme or amendment.

(2) The Governor may, on the recommendation of the Minister and at any time before the scheme or amendment is published in the

Gazette, revoke his or her approval of part of the scheme or amendment.

(3) If the approval is revoked under subsection (1) or (2) before the scheme or amendment has been published in the *Gazette*, section 54 does not apply in respect of the scheme or amendment, or, if the approval is revoked in respect of part of the scheme or amendment, the part of the scheme or amendment in respect of which the approval is revoked, as the case requires.

(4) If the approval is revoked under subsection (1) after notice of the scheme or amendment has been published in the *Gazette* and before the scheme is laid before both Houses of Parliament —

(a) section 56(1) does not apply in respect of the scheme or amendment; and

(b) notice of the revocation is to be published in the *Gazette.*

(5) If the approval of the scheme or amendment is revoked under subsection (1) after the scheme or amendment is laid before both Houses of Parliament —

(a) the scheme or amendment is to be withdrawn; and

(b) notice of the revocation is to be published in the *Gazette*.

56. Parliament may disallow scheme or amendment

(1) A copy of the scheme or amendment and a copy of the report of the Commission on the submissions referred to in sections 48 and 52 are to be laid before each House of Parliament within 6 sitting days of that House next following the date of the publication of the scheme or amendment in the *Gazette*.

(2) Either House of Parliament may, by resolution of which notice has been given within 12 sitting days of that House after the scheme or amendment has been laid before it under subsection (1), pass a resolution disallowing the scheme or amendment.

(3) As soon as the scheme or amendment is no longer subject to disallowance under subsection (2), the scheme or amendment has effect as if it were enacted by this Act.

(4) If either House of Parliament passes a resolution disallowing the scheme or amendment, notice of the disallowance is to be published in the *Gazette* within 21 days of the passing of the resolution.

(5) It does not matter whether or not the period of —

(a) 6 sitting days referred to in subsection (1) or some of them; or

(b) 12 sitting days referred to in subsection (2) or some of them,

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

Division 4 — Submission and approval of minor amendments to region planning schemes

[Heading inserted: No. 26 of 2020 s. 37.]

56A. Term used: minor region planning scheme amendment

In this Division —

minor region planning scheme amendment means an amendment to a region planning scheme that does not, in the opinion of the Commission, constitute a substantial alteration to the region planning scheme.

[Section 56A inserted: No. 26 of 2020 s. 38.]

57. Proposed minor amendment may be submitted and approved under this Division

(1) A proposed minor region planning scheme amendment —

(a) is not required to be submitted and approved in accordance with the procedure prescribed in Division 3; and

(b) instead, may be submitted and approved in accordance with the procedure prescribed in this Division.

[(2) deleted]

[Section 57 amended: No. 45 of 2020 s. 68; No. 26 of 2020 s. 39.]

*[**58-60.** Deleted: No. 26 of 2020 s. 40.]*

61. Minister not to approve proposed minor amendment in some cases

The Minister is not to approve under section 62(1) a proposed minor region planning scheme amendment referred to the EPA under section 38 if the Minister has reached agreement with the Minister for the Environment under section 48A(2)(b) of the EP Act, or until —

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

(b) the Minister has received a statement under section 48F(2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that amendment is subject; or

(c) the period of 28 days referred to in section 48A(1)(b)(i) of the EP Act has expired without the EPA having informed the Commission under that section,

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

[Section 61 amended: No. 26 of 2020 s. 41.]

62. Minister may approve or decline to approve minor amendment

(1A) After complying with any applicable requirements of Division 2 in relation to a proposed minor region planning scheme amendment, the Commission must, unless the proposed amendment has been withdrawn under section 62A, submit to the Minister —

(a) the proposed amendment; and

(b) a report and recommendation on the proposed amendment.

(1) The Minister may, if a proposed minor region planning scheme amendment is submitted under this section —

(a) approve the amendment; or

(b) require the Commission to modify the amendment in such manner as the Minister specifies before the amendment is resubmitted for the Minister's approval under this subsection; or

(c) refuse to approve the amendment.

(2) When the Minister has approved a proposed amendment under subsection (1) the Commission is to cause —

(a) that amendment, excluding any maps, plans or diagrams forming part of that amendment, to be published in the *Gazette*; and

(b) any maps, plans or diagrams forming part of that amendment to be open for inspection at such times and places as the Commission determines.

(3) The amendment has effect on publication under subsection (2) as if it were enacted by this Act.

[Section 62 amended: No. 26 of 2020 s. 42; No. 34 of 2023 s. 75.]

Division 4A — Withdrawal of region planning scheme or amendment

[Heading inserted: No. 26 of 2020 s. 43.]

62A. Minister may withdraw or direct withdrawal of proposed scheme or amendment

(1) The Minister may, if the Minister considers it appropriate, withdraw, or direct the Commission to withdraw, a proposed region planning scheme or proposed amendment to a region planning scheme at any time before the proposed scheme or amendment is presented to the Governor under section 53(1) or submitted to the Minister under section 62.

(2) The Minister must cause notice of the withdrawal of a proposed region planning scheme or amendment under subsection (1) to be published in the *Gazette*.

[Section 62A inserted: No. 26 of 2020 s. 43.]

Division 5 — Consolidation of region planning scheme

63. Minister may direct consolidation

(1) The Minister may direct the Commission to deliver to the Minister a consolidation of a region planning scheme as in force at the date specified in the direction.

(2) On receipt of a direction under subsection (1) the Commission is to cause to be prepared a consolidation of the region planning

scheme incorporating all amendments to the scheme in force on the date specified in the direction.

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

(1) In the preparation of the consolidation there may be included, in addition to or in substitution for, any maps, plans and diagrams forming part of the region planning scheme, such maps, plans or diagrams, prepared on such scale or scales, as, in the opinion of the Commission, are necessary to state and represent, in an informative and convenient form, the scope, effect and details of the region planning scheme as amended.

(2) Where an addition or substitution under subsection (1) necessitates the making of a consequential amendment to the text of the region planning scheme, that amendment is to be made in the consolidation.

(3) Where an addition, substitution or other amendment is effected under subsection (1) or (2) the region planning scheme is to be taken to be amended accordingly on and from the publication of notice of consolidation under section 66(1) but the provisions of Divisions 3 and 4 and the *Metric Conversion Act 1972* do not apply to any such addition, substitution or other amendment.

65. Certification and delivery of consolidation

After preparing the consolidation the Commission is to —

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

(b) deliver the consolidation to the Minister.

66. Proof of consolidation

(1) If the Minister approves of the consolidation and signs the consolidation, the Commission is to publish notice of the consolidation in the *Gazette*.

(2) After publication of the notice —

(a) the consolidation is to be judicially noticed by all courts, tribunals, bodies and persons; and

(b) the consolidation is to be taken, unless the contrary intention is shown, to be a correct statement and representation of the region planning scheme as in force on the date specified in the Minister's direction.

67. Consolidation of portion of region planning scheme

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

(2) The provisions of this Division apply to and in relation to the consolidation of the portion of the scheme so specified in the direction as though the portion of the scheme so specified were the whole scheme.

Part 5 — Local planning schemes

Division 1 — Continuation and formulation of local planning schemes

68. Town planning schemes under repealed Act, effect of

(1) Any town planning scheme in force under the *Town Planning and Development Act 1928* on the day on which this section comes into operation —

(a) continues in force as a local planning scheme under this Act; and

(b) has effect as if it were enacted by this Act.

(2) Except as provided in section 257B(3), nothing in this Act affects the validity of a town planning scheme continued under subsection (1).

[Section 68 amended: No. 28 of 2010 s. 53.]

69. General objects of schemes

(1) A local planning scheme may be made under this Act with respect to any land —

(a) with the general objects of making suitable provision for the improvement, development and use of land in the local planning scheme area; and

(b) making provision for all or any of the purposes, provisions, powers or works referred to in Schedule 7.

(2) With those objects a local planning scheme may provide for planning, replanning, or reconstructing, the whole or any part of the local planning scheme area.

(3) This section applies subject to section 256 and the regulations made under it and sections 257A and 257B.

[Section 69 amended: No. 28 of 2010 s. 54.]

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

(1) Nothing in this Act prevents —

(a) a local planning scheme from being made with respect to land comprised in another local planning scheme; or

(b) subject to subsection (2), 2 or more local planning schemes from having force and effect concurrently with respect to any land.

(2) The zoning of land in an area to which a local planning scheme applies is not to be provided for in more than one local planning scheme applicable to that area.

71. Scheme not to apply to redevelopment area or Swan Valley

A local planning scheme must not be made or amended under this Act —

(a) except as provided in the *Metropolitan Redevelopment Authority Act 2011* sections 57 and 58 and without limiting section 51 of that Act, to make any provision in respect of any land to which an approved redevelopment scheme that is in operation under that Act applies; or

(b) without limiting the *Hope Valley-Wattleup Redevelopment Act 2000* section 23, to make any provision in respect of land in the redevelopment area as defined in that Act; or

(c) without limiting the *Swan Valley Planning Act 2020* section 9, to make any provision in respect of any land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under that Act.

[Section 71 inserted: No. 45 of 2011 s. 141(5); amended: No. 45 of 2020 s. 69.]

72. Local government may prepare or adopt scheme

(1) Subject to section 71, a local government may —

(a) prepare a local planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district; or

(b) adopt, with or without modifications, a local planning scheme proposed by all or any of the owners of any land with respect to which the local government might itself have prepared a scheme.

(2) A local government and another local government may —

(a) jointly prepare a local planning scheme with respect to land that is partly in the district of the first-mentioned local government and partly in the district of the other local government; or

(b) jointly adopt, with or without modifications, a local planning scheme proposed by all or any of the owners of any land with respect to which the local governments might themselves have prepared a scheme.

(3) Where a local planning scheme is prepared or adopted under subsection (2) a reference in this Act to the local government or responsible authority that is preparing or has prepared the scheme is to be read as a reference to the local governments that join in the preparation or adoption of the scheme.

73. Contents of scheme

(1) A local planning scheme is to —

(a) define in such manner as may be prescribed by the regulations the area to which the scheme is to apply;

(b) specify the local government to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local government.

(2A) A local planning scheme may —

(a) supplement provisions prescribed under section 256; and

(b) deal with any special circumstances or contingencies for which adequate provisions are not prescribed under section 256.

(2) Where land included in a local planning scheme is in the districts of more than one local government, or is in the district of a local government by which the scheme was not prepared, the responsible authority in relation to the local planning scheme may be one of those local governments, or for certain purposes of the scheme one local government, and for other purposes of the scheme another local government.

[Section 73 amended: No. 28 of 2010 s. 55.]

74. Repealing scheme

A local planning scheme may be repealed by —

(a) a subsequent local planning scheme; or

(b) an instrument of repeal prepared by the local government, approved by the Minister and published in the *Gazette*.

75. Amending scheme

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

(a) prepared by the local government, approved by the Minister and published in the *Gazette*; or

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

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

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

(1A) Subsection (1) applies if the Minister is satisfied on any representation that a local government —

(a) has failed to prepare a local planning scheme, or an amendment to a local planning scheme, where one ought to be prepared; or

(b) has failed to adopt a local planning scheme, or an amendment to a local planning scheme, where one ought to be adopted; or

(c) has failed to take a requisite step for getting approval for a local planning scheme, or an amendment to a local planning scheme, that has been prepared or adopted by the local government where that step ought to be taken; or

(d) without limiting paragraph (c), has failed to give effect to any decision of the Minister under section 87(2)(b).

(1) The Minister may order the local government, within such time as is specified in the order, as the case requires —

(a) to prepare and submit to the Minister a local planning scheme or an amendment to a local planning scheme; or

(b) to adopt and submit to the Minister a local planning scheme or an amendment to a local planning scheme; or

(c) to take the requisite step referred to in subsection (1A)(c); or

(d) to give effect to the decision referred to in subsection (1A)(d).

(2) If the representation under subsection (1A) is that a local government has failed to adopt a local planning scheme or an amendment to a local planning scheme, the Minister, in lieu of

making an order to adopt the scheme or amendment, may approve of the proposed scheme or amendment subject to such modifications and conditions, if any, as the Minister thinks fit.

(3) A local planning scheme or an amendment approved under subsection (2) has effect as if it had been adopted by the local government and approved by the Minister under this Part.

(4) The Minister must ensure that written reasons for making an order under subsection (1) are provided with the order.

(5) The Minister must, as soon as is practicable after an order is given to the local government under subsection (1), cause to be laid before each House of Parliament or dealt with under section 268A —

(a) a copy of the order; and

(b) a copy of the reasons for making the order.

[Section 76 amended: No. 28 of 2010 s. 56(1)-(3); No. 45 of 2011 s. 141(6); No. 26 of 2020 s. 44.]

77A. Minister may order local government to amend scheme to be consistent with State planning policy

(1) The Minister may, on the recommendation of the Commission, order a local government to prepare and submit for the approval of the Minister an amendment to a local planning scheme for the purpose of rendering the local planning scheme consistent with a specified State planning policy.

(2) The order must specify the following —

(a) the relevant State planning policy;

(b) the amendments that are to be made to the local planning scheme;

(c) the time (being sufficient time to allow the local government to comply with its obligations under Divisions 3 and 4) by which the local government must comply with the order.

(3) The Minister must, as soon as is practicable after the order is given to the local government, cause a copy of the order to be laid before each House of Parliament or dealt with under section 268A.

(4) If —

(a) the Commission makes a recommendation for the purposes of subsection (1); and

(b) the Minister decides not to make an order pursuant to the recommendation,

the Minister must, as soon as is practicable —

(c) give the Commission written reasons for the Minister's decision; and

(d) cause a copy of the reasons to be laid before each House of Parliament or dealt with under section 268A.

[Section 77A inserted: No. 28 of 2010 s. 46.]

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

77. Effect of State planning policies and planning codes on scheme

(1) Every local government in preparing or amending a local planning scheme —

(a) is to have due regard to any State planning policy which affects its district; and

(b) may include in the scheme a provision that a specified planning code, with such modifications as may be set out in the scheme, is to be read as part of the scheme, or a provision however expressed to the same effect.

(2) Where a scheme includes a provision referred to in subsection (1)(b) —

(a) the scheme is to have effect as if the planning code, as from time to time amended, or any subsequent planning

code by which it is repealed under this Act, were set out in full in the scheme; and

(b) the planning code is to have effect as part of the scheme subject to any modifications set out in the scheme.

(3) Modifications referred to in subsection (2)(b) prevail over any later amendment of the planning code, or subsequent code referred to in subsection (2)(a), which is inconsistent with the modifications.

[Section 77 amended: No. 26 of 2020 s. 66.]

*[**78.** Deleted: No. 45 of 2020 s. 70.]*

79. Heritage Council's advice to be sought in some cases

If an entry in the register established and maintained under the *Heritage Act 2018* section 35(1) or in any local heritage survey prepared under section 103(1) of that Act relates to land or waters that are within or abut a local government district, the local government in preparing or amending a local planning scheme —

(a) is to refer the proposed scheme or amendment to the Heritage Council for advice in so far as any proposal under that scheme or amendment affects or may affect any such land or waters; and

(b) is to have regard to any advice given; and

(c) is not to proceed, without the consent of the Minister, with the proposal unless or until that advice has been received.

[Section 79 amended: No. 22 of 2018 s. 186(4).]

80. Swan and Canning Rivers management programme, effect of

If a strategic document in force under the *Swan and Canning Rivers Management Act 2006* Part 4 relates to land or waters that are within or abut the district of a local government referred

to in Schedule 7 of that Act, the local government in preparing or amending a local planning scheme is to have due regard to that management programme.

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

81. Referral of proposed scheme or amendment to EPA

(1) As soon as practicable after preparing, or resolving to adopt, a proposed local planning scheme or a proposed amendment to a local planning scheme, a local government must refer the proposed scheme or amendment to the EPA by giving to the EPA —

(a) a copy of the proposed scheme or amendment; and

(b) any other written information about the proposed scheme or amendment that is necessary to enable the EPA to comply with the EP Act section 48A in relation to the proposed scheme or amendment.

(2) Despite subsection (1), a proposed local planning scheme or amendment to a local planning scheme of a class prescribed by regulations under the EP Act section 48AAA(2) is not required to be referred to the EPA.

[Section 81 inserted: No. 26 of 2020 s. 45.]

82. Environmental review, when required etc.

(1) When the EPA has acted under section 48C(1)(a) of the EP Act in relation to a proposed local planning scheme or a proposed amendment to a local planning scheme referred to the EPA under section 81, the local government concerned, if it wishes to proceed with that local planning scheme or amendment, is to undertake, or cause under subsection (5) to be undertaken, an environmental review of that local planning scheme or amendment in accordance with the relevant instructions issued under that section.

(2) The local government is not to advertise that local planning scheme or amendment under section 84 until —

(a) the local government has forwarded the environmental review to the EPA; and

(b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.

(3) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions issued under section 48C(1)(a) of the EP Act, the local government may —

(a) comply with subsection (1) in respect of the local planning scheme or amendment concerned; or

(b) request the Minister to consult the Minister for the Environment and, if possible, agree with that Minister on whether or not the review has been undertaken in accordance with those instructions.

(4) If the Minister, having complied with a request made under subsection (3), and the Minister for the Environment —

(a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision is final and without appeal or review; or

(b) cannot so agree, section 48J of the EP Act applies.

(5) If —

(a) the resolution to prepare or adopt a local planning scheme, or an amendment to a local planning scheme, referred to in subsection (1) was passed at the request of the owner of land to which that local planning scheme or amendment relates; and

(b) the local government referred to in that subsection by written notice served on that owner requests the owner to undertake an environmental review of that local planning scheme or amendment in accordance with the relevant instructions issued under section 48C(1)(a) of the EP Act; and

(c) that owner wishes that local planning scheme or amendment to proceed,

the owner is to undertake the environmental review and forward that review to that local government.

(6) The local government may, in accordance with regulations made under section 259, recover the expenses incurred by the local government in undertaking an environmental review in accordance with instructions issued under section 48C(1)(a) of the EP Act.

[Section 82 amended: No. 26 of 2020 s. 46.]

83. Consultation requirements

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

Division 4 — Advertisement and approval

83A. Proposed scheme or amendment to be submitted to Minister for approval to advertise

(1) After preparing, or resolving to adopt, a proposed local planning scheme or a proposed amendment to a local planning scheme, and complying with sections 81 and 82 (if applicable) in relation to the proposed scheme or amendment, a local government must submit the proposed scheme or amendment to the Minister.

(2) The Minister may —

(a) approve the proposed scheme or amendment for advertising under section 84; or

(b) require the local government to modify the proposed scheme or amendment in such manner as the Minister specifies and to resubmit the proposed scheme or amendment to the Minister under subsection (1); or

(c) refuse approval for the proposed scheme or amendment to be advertised under section 84.

(3) A requirement under subsection (2)(b) may include a requirement that sections 81 and 82 (if applicable) be complied with again in relation to the modified scheme or amendment.

(4) If approval is refused under subsection (2)(c), the local government cannot proceed with the proposed scheme or amendment.

(5) A local government is not required to submit a proposed amendment to a local planning scheme under subsection (1), or to comply with section 84 in relation to a proposed amendment to a local planning scheme, if —

(a) the proposed amendment is of a class that regulations provide is not required to be advertised; and

(b) either —

(i) the proposed amendment was not referred to the EPA under section 81 because of section 81(2); or

(ii) the EPA has informed the local government under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA.

[Section 83A inserted: No. 26 of 2020 s. 47; amended: No. 34 of 2023 s. 76.]

84. Advertising proposed scheme or amendment

If under section 83A(2)(a) the Minister approves a proposed local planning scheme, or a proposed amendment to a local planning scheme, for advertising under this section, the local government must, in accordance with the regulations —

(a) advertise the proposed scheme or amendment for public inspection; and

(b) consider public submissions on the proposed scheme or amendment.

[Section 84 inserted: No. 26 of 2020 s. 47.]

85. Local government's duties if proposed scheme or amendment to be assessed under EP Act

(1) When a local government has been informed under section 48A(1)(b)(i) of the EP Act that a proposed local planning scheme or amendment referred to the EPA under section 81 should be assessed by the EPA under Part IV Division 3 of the EP Act, the local government is to —

(a) as soon as practicable, but in any event within 7 days after the expiry of the period during which that local planning scheme or amendment is advertised under section 84, transmit to the EPA a copy of each submission —

(i) made during that period; and

(ii) relating wholly or in part to environmental issues raised by that local planning scheme or amendment;

and

(b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in paragraph (a) inform the EPA of its views on and

response to the environmental issues referred to in paragraph (a) and received within that period.

[Section 85 amended: No. 26 of 2020 s. 48.]

86. Minister not to approve proposed scheme or amendment in some cases

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

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

(b) the Minister has received a statement under section 48F(2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that local planning scheme or amendment is subject; or

(c) the period of 28 days referred to in section 48A(1)(b)(i) of the EP Act has expired without the EPA having informed the local government under that section,

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

87. Approving and publicising scheme or amendment

(1) Subject to section 83, after advertisement under section 84 and compliance with sections 85 and 86 (if applicable), a local planning scheme prepared or adopted, or an amendment to a local planning scheme prepared or adopted, by a local government is to be submitted to the Minister for the approval of the Minister.

(2) The Minister may, in relation to a local planning scheme or amendment submitted to the Minister under subsection (1) —

(a) approve of that local planning scheme or amendment; or

(b) require the local government concerned to modify that local planning scheme or amendment in such manner as the Minister specifies before the local planning scheme or amendment is resubmitted for the Minister's approval under this subsection; or

(c) refuse to approve of that local planning scheme or amendment.

(3) When the Minister notifies the Commission that the Minister has approved a local planning scheme or an amendment to a local planning scheme, the Commission is to cause the scheme or amendment to be published in the *Gazette*.

(4A) Any costs incurred by the Commission in publishing a scheme or amendment under subsection (3) may be recovered by the Commission from the local government which prepared or adopted the scheme or amendment as a debt due to the Crown.

(4B) When the Minister has approved a local planning scheme or an amendment to a local planning scheme, the local government which prepared or adopted the scheme or amendment is to —

(a) advertise the scheme or amendment in accordance with the regulations; and

(b) ensure that copies of the scheme or amendment are available to the public.

(4) A local planning scheme or amendment to a local planning scheme, when approved by the Minister and published in the *Gazette*, has full force and effect as if it were enacted by this Act.

(5) It is sufficient compliance with subsection (3) if a local planning scheme or amendment to a local planning scheme is published

in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme or amendment.

[Section 87 amended: No. 28 of 2010 s. 57; No. 26 of 2020 s. 49.]

Division 5 — Review of local planning schemes

88. Consolidated scheme, when to be prepared

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

(2) The consolidation is to be prepared —

(a) in the fifth year after approval was given to the scheme by the Minister under section 87; and

(b) in the case of a scheme in respect of which a consolidation has been published in the *Gazette* under this Part, in the fifth year after the consolidation of the scheme was last so published; and

(c) in the case of a scheme in respect of which an exemption is granted under subsection (4)(b) or section 91(3), in the fifth year after the notice of exemption was published in the *Gazette*.

(3) Despite subsections (1) and (2), a local government is not required to prepare a consolidation of the scheme if the local government resolves instead to prepare a new scheme in substitution for that scheme.

(4) Despite subsections (1) and (2), the Minister may at any time, by notice in the *Gazette* —

(a) direct the local government by which a local planning scheme was prepared to prepare, within the period specified in the notice, a consolidation of the scheme; or

(b) exempt a local government from compliance with those subsections if the scheme does not contain any provision for the zoning or classification of land.

(5) If a consolidation is required under subsection (4)(a) before a consolidation has been prepared under a paragraph of subsection (2), the consolidation is not required under that paragraph.

(6) The Minister is to consult the local government before giving a direction under subsection (4)(a).

89. Consolidated scheme, public submissions to be sought on

(1) After preparing the consolidation the local government is to ensure that the consolidation is approved by the Commission and made available for inspection.

(2) When the consolidation has been approved by the Commission, the local government is to invite submissions from the public on the effectiveness of the scheme, the need for amendment of the scheme and the need for the making of a new scheme.

90. Consolidated scheme, report on operation of required

(1) Not later than 6 months after preparing a consolidation of a local planning scheme, the local government is to make a report to the Minister on the operation of the scheme.

(2) In its report the local government is to —

(a) include all submissions received under section 89; and

(b) report and make recommendations on the submissions; and

(c) report and make recommendations as to whether or not the scheme —

(i) is satisfactory in its existing form; or

(ii) should be amended; or

(iii) should be repealed and a new scheme prepared in its place; or

(iv) should be repealed.

91. Procedure if s. 90 report does not recommend change to scheme

(1) If —

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

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

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

(2) It is sufficient compliance with subsection (1) if a consolidation of a local planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme.

(3) If the Minister considers that the publication of a consolidation of a local planning scheme under subsection (1) is unnecessary or inexpedient the Minister may by notice published in the *Gazette* declare that the scheme is satisfactory in its existing form and exempt the local government from the requirement to publish the consolidation.

92. Procedure if s. 90 report recommends change to scheme

(1) If —

(a) a report of a local government under section 90 recommends amendment of a local planning scheme and the Minister concurs; or

(b) the Minister, after considering the report, advises the local government that amendment is recommended,

the local government, within 3 months or such longer period as the Minister may in writing agree from the date of the report or the Minister's advice as the case may be, is to amend the local planning scheme in accordance with this Part.

(2) After the Minister has under section 87(2), approved the amendments prepared for the purposes of subsection (1), the local government is to —

(a) prepare a consolidation of the local planning scheme, incorporating —

(i) all the amendments that have been made to the scheme and are of effect on the day on which the resolution to prepare the consolidation is made; and

(ii) the amendments prepared for the purposes of subsection (1) and approved by the Minister under section 87(2);

and

(b) publish the consolidation of the local planning scheme in the *Gazette*.

(3) It is sufficient compliance with subsection (2)(b) if a consolidation of a local planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the local planning scheme.

93. Consolidated scheme, effect of publication of

(1) As from the publication of a consolidation of a local planning scheme under section 91 or 92 the consolidation of the local planning scheme —

(a) is to be judicially noticed by all tribunals, bodies and persons; and

(b) is to be taken to be a correct statement and representation of the local planning scheme as of effect on the day on which the resolution to prepare the consolidation was made and, in the case of a consolidation published under section 92, including the amendments prepared for the purposes of subsection (1) of that section and approved by the Minister.

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

94. Procedure if new scheme prepared following s. 90 report

If —

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

(b) the Minister, after considering the report, advises the local government that the local planning scheme should be repealed and a new scheme prepared in its place,

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

95. Procedure if scheme repealed following s. 90 report

If —

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

(b) the Minister, after considering the report, advises the local government that the local planning scheme should be repealed and not replaced,

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

96. Consolidation of 2 or more schemes, when this Div. applies to

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

Division 6 — Crown land

97. Schemes for Crown lands

(1) If Crown land is to be sold, leased or disposed of, the Commission may prepare a scheme in respect of the land.

(2) The Commission may prepare a scheme in respect of the land with the general objects and provisions set out in section 69.

(3) A scheme prepared under this section, if approved by the Minister and published in the *Gazette*, has the same effect as a local planning scheme made and approved under this Part.

(4) The provisions of this Act, other than Part 10, so far as consistent and applicable, apply to and in respect of a scheme prepared under this section, as if the Commission were the responsible authority.

(5) If —

(a) a scheme is prepared, approved and published under this section; and

(b) Crown land the subject of the scheme is sold, leased or disposed of,

the Commission, with the approval of the Minister, may —

(c) suspend, vary, supplement, or supersede any of the provisions of the scheme; or

(d) agree with a local government to be jointly responsible with that local government, as the responsible authority under and for the purposes of the scheme either with respect to all, or part, of the scheme; or

(e) agree with a local government that the local government is to be substituted as the responsible authority under and for the purposes of the scheme, either with respect to all, or part, of the scheme.

(6) After subsection (7) has been complied with in respect of a scheme to which subsection (5)(e) applies, the scheme is to be taken to be a local planning scheme prepared by the local government substituted as the responsible authority and this Act applies accordingly.

(7) Where the Commission exercises a power under subsection (5) and as a result a scheme is amended, the Minister is to cause notice of the amendment to be published in the *Gazette*.

Part 6 — Interim development orders

Division 1 — Regional interim development orders

98. Making and purpose of order

(1) Subject to this Part, if —

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

(b) the Minister approves,

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

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

(a) before the relevant procedures set out in Part 4 have been fully complied with in respect of the region planning scheme; and

(b) after the Commission has complied with subsection (3).

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

(a) inform each local government of a district which lies within or partly within the area to which the proposed regional interim development order will apply of the proposal; and

(b) invite that local government to make submissions on the proposal within 28 days; and

(c) provide the Minister with a copy of any submission received under paragraph (b).

99. Contents of order

(1) A regional interim development order is to specify the land affected by the regional development order.

(2) A regional interim development order may —

(a) require a person, before commencing to carry out any specified development within the regional order area, to obtain the written approval of the Commission;

(b) regulate, restrict or prohibit any specified class of development within the regional order area;

(c) exempt from the operation of the order any development of a specified class within the regional order area;

(d) provide that the approval of the Commission for the carrying out of any development referred to in the order may, if granted, be granted subject to such conditions as the Commission considers necessary to impose, including, without limiting the generality of those conditions —

(i) a condition limiting the period during which that development may be carried out; and

(ii) a condition requiring the cessation of the development and removal of any structure or building erected under that approval at the expiry of the period so limited;

(e) provide that the Commission may refuse to grant to an applicant its approval of development of a specified class in a specified part of the regional order area;

(f) subject to section 108, suspend, vary, supplement or supersede any of the provisions of the local laws in force under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* in the regional order area.

(3) In subsection (2) —

specified means specified in the regional interim development order concerned.

100. Commission to consult local government on some development applications

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

(a) refer that application to the local government of the district in which the relevant land lies; and

(b) invite the local government to make submissions on the application within 42 days; and

(c) have regard to any submission received under paragraph (b).

101. Restrictions on power to grant development approval

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

Division 2 — Local interim development orders

102. Making and purpose of order

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

(2) If a local planning scheme is already in effect in a district or part of a district and it is proposed to make a further local planning

scheme for that district or part of a district, the Minister is not to make a local interim development order that has effect in that district or part of a district unless, in the opinion of the Minister, it is in the public interest to do so.

103. Contents of order

(1) A local interim development order is to specify the land affected by the order.

(2) A local interim development order may —

(a) require a person, before commencing to carry out any specified development within the local order area, to obtain the written approval of the local government administering the order;

(b) regulate, restrict or prohibit any specified class of development within the local order area;

(c) exempt from the operation of the order any development of a specified class within the local order area;

(d) in the case of land to which the *Heritage Act 2018* applies, require the local government administering the order before approving a development application —

(i) to refer the application in question to the Heritage Council; and

(ii) not to proceed, without the consent of the Minister, with the application unless or until the advice of the Heritage Council has been received; and

(iii) to have regard to that advice;

(e) provide that the approval of the local government for the carrying out of any development referred to in the order may, if granted, be granted subject to such conditions as the local government considers necessary to impose,

including, without limiting the generality of those conditions —

(i) a condition limiting the period during which that development may be carried out; and

(ii) a condition requiring the cessation of the development and removal of any structure or building erected under that approval at the expiry of the period so limited;

(f) provide that the local government administering the order may refuse to grant to an applicant its approval of development of a specified class in a specified part of the local order area;

(g) subject to section 108, suspend, vary, supplement or supersede any of the provisions of the local laws in force under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* in the local order area.

(3) In subsection (2) —

specified means specified in the local interim development order concerned.

[Section 103 amended: No. 22 of 2018 s. 186(5).]

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

104. Consultation requirements

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

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

(b) invite that public authority or utility services provider to make submissions on the proposal within 28 days; and

(c) provide the Minister with a copy of any submission received under paragraph (b).

105. Publicising interim development order

(1) On the making of a regional interim development order the Commission is to cause to be published once in the *Gazette* and 3 times in a daily newspaper circulating in the part of the State to which the order applies a notice —

(a) containing a summary of the order; and

(b) stating that copies of the order are available for inspection by any person free of charge at the offices of the Commission and of any local government within the area to which the order applies.

(2) At the same time or before acting under subsection (1), the Commission is to publish in the *Gazette* —

(a) a summary of the relevant resolution made under section 35(1); and

(b) a description of the part of the State to which the relevant proposed region planning scheme is to apply.

(3) On the making of a local interim development order the local government in whose district the order applies is to cause to be published once in the *Gazette* and 3 times in a daily newspaper circulating in that district a notice —

(a) containing a summary of the order; and

(b) stating that copies of the order are available for inspection by any person free of charge at the offices of the Commission and of any local government within the area to which the order applies.

106. Administration of interim development order

(1) The Commission is to administer each regional interim development order.

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

107. Effect and duration of interim development order

(1) Subject to subsection (2), an interim development order —

(a) comes into operation on the day of publication of the relevant notice in the *Gazette* under section 105; and

(b) has effect as if it were enacted by this Act.

(2) An interim development order ceases to have effect in the regional order area or local order area to which it applies —

(a) when the relevant region planning scheme or local planning scheme, as the case requires, comes into operation in respect of that area; or

(b) when the interim development order is revoked under section 110; or

(c) on the expiry of 3 years from the day on which the interim development order first applied to that area,

whichever is the sooner.

(3) Despite subsection (2) —

(a) the Commission may, by notice published in the *Gazette* before a regional interim development order ceases to have effect, extend its operation for a further period not exceeding 12 months and may, if the Commission thinks fit, exercise that power of extension more than once; and

(b) the Minister may, by notice published in the *Gazette* before a local interim development order ceases to have effect, extend its operation for a further period not

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

108. Existing lawful development not affected

Nothing in an interim development order prevents —

(a) the continued use of any land for the purpose for which the land was lawfully being used; or

(b) the carrying out of any development for which an approval or approvals, if any, required under this Act or any other Act authorising that development to be carried out, had been obtained and was or were current,

immediately before the coming into operation of the order.

109. Amending interim development order

(1) The Commission may, with the approval of the Minister, at any time make an order amending a regional interim development order.

(2) The Minister may at any time make an order amending a local interim development order.

(3) Sections 105(1) or (3) and 107(1) apply with any necessary modifications to such an order as if the order were an interim development order.

110. Revoking interim development order

(1) The Commission may, with the approval of the Minister, at any time by order published —

(a) once in the *Gazette*; and

(b) 3 times in a daily newspaper circulating in the part of the State to which the relevant regional interim development order applies,

revoke a regional interim development order.

(2) The Minister may at any time by order published —

(a) once in the *Gazette*; and

(b) 3 times in a daily newspaper circulating in the part of the district to which the relevant local interim development order applies,

revoke a local interim development order.

111. Non-conforming development by local government or public authority, procedure for

(1) If —

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

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

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

(2) If —

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

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

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

(3) The Governor may, by order, in respect of a matter submitted under subsection (1) or (2) for determination —

(a) prohibit absolutely or for such period as the Governor thinks fit; or

(b) restrict, regulate or permit,

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

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

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

Part 7 — Planning control areas

112. Declaration of planning control areas

(1) If the Commission considers that any land may be required for one or more of the purposes specified in Schedule 6, the Commission may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a planning control area.

(2) The power in subsection (1) cannot be exercised in respect of any land that is —

(a) land to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies; or

(b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or

(c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or

(d) in an improvement scheme area.

[(3) deleted]

(4) This Part and the operation of any approval of development granted under this Part have effect subject to the *Heritage Act 2018* Part 5 Division 2.

(5) Where any land is comprised within an area to which the Commission considers that this section should apply and is land to which the *Heritage Act 2018* applies, the Commission is to satisfy the Minister before seeking approval to the declaration of that land as a planning control area that full disclosure has been made to, and consultations concluded with, the Heritage Council

as to the likely effect of the declaration as regards places to which that Act applies.

[Section 112 amended: No. 52 of 2006 s. 6; No. 28 of 2010 s. 58; No. 45 of 2011 s. 141(7); No. 22 of 2018 s. 186(6) and (7); No. 45 of 2020 s. 71.]

113. Amending or revoking s. 112 declaration

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

114. Duration of s. 112 declaration

A declaration made under section 112 remains in force until —

(a) the expiry of such period, not exceeding 5 years from the date on which the notice by which that declaration was so made was published in the *Gazette*, as is specified in that notice; or

(b) it is revoked under section 113,

whichever is the sooner.

115. Development in planning control area, applying for approval of

(1) A person who wishes to commence and carry out development in a planning control area may apply to the local government in the district of which the planning control area is situated for approval of that development.

(2) An applicant is to submit to the local government such plans and other information as the local government may reasonably require.

(3) The local government, within 30 days of receiving the application, is to forward the application, together with its recommendation, to the Commission for determination.

116. Commission may approve or refuse s. 115 application

(1) After receiving an application and recommendation forwarded to it under section 115(3), the Commission may —

(a) consult with any authority that in the circumstances it thinks appropriate; and

(b) having regard to —

(i) any relevant State planning policy: and

(ii) the purposes for which the land to which that application relates is zoned or reserved under any planning scheme; and

(iii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates; and

(iv) the orderly and proper planning, and the preservation of the amenity, of the locality in which the land to which that application relates is situated,

approve, subject to such conditions as it thinks fit, or refuse to approve, that application.

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

[Section 116 amended: No. 28 of 2010 s. 59.]

117. Commission may revoke approval if development does not conform with it

(1) If —

(a) the Commission approves an application forwarded to it under section 115(3); and

(b) the development concerned is carried out in a manner which is not in conformity with that approval, or any

conditions subject to which that approval was given are not complied with,

the Commission may revoke that approval.

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

118. Existing lawful development not affected

Nothing in this Part or section 220 affects —

(a) the continued use of any land in a planning control area for the purpose for which it was lawfully being used; or

(b) the continuation and completion of the development of any land in a planning control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out,

immediately before the declaration of the planning control area.

Part 8 — Improvement plans and schemes

[Heading inserted: No. 28 of 2010 s. 9.]

Division 1 — Improvement plans

[Heading inserted: No. 28 of 2010 s. 9.]

119. Preparing and making improvement plan

(1) The Commission may —

(a) certify in writing to the Minister that for the purpose of advancing the planning, development and use of any land —

(i) the land should be dealt with in all or any of the following ways, namely, planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or

(ii) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces for those purposes, as may be appropriate or necessary;

and

(b) recommend to the Minister that the land should be so dealt with or used for that purpose and made the subject of an improvement plan.

(2) The recommendation is to be accompanied by a copy of the improvement plan and such supporting maps and texts as the Minister may require.

(2A) A recommendation under subsection (1) may relate to land in 1 or more districts.

(3A) The power in subsection (1) cannot be exercised in respect of any land that is —

(a) land to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies; or

(b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or

(c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or

(d) in the Swan Valley.

(3B) Before making a recommendation under subsection (1) in relation to any land, the Commission must consult with —

(a) the local government for the district in which the land is situated; or

(b) if the land is situated in more than 1 district — each of the local governments for those districts.

(3C) An improvement plan that authorises the making of an improvement scheme must set out the objectives of the improvement scheme.

(3) If the Minister accepts the recommendation, the Minister is to forward the recommendation to the Governor for acceptance.

(4) An improvement plan comes into force on the day on which notice of the acceptance of the recommendation of the Governor, and a summary of the improvement plan, is published in the *Gazette*.

(5A) The Minister must, as soon as is practicable after notice in respect of an improvement plan is published under subsection (4), cause a copy of the improvement plan to be laid before each House of Parliament or dealt with under section 268A.

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

[Section 119 amended: No. 28 of 2010 s. 10; No. 45 of 2011 s. 141(8); No. 26 of 2020 s. 97; No. 45 of 2020 s. 72.]

120. Amending or revoking improvement plan

(1) The Commission may —

(a) amend an improvement plan by notice of amendment; or

(b) revoke an improvement plan by notice of revocation.

(2) Section 119 applies to a notice of amendment or revocation under subsection (1) as if the notice were a recommendation under that section and the amendment or revocation were an improvement plan.

121. Commission's powers as to land under improvement plan

(1) For the purpose of advancing the development of land in accordance with an improvement plan the Commission with the approval of the Governor may —

(a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act; and

(b) return, sell, lease, exchange or otherwise dispose of —

(i) any buildings, works, improvements or facilities and the land appurtenant to the buildings, works, improvements or facilities; and

(ii) any land acquired by the Commission under this Act,

to any person or public authority upon such terms and conditions as the Commission with the approval of the Governor thinks fit; and

(c) in respect of land included in an improvement plan but not acquired or held by it under this Act, enter into an agreement with any owner of the land relating to —

(i) the planning, replanning, design, redesign, consolidation, resubdivision, clearing, development, reconstruction or rehabilitation of the land; and

(ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land; and

(iii) the sale, purchase, exchange, surrender, vesting, allocation or other disposal of the land, the adjustment or alteration of the boundaries of the land, the pooling of the lands of several owners, the adjustment of rights between owners of the land or other persons interested in the land whether by payments of money or transfers or exchanges of land or otherwise, the valuation of the land and the provision of land for any public open space, public work or any other public purpose; and

(iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and

(v) such other acts, matters or things as are or may be necessary to give effect to the improvement plan;

and

(d) do any act, matter or thing for the purpose of carrying out any agreement entered into under paragraph (c).

(2) The Commission is to notify in the *Gazette* particulars of any return, sale, lease, exchange or disposal to any person referred to in subsection (1)(b) within one month of the Governor's approval.

Division 2 — Improvement schemes

[Heading inserted: No. 28 of 2010 s. 11.]

122A. Content of improvement scheme

(1) Without limiting section 119, an improvement plan may authorise the making of an improvement scheme by the Commission in respect of some or all of the land to which the improvement plan applies.

(2) An improvement scheme must specify the land to which it applies (the ***improvement scheme area***).

(3) An improvement scheme may, in relation to the whole or any part of the relevant improvement scheme area, provide for all or any of —

(a) the matters referred to in section 119(1)(a); and

(b) the objects, purposes, provisions, powers and works referred to in section 69(1).

[Section 122A inserted: No. 28 of 2010 s. 11.]

122B. Preparing, approving and reviewing improvement scheme

(1) Sections 75, 77 and 79 to 95 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if, in each of those provisions —

(a) a reference to a local planning scheme were a reference to the improvement scheme; and

(b) a reference to a local government were a reference to the Commission; and

(c) a reference to a local government district or land in a district were a reference to the improvement scheme area.

[(2) deleted]

(3A) Before submitting an improvement scheme or amendment to an improvement scheme to the Minister under section 87, the Commission must consult with any affected local government.

(3B) In subsection (3A) —

affected local government means —

(a) in the case of an improvement scheme — a local government in the district of which the improvement scheme is proposed to apply; and

(b) in the case of an amendment — a local government in the district of which the improvement scheme applies.

(3) Regulations made under section 258 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if the improvement scheme were a local planning scheme.

(4) An improvement scheme may be repealed by an instrument of repeal prepared by the Commission, approved by the Minister and published in the *Gazette*.

(5) Unless otherwise specified in an instrument of repeal, the instrument has effect on the day on which it is published in the *Gazette*.

(6) The Minister must not approve an amendment to an improvement scheme that removes land from an improvement scheme area, or approve an instrument of repeal under subsection (4), unless satisfied that any other planning scheme, insofar as it will apply to the improvement scheme area on the amendment day or repeal day, does not —

(a) prevent any development that would be permitted; or

(b) allow any development that would not be permitted,

in the improvement scheme area immediately before the amendment day or repeal day.

(7) In subsection (6) —

amendment day, for an improvement scheme, means the day on which the amendment to the scheme has effect;

repeal day, for an improvement scheme, means the day on which an instrument of repeal of that scheme has effect.

[Section 122B inserted: No. 28 of 2010 s. 11; amended: No. 45 of 2020 s. 73.]

122C. Existing lawful development not affected

(1) This Division (other than this section) does not apply to a development that was lawfully being carried out on land immediately before an improvement scheme applied to the land.

(2) A development referred to in subsection (1) or in respect of which all necessary approvals under the relevant region planning scheme and local planning scheme were in force immediately before the improvement scheme applied to the land —

(a) may be lawfully carried out as if this Division had not been enacted; and

(b) is governed by those schemes despite section 122D.

(3) Despite subsections (1) and (2) —

(a) an improvement scheme may prohibit wholly or partially —

(i) the continuance of a non-conforming use; or

(ii) the erection, alteration or extension on land of any building in connection with, or in furtherance of, a non-conforming use;

and

(b) this Division applies to a development affected by a prohibition under paragraph (a) accordingly.

(4) In subsection (3) —

non-conforming use means a use of land which, though lawful immediately before the improvement scheme, or an amendment to the improvement scheme, takes effect, is not in conformity with a provision of the improvement scheme that deals with a matter specified in Schedule 7 clause 6 or 7.

[Section 122C inserted: No. 28 of 2010 s. 11; amended: No. 34 of 2023 s. 29.]

122D. Effect of improvement scheme on other planning schemes

(1) In this section —

start day, for an improvement scheme, means the day on which the improvement scheme has effect under section 87(4) as applied by section 122B(1).

(2) On the start day for an improvement scheme, any other planning scheme that applies to land in the improvement scheme area immediately before that day ceases to apply —

(a) to that land; and

(b) to any development of that land commenced on or after that day.

(3) If, after the start day, any land is added to an improvement scheme area by an amendment to the improvement scheme, any other planning scheme that applies to the land area immediately before the amendment comes into operation ceases to apply —

(a) to that land; and

(b) to any development of that land commenced on or after that time.

(4) Subsections (2) and (3) do not affect the operation of sections 122I to 122K.

(5) The *Interpretation Act 1984* section 37 applies in respect of subsections (2) and (3) as if a planning scheme were an enactment and the subsections repealed the scheme in so far as it

applies to the land in the improvement scheme area and development of that land.

(6) This section has effect subject to any provision of an improvement scheme made under section 122C(3).

[Section 122D inserted: No. 28 of 2010 s. 11; amended: No. 34 of 2023 s. 30.]

122E. Removal of land from improvement scheme area or repeal of improvement scheme, effect of

(1) If land is removed from an improvement scheme area by an amendment to an improvement scheme (the ***removed land***) —

(a) the improvement scheme for the area ceases to apply to the removed land; and

(b) a planning scheme that, but for section 122D, would apply to the land, applies to the land.

(2) If an improvement scheme is repealed, a planning scheme that, but for section 122D would apply to the improvement scheme area, applies to the area.

[Section 122E inserted: No. 28 of 2010 s. 11.]

122F. Transitional provisions for amended improvement scheme area

If land is added to or removed from an improvement scheme area by amendment to the improvement scheme, regulations may make provisions of a transitional nature that are expedient to be made, including provisions that save rights existing at the time of the amendment, but subject to any provisions of the improvement scheme made under section 122C(3).

[Section 122F inserted: No. 28 of 2010 s. 11; amended: No. 34 of 2023 s. 31.]

122G. Applications for development pending when land removed or improvement scheme repealed

(1) This section applies if —

(a) when land is removed from an improvement scheme area by an amendment to an improvement scheme (the ***removed land***); or

(b) when an improvement scheme is repealed,

an application for approval of development of any of the removed land or of any part of the improvement scheme area under the repealed improvement scheme made under this Act to the Commission —

(c) has not been determined by the Commission; or

(d) having been so determined, is the subject of an application to the State Administrative Tribunal for a review that has not been finalised.

(2) This Act continues to apply, and the Commission must continue to perform its functions, in relation to the application for approval and any application for review as if the land had not been removed or the scheme had not been repealed, as the case requires.

(3) This section applies irrespective of whether or not another planning scheme applies to the land after the land is removed or the improvement scheme is repealed.

[Section 122G inserted: No. 28 of 2010 s. 11.]

122H. Permanently closing street in improvement scheme area

For the purposes of permanently closing a street in an improvement scheme area, the *Land Administration Act 1997* section 58 and regulations made under that Act apply as if each reference to a local government in that section and in those regulations —

(a) were a reference to the Commission; and

(b) were not a reference to the local government of the district in which the street is wholly or partly situated.

[Section 122H inserted: No. 28 of 2010 s. 11.]

122I. Some planning schemes have no force while improvement scheme in force

(1) A local or region planning scheme, or an amendment to a local or region planning scheme, made after an improvement scheme has effect, insofar as it purports to apply to land in an improvement scheme area, has no effect while the improvement scheme applies to the land.

(2) Subject to subsection (1) and without limiting sections 122J to 122L, this Division does not prevent a local or region planning scheme or amendment referred to in that subsection being made after an improvement scheme has effect so as to commence when the improvement scheme ceases to apply to the land.

[Section 122I inserted: No. 28 of 2010 s. 11.]

122J. Minister may amend local planning scheme to conform with improvement scheme

(1) The Minister may, while an improvement scheme is of effect, publish in the *Gazette* a notice amending a local planning scheme so that the local planning scheme is consistent with the improvement scheme in relation to land in the improvement scheme area.

(2) An amendment published under subsection (1) has effect, by force of this subsection and without further action under this Act, on the day on which the improvement scheme ceases to apply to the land.

[Section 122J inserted: No. 28 of 2010 s. 11.]

122K. Region planning scheme may be amended to conform with improvement scheme

(1) A region planning scheme may be amended under Part 4 Division 4 while an improvement scheme is of effect so that the region planning scheme is consistent with the improvement scheme in relation to land in the improvement scheme area.

(2) An amendment referred to in subsection (1) has effect on the day on which the improvement scheme ceases to apply to the land.

[Section 122K inserted: No. 28 of 2010 s. 11.]

122L. Minister has s. 211 and 212 powers for improvement scheme

Sections 211 and 212 apply in relation to an improvement scheme as if, in each of those sections —

(a) a reference to a local planning scheme were a reference to the improvement scheme; and

(b) a reference to a local government were a reference to the Commission.

[Section 122L inserted: No. 28 of 2010 s. 11.]

122M. Fees for planning matters under improvement scheme, Commission may impose

The Commission may, in relation to an improvement scheme, impose fees under section 261 as if it were a local government, and that section, and the regulations made under that section, apply accordingly.

[Section 122M inserted: No. 28 of 2010 s. 11.]

Division 3 — General

[Heading inserted: No. 28 of 2010 s. 12.]

122. This Part does not derogate from other powers

Except as provided in Division 2, nothing in this Part is to be construed as taking away or in any way derogating from or diminishing any power otherwise conferred by this or any other Act upon the Commission or any other authority, body or person.

[Section 122 amended: No. 28 of 2010 s. 13.]

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

[Heading inserted: No. 28 of 2010 s. 14.]

123. Local planning scheme or local law to be consistent with region planning scheme or Swan Valley Planning Scheme

(1) A local planning scheme is not to be approved by the Minister under this Act unless the provisions of the local planning scheme are in accordance with and consistent with each relevant region planning scheme.

(2) Local laws which if made would affect or be likely to affect a region planning scheme or the Swan Valley Planning Scheme are not to be made by a local government unless the provisions of the local laws are in accordance with and consistent with each relevant region planning scheme or (if relevant) the Swan Valley Planning Scheme.

[Section 123 amended: No. 45 of 2020 s. 74.]

124. Effect of region planning scheme on local planning scheme

(1) If a region planning scheme is inconsistent with a local planning scheme, the region planning scheme prevails over the local planning scheme to the extent of the inconsistency.

(2) If a region planning scheme is inconsistent with a local planning scheme, the local government of the district in which the land directly affected is situated is to, not later than 90 days after the day on which the region planning scheme has effect, resolve to prepare —

(a) a local planning scheme which is consistent with the region planning scheme; or

(b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme,

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

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

(a) a local planning scheme which is consistent with the region planning scheme; or

(b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme,

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

(4) In preparing the local planning scheme or amendment the local government is to have due regard to the purpose and planning objectives of the region planning scheme or amendment to the region planning scheme.

(5) The local government is to, within such reasonable time after the passing of the resolution as is directed in writing by the Minister, forward to the Minister for approval under section 87 the local planning scheme or amendment it has prepared.

[Section 124 amended: No. 26 of 2020 s. 50.]

125. Minister may direct local government to amend local planning scheme to be consistent with region planning scheme etc.

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

(2) A local government to whom a notice is given under subsection (1) is to, within the time set out in the notice —

(a) resolve to prepare a local planning scheme, or an amendment to a local planning scheme, in accordance with the notice; and

(b) prepare and advertise the local planning scheme or amendment in accordance with the notice; and

(c) forward to the Minister for approval under section 87 the local planning scheme or amendment prepared by it.

(3) If the Minister so directs, the advertisement of the local planning scheme or amendment to the local planning scheme is to be published together with any advertisement of the relevant region planning scheme or amendment under regulations made for the purposes of section 43.

[Section 125 amended: No. 26 of 2020 s. 51; No. 34 of 2023 s. 77.]

126. Local planning scheme, amendment of due to region planning scheme

(1) If a region planning scheme delineates land comprised in a local planning scheme as a reserve for any public purpose, then the local planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act, amended to such extent (if any) as is necessary

to give effect to the reservation under the region planning scheme.

(2) Notice of any amendment effected under subsection (1) is to be published in the *Gazette*.

(3) If a region planning scheme delineates, or it is proposed that a region planning scheme delineate, land comprised in a local planning scheme as land in an Urban zone, the Commission may publish in the *Gazette* a notice amending the local planning scheme, insofar as it operates in relation to that land, so that the land is zoned in the local planning scheme in a manner that is consistent with the objectives of the delineation or proposed delineation under the region planning scheme.

(4) The Commission must not publish a notice under subsection (3) amending a local planning scheme until the local government that made or adopted the scheme has been consulted.

(5) An amendment in a notice published under subsection (3) takes effect —

(a) if the relevant region planning scheme is in operation on the day on which the notice is published under subsection (3) — on that day;

(b) otherwise — on the day on which the relevant region planning scheme comes into operation.

(6) When an amendment to a local planning scheme takes effect under subsection (5), the local planning scheme is, by force of this subsection and without further action under this Act, amended as set out in the notice.

[Section 126 amended: No. 28 of 2010 s. 60.]

127. Minister may direct local government to modify proposed scheme or amendment to be consistent with region planning scheme

(1) The Minister may, before approving a proposed local planning scheme, or amendment to a scheme, prepared by a local government under section 124(2) or 125, direct the local government to —

(a) modify the proposed local planning scheme or amendment in the manner specified in the direction to ensure that the proposed local planning scheme or amendment —

(i) is consistent with the region planning scheme; and

(ii) will not impede the implementation of the region planning scheme;

and

(b) forward the proposed local planning scheme or amendment as so modified to the Minister for approval under section 87.

(2) A local government is to comply with a direction under subsection (1).

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

128. Breach of s. 124(2), 125 or 127(2), Minister's powers in case of

(1) If a local government does not comply with —

(a) section 124(2); or

(b) section 125; or

(c) not later than 60 days after the giving of the direction concerned, section 127(2),

the Minister may —

(d) cause the relevant local planning scheme or amendment to be prepared or modified as the case requires and forwarded to the local government; and

(e) direct the local government to adopt that local planning scheme or amendment as if it were a local planning scheme proposed by owners of land with respect to which the local government might itself have prepared a scheme.

(2) A local government is to comply with a direction under subsection (1)(e).

(3) If a local government to which a direction has been given under subsection (1)(e) does not comply with the direction within 60 days after the relevant local planning scheme or amendment was forwarded to it, the Minister may approve of the local planning scheme or amendment and cause it to be published in the *Gazette* in accordance with Part 5.

(4) A local planning scheme, or an amendment to an existing local planning scheme, as the case requires, published in the *Gazette* under subsection (3) takes effect from the date of publication and has effect as if it were made under Part 5.

(5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on the Minister by this section may be recovered by the Minister from the local government concerned as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.

129. Inconsistency between interim development order and local planning scheme or local law, effect of

(1) If there is an inconsistency between —

(a) a local planning scheme in force in a regional order area, or a local law in force in a regional order area under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960*; and

(b) a regional interim development order in force in respect of the regional order area,

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

(2) If there is an inconsistency between —

(a) a local planning scheme in force in a local order area, or a local law in force in a local order area under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960*; and

(b) a local interim development order in force in respect of the local order area,

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

[Section 129 amended: No. 24 of 2011 s. 168(2).]

130. Planning control area provisions (Part 7) prevail

The provisions of Part 7 prevail over —

(a) every other provision of this Act; and

(b) any region planning scheme; and

(c) any local planning scheme; and

(d) the Swan Valley Planning Scheme,

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

[Section 130 amended: No. 45 of 2020 s. 75.]

131. Building standards etc. prevail

(1) If there is any inconsistency between a local planning scheme or the Swan Valley Planning Scheme and a regulation made under the *Building Act 2011*, the regulation prevails to the extent of the inconsistency.

(2) In the exercise of any power conferred on it by a local planning scheme a local government is obliged to have regard to any regulations made under the *Building Act 2011*.

(3) In the exercise of any power conferred on it by the Swan Valley Planning Scheme the Commission is obliged to have regard to any regulations made under the *Building Act 2011*.

[Section 131 amended: No. 24 of 2011 s. 168(3) and (4); No. 45 of 2020 s. 76.]

131A. Relationship between Swan Valley Planning Scheme and other planning schemes or policies

(1) The Minister may, by notice published in the *Gazette*, make any amendments to a region planning scheme, local planning scheme or improvement scheme that are necessary as a result of the *Swan Valley Planning Act 2020* section 9.

(2) On and after the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*, a State planning policy that applies to land in the Swan Valley has no effect to the extent that it is inconsistent with the Swan Valley Planning Scheme.

(3) The Minister may, by notice published in the *Gazette*, amend a State planning policy so that the policy is consistent with the

Swan Valley Planning Scheme in relation to land in the Swan Valley.

(4) An amendment in a notice published under subsection (1) or (3) has effect, by force of this subsection and without further action under this Act, on the day on which it is published or a later day stated in the notice (which must not be earlier than the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*).

[Section 131A inserted: No. 45 of 2020 s. 77.]

132. Governor may modify or suspend law to enable planning scheme to have effect

(1) If the carrying out of any provision of a planning scheme would conflict with any provisions, limitations, or conditions of or prescribed by any Act, the responsible authority may apply to the Governor for an order modifying or suspending the provisions of that Act, so far as may be necessary to enable effect to be given to the planning scheme.

(2) Upon application under subsection (1) the Governor may, in respect of that planning scheme but not otherwise, make an order accordingly for the suspension or modification of the provisions or any of them, subject to such conditions and limitations as the Governor thinks fit.

(3) An order under subsection (2) does not take effect unless and until it has been approved by a resolution of both Houses of Parliament.

Part 10 — Subdivision and development control

Division 1 — Application

133. Application of Part to Crown land

(1) Except as provided in subsection (2) and section 168, this Part (other than Division 5) does not apply to Crown land.

(2) If the Minister to whom the Governor has for the time being committed the administration of the *Land Administration Act 1997* intends to subdivide and develop any Crown land under section 27(1) of that Act for the purpose of selling the Crown land under section 74 of that Act, section 134, Division 2 (except section 136), sections 150, 151, 152 and 157, Division 4 and section 167 apply to that Crown land for the purposes of section 27 of the *Land Administration Act 1997* as if that Crown land were held in freehold.

[Section 133 amended: No. 28 of 2010 s. 61.]

134. Relationship of Part to some other laws

(1) Sections 135 and 136 are subject to section 68 of the *Environmental Protection Act 1986* and to section 58(6) of the *Contaminated Sites Act 2003*.

(2) Sections 135 and 136 do not apply to —

(a) the grant of, or to the transfer of or other dealing with or in, a mining tenement as defined in the *Mining Act 1904* [2] or the *Mining Act 1978* or a portion of such a mining tenement or any shares in the mining tenement or portion; or

(b) the conferral of rights under section 34 of the *Dampier to Bunbury Pipeline Act 1997*; or

(c) the issue of a distribution licence under Part 2A of the *Energy Coordination Act 1994*.

[(3)-(8) deleted]

[Section 134 amended: No. 7 of 2006 s. 20(3); No. 45 of 2020 s. 78.]

Division 2 — Approval for subdivision and certain transactions

135. No subdivision etc. without approval

(1) A person is not to —

(a) subdivide any lot; or

(b) amalgamate any lot with any other lot, whether within the same district or otherwise; or

(c) lay out, grant or convey a road,

without the approval of the Commission.

(2) A person who contravenes subsection (1) commits an offence.

(3) In this section —

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

136. Approval required for some dealings as to land not dealt with as lot or lots

(1) Subject to sections 139 and 140 a person is not to —

(a) lease or grant a licence to use or occupy land for any term exceeding 20 years, including any option to extend or renew the term or period; or

(b) lease and grant a licence to use or occupy land for terms in the aggregate exceeding 20 years, including any option to renew or extend the terms or periods; or

(c) sell or agree to sell land; or

(d) grant any option of purchase of land,

without the approval of the Commission unless the land is dealt with by way of such lease, licence, agreement or option of purchase as a lot or lots.

(2) A person who contravenes subsection (1) commits an offence.

(2A) Subsection (1) applies to land comprised of common property or a lot in a community titles scheme and a reference in that subsection to a lot includes a reference to a lot in a community titles scheme.

(2B) However, subsection (1) does not apply to the sale of common property or part of a lot, an agreement to sell common property or part of a lot or the grant of an option of purchase of common property or part of a lot if the transaction is associated with a subdivision by registration of an amendment of a community titles scheme.

(2C) Words in subsections (2A) and (2B) have the meanings given in the *Community Titles Act 2018* section 3(1) (and references to those words in sections 139 and 140 are to be read accordingly).

(2D) Subsection (1) applies to land comprised of common property or a lot in a strata titles scheme and a reference in that subsection to a lot includes a reference to a lot in a strata titles scheme.

(2E) However, subsection (1) does not apply to the sale of common property or part of a lot, an agreement to sell common property or part of a lot or the grant of an option of purchase of common property or part of a lot if the transaction is associated with a subdivision by registration of an amendment of a strata titles scheme.

(2F) Words in subsections (2D) and (2E) have the meanings given in the *Strata Titles Act 1985* section 3(1) (and references to those words in sections 139 and 140 are to be read accordingly).

[(3A) deleted]

(3) In this section —

land, in relation to the leasing or the granting of a licence to use or occupy or, where applicable, the leasing and the granting of such a licence, does not include the whole or a portion of a building if —

(a) the building was constructed in accordance with a building licence granted by a local government under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* (deleted by the *Building Act 2011* section 153(2)) or a building permit granted under the *Building Act 2011*, or a building permit, occupancy permit or building approval certificate is in effect under the *Building Act 2011* in respect of the building; and

(b) subject to subsection (4), the leasing or the granting of a licence does not relate to any land other than that building or portion;

licence to use or occupy does not include an easement.

(4) A reference in the definition of ***land*** in subsection (3) to the whole or a portion of a building includes a reference to any area outside that whole or portion, which area is —

(a) the subject of the same lease or licence to use or occupy as that whole or portion or of a lease or licence to use or occupy entered into or granted by the lessor of, or grantor of a licence to use or occupy, that whole or portion; and

(b) used for the purpose of ingress to or egress from that whole or portion, advertising, parking vehicles, storing goods, loading or unloading goods or passengers or for any other purpose necessary or desirable for the convenient occupation of that whole or portion.

[Section 136 amended: No. 28 of 2010 s. 62; No. 24 of 2011 s. 168(5); No. 30 of 2018 s. 162; No. 32 of 2018 s. 223.]

137. Heritage land, subdivision etc. of

(1) This section applies to land included in a place of a kind mentioned in the *Heritage Act 2018* section 72(1).

(2) The Commission must not grant an application for its approval under section 135 or 136 in respect of land to which this section applies unless the requirements of the *Heritage Act 2018* Part 5 Division 2 have been observed.

(3) If the *Heritage Act 2018* section 76(3) applies, the holder of an approval given by the Commission under section 135 or 136 in respect of land to which this section applies is not to give effect to that approval —

(a) during such time as the operation of the approval is suspended the *Heritage Act 2018* section 76(3); or

(b) otherwise than in accordance with the *Heritage Act 2018* section 76(6).

[(4) deleted]

[Section 137 amended: No. 22 of 2018 s. 186(8)-(11).]

138. Commission's functions when approving subdivision etc.

(1) The Commission may give its approval under section 135 or 136 subject to conditions which are to be carried out before the approval becomes effective.

(2) Subject to subsection (3), in giving its approval under section 135 or 136 the Commission is to have due regard to the provisions of any local planning scheme that applies to the land under consideration and is not to give an approval that conflicts with the provisions of a local planning scheme.

(3) The Commission may give an approval under section 135 or 136 that conflicts with the provisions of a local planning scheme if —

(a) the local planning scheme was not first published, or a consolidation of the local planning scheme has not been published, in the preceding 5 years and the approval is consistent with a State planning policy that deals with substantially the same matter; or

(b) the approval is consistent with a region planning scheme that deals with substantially the same matter; or

(c) in the opinion of the Commission —

(i) the conflict is of a minor nature; or

(ii) the approval is consistent with the general intent of the local planning scheme;

or

(d) the local planning scheme includes provisions permitting a variation of the local planning scheme that would remove the conflict; or

(e) in the case of an application under section 135, the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision, or a copy, under section 142 and has not made any objection under that section; or

(f) the approval is given in circumstances set out in the regulations.

(4) Despite subsection (3), the Commission is to ensure that an approval under section 135 or 136 complies with the provisions of a local planning scheme to the extent necessary for compliance with an environmental condition relevant to the land under consideration.

138A. Commission's functions when approving subdivision etc. in Swan Valley

(1) In this section —

scheme start day means the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*.

(2) On and after the scheme start day, section 138(2) to (4) do not apply in relation to the Commission giving an approval under section 135 or 136 relating to land in the Swan Valley (a ***Swan Valley approval***).

(3) Subject to subsection (4), in giving a Swan Valley approval on or after the scheme start day, the Commission —

(a) must have regard to the provisions of the Swan Valley Planning Scheme; and

(b) must not give an approval that conflicts with the provisions of the Swan Valley Planning Scheme.

(4) The Commission may give a Swan Valley approval that conflicts with the provisions of the Swan Valley Planning Scheme on or after the scheme start day if the approval is given in circumstances set out in the regulations.

[Section 138A inserted: No. 45 of 2020 s. 79.]

139. Leases and licences that do not need approval under s. 136

(1) A person may without the approval of the Commission lease or grant a licence to use or occupy land for a term of any duration and otherwise than as a lot or lots if that lease or licence —

(a) belongs to a class of lease or licence for the time being approved under subsection (3) in respect of the person; and

(b) complies with such conditions as are imposed under subsection (3) in respect of that person.

(2) A person may apply to the Commission in writing for a class of lease or licence to use or occupy land to be approved under subsection (3) in respect of that person.

(3) On receiving an application made under subsection (2) the Commission may, having regard to —

(a) the nature of the interest proposed to be granted under leases or licences of the class concerned; and

(b) the classification or zoning of the land to which leases or licences of the class concerned will relate; and

(c) the proposed terms of leases or licences of the class concerned, whether for the lives of the proposed lessees or licensees or for fixed periods; and

(d) the anticipated number or frequency of leases or licences of the class concerned; and

(e) such matters other than those referred to in paragraphs (a), (b), (c) and (d) as the Commission considers relevant,

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

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

140. Saving of some agreements entered into without approval under s. 136

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

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

(a) the agreement is entered into subject to the approval of the Commission being obtained; and

(b) an application for the approval of the Commission is made within a period of 3 months after the date of the agreement.

(2) Nothing in this Division renders the agreement illegal or void by reason only that the agreement was entered into before the approval of the Commission was obtained.

(3) Without prejudice to the operation of section 141, the agreement referred to in subsection (1) has no effect, unless and until the Commission gives its approval —

(a) within a period of 6 months after the date of the agreement or within such further period as is stipulated in that agreement; or

(b) within such further period as is stipulated in a subsequent agreement in writing made —

(i) by all the parties to the first-mentioned agreement; or

(ii) when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party.

141. Refund where land transaction cannot be completed

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

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

(b) within such further period as is stipulated in a subsequent agreement in writing made —

(i) by all the parties to the transaction; or

(ii) when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party,

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

142. Consultation requirements as to proposed subdivision

(1) When, in the opinion of the Commission, a plan of subdivision may affect the functions of a local government, a public authority, or a utility services provider, the Commission is to forward the plan or a copy of the plan to that local government, public authority or utility services provider for objections and recommendations.

(2) A local government, public body or utility services provider receiving such a plan or copy is to, within 42 days of receipt of the plan or copy or within such longer period as the Commission allows, forward it to the Commission with —

(a) a memorandum in writing containing any objections to, or recommendations in respect of, the whole or part of that plan; and

(b) in the case of a local government receiving a plan or copy relating to land within the area to which an assessed scheme (as defined in the EP Act) applies, advice of any relevant environmental condition to which the assessed scheme is subject.

(3) If a local government, public authority or utility services provider does not forward a memorandum within the time allowed under subsection (2), the Commission may determine

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

143. Commission's duties when dealing with plan of subdivision

(1) After considering any objections or recommendations contained in a memorandum forwarded to the Commission under section 142, and any advice of a relevant environmental condition forwarded to it under that section, the Commission is to —

(a) approve the plan of subdivision; or

(b) refuse to approve the plan of subdivision; or

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

(2) The Commission is to try to deal with the plan of subdivision in one of the ways mentioned in subsection (1) within the period of 90 days after the day on which the plan was submitted to the Commission for approval or within such longer period after that day as may be agreed in writing between the Commission and the applicant for approval.

144. Reconsidering refusal to approve plan of subdivision

(1) If the Commission under section 143 refuses to approve a plan of subdivision and the applicant for approval concerned is dissatisfied with the refusal, that applicant may within 28 days of being notified of the refusal request in writing the Commission to reconsider the refusal.

(2) On receiving a request under subsection (1), the Commission, by notice in writing served on the person who made that request, may —

(a) approve the plan of subdivision; or

(b) again refuse to approve the plan of subdivision; or

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

145. Diagram or plan of survey of approved plan of subdivision, approval of

(1) A person to whom approval of a plan of subdivision has been given may, within the period that applies under section 145A —

(a) submit to the Commission in the prescribed manner and form a diagram or plan of survey of the subdivision, accompanied by the prescribed fee; and

(b) request the Commission to approve the diagram or plan of survey of the subdivision.

[(2) deleted]

(3) If a subdivision is being carried out in stages, a diagram or plan of survey of the subdivision may be submitted to the Commission under subsection (1) in relation to a stage of subdivision.

(4) Subject to subsection (6), the Commission must endorse its approval on the diagram or plan of survey if the Commission is satisfied that —

(a) the diagram or plan of survey is in accordance with the plan of subdivision approved by the Commission; and

(b) if that approval was given subject to conditions —

(i) the conditions (other than any conditions to which subparagraph (ii) applies) have been complied with; and

(ii) any conditions that cannot be complied with until a certificate of title is created or registered will be complied with at that time.

(4A) In the case of a diagram or plan of survey submitted in relation to a stage of subdivision, the conditions to which subsection (4)(b) applies are the conditions imposed on the approval in relation to that stage of subdivision or that, in the opinion of the Commission, are relevant to that stage of subdivision or the subdivision as a whole.

(5) The Commission is to try to deal with the request under subsection (1)(b) within the period of 30 days after the day on which the request is made to the Commission or within such longer period after that day as may be agreed in writing between the Commission and the person making the request.

(6) If, in the case of a diagram or plan of survey submitted in relation to a stage of subdivision, the Commission is of the opinion that, because of planning considerations, it is not appropriate to approve the diagram or plan of survey, the Commission may refuse to endorse its approval on the diagram or plan of survey.

(7) If, at the expiration of the period referred to in subsection (1), a diagram or plan of survey of the subdivision has not been submitted to the Commission, the approval of the plan of subdivision ceases to have effect and the diagram or plan of survey cannot be submitted to the Commission under this section.

[Section 145 amended: No. 26 of 2020 s. 90.]

145A. Period for submission of diagram or plan of survey for approval by Commission

(1) Subject to any extension granted under subsection (2), the period within which a person to whom approval of a plan of subdivision was given must submit, and request approval of, a

diagram or plan of survey of the subdivision under section 145(1) is —

(a) in relation to a plan of subdivision creating more than 5 lots — the period of 4 years beginning on the day on which the Commission approved the plan of subdivision; and

(b) in any other case — the period of 3 years beginning on the day on which the Commission approved the plan of subdivision.

(2) On the application of a person to whom approval of a plan of subdivision has been given, the Commission may, by written notice, grant an extension of 2 years to the period that would otherwise apply under subsection (1).

(3) An application under subsection (2) must be made in the manner and form approved by the Commission.

(4) The Commission must not grant an extension under subsection (2) unless the Commission is satisfied that —

(a) the applicant has done everything that is reasonably practicable to enable the applicant to submit, and request approval of, the diagram or plan of survey in accordance with section 145(1) within the period that would otherwise apply under subsection (1); and

(b) since the approval of the plan of subdivision was granted, there have been no significant changes to the requirements that apply under this Act to the area covered by the plan of subdivision.

(5) The Commission must not grant more than 1 extension under this section in relation to a plan of subdivision.

(6) The Commission must try to deal with an application under subsection (2) within the period of 30 days after the day on which the application is made or within such longer period after that day as may be agreed in writing between the Commission and the applicant.

(7) If an extension is granted under subsection (2) after the expiry of the period that would otherwise have applied under subsection (1) (the ***original period***), the approval of the plan of subdivision is taken not to have ceased to have effect under section 145(7) at the end of the original period.

[Section 145A inserted: No. 26 of 2020 s. 91.]

145B. Land subject to strata titles scheme

(1) This section applies if —

(a) the Commission approves a plan of subdivision in respect of land that is or includes —

(i) land that, at the time of the approval, is the subject of a strata titles scheme under the *Strata Titles Act 1985* (the ***existing strata titles scheme***); or

(ii) a part of such land;

and

(b) in accordance with section 149A, the Commission imposes a condition requiring the termination of the existing strata titles scheme.

Note for this subsection:

See the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

(2) A diagram or plan of survey of the subdivision may be submitted to the Commission under section 145 even though the existing strata titles scheme has not terminated.

(3) The Commission must endorse its approval on a diagram or plan of survey of the subdivision under section 145 even though the existing strata titles scheme has not terminated if —

(a) had the existing strata titles scheme terminated, the Commission would be required to endorse its approval in accordance with section 145(4); and

(b) the Commission is satisfied that the existing strata titles scheme will terminate within the period referred to in section 145(1).

(4) In subsections (2) and (3), references to a diagram or plan of survey of the subdivision include, if the subdivision is being carried out in stages, a diagram or plan of survey that relates to a stage of the subdivision.

[Section 145B inserted: No. 34 of 2023 s. 33.]

146. No certificate of title for subdivided land without approved diagram or plan of survey

(1) The Registrar of Titles is not to create or register a certificate of title under the *Transfer of Land Act 1893* for land the subject of a plan of subdivision unless a diagram or plan of survey of the subdivision of that land has been endorsed with the approval of the Commission and —

(a) in the case of a diagram or plan of survey endorsed with the approval of the Commission before the coming into operation of this section, the title application was lodged with the Registrar of Titles before, or is lodged with the Registrar of Titles within 5 years after, the coming into operation of this section; and

(b) in the case of a diagram or plan of survey endorsed with the approval of the Commission on or after the coming into operation of this section, the diagram or plan of survey has been endorsed with the approval of the Commission within the 24 months preceding the lodging of a title application with the Registrar of Titles; and

(c) any conditions as to the registration or recording or continued registration or recording of an encumbrance or other document on or before the creation or registration of a certificate of title that are noted on the diagram or plan of survey have been complied with, or

will be complied with at the time the certificate of title is created or registered; and

(d) in the case of a diagram or plan of survey endorsed with the approval of the Commission under section 145B(3), the existing strata titles scheme has terminated.

Note for this subsection:

For the purposes of paragraph (d), see the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

(2) In subsection (1)(a) and (b) —

title application, in relation to a diagram or plan of survey, means an application for new titles to be created and registered for land the subject of the diagram or plan of survey.

(3) A plan containing one lot only is deemed a diagram or plan of survey of a subdivision provided that it is a portion of land comprised in —

(a) a certificate of title; or

(b) a registered conveyance; or

(c) a Crown grant; or

(d) a lot on a plan deposited with the Authority.

[Section 146 amended: No. 60 of 2006 s. 147(3); No. 34 of 2023 s. 34.]

147. No registration etc. of some land dealings without Commission's approval

(1) The Registrar of Titles is not to register a transfer, conveyance, lease or mortgage of any land unless —

(a) it has first been approved in writing by the Commission; or

(b) the land comprises the whole of one or more lots, or the land comprises part of a lot included in a diagram or plan of survey of subdivision that has been approved by the Commission; or

(c) in the case of a lease, the lease does not contain or purport to contain an option to purchase land other than the whole of one or more lots and —

(i) the term is not more than 20 years, including any option to extend or renew the term; or

(ii) section 136(1) does not apply to the lease by virtue of the definition of ***land*** in section 136; or

(iii) the lease is a lease which may be entered into without the approval of the Commission by virtue of section 139(1).

(2) The Registrar of Titles is not to create and register in the name of a registered proprietor a certificate of title for a portion of land, not being the whole of one or more lots, unless the application from the registered proprietor for the certificate of title has been endorsed with the approval of the Commission.

Division 3 — Conditions of subdivision

*[**148**. Deleted: No. 30 of 2018 s. 163.]*

*[**149.** Has not come into operation.]*

149A. Condition requiring termination of strata titles scheme

(1) This section applies if —

(a) the Commission approves a plan of subdivision in respect of land that is or includes —

(i) land that, at the time of the approval, is the subject of a strata titles scheme under the *Strata Titles Act 1985* (the ***existing strata titles scheme***); or

(ii) a part of such land;

and

(b) the Commission considers that the subdivision is dependent upon the existing strata titles scheme being terminated under the *Strata Titles Act 1985*.

Note for this subsection:

See the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

(2) Without limiting any other conditions that may be imposed under section 143, the Commission must impose a condition under that section requiring the termination of the existing strata titles scheme.

(3) This section does not apply to a plan of subdivision for the termination of a strata titles scheme as referred to in the *Strata Titles Act 1985* section 177 or 191.

Note for this section:

If a condition is imposed in accordance with this section, section 145B provides for the Commission to endorse its approval on a diagram or plan of survey for the subdivision even though the existing strata titles scheme has not terminated.

[Section 149A inserted: No. 34 of 2023 s. 35.]

150. Road access, conditions as to

(1) Without limiting section 143, the Commission may impose a condition under that section that access to and from a portion of land shown on a plan or diagram of survey relating to the subdivision to a road abutting the portion of land is to be restricted or prohibited as set out in the condition and in accordance with the regulations.

(2) A condition referred to in subsection (1) is to specify a covenantee.

(3) Where —

(a) a diagram or plan of survey of a subdivision, or a scheme plan lodged for registration under the *Strata Titles Act 1985*, is received by the Authority; and

(b) it is shown on the plan or diagram that access to and from any portion of land shown on the plan or diagram to and from a road abutting the portion of land is subject to or intended to be subject to a restriction or prohibition as set out in a condition imposed by the Commission,

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

(c) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

(d) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.

(4) It is sufficient description for the purposes of subsection (3)(b) if reference is made on the plan or diagram to this section and regulations made for the purposes of this section.

[Section 150 amended: No. 60 of 2006 s. 147(4); No. 30 of 2018 s. 164.]

151. Reconsidering conditions

(1) If the Commission under section 143 imposes conditions and the applicant concerned is dissatisfied with any such condition, that applicant may within 28 days of being notified of that condition request in writing the Commission to reconsider that condition.

(2) On receiving a request under subsection (1), the Commission may by notice in writing served on the person who made that request —

(a) alter or revoke the condition to which that request relates; or

(b) confirm the condition.

152. Certain land to vest in Crown

(1) If the Commission has approved a subdivision of land subject to a condition that one or more portions of land shown on a diagram or plan of survey relating to the subdivision or a scheme plan under the *Strata Titles Act 1985* are to vest in the Crown for any one or more of the following purposes —

(a) conservation or protection of the environment;

(b) an artificial waterway;

(c) a pedestrian accessway;

(d) a right-of-way;

(e) a reserve for water supply, sewerage, drainage, foreshore management, waterway management or recreation;

(f) a public purpose specified in the condition and related to the subdivision,

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

(2) Land vested under subsection (1) is vested —

(a) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

(b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan of survey, has or have been registered under the *Transfer of Land Act 1893*.

(3) Land vested under subsection (1) —

(a) is Crown land; and

(b) does not form part of a parcel comprised in a scheme plan that is registered under the *Strata Titles Act 1985*; and

(c) is to be taken to be reserved under section 41 of the *Land Administration Act 1997* for the purpose set out in the condition; and

(d) may be dealt with in accordance with the *Land Administration Act 1997*.

(4) The Registrar of Titles is to do all things necessary to give effect to this section.

(5) Land vested under this section is to be vested subject to —

(a) any easement on that land created for the purposes of the subdivision, shown on the diagram or plan of survey and referred to in section 167; and

(b) any easement on that land created under Part IVA of the *Transfer of Land Act 1893* for the purposes of the subdivision and shown on the diagram or plan of survey; and

(c) any existing encumbrance specified in a direction of the Minister responsible for the administration of the *Land Administration Act 1997*, or a person authorised in writing by that Minister for the purposes of this section, lodged with the Registrar of Titles on or before the vesting; and

(d) any encumbrance prescribed, or of a class prescribed, by the regulations.

[Section 152 amended: No. 30 of 2018 s. 165.]

153. Setting aside land for open space or payment in lieu

(1) The Commission may under section 143(1)(c) impose either of the following conditions on the approval of a plan of subdivision of land —

(a) a requirement that a specified portion of the land be set aside and vested in the Crown for parks, recreation grounds or open spaces generally;

(b) a requirement that the owner of the land make a payment to the local government in whose district the land is situated of a sum that represents the value of a specified portion of the land in lieu of a requirement to set aside and vest in the Crown that portion of the land for parks, recreation grounds or open spaces generally.

(2) The Commission must not impose a requirement referred to in subsection (1)(b) unless the local government in whose district the land is situated has been consulted.

(3) The Commission must not impose a requirement referred to in subsection (1)(b) in respect of a plan of subdivision that creates fewer than 3 lots.

(4) If the Commission has imposed a condition referred to in subsection (1)(a) on an approval of a plan of subdivision, the Commission may, with the agreement of the local government in whose district the land is situated, consent to the owner of the land making a payment to the local government of a sum that represents the value of a portion of the land in lieu of setting aside that portion.

(5) This section does not limit any other condition that the Commission may impose under section 143(1)(c).

[Section 153 inserted: No. 26 of 2020 s. 85.]

154. Money paid in lieu of open space, application of

(1) All money received by a local government under section 153 is to be paid into a separate reserve account established and maintained under the *Local Government Act 1995* section 6.11 for the purposes set out in subsection (2)(a) to (d).

(2) The money is to be applied —

(a) for the purchase of land by the local government for parks, recreation grounds or open spaces generally, in

the locality in which the land included in the plan of subdivision referred to in section 153 is situated; or

(b) in repaying any loans raised by the local government for the purchase of any such land; or

(c) with the approval of the Minister, for the improvement or development as parks, recreation grounds or open spaces generally of any land in that locality vested in or administered by the local government for any of those purposes; or

(d) with the approval of the Commission, in reimbursing an owner (the ***first owner***) of land included in a joint subdivision agreement for land that has been set aside and vested for parks, recreation grounds or open space where —

(i) the first owner set aside a greater proportion of land than another owner (the ***second owner***); and

(ii) as a consequence, the local government and the Commission approved of the second owner paying to the local government a sum in lieu of land being set aside for that purpose and that sum, or the relevant proportion of that sum, being reimbursed to the first owner for the excess proportion of land set aside by the first owner.

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

[Section 154 amended: No. 26 of 2020 s. 86.]

155. Value of land for s. 153, how determined

(1) In this section —

licensed valuer means —

(a) a licensed valuer as defined in the *Land Valuers Licensing Act 1978*; or

(b) the Valuer-General,

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

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

(2) For the purposes of section 153, the value of the portion is to be such percentage of the market value of the land of which the portion forms part as the area of the portion bears to the area of that land.

(3) For the purposes of subsection (2), the market value of land —

(a) is to be determined, at the cost of the owner of the land, by a licensed valuer agreed upon by the parties or, failing agreement, appointed by the local government; and

(b) is to be so determined —

(i) as at the date on which the valuation is made; and

(ii) on the basis that there are no buildings, fences or other improvements of a like nature on the land; and

(iii) on the assumption that any rezoning necessary for the purpose of the subdivision has come into force; and

(iv) taking into account the added value of all other improvements on or appurtenant to the land.

(4) The licensed valuer is to give the valuation to the owner of the land and the local government.

(5) If within 90 days, or such longer time as is agreed in writing by the local government, of the date on which the valuation is made the owner of the land has not —

(a) paid the amount of the valuation; or

(b) disputed the valuation under section 156,

the local government may, by written notice to the owner of the land, determine that the valuation is no longer current and that a fresh valuation is required.

156. Valuation under s. 155, dispute as to

(1) If either the owner of the land or the local government disputes a valuation made under section 155, the valuation may be varied by agreement between the parties or the dispute may be settled by such method as they may agree upon.

(2) If after 28 days from the date when both parties have received the valuation the dispute has not been settled or an agreement made as to the method of settlement, either the owner of the land or the local government may refer the dispute for determination by an arbitrator under the *Commercial Arbitration Act 2012*.

[Section 156 amended: No. 23 of 2012 s. 45.]

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

(1) Subject to subsection (2), when the Commission has approved a plan of subdivision of any land to which a planning scheme relates, that approval is to be taken to be approval by the responsible authority under the planning scheme of the carrying out of works necessary to enable the subdivision of the land that are —

(a) shown on the plan of subdivision; or

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

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

Division 4 — Subdivision costs

158. Expenses of construction etc. of roads etc.

(1) Where a person who is subdividing land is required under this Part to construct and drain roads or construct artificial waterways shown on the plan of subdivision that person may —

(a) carry out or cause to be carried out the construction and drainage at his or her own expense; or

(b) arrange for the local government to carry out the work on behalf, and at the cost and expense, of that person.

(2) Where the person does not make the arrangement with the local government, that person is to pay to the local government, on demand, an amount (calculated under subsection (3)) to cover the reasonable costs of the local government in supervising the construction and drainage.

(3) For the purposes of subsection (2) the amount is to be calculated as follows —

(a) where the person has not engaged a consulting engineer and clerk of works to design and supervise the construction and drainage, the amount is to be 3% of the cost of the construction and drainage as estimated by the local government;

(b) where the person has engaged a consulting engineer and clerk of works to design and supervise the construction and drainage, the amount is to be 1½% of the cost of the

construction and drainage as estimated by the local government.

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

159. Subdivider may recover portion of road costs from later subdivider

(1) Where —

(a) a person (in this section called the ***later subdivider***) has subdivided land in which —

(i) a lot or lots has or have a common boundary with; or

(ii) a road joins,

an existing road to which there is access from the subdivided land; and

(b) a person (in this section called the ***original subdivider***) who previously subdivided land that also has a common boundary with that existing road, in connection with that subdivision, contributed to or bore solely the cost of providing or upgrading the existing road; and

(c) the later subdivider did not contribute to that cost,

the original subdivider may, in accordance with this Division, recover from the later subdivider a sum representing one-half of so much of the reasonable cost as was borne by the original subdivider of providing or upgrading the part of the existing road which has a common boundary with the lot or lots, or is joined by a subdivisional road, as referred to in paragraph (a).

(2) In this section —

CPI means the Table described as the Consumer Price Index (All Groups Index) for Perth published by the Commonwealth

Statistician under the *Census and Statistics Act 1905* of the Commonwealth, or if the same is not published, such other similar index as the Minister may reasonably determine;

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

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

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

(a) the value, as at the date of the subdivision referred to in subsection (1)(b), of the portion of the land provided as a road, being such percentage of the market value of the total area of land comprised in that subdivision as the area of the road bears to that total area as at the date of that subdivision; and

(b) the reasonable cost of designing and carrying out the following works —

(i) the survey of the land provided as a road; and

(ii) the formation, preparation, priming and sealing of the road; and

(iii) the provision of kerbing, drainage and service ducts in connection with the road,

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

160. Money payable under s. 159, recovery of

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

161. When subdivision occurs

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

Division 5 — Development controls

162. No development except with approval

(1) Subject to this Act, where a planning scheme or interim development order provides that development referred to in the planning scheme or interim development order is not to be commenced or carried out without approval being obtained upon the making of a development application, a person must not commence or carry out that development on land to which the planning scheme or interim development order applies unless —

(a) the approval has been obtained and is in force under the planning scheme or interim development order; and

(b) the development is carried out in accordance with the conditions subject to which the approval was granted.

(2) Nothing in this section limits or otherwise affects a right or entitlement under any other written law.

163. Application for development of heritage place

An application for approval of development must, if the application is a proposal to which the *Heritage Act 2018* section 73(1) applies, be made —

(a) in the case of an application under a local planning scheme or local interim development order, to the responsible authority; and

(b) in any other case, to the Commission.

[Section 163 inserted: No. 22 of 2018 s. 186(12).]

164. Development commenced or carried out, subsequent approval of

(1) A responsible authority may grant its approval under a planning scheme or interim development order for development already commenced or carried out.

(2) The Commission may grant its approval under section 116 for development already commenced or carried out in a planning control area.

(3) Subsections (1) and (2) do not affect the operation of the provisions of Part 13 in respect of development commenced or carried out before approval has been granted.

(4) Development which was unlawfully commenced or carried out is not rendered lawful by the occurrence of any subsequent event except the approval by the relevant responsible authority of that development.

(5) The continuation of development unlawfully commenced is to be taken to be lawful upon the grant of approval for the development.

Division 5A — Integration of subdivision and development

[Heading inserted: No. 30 of 2018 s. 166.]

164A. Integration of subdivision and development

(1) This section applies if, on an application for subdivision approval or development approval, the Commission or responsible authority forms the opinion that the integration of subdivision and development approvals or multiple subdivision or development approvals is necessary or desirable —

(a) due to the size of the lots and potential impact on the amenity of the locality; or

(b) for other reasons associated with the achievement of orderly and proper planning, and the preservation of the amenity, of the locality.

(2) The main purposes of integrating subdivision and development approvals are —

(a) to facilitate a cohesive approach to planning and development in circumstances where subdivision and development should only be undertaken in conjunction with each other; and

(b) to ensure that, in those circumstances, appropriate conditions for both the subdivision and development of land are determined as early as is practicable.

(3) If this section applies —

(a) the Commission may, in order to achieve the necessary or desirable integration of subdivision and development approvals, refuse to determine an application for subdivision approval until other applications for subdivision or development approvals are made or are made and determined; and

(b) the Commission may refuse to unconditionally endorse a diagram or plan of survey with a subdivision approval in

order for the plan to be registered in the Register under the *Transfer of Land Act 1893* unless satisfied that —

(i) the diagram or plan of survey is an accurate depiction of the subdivision that has been prepared after completion of the works necessary for the subdivision and the construction or modification of the buildings necessary for the development, the approvals of which have been required to be integrated; and

(ii) the subdivision and development has been undertaken consistently with the relevant approvals, including their conditions; and

(iii) the requirements of the *Building Act 2011* have been complied with for the development.

(4) Regulations may be made —

(a) requiring the Commission or a responsible authority to inform each other and share information about an application for subdivision approval or development approval; or

(b) requiring an applicant to provide additional documents or information reasonably required to determine whether subdivision and development approvals should be integrated under this section and to give effect to any such integration; or

(c) establishing processes for the concurrent or separate consideration of subdivision and development approvals to which this section applies and for the imposition of conditions of approvals to which this section applies; or

(d) otherwise facilitating the integration of subdivision and development approvals.

[Section 164A inserted: No. 30 of 2018 s. 166.]

Division 6 — Miscellaneous

165. Hazard etc. affecting land, notating titles as to

(1) This section applies when the Commission considers it desirable that owners or prospective owners of land comprised in —

(a) a plan of subdivision or proposed plan of subdivision; or

(b) a strata titles scheme as defined in the *Strata Titles Act 1985* section 3(1), registered, or lodged for registration, under that Act,

be made aware of hazards or other factors seriously affecting the use or enjoyment of that land and determines that the title and land register in respect of that land should be noted accordingly.

(2) When this section applies, the Commission may cause a notification of the hazard or other factor affecting the use or enjoyment of the land to be prepared in a form acceptable to the Registrar of Titles and deposited with the Authority.

(3) Where a notification is deposited under subsection (2), the Registrar of Titles is to endorse or note the title and land register in respect of the land with that notification.

(4) The Commission may, at any time after the notification has been deposited under subsection (2), lodge a withdrawal of that notification with the Authority.

(5) A withdrawal of a notification under subsection (4) is to be in a form acceptable to the Registrar of Titles.

[Section 165 amended: No. 60 of 2006 s. 147(5); No. 30 of 2018 s. 167.]

166. Encroachment that leads to approved subdivision

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

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

(b) the encroaching owner desires to purchase the land upon which the encroachment stands; and

(c) an application for approval of the necessary subdivision is made by the owner of the land encroached upon; and

(d) the Commission is satisfied that there has not been collusion and that everything has been done in good faith without intention to evade the law,

the Commission is to approve of the necessary subdivision.

167. Easement, creation of etc. on subdivision etc.

(1) Where —

(a) a diagram or plan of survey of a subdivision, or a scheme plan lodged for registration under the *Strata Titles Act 1985*, is received by the Authority; and

(b) it is shown on the plan or diagram that any land comprised in the diagram or plan is subject to or intended to be subject to an easement in favour of —

(i) the local government in whose district the land is situated, for the purposes of sewerage or drainage or access to sewerage or drainage works; or

(ii) a licensee as defined in the *Water Services Act 2012* section 3(1), for the purpose of water supply, sewerage, irrigation or drainage works or access to water supply, sewerage, irrigation or drainage works; or

(iii) the holder of a licence under the *Electricity Industry Act 2004* for the purpose of the supply

of electricity or access to electricity supply works; or

(iv) the holder of a distribution licence under the *Energy Coordination Act 1994* for the purpose of the supply of gas, or access to gas supply works, under the authority of that licence; or

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

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

(c) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

(d) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.

(2) An easement in favour of a person or authority for any purpose, to which any land is subject by virtue of this section, gives that person or authority such rights, powers and privileges as are prescribed in respect of an easement in favour of that person or authority for that purpose.

(3) If, by virtue of this section, any land is subject to an easement, the Registrar of Titles is to make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence that the land is so subject, and, for the purpose of making any such entry or endorsement or registering any such memorial, it is sufficient description of the easement if reference is made to this section.

(4) Where, by virtue of this section, any land is subject to an easement in favour of a person or authority for any purpose, the Registrar of Titles may, by order made —

(a) upon application in writing by the person or authority; and

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

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

(5) The purpose of an easement in favour of a person or authority is to be taken to be varied if —

(a) the prescribed circumstances set out in the regulations occur; and

(b) the person or authority gives written consent to that variation,

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

[Section 167 amended: No. 60 of 2006 s. 147(6); No. 25 of 2012 s. 222(3); No. 30 of 2018 s. 168.]

168. Road, creation of etc. on subdivision etc.

(1) All land on a diagram or plan of survey of a subdivision, or a scheme plan lodged for registration under the *Strata Titles Act 1985*, deposited with the Authority that is shown as a new road is dedicated as a road.

(2) Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the local government within the district of which the dedicated road is situated has the care, control and management of the road.

(3) All land on a diagram or plan of survey of a subdivision, or a scheme plan lodged for registration under the *Strata Titles Act 1985*, deposited with the Authority that is shown as a road widening or is for the purpose of extending or adding to a road forms part of the road and is dedicated to the public use.

(4) Subsections (1) and (3) operate —

(a) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act; and

(b) in any other case, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered under the *Transfer of Land Act 1893*.

(5) When a portion of land is transferred to the Crown or a local government for the purpose of extending or adding to a road, the transferred portion is to be taken —

(a) to be dedicated to the public use; and

(b) to form part of the road,

as and from the date of registration of the transfer.

(6) When a road corner shown on a plan deposited with the Authority is subsequently rounded off or truncated, the portion of land so excised forms part of the road and is dedicated to the public use.

(7) Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the local government within the district of which the land referred to in subsection (6) is situated has the care, control and management of the land.

(8) Subsection (6) operates —

(a) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985*, at the time the Registrar of Titles registers the plan under that Act;

(b) in the case of a plan lodged with an application for a new certificate or certificates, at the time the new certificate, or if more than one, all the new certificates, for the land the subject of the plan have been registered;

(c) in the case of a plan lodged with an application for registration of a document giving effect to the rounding off or truncation, at the time of the registration of that document.

(9) Land referred to in subsection (1), (3), (5) or (6) does not form part of a parcel comprised in a scheme plan that is registered under the *Strata Titles Act 1985*.

(10) Land referred to in subsection (1), (3), (5) or (6) is subject to any existing encumbrance specified in a direction of the Minister responsible for the administration of the *Land Administration Act 1997*, or a person authorised in writing by that Minister for the purposes of this subsection, lodged with the Registrar of Titles —

(a) in the case of a scheme plan lodged for registration under the *Strata Titles Act 1985* — at or before the time the Registrar of Titles registers the plan under that Act; or

(b) in the case of a diagram or plan lodged with an application for a new certificate or certificates — at or before the time the new certificate, or if more than one, all the new certificates, for the land the subject of the diagram or plan have been registered; or

(c) in the case of a plan lodged with an application for registration of a document giving effect to a rounding off or truncation — at or before the time of the registration of that document.

[Section 168 amended: No. 60 of 2006 s. 147(7); No. 30 of 2018 s. 169; No. 4 of 2023 s. 144.]

169. Roads and waterways, minimum standards of construction for

(1) The Commission may by notice published in the *Gazette* fix minimum standards of construction with respect to roads and artificial waterways to be constructed on a proposed subdivision.

(2) A notice published under subsection (1) may set out particulars relating to the width, kerbing, thickness, surfacing and foundations of roads, and the materials to be used in the construction of roads and artificial waterways.

(3) A notice published under subsection (1) is subsidiary legislation for the purposes of sections 43 and 44 of the *Interpretation Act 1984*.

(4) A person who without the approval of the Commission constructs a road or artificial waterway on a subdivision that does not comply with the standards set out in a notice published under subsection (1) commits an offence.

170. Proposed road or waterway, drawings etc. of required

(1A) In this section —

responsible authority means —

(a) in relation to land that is subject to a local planning scheme — the local government responsible for the enforcement of the observance of the scheme; and

(b) in relation to land that is subject to an improvement scheme or the Swan Valley Planning Scheme — the Commission.

(1) Before a person who is subdividing land commences to construct and drain roads or construct artificial waterways

shown in the diagram or plan of survey, that person is to give to the responsible authority —

(a) drawings showing longitudinal and cross sections of the proposed road or artificial waterway; and

(b) specifications of the proposed road or artificial waterway; and

(c) such other information including information relating to levels, drainage, nature of soil, and physical features as the responsible authority requires.

(2) A person who does not comply with subsection (1) commits an offence.

(3) The responsible authority may by written notice require the person subdividing the land —

(a) to amend the drawings or specifications or both; and

(b) to comply with such further conditions as the responsible authority thinks fit to impose in respect of the proposed road or waterway,

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

(4) Without limiting the powers conferred on a responsible authority by subsection (3), where —

(a) a person delivers drawings and specifications of a proposed road or artificial waterway to a responsible authority under subsection (1); and

(b) the proposed road or artificial waterway, if constructed in accordance with those plans and specifications, would not satisfy the minimum standards fixed under section 169 applicable to the proposed road or artificial waterway,

the responsible authority is to by written notice require the person to so amend the drawing or specifications, or both, as to

cause the proposed road or artificial waterway to satisfy those minimum standards.

(5) A person who is aggrieved by a requirement of the responsible authority made under subsection (3) may apply to the State Administrative Tribunal for a review, in accordance with Part 14, of the responsible authority's decision.

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

[Section 170 amended: No. 28 of 2010 s. 15; No. 45 of 2020 s. 80.]

Part 11A — Development Assessment Panels and development control

[Heading inserted: No. 28 of 2010 s. 43.]

Division 1 — Functions of DAPs

[Heading inserted: No. 28 of 2010 s. 43.]

171A. Prescribed development applications, DAP to determine and regulations for

(1) In this section —

planning instrument means —

(a) a planning scheme; or

(b) an interim development order;

prescribed development application means —

(a) a development application of a class or kind prescribed for the purposes of subsection (2)(a); or

(b) a development application of a class or kind prescribed for the purposes of subsection (2)(ba) in respect of which an applicant has made an election in accordance with regulations made under subsection (2)(ba)(i).

(2) The Governor may make regulations —

(a) providing that, despite any other provision of this Act or a planning instrument, a development application of a class or kind prescribed for the purposes of this paragraph —

(i) must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and

(ii) cannot be determined by a local government or the Commission;

(ba) providing that, despite any other provision of this Act or a planning instrument, if —

(i) an applicant for approval of development elects in accordance with the prescribed procedure to have a development application determined by a DAP; and

(ii) the development application is of a class or kind prescribed by the regulations for the purposes of this paragraph,

the development application —

(iii) must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and

(iv) cannot be determined by a local government or the Commission;

(bb) making provision for determining which DAP is to determine a prescribed development application of a particular class or kind;

(b) providing for the duties and responsibilities of local governments and the Commission in relation to prescribed development applications;

(c) providing for the procedures for dealing with prescribed development applications;

(d) providing for the application of the provisions of this Act and planning instruments in relation to prescribed development applications;

(e) providing for the procedures to be followed by, and powers of, a DAP when determining a prescribed development application;

(f) providing for the effect of a determination of a prescribed development application;

(g) providing for the notification of a determination of a prescribed development application;

(h) providing for the review of a determination of a prescribed development application;

(i) providing for a DAP to give advice to —

(i) a local government or the Commission in relation to development applications to be determined by the local government or Commission; or

(ii) the Minister in relation to development applications;

(j) providing for the circumstances in which, and the classes or kinds of development application for which, advice is required or permitted to be given by a DAP as referred to in paragraph (i);

(k) providing for the procedures to be followed by, and powers of, a DAP when preparing and giving advice referred to in paragraph (i);

(l) providing for the duties and responsibilities of local governments and the Commission in relation to advice referred to in paragraph (i).

(2A) A development application that relates to land in the Swan Valley cannot be a prescribed development application.

(3) Unless otherwise provided under regulations made for the purposes of subsection (2) —

(a) a determination by a DAP of a prescribed development application; and

(b) a failure by a DAP to make a determination of a prescribed development application,

is to be regarded as, and has effect as if it were, a determination or failure of the responsible authority to which the application was made.

(4) Regulations made for the purposes of subsection (2) have effect subject to Parts 11B and 17.

[Section 171A inserted: No. 28 of 2010 s. 43; amended: No. 26 of 2020 s. 7; No. 45 of 2020 s. 81; No. 34 of 2023 s. 10.]

171B. DAP to carry out delegated functions

(1) In addition to the functions conferred on it by regulations made under section 171A, a DAP is to perform the functions that are delegated to it by a responsible authority in accordance with regulations made under subsection (2).

(2) The Governor may make regulations —

(a) prescribing the functions under this Act or a planning scheme that may be delegated by a responsible authority to a DAP; and

(b) making provision in relation to the making and effect of the delegation of functions by a responsible authority to a DAP.

[Section 171B inserted: No. 28 of 2010 s. 43.]

Division 2 — Development Assessment Panels: establishment and administration

[Heading inserted: No. 28 of 2010 s. 43.]

171C. Establishment of DAPs

(1) The Minister may, by order published in the *Gazette*, establish a Development Assessment Panel for 1 or more districts specified in the order.

[(1A) deleted]

(2) The order must give the DAP a name.

(3) A DAP cannot be established for a district for which another DAP is established.

[(4) deleted]

(5) If a DAP is established for 2 or more districts, the districts need not be contiguous.

(6) The Minister may revoke or amend an order made under subsection (1) by further order published in the *Gazette*.

[(7) deleted]

[Section 171C inserted: No. 28 of 2010 s. 43; amended: No. 26 of 2020 s. 8; No. 34 of 2023 s. 5.]

171D. Constitution, procedure and conduct of DAPs

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the establishment and functioning of DAPs.

(2) Without limiting subsection (1), regulations may be made about the constitution, procedure and conduct of DAPs, including but not limited to regulations about the following —

(a) the total number of persons who are to be on a DAP;

(b) the qualifications to be held by each person on a DAP;

(c) the procedure to be followed for nominating and appointing DAP members;

(d) the remuneration and allowances payable to DAP members;

(e) the term of office of DAP members;

(f) the removal of DAP members;

(g) compiling and maintaining a register of persons who are eligible to be DAP members;

(h) the paid training of persons appointed to be DAP members;

(i) procedures at DAP meetings;

(j) the conduct of DAP members.

(3) The qualifications to be held by a person on a DAP may be specified in the regulations by reference to one or more of these —

(a) an office or position;

(b) an educational qualification;

(c) a type or level of knowledge;

(d) a type or level of experience.

[Section 171D inserted: No. 28 of 2010 s. 43.]

171E. Administration and costs of DAPs

(1) The Governor may make regulations about —

(a) the administration of DAPs; and

(b) the payment of the costs and expenses of DAPs.

(2) Without limiting subsection (1), regulations may be made —

(a) about the staffing, facilities and services that are to be provided to DAPs by the chief executive officer or by local governments; and

(b) about the access of the Minister to information in the possession of a DAP; and

(c) about reporting requirements in relation to —

(i) directions under the regulations; and

(ii) expenditure in relation to DAPs; and

(iii) determinations by DAPs; and

(iv) any other matter specified in the regulations.

(3) A local government must comply with a direction given and requirements prescribed under subsection (2).

[Section 171E inserted: No. 28 of 2010 s. 43.]

171F. Review of regulations

(1) An appropriate Standing Committee of the Legislative Council is to carry out a review of the operation and effectiveness of all regulations made under this Part as soon as practicable after the expiry of 2 years from the day on which regulations made under this Part first come into operation.

(2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

[Section 171F inserted: No. 28 of 2010 s. 43.]

171G. Regulations about transitional matters

The Governor may make regulations making provision for any transitional issues arising because of the repeal or amendment of any regulations made under this Part or the revocation or amendment of an order made under section 171C.

[Section 171G inserted: No. 26 of 2020 s. 9.]

Part 11B — Development approval for significant development

[Heading inserted: No. 34 of 2023 s. 11.]

Division 1 — Preliminary

[Heading inserted: No. 34 of 2023 s. 11.]

171H. Terms used

(1) In this Part —

applicable planning instrument means —

(a) in relation to a development application that would, apart from this Part, be determined under a local planning scheme — the local planning scheme; or

(b) in relation to a development application that would, apart from this Part, be determined under a region planning scheme — the region planning scheme; or

(c) in relation to a development application that would, apart from this Part, be determined under the Swan Valley Planning Scheme — the Swan Valley Planning Scheme; or

(d) in relation to a development application that would, apart from this Part, be determined under an interim development order — the interim development order;

design review, in relation to development to which a development application or prospective development application relates, means a review of the design of the development conducted by —

(a) a committee established under Schedule 2 clause 1; or

(b) another person or body that the Commission considers has appropriate qualifications, knowledge and experience to conduct the review;

development application —

(a) means a development application as defined in section 4(1); and

(b) includes a prescribed development application as defined in section 171A(1);

local planning strategy means a local planning strategy in effect under regulations made under this Act;

mandatory significant development has the meaning given in section 171I(2);

normal decision-maker, in relation to a development application, means a person or body who could, apart from this Part, determine the application under the applicable planning instrument;

Part 11B regulations means regulations made under section 171ZD(1);

prescribed significant development has the meaning given in section 171I(1);

procedural provision, in relation to an applicable planning instrument —

(a) means a provision of the applicable planning instrument that relates to a procedure for dealing with a development application; and

(b) includes a provision of the applicable planning instrument that relates to any of the following —

(i) a development application being accepted for assessment;

(ii) the provision of additional information or material in relation to a development application;

(iii) advertising or publicising a development application, including recovery of costs of such advertising or publicising;

(iv) consulting with any persons or bodies in relation to a development application;

(v) considering submissions made on a development application;

(vi) the time within which a development application is required to be determined;

(vii) a development application being taken to be refused if it is not determined within the required time;

(viii) any other matter prescribed by Part 11B regulations for the purposes of this subparagraph;

but

(c) does not include a provision of the applicable planning instrument that relates to the matters to which regard must be had in considering a development application (except to the extent that the provision provides for a matter to which regard must be had in connection with submissions or consultation as referred to in paragraph (b));

significant development application means a development application made to the Commission for determination under this Part under section 171L(1);

substantially commenced, in relation to development approved under section 171P(1), means that some substantial part of work in respect of the development has been performed at the site of the development.

(2) In this Part —

(a) a reference to a determination under section 171P(1) is a reference to that determination as amended from time to time under section 171X or by an order under section 171ZA; and

(b) a reference to the conditions on an approval of development granted under section 171P(1) is a reference to those conditions as amended from time to

time under section 171X or by an order under section 171ZA; and

(c) a reference to the approved development in relation to an approval of development granted under section 171P(1) is a reference to that approved development as amended from time to time under section 171X or by an order under section 171ZA.

[Section 171H inserted: No. 34 of 2023 s. 11.]

171I. Prescribed significant development

(1) In this Part, ***prescribed significant development*** is development that is of a class or kind prescribed by Part 11B regulations for the purposes of this subsection.

(2) Part 11B regulations may provide for classes or kinds of prescribed significant development to be ***mandatory significant development*** for the purposes of section 171L(2).

(3) Without limiting subsections (1) and (2), Part 11B regulations made for the purposes of this section may describe a class or kind of development by reference to the estimated cost of the development, the nature of the development, the area in which the development is to be carried out or any other matter.

[Section 171I inserted: No. 34 of 2023 s. 11.]

171J. Development to which this Part applies

This Part does not apply in relation to development —

(a) in a planning control area; or

(b) in an improvement scheme area; or

(c) in an area to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies; or

(d) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000* section 3(1); or

(e) to which the *Swan and Canning Rivers Management Act 2006* Part 5 applies; or

(f) if a Government agreement is in effect that affects the operation of this Act, or the operation of an applicable planning instrument, in relation to approval for the development; or

(g) that is a public work.

[Section 171J inserted: No. 34 of 2023 s. 11.]

171K. Relationship of this Part with other laws

(1) This Part has effect despite any other provision of this Act (other than Part 11C) or any provision of an applicable planning instrument.

(2) To avoid doubt, this Part is subject to section 5 of the EP Act.

[Section 171K inserted: No. 34 of 2023 s. 11.]

Division 2 — Determination of significant development applications

[Heading inserted: No. 34 of 2023 s. 11.]

Subdivision 1 — Making significant development applications

[Heading inserted: No. 34 of 2023 s. 11.]

171L. Development application may be made to Commission for determination under this Part

(1) A person may make a development application to the Commission for determination under this Part if —

(a) the application is for approval of prescribed significant development; or

(b) the Premier has given authorisation under section 171M(3) for the application to be made and determined under this Part.

(2) A development application for approval of mandatory significant development must be made to the Commission for determination under this Part under subsection (1) and cannot be made to a normal decision-maker for determination under the applicable planning instrument as it applies apart from this Part.

[Section 171L inserted: No. 34 of 2023 s. 11.]

171M. Authorisation for application raising issues of State or regional importance to be made under s. 171L

(1) The prospective applicant in relation to a development application that has not yet been made may, by notice given to the Minister, request authorisation for the application to be made and determined under this Part.

(2) On a request under subsection (1), the Minister may recommend that the Premier give authorisation for the making and determination of the development application under this Part if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for it to be made and determined under this Part.

(3) On the recommendation of the Minister under subsection (2), the Premier may give authorisation in writing for the development application to be made and determined under this Part.

(4) If authorisation is given under subsection (3) —

(a) the Premier must, as soon as is practicable —

(i) give a copy of the authorisation to the Commission; and

(ii) cause a copy of the authorisation to be laid before each House of Parliament or dealt with under section 268A;

and

(b) the Commission must publish the authorisation on a website maintained by, or on behalf of, the Commission.

[Section 171M inserted: No. 34 of 2023 s. 11.]

171N. Supplementary provisions about applications and authorisations

(1) A significant development application —

(a) must be made —

(i) in accordance with any requirements prescribed by Part 11B regulations for the purposes of this subparagraph; and

(ii) otherwise in the manner and form required by the Commission;

and

(b) without limiting paragraph (a), must include any documents or information required by Part 11B regulations or by the Commission.

(2) A request under section 171M(1) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

(3) Without limiting section 171K(1), in imposing requirements under subsection (1) or (2), the Commission or Minister is not bound or restricted by any provisions of an applicable planning instrument that would, apart from this Part and Part 11B regulations, regulate, or otherwise apply in relation to, any of the following —

(a) the making of a development application;

(b) a development application itself;

(c) the consideration or determination of a development application.

[Section 171N inserted: No. 34 of 2023 s. 11.]

Subdivision 2 — Considering and determining significant development applications

[Heading inserted: No. 34 of 2023 s. 11.]

171O. Significant development application must be determined under s. 171P(1)

A significant development application must be determined under section 171P(1).

[Section 171O inserted: No. 34 of 2023 s. 11.]

171P. Determination of significant development application by Commission

(1) The Commission must consider a significant development application and determine it by —

(a) granting approval for the development without conditions; or

(b) granting approval for the development with conditions; or

(c) refusing approval for the development.

(2) Except as otherwise provided in this Subdivision, the Commission must consider and determine the significant development application under subsection (1) as if it were considering and determining the application under the applicable planning instrument.

(3) If the Commission is not a normal decision-maker under the applicable planning instrument, the applicable planning

instrument applies for the purposes of subsection (2) as if the Commission were a normal decision-maker.

[Section 171P inserted: No. 34 of 2023 s. 11.]

171Q. Procedures for dealing with significant development application

(1) For the purposes of the Commission's consideration and determination of a significant development application under section 171P(1) —

(a) Part 11B regulations made under section 171ZD(2)(c) apply; and

(b) procedural provisions of the applicable planning instrument do not apply.

(2) Despite subsection (1)(b), the Commission may decide to apply particular procedural provisions of the applicable planning instrument in considering and determining a significant development application if the Commission considers that the provisions are consistent with this Subdivision and Part 11B regulations made under section 171ZD(2)(c) and that it is appropriate in the circumstances for the provisions to apply.

[Section 171Q inserted: No. 34 of 2023 s. 11.]

171R. Determining significant development application inconsistently with applicable planning instrument in some circumstances

(1) The Commission may determine a significant development application under section 171P(1) in a manner that conflicts with the provisions of the applicable planning instrument —

(a) if the Commission is of the opinion that —

(i) the application raises issues of State or regional importance; and

(ii) the determination is in the public interest;

or

(b) if —

(i) the applicable planning instrument is a local planning scheme; and

(ii) the local planning scheme was not first published, or a consolidation of the local planning scheme has not been published, in the preceding 5 years; and

(iii) the determination complies with any requirements prescribed by Part 11B regulations for the purposes of this subparagraph;

or

(c) if —

(i) the applicable planning instrument is a local planning scheme; and

(ii) in the opinion of the Commission, the conflict is of a minor nature; and

(iii) in the opinion of the Commission, the determination is consistent with the general intent of each State planning policy, planning code, region planning scheme and local planning strategy that is relevant to the development;

or

(d) in circumstances prescribed by Part 11B regulations for the purposes of this paragraph.

(2) In making a determination under section 171P(1) in a manner permitted by subsection (1) of this section, the Commission must have due regard to the need to ensure the orderly and proper planning, and the preservation of amenity, of the locality to which the application relates.

(3) For the purposes of subsection (1)(a), the Commission is not limited to planning considerations and may have regard to any other matter affecting the public interest.

(4) Subsection (1) does not permit the Commission to determine a significant development application under section 171P(1) in a manner that conflicts with an environmental condition.

[Section 171R inserted: No. 34 of 2023 s. 11.]

171S. Provisions about determination of significant development application

(1) In determining a significant development application under section 171P(1) —

(a) approval can be granted —

(i) for the development for which approval is sought; or

(ii) for that development, except for a part or aspect of that development specified in the approval; or

(iii) for a part or aspect of that development specified in the approval;

but

(b) approval cannot be granted as referred to in paragraph (a)(ii) or (iii) —

(i) in the case of a significant development application made with the authorisation of the Premier under section 171M(3) — for development that is substantially different from the development for which approval is sought; or

(ii) otherwise — for development that is not prescribed significant development.

(2) For the purposes of section 171P(1)(b), the Commission may impose any conditions that the Commission considers appropriate, including (without limitation) the following —

(a) a condition limiting the time period for which approval is granted;

(b) a condition requiring further details of the development specified in the approval to be, before the development is commenced, submitted to, and approved by, the Commission.

(3) The Commission can impose a condition of the kind referred to in subsection (2)(b) only if the Commission considers that the further details to be approved would not substantially change the approved development.

(4) When the Commission determines a significant development application under section 171P(1), the Commission must —

(a) give written notice of the determination, including the Commission's reasons for the determination, to —

(i) the applicant; and

(ii) each local government to the district of which the significant development application relates;

and

(b) make copies of the determination and reasons publicly available on a website maintained by, or on behalf of, the Commission.

(5) A determination under section 171P(1) has effect on the day on which the notice of the determination is given to the applicant under subsection (4)(a)(i).

[Section 171S inserted: No. 34 of 2023 s. 11.]

171T. Time for determination of significant development application

(1) The Commission must determine a significant development application within the period provided for under Part 11B regulations for the purposes of this subsection.

(2) The Commission may determine a significant development application under section 171P(1) after the period referred to in

subsection (1) has expired and the validity of the determination is not affected by the expiry.

[Section 171T inserted: No. 34 of 2023 s. 11.]

Subdivision 3 — Consequences of determination and amendment and cancellation of determination

[Heading inserted: No. 34 of 2023 s. 11.]

171U. Effect of determination of significant development application under s. 171P(1)

(1) This section applies if the Commission determines a significant development application under section 171P(1).

(2) The Commission's determination has effect, and is valid, for the purposes of this Act and all other written laws, as if it had been made under the applicable planning instrument by a normal decision-maker.

Example for this subsection:

1. If the significant development application would, apart from this Part, have been determined by a local government for the purposes of a local planning scheme, the Commission's determination has the same effect for the purposes of the local planning scheme as if the determination had been made by the local government.
2. Accordingly, if the determination is to grant approval for development —
   (a) the development may be commenced and carried out as if the approval had been granted by the local government; and
   (b) any conditions imposed by the Commission on the approval must be complied with as if they were conditions imposed on the approval by the local government; and
   (c) section 218(c) applies in relation to a failure to comply with any of those conditions.

(3) Subsection (2) applies even if the Commission's determination could not have been made by a normal decision-maker under the applicable planning instrument.

(4) Without limiting subsections (2) and (3), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the Commission's determination could not have been made by a normal decision-maker under the applicable planning instrument.

(5) Subsections (2) to (4) are subject to sections 171W and 171X and Division 3.

(6) If the Commission's determination is to grant approval for development, the determination does not affect the operation of any written law that requires the obtaining, in relation to the development, of any other type of approval, consent, licence, permit, registration or other authority (however described).

Examples for this subsection:

1. A building permit or demolition permit under the *Building Act 2011*.
2. A licence under the *Liquor Control Act 1988*.

Note for this subsection:

Part 11C applies despite this Part (see section 171ZF(1)).

[Section 171U inserted: No. 34 of 2023 s. 11.]

171V. Enforcement powers of Commission in relation to conditions

(1) If development is commenced, continued or carried out otherwise than in accordance with any of the conditions on an approval of development granted under section 171P(1), the Commission has the powers of a responsible authority under sections 214, 215 and 216 in relation to the development.

(2) Subsection (1) does not limit any powers of a responsible authority under sections 214, 215 and 216 (including any powers that a responsible authority has under those sections because of section 171U(2)).

[Section 171V inserted: No. 34 of 2023 s. 11.]

171W. Substantial commencement of development approved under s. 171P(1)

(1) This section applies if the Commission grants approval for development under section 171P(1).

(2) The development must be substantially commenced —

(a) within the period specified in the approval for the purposes of this subsection; or

(b) if no period is specified in the approval — within the period of 4 years beginning on the day on which the approval is granted.

(3) The approval lapses if the development is not substantially commenced within the period referred to in subsection (2).

Note for this subsection:

The period referred to in subsection (2) can be extended by an amendment to the approval made under section 171X(2)(a) or an order made under section 171ZA(2)(a).

(4) An application under section 171X(2)(a) can be made or determined in relation to the approval even if the approval has lapsed under subsection (3) and, if the application is granted after the approval has lapsed, the approval comes back into effect accordingly when the application is granted.

(5) An order under section 171ZA(2)(a) can be made in relation to the approval even if the approval has lapsed under subsection (3), in which event the approval comes back into effect accordingly when the amendment is made.

[Section 171W inserted: No. 34 of 2023 s. 11.]

171X. Amendment or cancellation of approval granted under s. 171P(1)

(1) This section applies if the Commission grants approval for development under section 171P(1) in respect of any land.

(2) An owner of the land, or a person who is of a class or kind prescribed by Part 11B regulations for the purposes of this subsection, may apply to the Commission for the Commission —

(a) for the purposes of section 171W(2), to amend the approval —

(i) to extend the period specified in the approval; or

(ii) if no period is specified in the approval — to specify a period that is longer than the period of 4 years referred to in section 171W(2)(b);

or

(b) to amend or remove any of the conditions imposed on the approval; or

(c) to amend any part or aspect of the approved development; or

(d) to amend the approval in any other way; or

(e) to cancel the approval.

(3) An amendment of the kind referred to in subsection (2)(c) —

(a) cannot substantially change the approved development; and

(b) in the case of approval granted on a significant development application not made with the authorisation of the Premier under section 171M(3) — cannot result in the approved development no longer being prescribed significant development.

(4) The Commission must consider an application made under subsection (2) and determine it by —

(a) granting it (with or without conditions); or

(b) refusing it.

(5) Sections 171N(1), 171P(2) and (3), 171Q, 171R, 171S(2) to (5), 171T and 171ZD apply with any necessary modifications to an

application under subsection (2) as they apply to a significant development application.

(6) Subject to Division 3, no person or body, apart from the Commission acting under this section, can do any of the following in relation to the approval referred to in subsection (1) —

(a) make an amendment of the kind referred to in subsection (2)(a);

(b) amend or remove any of the conditions imposed on the approval;

(c) impose new conditions on the approval;

(d) amend any part or aspect of the approved development;

(e) amend the approval in any other way;

(f) cancel the approval.

[Section 171X inserted: No. 34 of 2023 s. 11.]

Division 3 — Oversight of Commission

[Heading inserted: No. 34 of 2023 s. 11.]

171Y. Review by State Administrative Tribunal

(1) If the Commission determines a significant development application, the applicant may apply to the State Administrative Tribunal for a review, in accordance with Part 14, of —

(a) a determination by the Commission to refuse approval for the development under section 171P(1)(c); or

(b) any condition imposed by the Commission on the determination of the application.

(2) If the Commission determines an application under section 171X, the applicant may apply to the State

Administrative Tribunal for a review, in accordance with Part 14, of —

(a) a determination by the Commission to refuse the application under section 171X(4)(b); or

(b) any condition imposed by the Commission on the determination of the application.

(3) If the Commission does not determine a significant development application within the period referred to in section 171T(1), the applicant may apply for a review under subsection (1) as if the Commission had, on the last day of that period, determined the application under section 171P(1)(c) by refusing approval for the development.

(4) If the Commission does not determine an application under section 171X(2) within the period referred to in section 171T(1) (as that section applies under section 171X(5)), the applicant may apply for a review under subsection (2) as if the Commission had, on the last day of that period, determined the application under section 171X(4)(b) by refusing the application.

(5) For an application for review under this section, the Commission is the decision-maker for the purposes of the *State Administrative Tribunal Act 2004*.

[Section 171Y inserted: No. 34 of 2023 s. 11.]

171Z. Ministerial call-in of application for review under s. 171Y

(1) If the significant development application to which an application for review under section 171Y(1) or (2) relates was made with the authorisation of the Premier under section 171M(3), the application for review must be heard by the State Administrative Tribunal, and determined by the Minister under section 247, as if the Minister had given a direction under section 246(2)(b) in relation to the application for review.

(2) If the significant development application to which an application for review under section 171Y(1) or (2) relates was not made with the authorisation of the Premier under section 171M(3), the Minister cannot give a direction under section 246(2)(a) in relation to the application for review.

(3) Subsection (2) does not affect the Minister's power to give a direction under section 246(2)(b).

(4) For the purposes of subsections (1) and (2), the significant development application to which an application for review under section 171Y(1) or (2) relates is —

(a) in the case of an application for review under section 171Y(1) — the significant development application referred to in section 171Y(1); or

(b) in the case of an application under section 171Y(2) — the significant development application determined by granting the approval of development to which the application under section 171X referred to in section 171Y(2) relates.

[Section 171Z inserted: No. 34 of 2023 s. 11.]

171ZA. Governor may amend or cancel approval granted by Commission under s. 171P(1)

(1) This section applies if the Commission grants approval for development under section 171P(1).

(2) The Governor may, by order, do any of the following —

(a) for the purposes of section 171W(2), amend the approval —

(i) to extend the period specified in the approval; or

(ii) if no period is specified in the approval — to specify a period that is longer than the period of 4 years referred to in section 171W(2)(b);

(b) amend or remove any of the conditions imposed on the approval;

(c) impose new conditions on the approval;

(d) amend any part or aspect of the approved development;

(e) amend the approval in any other way;

(f) cancel the approval.

(3) An amendment of the kind referred to in subsection (2)(d) —

(a) cannot substantially change the approved development; and

(b) in the case of approval granted on a significant development application not made with the authorisation of the Premier under section 171M(3) — cannot result in the approved development no longer being prescribed significant development.

(4) An order under this section may include directions for giving effect to the order.

(5) The Commission cannot do anything under section 171X that would override, or otherwise be inconsistent with, the provisions of an order under this section.

(6) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(7) The *Interpretation Act 1984* section 42 applies to an order under this section as if it were a regulation.

[Section 171ZA inserted: No. 34 of 2023 s. 11.]

Division 4 — Miscellaneous

[Heading inserted: No. 34 of 2023 s. 11.]

171ZB. Meetings to be open to public

(1) A meeting of the board, or of a committee of the Commission, that is held for the purpose of the Commission's consideration

or determination of a significant development application, or an application under section 171X, must be open to the public.

(2) The requirement in subsection (1) is satisfied if members of the public can observe the meeting using audiovisual communication.

(3) Subsection (1) does not apply to a meeting, or part of a meeting, that deals with a matter of a kind prescribed by Part 11B regulations for the purposes of this subsection.

[Section 171ZB inserted: No. 34 of 2023 s. 11.]

171ZC. Fees

(1) The Minister may, by notice published in accordance with the *Interpretation Act 1984* section 41(1)(a) —

(a) set fees to be charged in respect of any matter under, or relating to, this Part or any Part 11B regulations; and

(b) make provision for determining the persons by whom the fees are payable.

(2) Neither the Commission nor any other person or body is required to consider or determine a significant development application, or to do any other thing under this Part or Part 11B regulations, unless any fee relating to the application or other thing has been paid.

(3) Section 20 does not apply in relation to this Part.

[Section 171ZC inserted: No. 34 of 2023 s. 11.]

171ZD. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

(2) Without limiting subsection (1), Part 11B regulations may make provision for or in relation to the following —

(a) requests, recommendations and authorisations under section 171M;

(b) procedures to be followed before significant development applications are made;

(c) procedures for dealing with significant development applications, including in relation to any matter referred to in paragraph (b)(i) to (v) of the definition of ***procedural provision*** in section 171H(1).

(3) For the purposes of subsection (2)(b) and (c), Part 11B regulations may, without limitation —

(a) prescribe procedures that require or permit design review of development to be conducted; and

(b) provide for procedures to be determined by the Commission.

[Section 171ZD inserted: No. 34 of 2023 s. 11.]

Part 11C — Avoiding conflicts with certain development approvals

[Heading inserted: No. 34 of 2023 s. 11.]

Division 1 — Preliminary

[Heading inserted: No. 34 of 2023 s. 11.]

171ZE. Terms used

In this Part —

approved development, in relation to a relevant development approval, means the development for which approval is given;

conflict, in relation to the performance of a function and a relevant development approval, has the meaning given in section 171ZI;

Part 11C regulations means regulations made under section 171ZP;

prescribed significant development has the meaning given in section 171I(1);

relevant development approval has the meaning given in section 171ZG(1);

relevant legal instrument means —

(a) this Act, other than this Part and Part 11C regulations;

(b) a planning scheme or an interim development order;

(c) the *Main Roads Act 1930*;

(d) regulations made under the *Local Government Act 1995* section 9.60 and applying as local laws, to the extent that those regulations deal with a matter referred to in Schedule 9.1 clause 7 of that Act;

(e) any other enactment prescribed by Part 11C regulations for the purposes of this paragraph;

(f) any other scheme, code, policy, plan, local law, by-law, rule, condition, notice or other instrument made under any enactment covered by paragraph (a), (c) or (e);

responsible Minister, in relation to a relevant legal instrument, means the Minister responsible for the administration of the relevant legal instrument or the enactment under which the relevant legal instrument is made.

[Section 171ZE inserted: No. 34 of 2023 s. 11.]

171ZF. Relationship of this Part with other laws and instruments

(1) This Part has effect despite any relevant legal instrument.

(2) To avoid doubt, this Part is subject to section 5 of the EP Act.

[Section 171ZF inserted: No. 34 of 2023 s. 11.]

171ZG. Relevant development approvals

(1) A ***relevant development approval*** is any of the following —

(a) an approval of development in a planning control area granted by the Commission under section 116(1); or

(b) an approval of development granted by the Commission in determining a development application under an improvement scheme; or

(c) an approval of development granted by the Commission in determining a significant development application under section 171P(1); or

(d) an approval of development affirmed, varied or granted by the Minister in determining under section 247 an application for review that was —

(i) made to the State Administrative Tribunal; and

(ii) referred to the Minister for determination in compliance with a direction given under section 246(2)(a);

or

(e) an approval of development granted by the Commission under section 274; or

(f) an approval of development granted under a planning scheme or interim development order, being an approval of a class or kind prescribed by Part 11C regulations for the purposes of this paragraph.

(2) In this Part —

(a) a reference to a relevant development approval is a reference to the relevant development approval as amended or in effect from time to time; and

(b) a reference to the conditions on a relevant development approval is a reference to the conditions as amended or in effect from time to time; and

(c) a reference to the approved development in relation to a relevant development approval is a reference to the approved development as amended or in effect from time to time.

[Section 171ZG inserted: No. 34 of 2023 s. 11.]

171ZH. Performance of functions to which this Part applies

(1) This Part does not apply to the performance of a function —

(a) of a court or tribunal; or

(b) that is the subject of proceedings before a court or tribunal or a decision made by a court or tribunal; or

(c) that is performed or to be performed in accordance with, or in a manner affected by, a Government agreement.

(2) In this Part, references to performing a function include references to the following —

(a) refusing or failing to perform a function or otherwise not performing a function;

(b) being taken to perform a function;

(c) being taken to refuse or fail to perform a function or otherwise not to perform a function.

[Section 171ZH inserted: No. 34 of 2023 s. 11.]

171ZI. When performance of function conflicts with relevant development approval

(1) For the purposes of this Part, the performance of a function under a relevant legal instrument ***conflicts*** with a relevant development approval if the performance of the function, or the way in which the function is performed —

(a) prevents the approved development from proceeding in accordance with the approval; or

(b) prevents any of the conditions imposed on the approval from being complied with; or

(c) otherwise substantially undermines, or substantially conflicts with, the approval.

Examples for this subsection:

1. An authority refuses to grant a permit under a relevant legal instrument that is necessary for the approved development to proceed in accordance with the relevant development approval.
2. An authority grants a permit under a relevant legal instrument that is necessary for the approved development to proceed in accordance with the relevant development approval but the permit is granted subject to conditions that prevent the approved development from proceeding in accordance with the relevant development approval.

(2) Despite subsection (1), the performance of a function under a relevant legal instrument does not ***conflict*** with a relevant development approval if the function consists of —

(a) amending or varying —

(i) the relevant development approval; or

(ii) the conditions on the relevant development approval; or

(iii) the approved development in relation to the relevant development approval;

or

(b) the imposition of new conditions on the relevant development approval; or

(c) the cancellation of the relevant development approval.

[Section 171ZI inserted: No. 34 of 2023 s. 11.]

Division 2 — Dealing with conflicts with relevant development approvals

[Heading inserted: No. 34 of 2023 s. 11.]

171ZJ. Proposed performance of function that conflicts with relevant development approval

(1) This section applies if —

(a) a relevant development approval has been granted; and

(b) a person or body (the ***decision-maker***) proposes to perform a function under a relevant legal instrument; and

(c) the performance of the function as proposed would conflict with the relevant development approval.

(2) The decision-maker must not perform the function as proposed unless —

(a) the decision-maker has notified the Minister of the proposed performance of the function and the conflict; and

(b) either —

(i) the decision-maker performs the function in compliance with a direction given to the decision-maker under section 171ZK; or

(ii) the Minister has notified the decision-maker under section 171ZK(6).

(3) A notification under subsection (2)(a) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

[Section 171ZJ inserted: No. 34 of 2023 s. 11.]

171ZK. Direction to decision-maker by Minister on notification of proposed performance of function

(1) If the Minister is notified under section 171ZJ(2)(a) by a decision-maker, the Minister may give a direction under this section if the Minister considers —

(a) that —

(i) the approved development in relation to the relevant development approval is prescribed significant development; or

(ii) the conflict raises issues of State or regional importance;

and

(b) that it is appropriate to resolve the conflict.

(2) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —

(a) not perform the function as proposed;

(b) perform the function in accordance with the direction;

(c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;

(d) take any steps specified in the direction for giving effect to the direction.

(3) The direction can only be given —

(a) if the Minister is not the responsible Minister for the relevant legal instrument under which it is proposed to

perform the function — after consulting that responsible Minister; and

(b) with the agreement of the Premier.

(4) The direction may specify a period within which anything required to be done under the direction must be done.

(5) The decision-maker must comply with the direction —

(a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or could not omit to do, under the relevant legal instrument; and

(b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under the relevant legal instrument in relation to anything to which the direction relates.

(6) If the Minister decides not to give a direction under this section, the Minister must notify the decision-maker of the Minister's decision.

[Section 171ZK inserted: No. 34 of 2023 s. 11.]

171ZL. Application for direction if performance of function conflicts with approval

(1) This section applies if —

(a) a relevant development approval has been granted; and

(b) a person or body (the ***decision-maker***) performs a function under a relevant legal instrument; and

(c) the performance of the function has not been the subject of a notification or direction under section 171ZJ or 171ZK; and

(d) the performance of the function conflicts with the approval.

(2) An owner of land in respect of which the relevant development approval is granted, or a person who is of a class or kind prescribed by Part 11C regulations for the purposes of this subsection, may apply to the Minister for a direction under section 171ZM to resolve the conflict.

(3) An application under subsection (2) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

[Section 171ZL inserted: No. 34 of 2023 s. 11.]

171ZM. Direction by Minister on application if performance of function conflicts with approval

(1) If an application is made under section 171ZL(2), the Minister may give a direction under this section if the Minister considers —

(a) that —

(i) the approved development in relation to the relevant development approval is prescribed significant development; or

(ii) the conflict raises issues of State or regional importance;

and

(b) that it is appropriate to resolve the conflict.

(2) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —

(a) cancel the performance of the function;

(b) perform the function again but in accordance with the direction;

(c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;

(d) take any steps specified in the direction for giving effect to the direction.

(3) The direction can only be given —

(a) if the Minister is not the responsible Minister for the relevant legal instrument under which the function is performed — after consulting that responsible Minister; and

(b) with the agreement of the Premier.

(4) The direction may specify a period within which anything required to be done under the direction must be done.

(5) The decision-maker must comply with the direction —

(a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or could not omit to do, under the relevant legal instrument; and

(b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under the relevant legal instrument in relation to anything to which the direction relates.

[Section 171ZM inserted: No. 34 of 2023 s. 11.]

171ZN. Direction is disallowable subsidiary legislation

(1) A direction under section 171ZK or 171ZM is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) The *Interpretation Act 1984* section 42 applies to a direction under section 171ZK or 171ZM as if it were a regulation.

[Section 171ZN inserted: No. 34 of 2023 s. 11.]

171ZO. Effect of performance of function in compliance with direction

(1) The performance of a function by a person or body (the ***decision-maker***) in compliance with a direction given to the

decision-maker under section 171ZK or 171ZM has effect, and is valid, for the purposes of the relevant legal instrument and all other enactments.

(2) Subsection (1) applies even if, apart from this Part, the decision-maker could not have performed the function as required by the direction.

(3) Without limiting subsections (1) and (2), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the decision-maker could not, apart from this Part, have performed the function as required by the direction.

(4) Despite any relevant legal instrument or other enactment, the State Administrative Tribunal has no jurisdiction in relation to anything done under this Part, including (without limitation) anything done in compliance with a direction under section 171ZK or 171ZM.

[Section 171ZO inserted: No. 34 of 2023 s. 11.]

Division 3 — Regulations

[Heading inserted: No. 34 of 2023 s. 11.]

171ZP. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

[Section 171ZP inserted: No. 34 of 2023 s. 11.]

Part 11 — Compensation and acquisition

Division 1 — General matters in relation to compensation

171. Entitlement to compensation, limits on

(1) If compensation has been paid under a provision of this Part in relation to a matter or thing no further compensation is payable under any other provision of this Act as a result of the same matter or thing.

(2) When a person is entitled to compensation under this Act in respect of any matter or thing, and is also entitled to compensation in respect of the same matter or thing under any other written law, that person is not entitled to compensation in respect of that matter or thing both under this Act and that other written law, and is not entitled to any greater compensation under this Act than that person would be under the other written law.

Division 2 — Compensation where land injuriously affected by planning scheme

172. Terms used

In this Division —

Board means the Board of Valuers established under section 182;

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

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

173. Injurious affection, compensation for

(1) Subject to this Part any person whose land is injuriously affected by the making or amendment of a planning scheme is entitled to obtain compensation in respect of the injurious affection from the responsible authority.

(2) Despite subsection (1) a person is not entitled to obtain compensation under this section on account of any building erected, or any contract made, or other thing done with respect to land included in a planning scheme after the date of the approval of a planning scheme or amendment, or after such other date as the Minister may fix for the purpose, being not earlier than the date of the approval of the scheme or amendment.

(3) A responsible authority may make agreements with owners for the development of their land during the time that the planning scheme or amendment is being prepared.

174. When land is injuriously affected

(1) Subject to subsection (2), land is injuriously affected by reason of the making or amendment of a planning scheme if, and only if —

(a) that land is reserved (whether before or after the coming into operation of this section) under the planning scheme for a public purpose; or

(b) the scheme permits development on that land for no purpose other than a public purpose; or

(c) the scheme prohibits wholly or partially —

(i) the continuance of any non-conforming use of that land; or

(ii) the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the land, which, but for that prohibition, would not

have been an unlawful erection, alteration or extension under the laws of the State or the local laws of the local government within whose district the land is situated.

(2) Despite subsection (1)(c)(ii), a planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building is not to be taken to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of that class or kind in connection with, or in furtherance of, non-conforming use.

(3) Where a planning scheme wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme or amendment does not comprise —

(a) the lot or lots on which the non-conforming use is in fact being carried on; or

(b) if the prohibition relates to a building or buildings standing on one lot, the lot on which the building stands or the buildings stand; or

(c) if the prohibition relates to a building or buildings standing on more than one lot, the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorised by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.

(4) If any question arises under subsection (3) as to whether at any particular date, any land —

(a) does or does not comprise the lot or lots on which a non-conforming use is being carried on; or

(b) is or is not being used for any purpose authorised by a scheme; or

(c) is or is not reasonably required for the purpose for which any building is being used,

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

175. No compensation if scheme's provisions are, or could have been, in certain other laws

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

(a) also contained in any Act, or in any order having the force of an Act of Parliament, in operation in the area; or

(b) such as would have been enforceable without compensation if they had been contained in local laws.

(2) When land is alleged to be injuriously affected by the making of the first Swan Valley Planning Scheme, no compensation is payable in respect of the injurious affection if or so far as the relevant provisions of the Swan Valley Planning Scheme were also contained in a relevant planning scheme (as defined in the *Swan Valley Planning Act 2020* section 9) that applied to the Swan Valley before the scheme start day referred to in that section.

(3) A reference in this section to provisions includes a reference to maps, plans and diagrams.

[Section 175 amended: No. 45 of 2020 s. 82.]

176. Questions as to injurious affection etc., how determined

(1) A claimant or responsible authority may apply to the State Administrative Tribunal for determination of any question as to whether land is injuriously affected.

(2) Any question as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this Division is to be determined by arbitration under and in accordance with the *Commercial Arbitration Act 2012*, unless the parties agree on some other method of determination.

[Section 176 amended: No. 23 of 2012 s. 45.]

177. When compensation payable if land reserved

(1) Subject to subsection (3), when under a planning scheme any land has been reserved for a public purpose, no compensation is payable by the responsible authority for injurious affection to that land alleged to be due to or arising out of such reservation until —

(a) the land is first sold following the date of the reservation; or

(b) the responsible authority —

(i) refuses an application made under the planning scheme for approval of development on the land; or

(ii) grants approval of development on the land subject to conditions that are unacceptable to the applicant.

(2) Compensation for injurious affection to any land is payable only once under subsection (1) and is so payable —

(a) under subsection (1)(a) to the person who was the owner of the land at the date of reservation referred to in subsection (1)(a); or

(b) under subsection (1)(b) to the person who was the owner of the land at the date of application referred to in subsection (1)(b),

unless after the payment of that compensation further injurious affection to the land results from —

(c) an alteration of the existing reservation of the land; or

(d) the imposition of another reservation of the land.

(3) Before compensation is payable under subsection (1) —

(a) when the land is sold, the person lawfully appointed under section 176 to determine the amount of the compensation is to be satisfied that —

(i) the owner of the land has sold the land at a lesser price than the owner might reasonably have expected to receive had there been no reservation of the land under the planning scheme; and

(ii) the owner before selling the land gave written notice to the responsible authority of the owner's intention to sell the land; and

(iii) the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land;

or

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

178. Claim for compensation, time for making

(1) A claim for compensation for injurious affection to land by the making or amendment of a planning scheme is to be made —

(a) in the case of a claim in respect of injurious affection referred to in section 174(1)(a) or (b), at any time within 6 months after —

(i) the land is sold; or

(ii) the application for approval of development on the land is refused; or

(iii) the approval is granted subject to conditions that are unacceptable to the applicant;

or

(b) in the case of a claim in respect of injurious affection referred to in section 174(1)(c), within the time, if any, limited by the planning scheme.

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

179. Injurious affection due to land being reserved, amount of compensation for

(1) Subject to this Division, the compensation payable for injurious affection due to or arising out of the land being reserved under a planning scheme, where no part of the land is purchased or acquired by the responsible authority, is not to exceed the difference between —

(a) the value of the land as so affected by the existence of such reservation; and

(b) the value of the land as not so affected.

(2) The values referred to in subsection (1)(a) and (b) are to be assessed as at the date on which —

(a) the land is sold as referred to in section 178(1)(a); or

(b) the application for approval of development on the land is refused; or

(c) the approval is granted subject to conditions that are unacceptable to the applicant.

180. Notating title to land after compensation paid

(1) When compensation for injurious affection to any land has been paid under section 177, the responsible authority may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a notification in a form acceptable to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, specifying —

(a) the date of payment of compensation; and

(b) the amount of compensation so paid; and

(c) the proportion (expressed as a percentage), which the compensation bears to the unaffected value of the land as assessed under section 179(2).

(2) On receipt of the notification from the responsible authority, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, is to register the notification.

181. Recovering paid compensation if reservation revoked or reduced

(1) Where —

(a) compensation for injurious affection to land (the ***original compensation***) has been paid to an owner of land in the circumstances set out in section 177; and

(b) as a result of the planning scheme being amended or revoked the reservation of the land for a public purpose

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

the responsible authority is entitled to recover from the owner of the land at the date of the revocation or reduction of the reservation an amount (the ***refund***) which is determined by calculating the relevant proportion (as determined under subsections (4) to (7)) of the value of the land as at the date on which the refund becomes payable under subsection (2).

(2) The refund is not payable by the owner of the land until the land is first sold or subdivided following the date of the revocation or reduction referred to in subsection (1)(b) unless otherwise agreed by the owner and the responsible authority.

(3) If the land is owned by 2 or more people they are jointly and severally liable to pay the refund.

(4) When the reservation has been revoked the relevant proportion for the purposes of subsection (1) is the same as the proportion referred to in section 180(1)(c) in relation to the original compensation.

(5) Where the area of the reservation has been reduced the relevant proportion for the purposes of subsection (1) is to be determined as follows —

(a) a notional amount of compensation is determined under sections 177 and 179 as if —

(i) the reservation had never occurred; and

(ii) a reservation of the reduced area had occurred when the reduction occurred; and

(iii) the land were being sold;

and

(b) the proportion (expressed as a percentage) which that notional amount of compensation bears to the current value of the land (unaffected by the existence of the reservation) is calculated; and

(c) the relevant proportion is then determined by deducting the proportion calculated under paragraph (b) from the proportion referred to in section 180(1)(c) in relation to the original compensation.

Example:	Original compensation proportion	25%
	Less	
	Notional compensation proportion	15%
	Relevant proportion =	10%

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

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

(a) a notional compensation proportion is calculated under subsection (5)(a) and (b) in respect of the subsequent reduction; and

(b) the relevant proportion is then determined by deducting the proportion referred to in paragraph (a) from the notional compensation proportion calculated under subsection (5)(a) and (b) in respect of the previous reduction.

Example:	Notional compensation proportion calculated under subsection (5)(a)	

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

(8) For the purposes of subsections (1) and (5)(b) the value of the land is to be determined by one of the methods set out in section 188(2)(a), (b) or (c), but that value is to be determined without regard to any increase in value attributable to factors unrelated to the reservation or to its revocation or reduction.

(9) When the responsible authority has an entitlement to recover an amount under subsection (1) it has an interest in the land and may lodge with the Registrar a notification in a form acceptable to the Registrar of the existence of that interest, and may withdraw, in a form acceptable to the Registrar, any notification so lodged.

(10) On receipt of the notification or a withdrawal of notification from the responsible authority, the Registrar is to register the notification or withdrawal of notification.

(11) Before selling or subdividing land in respect of which a notification is lodged under subsection (9), the owner of the land is to give written notice to the responsible authority, in accordance with the regulations, of the owner's intention to sell or subdivide the land.

(12) Where a notification is lodged under subsection (9) the Registrar of Titles is not to register a transfer of the land without the consent of the responsible authority.

(13) Where a notification as to the land is lodged under subsection (9) with the Registrar of Deeds and Transfers without the consent of the responsible authority, registration of the document the subject of the notification is null and void.

(14) Subject to subsection (15), in the case of land reserved under a region planning scheme, subsection (1) has effect whether the reservation of the land occurred before the commencement of this section or occurs after that commencement.

(15) In the case of land reserved under the Metropolitan Region Scheme, where the reservation occurred before the commencement of this Act, subsection (1) does not have effect if —

(a) the revocation or reduction of the reservation occurred before 1 July 1988; or

(b) the sale or subdivision referred to in subsection (2) occurred before 1 March 1995,

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

(16) In any other case subsection (1) has effect if the revocation or reduction occurs after the commencement of this section.

(16A) The reference in subsection (1)(b) to the planning scheme being amended or revoked includes, in relation to land in the Swan Valley for which compensation for injurious affection was paid before the scheme start day referred to in the *Swan Valley Planning Act 2020* section 9 —

(a) a reference to that planning scheme ceasing to apply, and the first Swan Valley Planning Scheme beginning to

apply instead, under the *Swan Valley Planning Act 2020* section 9; and

(b) a reference to the making of a subsequent Swan Valley Planning Scheme or the amendment of the Swan Valley Planning Scheme.

(17) In this section —

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

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

[Section 181 amended: No. 28 of 2010 s. 63; No. 45 of 2020 s. 83.]

182. Board of Valuers

(1) A Board of Valuers is established.

(2) The Board consists of the following members appointed by the Governor —

(a) a chairperson nominated by the Commission; and

(b) 3 other members nominated by the body known as The Real Estate Institute of Western Australia, an incorporated association under the *Associations Incorporation Act 2015*.

(3) Each of the persons appointed to the Board is to be an Associate or a Fellow of the Australian Property Institute, an association incorporated under the laws of South Australia.

(4) Judicial notice is to be taken of the signature of the chairperson on any finding of the Board.

(5) Schedule 9 has effect.

[Section 182 amended: No. 30 of 2015 s. 226.]

183. Valuations by Board

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

(2) Subject to subsection (4), a valuation made by the Board under subsection (1) is to be communicated to the applicant and to the responsible authority and, for the purposes of this Division, a valuation so made is final.

(3) Upon receipt of a valuation made by the Board under this section, the responsible authority is to advise the owner of the subject land of the minimum price at which the land may be sold without affecting the amount of compensation (if any) payable to him or her under this Division.

(4) Where any land with respect to which a valuation has been made under this section is not sold within a period of 6 months from the making of the valuation, the Board may, at the request of the owner of the land, if in the circumstances of the case it thinks it just to do so, review the valuation and either confirm the valuation or vary it.

(5) Where the Board reviews a valuation under subsection (4), it is to notify the owner of the land and the responsible authority accordingly and upon that notification subsection (3), with such modification as circumstances require, applies to the valuation as reviewed by the Board.

Division 3 — Other compensation

184. Betterment; compensation for expenses rendered abortive by amendment or repeal of scheme

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

(2) A claim by a responsible authority for the purposes of subsection (1) is to be made within the time, if any, limited by the planning scheme, not being less than 3 months after the date when notice of the approval of the scheme is first published.

(3) If a planning scheme is amended or repealed by an order of the Minister under this Act any person who has incurred expenditure for the purpose of complying with the planning scheme is entitled to compensation from the responsible authority, in so far as any such expenditure is rendered abortive by reason of the amendment or repeal of the planning scheme.

(4) A question as to the amount and manner of payment (whether by instalments or otherwise) of the sum which —

(a) the responsible authority is entitled to recover under this section from a person whose land is increased in value; or

(b) is to be paid as compensation under this section,

is to be determined by arbitration in accordance with the *Commercial Arbitration Act 2012* or by some other method agreed by the parties.

[Section 184 amended: No. 23 of 2012 s. 45.]

185. Injurious affection due to interim development order

(1) Compensation for injurious affection to any land within a regional order area or a local order area or for loss arising from any other cause is payable under this Part as a result of the operation of the relevant interim development order if, and only if —

(a) the Commission or the local government administering the interim development order —

(i) refuses an application made under that interim development order for approval of development on that land; or

(ii) grants such an application subject to conditions,

on the ground that the proposed planning scheme for the regional order area or local order area, as the case requires, is to include that land within a reservation for public purposes; and

(b) any decision for the review of which the claimant has made an application under section 249 has been affirmed in whole or in part by the State Administrative Tribunal.

(2) The Commission or local government, as the case requires, may, and if the claimant so requests is to, purchase any land injuriously affected at a price not exceeding the value of that land at the time of —

(a) the refusal of approval; or

(b) the grant of approval subject to conditions,

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

(3) If the land is not purchased under subsection (2), when compensation of the kind referred to in subsection (1) is claimed that compensation is to be determined by arbitration in

accordance with the *Commercial Arbitration Act 2012* or by some other method agreed by the parties.

[Section 185 amended: No. 23 of 2012 s. 45.]

186. Injurious affection due to planning control area

(1) Compensation is payable in respect of land injuriously affected by the declaration, or by the amendment of the declaration, of a planning control area, and land so affected may be acquired by the Commission, in the same circumstances and to the same extent as if the land in the planning control area, instead of being in the planning control area, had been reserved under a planning scheme for a public purpose.

(2) Division 2 applies to compensation payable under this section as if any reference in that Division to compensation for injurious affection to any land were a reference to compensation under this section for injurious affection as a result of the declaration of a planning control area under section 112, or the amendment of the declaration under section 113.

Division 4 — Purchase or compulsory acquisition

187. Acquiring land in lieu of paying compensation

(1) Where compensation for injurious affection is claimed as a result of the operation of the provisions of section 174(1), the responsible authority may at its option elect to acquire the land so affected instead of paying compensation.

(2) The responsible authority, within 3 months of the claim for injurious affection being made, is to by written notice given to the claimant —

(a) elect to acquire the land; or

(b) advise that it does not intend to acquire the land.

(3) Where the responsible authority elects to acquire the land as provided in subsections (1) and (2), if the responsible authority and the owner of the land are unable to agree as to the price to

be paid for the land by the responsible authority, the price at which the land may be acquired by the responsible authority is to be the value of the land as determined in accordance with section 188.

(4) If —

(a) an owner of land claims compensation and the responsible authority elects to purchase the land instead of paying compensation; and

(b) the price to be paid for the land by the responsible authority has not been determined for the purposes of subsection (3),

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

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

188. Land to be acquired under s. 187, valuing

(1) The value of the land referred to in section 187(3) is to be —

(a) the value of the land on the date the responsible authority elects to acquire the land under that section; and

(b) determined without regard to any increase or decrease, if any, in value attributable wholly or in part to the planning scheme.

(2) Subject to subsection (4), the value of the land referred to in section 187(3) is to be determined —

(a) by arbitration in accordance with the *Commercial Arbitration Act 2012*; or

(b) by the State Administrative Tribunal on the owner of the land applying to it for a determination of that value; or

(c) by some other method agreed upon by the responsible authority and the owner of the land.

(3) If arbitration has not commenced under subsection (2)(a), an application has not been made under subsection (2)(b), and no method has been agreed under subsection (2)(c), within 12 months of the date on which the responsible authority elected to acquire the land, the responsible authority may —

(a) refer the matter for determination by arbitration in accordance with the *Commercial Arbitration Act 2012*; or

(b) apply to the State Administrative Tribunal for a determination of that value,

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

(4) Where a dispute is referred for determination under subsection (3)(a) there is to be taken to be, for the purposes of the *Commercial Arbitration Act 2012*, an arbitration agreement to refer the dispute, and the parties to the agreement are to be taken to be the owner of the land and the responsible authority.

[Section 188 amended: No. 23 of 2012 s. 45.]

189. Land in proposed region planning scheme, Commission may purchase

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

190. Responsible authority may purchase land for planning scheme

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

(2) If the land to be purchased under subsection (1) (the ***relevant land***) forms only part of a lot, the responsible authority may also purchase under subsection (1) the rest of the lot, or any part of the rest of the lot, for purposes related to the purchase of the relevant land.

(3) Subsection (2) applies whether or not the rest of the lot, or the part of the rest of the lot, is comprised in the planning scheme and whether or not its purchase is for the purpose of the scheme.

[Section 190 amended: No. 26 of 2020 s. 15.]

191. Compulsory acquisition of land in scheme area

(1) The responsible authority may, for the purpose of a planning scheme and with the consent of the Governor, take compulsorily under and subject to Part 9 of the *Land Administration Act 1997* (but subject to subsection (3)), any land comprised in the scheme, and whether situate within or without the boundaries of the district of the responsible authority, as if the land were required for a public work (as defined in the *Public Works Act 1902* section 2).

(1A) If the land to be taken under subsection (1) (the ***relevant land***) forms only part of a lot, the responsible authority may also take under subsection (1) the rest of the lot, or any part of the rest of the lot, for purposes related to the taking of the relevant land.

(1B) Subsection (1A) applies whether or not the rest of the lot, or the part of the rest of the lot, is comprised in the planning scheme and whether or not the taking of the rest of the lot, or the part of the rest of the lot, is for the purpose of the scheme.

(2) Land acquired under subsection (1) is to be acquired in the name and on behalf of the responsible authority.

(3) When any land is taken compulsorily under the powers conferred by this section the provisions of —

(a) sections 166 to 171 inclusive; and

(b) section 180,

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

[Section 191 amended: No. 26 of 2020 s. 16; No. 4 of 2023 s. 145.]

192. Land etc. to be acquired under s. 191, valuing

(1) Despite Part 10 of the *Land Administration Act 1997*, the value of any land or improvements on land which is compulsorily acquired by a responsible authority under section 191 is, for the purpose of assessing the amount of compensation to be paid for the land and improvements to be assessed —

(a) without regard to any increase or decrease in value attributed wholly or in part to any of the provisions contained in, or to the operation or effect of, the relevant planning scheme; and

(b) having regard to values current at the time of acquisition,

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

(2) Where compensation has been paid, or is payable, in respect of land under Division 2, then, subject to subsection (3), there is to be deducted from the compensation assessed under subsection (1) an amount that bears the same ratio to the compensation so assessed as the compensation paid or payable under that Division bears to the unaffected value of the land, as determined under this Part.

(3) In assessing the amount to be deducted from compensation under subsection (2), the person lawfully appointed to determine the amount of compensation is to have regard to —

(a) any improvements or demolitions lawfully made to or on the land, subsequently to the determination of the unaffected value of the land; and

(b) to the earlier termination of the tenure of the land, where the compensation might otherwise have been affected by an assurance given by the responsible authority, and which the responsible authority is by this paragraph authorised to give, that the tenure was to be of a greater period.

193. Responsible authority's powers as to acquired land

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

194. Responsible authority may grant easement over acquired land

(1) The responsible authority may grant to any person any easement in, upon, through, under, or over, any land taken or acquired for planning purposes, subject to such conditions and payments of such rents as the responsible authority thinks fit.

(2) A grant of an easement under subsection (1) is subject to revocation without compensation at any time the responsible authority thinks fit, or in the case of a breach of any condition under which an easement may have been granted.

195. Commission's powers to acquire land in improvement plan

(1) The Commission may purchase or otherwise acquire any land included in an improvement plan in force under section 119 by agreement with the owner of the land.

(2) In default of agreement under subsection (1), the Commission may acquire the land compulsorily under and subject to Part 9 of the *Land Administration Act 1997* as if the land were required for a public work (as defined in the *Public Works Act 1902* section 2), subject to subsection (3).

(3) Sections 191(3) and 192 apply with any necessary modifications to the taking of land under subsection (2) as they apply to the taking of land under section 191.

(3A) For the purposes of subsection (3), in section 192(1)(a), the reference to the relevant planning scheme is to be read as a reference to the improvement plan.

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

[Section 195 amended: No. 28 of 2010 s. 16; No. 26 of 2020 s. 17; No. 4 of 2023 s. 146.]

196. Commission may sell etc. acquired land

(1) The Commission is to hold for the purposes of the relevant region planning scheme, Swan Valley Planning Scheme or improvement plan any land acquired by it under this Part and may, subject to subsections (2) and (3), dispose of or alienate that land —

(a) for or in furtherance of the provisions or likely provisions of the relevant region planning scheme, Swan Valley Planning Scheme or improvement plan; or

(b) if that land is no longer required by the Commission.

(2) Subject to subsection (3), except with the consent of the Governor, the Commission is not to dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the relevant region planning scheme, Swan Valley Planning Scheme or improvement plan.

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

(4) In relation to a part of a lot purchased or taken by the Commission in accordance with section 190(2) or 191(1A), in subsection (1), the reference to the purposes of the relevant region planning scheme or the Swan Valley Planning Scheme is a reference to the purposes for which the part of the lot was purchased or taken.

[Section 196 amended: No. 28 of 2010 s. 17; No. 26 of 2020 s. 18; No. 45 of 2020 s. 84.]

197. Declaring land for public work to be instead held etc. for region planning scheme or improvement plan

(1) Where any land held, taken, resumed or otherwise acquired under any Act, for any public work, is in the opinion of the Governor not required for that work and is required for the purposes or likely purposes of a region planning scheme, the Swan Valley Planning Scheme or an improvement plan, the Governor, despite Part 9 Division 5 of the *Land Administration Act 1997*, may declare by notice published in the *Gazette* that the land is to be held and may be used for the purposes of the region planning scheme, Swan Valley Planning Scheme or improvement plan.

(2) From the date of the publication of the notice the land described in the notice, by force of this section, vests in the Commission for the purposes of the region planning scheme, Swan Valley Planning Scheme or improvement plan.

(3) The Commission is to ensure that a memorial is lodged with the Registrar in respect of land vested in the Commission under this section as soon as is practicable after the land is so vested.

(4) The memorial is to be —

(a) accompanied by the notice published under subsection (1) in respect of the relevant land; and

(b) in a form approved by the Registrar.

(5) The Registrar is to register the memorial against the relevant land and take such steps as are necessary to record the vesting.

(6) In this section —

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

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

[Section 197 amended: No. 28 of 2010 s. 18; No. 45 of 2020 s. 85.]

197A. Planning control areas

(1) In section 187(1), the reference to the provisions of section 174(1) includes those provisions as applied by section 186(2).

(2) The Commission may purchase any of the following land —

(a) land within a proposed planning control area;

(b) land that would be brought within a planning control area as a result of a proposed change to the area;

(c) land within a planning control area.

(3) The Commission may compulsorily take any land within a planning control area under and subject to the *Land Administration Act 1997* Part 9 as if the land were required for a public work (as defined in the *Public Works Act 1902* section 2).

(4) Sections 191(3) and 192 apply with any necessary modifications to the taking of land under subsection (3) as they apply to the taking of land under section 191.

(5) For the purposes of subsection (4), in section 192(1)(a), the reference to the relevant planning scheme is to be read as a reference to the declaration of the planning control area under section 112.

(6) The Commission —

(a) must hold any land acquired by the Commission under this section for the purpose, or for any 1 or more of the purposes, for which the land is required as referred to in section 112(1); and

(b) may dispose of or alienate the land —

(i) for that purpose or 1 or more of those purposes; or

(ii) if the land is no longer required for that purpose or any of those purposes.

(7) Land acquired under subsection (3) can be disposed of or alienated under subsection (6)(b)(ii) only with the Governor's consent.

(8) Section 196(3) applies to the power to dispose of or alienate land conferred by subsection (6)(b) as it applies to a power conferred by section 196.

(9) In section 197, references to the purposes of a region planning scheme include the purposes, or any 1 or more of the purposes, for which land within a planning control area is required as referred to in section 112(1).

[Section 197A inserted: No. 26 of 2020 s. 19; amended: No. 4 of 2023 s. 147.]

Part 12 — Financial provisions

Division 1 — Metropolitan Region Improvement Fund

198. Metropolitan Region Improvement Account

(1) For the purposes of reviewing, amending, carrying out and giving effect to the Metropolitan Region Scheme, the Swan Valley Planning Scheme and any improvement scheme that has effect in part or all of the metropolitan region, an agency special purpose account called the Metropolitan Region Improvement Account is established under section 16 of the *Financial Management Act 2006*.

(2) The Commission is to control the MRI Account and the MRI Account may be operated for the purposes set out in subsection (1) in such manner as from time to time the Treasurer approves and is by this section authorised to approve.

(3) The Commission is to credit to the MRI Account —

(a) moneys appropriated to the MRI Account under section 201(2); and

(b) any purchase moneys or rents or profits or other money received by the Commission from land acquired by it or arising out of the use or occupation of the land by the Commission; and

(c) moneys borrowed by the Commission for the performance of any function referred to in section 14 in relation to the metropolitan region; and

(d) any other payments made to the Commission in connection with the performance of a function referred to in paragraph (c).

[Section 198 amended: No. 77 of 2006 Sch. 1 cl. 127(3) and (5); No. 28 of 2010 s. 19; No. 45 of 2020 s. 86.]

199. MRI Account, application of

(1A) In this section —

metropolitan improvement scheme means an improvement scheme that has effect in part or all of the metropolitan region.

(1) The Commission may apply money in the MRI Account to payment of all expenditure incurred by it for the purpose of reviewing, amending, carrying out and giving effect to the Metropolitan Region Scheme, the Swan Valley Planning Scheme and any metropolitan improvement scheme, including —

(a) payment of capital expenditure, costs and other expenses incurred by the Commission in and in connection with, the acquisition, whether by agreement or compulsorily, of any property in the metropolitan region under this Act; and

(b) all expenses incurred by the Commission in or in connection with —

(i) the Metropolitan Region Scheme, the Swan Valley Planning Scheme, a regional interim development order in respect of land in the metropolitan region or a metropolitan improvement scheme or the establishment and maintenance of any works in connection with the Metropolitan Region Scheme, Swan Valley Planning Scheme, regional interim development order or metropolitan improvement scheme; or

(ii) the development, maintenance and management of any land held by the Commission that is reserved under the Metropolitan Region Scheme, Swan Valley Planning Scheme or metropolitan improvement scheme; or

(iii) the carrying out of any works, including the provision of facilities, incidental to such development, maintenance and management or

conducive to the use of such land for any purpose for which it is reserved.

(2) The Commission is also authorised to apply money standing to the credit of the MRI Account to payment of expenditure required for the purpose of carrying out the *Metropolitan Redevelopment Authority Act 2011*, the *Hope Valley-Wattleup Redevelopment Act 2000* or the *Swan Valley Planning Act 2020*.

[Section 199 amended: No. 77 of 2006 Sch. 1 cl. 127(5); No. 28 of 2010 s. 20; No. 45 of 2011 s. 141(9); No. 45 of 2020 s. 87.]

Division 2 — Metropolitan Region Improvement Tax

200. Owners' liability to pay tax

(1) Subject to subsection (3), a person who, at midnight on 30 June in any year is the owner of land in the metropolitan region is liable to pay Metropolitan Region Improvement Tax on the land in accordance with this Act.

(2) The land is chargeable with the tax imposed by and at the rate imposed by the *Metropolitan Region Improvement Tax Act 1959*.

(3) An owner of land in the metropolitan region is also liable to pay Metropolitan Region Improvement Tax in accordance with sections 14 and 15 of the *Land Tax Assessment Act 2002* and, for that purpose, those sections are to apply as if references in those sections to land tax and the *Land Tax Act 2002* were respectively references to Metropolitan Region Improvement Tax and the *Metropolitan Region Improvement Tax Act 1959*.

(4) For the purposes of this Act the provisions of the *Land Tax Assessment Act 2002* and the *Taxation Administration Act 2003*, relating to land tax and land so far as they can be made applicable with all necessary modifications or adaptations apply to the Metropolitan Region Improvement Tax and land in the metropolitan region.

(5) Despite anything contained in any other law, the amount of the tax which the Commissioner of State Revenue is to treat as having come into his or her possession under this Act in each financial year is to be the amount of the tax which becomes payable in that financial year.

201. Tax collections, how to be dealt with [1MC]

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

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

[Section 201 amended: No. 77 of 2006 s. 4 and Sch. 1 cl. 127(4).]

*[**201.** [1MC] Modification, to replace section 201, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 25 and endnote 1MC.]*

*[**201A.** [1M] Modification, to insert section 201A, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 24 and endnote 1M.]*

Division 3 — Financial provisions relating to the Commission

202. Saving

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

203. Funds of Commission

(1) The funds available to the Commission to enable it to perform its functions are —

(a) moneys borrowed by the Commission under this Act; and

(b) other moneys lawfully received by, made available to, or payable to, the Commission under this or any other Act.

(2) The funds referred to in subsection (1) are to be credited to, and money paid by the Commission is to be debited to, an account called the "Western Australian Planning Commission Account" that is to be established —

(a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

[Section 203 amended: No. 77 of 2006 Sch. 1 cl. 127(6).]

204. Minister's approval needed for some contracts and expenditure

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

205. Borrowing powers

(1) Subject to subsection (2), the Commission may, with the prior written approval of the Treasurer and on such terms as the Treasurer approves, borrow money for the performance by the Commission of its functions.

(2) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of money so borrowed is not in any one year to exceed in the aggregate such amounts as the Treasurer approves.

(3) For the purpose of making provision to repay either the whole or any part of any loan raised under this section the Commission may, subject to this section, borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

206. Borrowing from Treasurer

(1) In addition to the powers conferred by section 205, the Commission may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment and payment of interest as the Treasurer imposes.

(2) Under this section the Account and the assets of the Commission are charged with the due performance by the Commission of all obligations arising from any advance made under this section.

207. Guarantees by Treasurer

(1) The Treasurer is authorised to guarantee —

(a) the repayment of any amount borrowed from time to time under section 205; and

(b) the payment of interest and such other charges in respect of such borrowings as the Treasurer has approved.

(2) A guarantee is to be in the form, and subject to the terms and conditions, determined by the Treasurer.

(3) The due payment of money payable by the Treasurer under a guarantee is to be charged to the Consolidated Account, which this subsection appropriates accordingly.

(4) The Treasurer is to cause any amounts received or recovered, from the Commission or otherwise, in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

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

208. *Financial Management Act 2006* and *Auditor General Act 2006*, application of

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

[Section 208 amended: No. 77 of 2006 Sch. 1 cl. 127(7).]

209. Commission's land not subject to rates etc.

(1) Subject to subsection (2), no rate, tax, or assessment is to be imposed, levied, charged or made upon any land acquired by the Commission under and for the purposes of this Act while the Commission is the owner of the land.

(2) If any land referred to in subsection (1) is leased by the Commission, the Commission is to pay in respect of the land out of the rent received by the Commission, the whole or such portion of the amount of any rate, tax, or assessment that would but for this section have been imposed, levied, charged or made on the land so leased, as the Commission certifies in writing to be available for the purpose.

Division 4 — Financial provisions relating to local governments

210. Apportioning expenses between local governments

(1) The Minister may order that any part of the expenses incurred by a local government under this Act, or under any local planning scheme, are to be borne by another local government (the ***other local government***).

(2) An amount ordered under subsection (1) is to be taken to be a debt due to the local government that incurred the expenses by the other local government.

(3) In fixing the amount to be borne by the other local government the Minister is to have regard to the proportion of the expenses incurred in respect of anything done within the district of the other local government in relation to a local planning scheme, and the ratio of that proportion to the whole expense under this Act in relation to the scheme, and such other matters as are prescribed by the regulations.

(4) A local government may apply to the State Administrative Tribunal for a review, in accordance with Part 14, of any order of the Minister under this section.

Part 13 — Enforcement and legal proceedings

Division 1 — Enforcement

211. Person aggrieved by local government's omission may go to Minister; Minister's powers

(1) A person aggrieved by —

(a) the failure of a local government to enforce or implement effectively the observance of a local planning scheme; or

(b) the failure of a local government to execute any works which, under a local planning scheme or this Act, the local government is required to execute,

may make representations to the Minister.

(2) The Minister may determine not to take any action in response to the representations or, if the Minister considers it appropriate to do so, the Minister may refer the representations to the State Administrative Tribunal for its report and recommendations.

(3) For the purposes of making a report and recommendations on a referral under subsection (2), Part 14 applies with such modifications as may be necessary, as if the referral were an application for review.

(4) On holding an inquiry or receiving a report and recommendations from the State Administrative Tribunal, the Minister may order the local government —

(a) to do all things necessary for enforcing the observance of the scheme or any of the provisions of the scheme; or

(b) to do all things necessary for executing any works which, under the scheme or this Act the local government is required to execute,

as the case requires.

(5) The Minister is not bound by the report and recommendations of the State Administrative Tribunal.

(6) The local government may within 28 days of service of the order appeal against the order to a judge who may —

(a) confirm, vary or annul the Minister's order; and

(b) make such order as to costs of the appeal as the judge thinks proper.

(7) The decision of the judge is final and enforceable as an order of judgment of the Supreme Court.

(8) Subject to any rules made by the Governor —

(a) the proceedings on an appeal are to be as the judge directs; and

(b) subject to the direction of the judge may, as regards the summoning and attendance of witnesses, the production of documents and costs, be regulated by the appropriate Rules of the Supreme Court, with appropriate adaptations and alterations.

212. Breach of order etc. by local government, Minister's powers as to

(1) If the Minister is satisfied that a local government has failed to —

(a) comply with an order under section 76; or

(ba) comply with an order made under section 77A; or

(b) comply with a provision of Part 5 Division 5; or

(c) comply with an order under section 211; or

(d) comply with a provision of regulations made under this Act,

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

(2) The notice is to —

(a) set out the relevant order or provision and the manner in which the local government has failed to comply with it; and

(b) specify a period (which is not to be less than 60 days after the notice is served) before which the local government is required to comply with the relevant order or provision; and

(c) advise the local government that the Minister intends to exercise the powers conferred by subsection (3) if the local government does not comply with the requirement made under paragraph (b).

(3) If the local government does not comply with the requirement made under subsection (2)(b), the Minister may take all such steps and prepare or cause to be prepared all such documents as are necessary for compliance with the requirement as if the Minister were the local government.

(4) For the purposes of subsection (3), the Minister may by order direct the local government to provide the Minister with such reports or other information specified in the order as are necessary for the exercise of the Minister's powers under this section.

(5) The Minister is to cause a copy of an order directed to a local government under subsection (4) to be served on the local government, and the local government is to comply with the order.

(6) For the purposes of subsection (3), the provisions of the regulations that would have applied to the local government apply to the Minister with such modifications as are necessary or are prescribed.

(7) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred by subsection (3) may be

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

(8) The Minister must, as soon as is practicable after a notice is served on a local government under subsection (1) —

(a) give a copy of the notice to the Commission; and

(b) cause to be laid before each House of Parliament or dealt with under section 268A —

(i) a copy of the notice; and

(ii) a copy of the reasons for giving the notice.

[Section 212 amended: No. 28 of 2010 s. 47; No. 26 of 2020 s. 101.]

213. Minister's action under s. 212, effect of

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

(a) an amendment to a local planning scheme; or

(b) a local planning scheme, incorporating, if necessary, any modifications to, or conditions on, the scheme; or

(c) a consolidated local planning scheme; or

(d) the repeal of a local planning scheme,

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

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

(a) an amendment to a local planning scheme is to be read and construed as including a reference to an amendment

to a local planning scheme prepared or caused to be prepared by the Minister under section 212; and

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

214. Illegal development, responsible authority's powers as to

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

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

(i) is required to comply with the planning scheme or interim development order; and

(ii) is commenced, continued or carried out otherwise than in accordance with the planning scheme or interim development order or otherwise than in accordance with any condition imposed with respect to that development by the responsible authority pursuant to its powers under that planning scheme or interim development order;

(b) a development is undertaken in contravention of planning control area requirements if the development —

(i) is commenced, continued or carried out in a planning control area without the prior approval of that development obtained under section 116; or

(ii) is commenced, continued or carried out otherwise than in accordance with the approval referred to in subparagraph (i) or otherwise than in accordance with the conditions, if any, subject to which that approval is given.

(2) If a development, or any part of a development, is undertaken in contravention of a planning scheme or an interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the planning scheme, interim development order or planning control area requirements.

(3) If a development has been undertaken in contravention of a planning scheme or interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person who undertook the development —

(a) to remove, pull down, take up, or alter the development; and

(b) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.

(4) The responsible authority may give directions under subsections (2) and (3)(a) and (b) in respect of the same development and in the same instrument.

(5) If it appears to a responsible authority that delay in the execution of any work to be executed under a planning scheme or interim development order would prejudice the effective operation of the planning scheme or interim development order, the responsible authority may give a written direction to the person whose duty it is to execute the work to execute that work.

(6) A direction under subsection (3) or (5) is to specify a time, being not less than 60 days after the service of the direction, within which the direction is to be complied with.

(7) A person who —

(a) fails to comply with a direction given to the person under subsection (2); or

(b) fails to comply with a direction given to the person under subsection (3) or (5) within the time specified in the direction, or within any further time allowed by the responsible authority,

commits an offence.

215. Illegal development, responsible authority's powers to remove etc.

(1) If —

(a) a notice is served on a person under section 214(2), (3) or (5) and that person fails to —

(i) carry out the directions within the time specified in the notice; or

(ii) apply under section 255 for a review of any direction contained in the notice;

or

(b) on an application by that person for a review of any direction contained in the notice, the direction is confirmed or varied and the owner fails to carry out the direction as confirmed or varied within the time specified by the State Administrative Tribunal in the notice given under section 255(2),

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

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

216. Breach of Act etc. or development approval, injunctions as to

(1) Without prejudice to any proceeding for an offence against this Act, if —

(a) a person contravenes a provision of this Act, an interim development order or a planning scheme; or

(b) a responsible authority grants an application for approval of development subject to conditions and the development is commenced, continued or completed contrary to or otherwise than in accordance with any condition imposed by the responsible authority with respect to the development,

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

(c) if the application is with respect to a contravention of the Act, an interim development order or a planning scheme, restraining the person from engaging in any conduct or doing any act, that constitutes or is likely to constitute a contravention of this Act, the interim development order or the planning scheme;

(d) if the application is with respect to the commencement, continuation or completion of a development contrary to or otherwise than in accordance with any condition imposed by the responsible authority with respect to the development —

(i) in the case where the development is commenced but not carried out, restraining the continuation

or completion of the development or any use of the development; or

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

until the condition is complied with.

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

(a) has effect for the period specified in the injunction or until further order of the Court; and

(b) may be varied or rescinded by the Court.

217. Environmental conditions, Minister's powers to enforce

(1) In this section —

assessed scheme means a planning scheme, or an amendment to a planning scheme, that is an assessed scheme as defined in the EP Act;

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

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

pollution has the meaning given to that term in the EP Act.

(2) After receiving advice from the Minister for the Environment under section 48H(4) of the EP Act the Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.

(3) For the purposes of subsection (2) the Minister may —

(a) by order in writing served on the person who is undertaking the development, direct the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order; or

(b) cause the responsible authority to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified for the purpose of —

(i) complying with; or

(ii) preventing non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates; or

(c) advise the responsible authority to cause such steps to be taken as are necessary for the purpose of —

(i) complying with; or

(ii) preventing non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates.

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

(5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —

(a) a development referred to in subsection (2); or

(b) pollution or environmental harm caused by any non-compliance with an environmental condition referred to in subsection (3).

(6) If the assessed scheme to which this section applies is the Swan Valley Planning Scheme or an amendment to that scheme, a reference in this section to the Minister is to be read as a reference to the Minister responsible for the administration of the *Swan Valley Planning Act 2020*.

[Section 217 amended: No. 45 of 2020 s. 88.]

Division 2 — Offences

218. Planning scheme or condition on development, contravening etc.

A person who —

(a) contravenes the provisions of a planning scheme; or

(b) commences, continues or carries out any development in any part of a region the subject of a region planning scheme or any part of an area the subject of a local planning scheme, an improvement scheme or the Swan Valley Planning Scheme otherwise than in accordance with the provisions of the planning scheme; or

(c) commences, continues or carries out any such development which is required to comply with a planning scheme otherwise than in accordance with any condition imposed under this Act or the scheme with respect to the development, or otherwise fails to comply with any such condition,

commits an offence.

[Section 218 amended: No. 28 of 2010 s. 21; No. 45 of 2020 s. 89.]

219. Unauthorised subdivision works

(1) A person who commences, continues or carries out works for the purpose of enabling the subdivision of land otherwise than —

(a) as shown on a plan of subdivision approved by the Commission; or

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

commits an offence.

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

220. Planning control area, unauthorised development in

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

(a) with the prior approval of that development obtained under section 116; and

(b) in a manner which is in conformity with the approval referred to in paragraph (a) and in accordance with the conditions, if any, subject to which that approval is given,

commits an offence.

221. Interim development order, contravening

A person who —

(a) contravenes an interim development order; or

(b) commences, continues or carries out any development which is required to comply with an interim development order otherwise than in accordance with —

(i) the interim development order; or

(ii) any condition imposed in respect of that development by the Commission or the local government administering that order under its powers under the order,

commits an offence.

222. Heritage place, unauthorised development in

A person who commences, continues or carries out any development, or causes or permits any development to be

commenced, continued or carried out, affecting land to which section 163 applies except —

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

(b) in a manner which is in conformity with the approval referred to in paragraph (a) and in accordance with the conditions, if any, subject to which that approval was given,

commits an offence.

223. General penalty

Unless otherwise provided, a person who commits an offence under this Act is liable to a fine of $200 000 and, in the case of a continuing offence, a further fine of $25 000 for each day during which the offence continues.

[Section 223 amended: No. 4 of 2011 s. 10.]

224. Other enforcement provisions not affected

(1) This Division does not prejudice or affect the operation of sections 214, 215 or 216.

(2) A person may be prosecuted for an offence under this Division irrespective of whether or not a direction has been given under section 214.

225. Onus of proof in vehicle offence may be shifted

(1) In this section —

vehicle offence means an offence of which the parking, standing or leaving of a vehicle is an element.

(2) Where a vehicle offence is alleged to have been committed and the identity of the person committing the alleged offence is not known and cannot immediately be ascertained an officer of the relevant responsible authority who is a designated person under

section 228 may give the owner of the vehicle a notice under this section.

(3) The notice is to be in the form prescribed in the regulations and is to contain particulars of the alleged offence and require the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

(4) The notice may be addressed to the owner of the vehicle without naming, or stating the address of, the owner and may be given by —

(a) attaching it to the vehicle or leaving it in or on the vehicle at or about the time that the alleged offence is believed to have been committed; or

(b) giving it to the owner within 21 days after the alleged offence is believed to have been committed.

(5) The notice is to include a short statement of the effect of subsection (6).

(6) Unless, within 28 days after being served with the notice, the owner of the vehicle —

(a) informs the responsible authority or an officer of the responsible authority authorised for the purposes of this paragraph as to the identity and address of the person who was the person in charge of the vehicle at the time the offence is alleged to have been committed; or

(b) satisfies the responsible authority that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

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

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

Division 3 — Infringement notices

226. Terms used

In this Division —

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

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

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

227. Prescribed offences

(1) The regulations may prescribe an offence under this Act, or under any regulations made under this Act, to be an offence for which an infringement notice may be issued under this Division.

(2) For each prescribed offence the regulations must prescribe —

(a) a modified penalty applicable in whatever the circumstances in which the offence is committed; or

(b) a modified penalty applicable if the offence is committed in circumstances specified in the regulations.

(3) The modified penalty for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

228. Giving of infringement notice

(1) A designated person who has reason to believe that a person has committed a prescribed offence may give an infringement notice to the alleged offender.

(2) The notice must be given within 6 months after the alleged offence is believed to have been committed.

229. Content of infringement notice

(1) An infringement notice is to be in the prescribed form and is to —

(a) contain a description of the alleged offence; and

(b) specify the amount of the modified penalty for the offence; and

(c) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, that amount may be paid to a designated person within a period of 28 days after the giving of the notice; and

(d) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.

(2) The amount referred to in subsection (1)(b) is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

230. Extending time to pay modified penalty

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

231. Withdrawal of infringement notice

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

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

232. Benefit of paying modified penalty

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

233. Paid modified penalty, application of

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

234. Designated persons, appointment of

(1) The chief executive officer of a responsible authority may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 228, 229, 230 or 231 or for the purposes of 2 or more of those sections.

(2) A person who is authorised to give infringement notices under section 228 is not eligible to be a designated person for the purposes of any of the other sections.

235. Notice placing onus on vehicle owner

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

(2) For the purpose of giving the vehicle owner an infringement notice that is with a notice under section 225 —

(a) it is a sufficient ground for believing the owner to have committed the alleged offence that the person is the owner; and

(b) the infringement notice may be addressed and given as specified in section 225(4).

(3) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, section 225(6) does not have effect to deem the owner to have committed the offence.

(4) The statement required by section 225(5) is to include a description of the effect of subsection (3) if an infringement notice is given with a notice under section 225.

Division 4 — Entry and inspection powers for officers authorised by Commission

[Heading inserted: No. 34 of 2023 s. 71.]

Subdivision 1 — Preliminary

[Heading inserted: No. 34 of 2023 s. 71.]

235A. Terms used

In this Division —

authorised officer means a person authorised by the Commission under section 235B;

authorised purpose means a purpose of ascertaining any matter for purposes connected with enforcing or monitoring compliance with this Act or the *Swan Valley Planning Act 2020*, including investigating a suspected contravention of, or offence against, this Act or that Act;

entry warrant has the meaning given in section 235F(1);

entry warrant application means an application under section 235F(1);

occupier, in relation to any land, includes a person apparently in charge of the land;

remote communication means any way of communicating at a distance, including by telephone, fax, radio, videoconferencing, email and other electronic means.

[Section 235A inserted: No. 34 of 2023 s. 71.]

Subdivision 2 — Authorised officers

[Heading inserted: No. 34 of 2023 s. 71.]

235B. Commission may authorise certain persons for purposes of Division

The Commission may authorise a person who is either of the following for the purposes of this Division —

(a) a public service officer who is appointed or made available under section 22;

(b) an officer or employee who is the subject of an arrangement under section 23(1).

[Section 235B inserted: No. 34 of 2023 s. 71.]

235C. Identity cards

(1) The Commission must give an authorised officer an identity card.

(2) The identity card must —

(a) identify the person as an authorised officer; and

(b) include a recent photograph of the authorised officer; and

(c) state an expiry date for the card; and

(d) include any other matter required by regulations for the purposes of this paragraph.

(3) An authorised officer must —

(a) if it is practicable to do so — before exercising any powers under section 235E in respect of any land, produce the officer's identity card to an occupier of the land who is present (if any); and

(b) otherwise carry the officer's identity card when exercising any powers under section 235E and produce it upon any reasonable request.

(4) If a person ceases to be an authorised officer, the person must, within 14 days after the day on which the person ceases to be an authorised officer, return to the Commission the identity card that the person was given.

(5) A person commits an offence if, without reasonable excuse, the person fails to comply with subsection (4).

Penalty for this subsection: a fine of $5 000.

[Section 235C inserted: No. 34 of 2023 s. 71.]

235D. Offences relating to authorised officers

(1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer exercising a power under this Division.

Penalty for this subsection: a fine of $10 000.

(2) A person commits an offence if, without reasonable excuse, the person fails to comply with a direction given to the person by an authorised officer under section 235E(7).

Penalty for this subsection: a fine of $10 000.

(3) A person must not impersonate an authorised officer.

Penalty for this subsection: a fine of $5 000.

[Section 235D inserted: No. 34 of 2023 s. 71.]

Subdivision 3 — Entry and inspection

[Heading inserted: No. 34 of 2023 s. 71.]

235E. Powers of entry and inspection

(1) For an authorised purpose, an authorised officer may enter any land —

(a) with the consent of an occupier of the land; or

(b) if authorised to do so by an entry warrant.

(2) If an authorised officer enters any land under subsection (1), the authorised officer may, for the authorised purpose —

(a) inspect the land or anything on or in the land; and

(b) photograph, or otherwise make a record of, the land or anything on or in the land.

(3) Before an authorised officer enters any land under subsection (1)(b) in a case where an occupier of the land is present, the officer must do the following to the extent it is practicable to do so —

(a) inform the occupier of the officer's intention to enter the land;

(b) produce the entry warrant for the occupier to see;

(c) give the occupier an opportunity to consent to the officer entering the land under subsection (1)(a).

(4) If it is not practicable for the authorised officer to produce the entry warrant as required under subsection (3)(b) before entering the land, the officer must produce the entry warrant as soon as practicable after entering the land.

(5) If an authorised officer enters any land under subsection (1)(b) in a case where no occupier of the land is present, the officer must leave, in a prominent place on the land, a notice stating —

(a) the officer's official details; and

(b) that the land has been entered under the authority of an entry warrant.

(6) If 2 or more authorised officers are involved, the duties under subsections (3) and (4), or the duty under subsection (5), need only be performed by 1 of the officers.

(7) If an authorised officer is authorised by an entry warrant to enter any land, the officer may direct any person present on the land to provide the officer with any assistance that the officer reasonably requires to enable or assist the officer —

(a) to enter the land or to gain access to anything on or in the land; or

(b) otherwise to exercise powers under subsection (2) on the land.

(8) If an authorised officer enters any land under subsection (1) in a case where an occupier of the land is present, the officer must not prevent the occupier from observing the exercise of powers under subsection (2) on the land unless —

(a) the officer reasonably suspects that the occupier might be endangered if they were to observe the exercise of powers; or

(b) the occupier hinders or obstructs the exercise of powers; or

(c) it is not practicable for the occupier to observe the exercise of powers.

(9) An authorised officer may record the exercise of a power under this section, including by making an audiovisual recording.

[Section 235E inserted: No. 34 of 2023 s. 71.]

235F. Authorised officer may apply for entry warrant

(1) An authorised officer may apply to a magistrate for a warrant (an ***entry warrant***) authorising an authorised officer to enter land for an authorised purpose.

(2) An entry warrant application must be made in accordance with section 235G and must include the following information —

(a) the applicant's full name;

(b) a reasonably particular description of the land;

(c) a reasonably particular description of the authorised purpose for which entry to the land is required;

(d) why it is necessary to enter the land for the authorised purpose;

(e) any other information prescribed by the regulations.

[Section 235F inserted: No. 34 of 2023 s. 71.]

235G. Making entry warrant application

(1) A reference in this section to making an entry warrant application includes a reference to giving information in support of an entry warrant application.

(2) An entry warrant application must be made in person before a magistrate.

(3) Despite subsection (2), a magistrate may allow an entry warrant application to be made by remote communication if the magistrate considers that it is reasonable in the circumstances to do so.

(4) An entry warrant application must be made in writing unless —

(a) the entry warrant application is made by remote communication; and

(b) it is not practicable to send the magistrate written material.

(5) If subsection (4)(a) and (b) apply —

(a) the entry warrant application may be made orally; and

(b) the magistrate must make a written record of —

(i) the entry warrant application; and

(ii) any information given in support of the entry warrant application.

(6) An entry warrant application must be made on oath unless —

(a) the entry warrant application is made by remote communication; and

(b) it is not practicable for the magistrate to administer an oath to the applicant.

(7) If subsection (6)(a) and (b) apply —

(a) the entry warrant application may be made in an unsworn form; and

(b) if the magistrate issues an entry warrant, the applicant must, as soon as practicable, send the magistrate an affidavit verifying —

(i) the entry warrant application; and

(ii) any information given in support of the entry warrant application.

[Section 235G inserted: No. 34 of 2023 s. 71.]

235H. Further provisions about entry warrant application made by remote communication

(1) This section applies if an entry warrant application is made by remote communication.

(2) If the magistrate issues an entry warrant, the magistrate must, if practicable, send a copy of the original entry warrant to the applicant by remote communication.

(3) If that is not practicable —

(a) the magistrate must send to the applicant by remote communication any information that must be set out in the entry warrant; and

(b) the applicant must —

(i) complete a form of entry warrant with the information received; and

(ii) give the magistrate a copy of the form as soon as practicable after completing the form;

and

(c) the magistrate must —

(i) attach the copy of the form to the original entry warrant and any affidavit received from the applicant; and

(ii) make them available for collection by the applicant.

(4) The copy of the original entry warrant sent under subsection (2), or the form of the entry warrant completed under subsection (3), has the same force as the original entry warrant.

(5) If an applicant contravenes subsection (3)(b) or section 235G(7)(b), neither of the following is admissible in proceedings in a court or the State Administrative Tribunal —

(a) any evidence of, or derived from, an inspection made under section 235E(2)(a);

(b) any evidence of, or derived from, a photograph taken, or other record made, under section 235E(2)(b).

[Section 235H inserted: No. 34 of 2023 s. 71.]

235I. Issuing entry warrant

(1) A magistrate may issue an entry warrant only if satisfied that it is necessary for an authorised purpose.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the land to which the entry warrant relates;

(b) a reasonably particular description of the authorised purpose for which entry on the land is authorised;

(c) the period, not exceeding 30 days, during which the entry warrant may be executed;

(d) the name of the magistrate who issued the entry warrant;

(e) the date and time when the entry warrant was issued.

(3) If a magistrate refuses to issue an entry warrant, the magistrate must record on the entry warrant application the fact of, the date and time of and the reasons for the refusal.

[Section 235I inserted: No. 34 of 2023 s. 71.]

235J. Effect of entry warrant

(1) An entry warrant has effect according to its content and this section.

(2) An entry warrant comes into force when it is issued by the magistrate.

(3) An entry warrant authorises an authorised officer executing the warrant —

(a) to enter the land described in the entry warrant; and

(b) to exercise the powers under section 235E(2) for the authorised purpose described in the entry warrant.

(4) An entry warrant does not authorise the use of force, subject to section 235K(2).

[Section 235J inserted: No. 34 of 2023 s. 71.]

235K. Execution of entry warrant

(1) An entry warrant may be executed by the authorised officer to whom it is issued or by any other authorised officer.

(2) An authorised officer executing an entry warrant may call on the assistance of a police officer who, in providing assistance, may use force, including force against a person, that is reasonably necessary in the circumstances.

[Section 235K inserted: No. 34 of 2023 s. 71.]

Part 14 — Applications for review

Division 1 — Making and determination of applications for review

236. When this Part applies

(1) In this section —

planning scheme includes any other instrument that regulations made under the *State Administrative Tribunal Act 2004* specify to be a planning scheme for the purposes of subsection (3).

(2) This Part applies if a written law or a planning scheme or any other written law gives the State Administrative Tribunal jurisdiction to carry out a review in accordance with this Part.

(3) Even if a planning scheme does not expressly give a person a right to apply to the State Administrative Tribunal for a review, in accordance with this Part, of a decision or matter, the planning scheme is to be taken to give that right if —

(a) the planning scheme is expressed as conferring on the person a right to appeal against the decision, or to refer the matter, under this Act; or

(b) the planning scheme is expressed as conferring on the person a right to appeal or apply for review in respect of the matter and the matter involves the exercise by the responsible authority of a discretionary power.

(4) Subsection (3) applies even if the planning scheme provides for the appeal, referral or application to be made otherwise than to the State Administrative Tribunal or, in the circumstances described in paragraph (b) of that subsection, otherwise than in accordance with this Part.

(5) A provision in a planning scheme of the kind described in subsection (3)(a) or (b) has no effect other than the effect given to that provision by subsection (3).

237. Terms used

In this Part, unless the contrary intention appears —

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

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

President means the President of the State Administrative Tribunal;

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

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

237A. How SAT to be constituted

(1) When exercising the jurisdiction referred to in section 236(2), the State Administrative Tribunal is to be constituted under this section and section 238.

(2) The State Administrative Tribunal is to be constituted by one Tribunal member when it is dealing with an application for a review of the determination of, or conditions imposed in respect of —

(a) a development application to commence a development of a value of less than $250 000 or such other amount as is prescribed by regulations made under the *State Administrative Tribunal Act 2004*; or

(b) a development application to commence a development of a single house on a single lot where the development is of a value of less than $500 000 or such other amount as is prescribed by regulations made under the *State Administrative Tribunal Act 2004*, or any development ancillary to that development; or

(c) an application for approval to subdivide a lot into not more than 3 lots.

(3) The State Administrative Tribunal is to be constituted by one Tribunal member when it is dealing with an application that the applicant, with the agreement of each other party, has elected at the time of making the application to have determined by one Tribunal member.

(4) If —

(a) subsection (2) or (3) does not apply; or

(b) the President is of the opinion that an application referred to in subsection (2) or (3) is likely to raise complex or significant planning issues,

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

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

238. SAT members, qualifications of

(1) The member constituting the State Administrative Tribunal, or each of them if there is more than one, is to be a person who has knowledge of and experience in one or more of the fields of urban and regional planning, architecture and urban design, engineering, surveying, environmental science, planning law, heritage matters, public administration, commerce and industry.

(2) If the application is for a review of a decision referred to in section 254 or a decision relating to an environmental condition, the member constituting the State Administrative Tribunal, or at least one of them if there is more than one, is to be a person who has knowledge of and experience in the field of environmental science.

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

239. Legal representation, some applicants may elect there will be none

(1) In the case of an application described in section 237A(2) the applicant may, at the time the application is made, elect that no

party to the application is to be represented by a legal practitioner.

(2) If an applicant makes an election under subsection (1), no party to the application is entitled to be represented by a legal practitioner unless —

(a) the President, being of the opinion that the application is likely to raise complex or significant planning issues, directs that the parties may be so represented; or

(b) the President, having regard to whether the application involves a question of law, directs in any other case that the parties may be so represented; or

(c) the applicant is a legal practitioner; or

(d) the applicant withdraws the election.

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

240. SAT to invite Minister for the Environment to make submission before determining certain applications

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

241. SAT to have regard to certain matters

(1) In determining an application in accordance with this Part the State Administrative Tribunal is to have due regard to relevant planning considerations including —

(a) any State planning policy which may affect the subject matter of the application; and

(b) any management programme for the development control area in force under the *Swan and Canning Rivers Management Act 2006* Part 4 that may affect the subject matter of the application; and

(c) in the case of an application that relates to the Swan Valley Planning Scheme — the objects set out in the *Swan Valley Planning Act 2020* section 5.

(2) In the case of an application that relates to land to which the *Heritage Act 2018* applies, and whether or not a State planning policy provides for the conservation of that land, the State Administrative Tribunal —

(a) is to refer the matter to the Heritage Council for advice; and

(b) may receive and hear submissions made on behalf of the Heritage Council; and

(c) may join the Heritage Council as a party to the application; and

(d) is to have due regard to the objects of the *Heritage Act 2018*.

(3) In determining an application for the review of the determination of, or conditions imposed in respect of, an application for approval to subdivide a lot into not more than 3 lots, the State Administrative Tribunal may have regard to claims of hardship raised by the applicant and proved to the satisfaction of the State Administrative Tribunal, if the State Administrative Tribunal is of the opinion that such regard will not affect the application of sound planning principles.

[Section 241 amended: No. 52 of 2006 s. 6; No. 22 of 2018 s. 186(13); No. 45 of 2020 s. 90.]

242. Persons who are not parties, submissions from

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

243. Exclusion of powers to join parties

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

244. SAT review of some SAT decisions

(1) The State Administrative Tribunal constituted by a judicial member may, of its own motion or upon an application made under subsection (3), review a direction, determination or order upon a matter involving a question of law that was made by the State Administrative Tribunal when constituted without a legally qualified member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*.

(2) The State Administrative Tribunal constituted by a judicial member may —

(a) affirm the direction, determination or order; or

(b) revoke the direction, determination or order and substitute another direction, determination or order that the State Administrative Tribunal could have made in relation to that matter.

(3) An application for a review of a direction, determination or order upon a matter involving a question of law may be made, in accordance with the regulations and rules made under the *State Administrative Tribunal Act 2004*, by a party within one month after the direction, determination or order is given to the party.

[(4) deleted]

(5) A review by the State Administrative Tribunal —

(a) of its own motion is not to be made later than one month after the direction, determination or order is given to the party; or

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

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

245. Submissions by Minister to SAT

(1) If it appears to the State Administrative Tribunal that an application may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the application is situated, the State Administrative Tribunal may invite the Minister to make a submission as to the matters the Minister considers to be relevant to the issues before the State Administrative Tribunal.

(2) Irrespective of whether or not there has been an invitation under subsection (1), if it appears to the Minister that an application may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the application is situated, the Minister may make a submission as to the matters which the Minister considers to be relevant to the issues before the State Administrative Tribunal.

(3) A submission may be made by the Minister in writing or orally on behalf of the Minister by a representative who appears at a hearing of the application, and may be made at any time before the determination of the application.

(4) When a written submission has been made by the Minister, a copy is to be given by the State Administrative Tribunal to the parties who are in any case to be given an opportunity of making further submissions to the State Administrative Tribunal.

(5) In this section —

(a) where the area in which the land the subject of the application is situated includes or comprises land or waters that are within or abut the development control area as defined in the *Swan and Canning Rivers*

Management Act 2006, ***Minister*** includes the Minister to whom the administration of that Act is committed; and

(b) where the area in which the land the subject of the application is situated includes, or is included in, or abuts any land included in a place of a kind mentioned in the *Heritage Act 2018* section 72(1), ***Minister*** includes the Minister to whom the administration of that Act is committed.

[Section 245 amended: No. 52 of 2006 s. 6; No. 22 of 2018 s. 186(14).]

246. Minister may call in application to SAT for review

(1) This section applies to an application made to the State Administrative Tribunal if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister.

(2) The Minister may direct —

(a) the President to refer an application to which this section applies to the Minister for determination; or

(b) the State Administrative Tribunal to hear the application but, without determining it, to refer it with recommendations to the Minister for determination.

(3) The Minister cannot give a direction under subsection (2) —

(a) in respect of an application made to the State Administrative Tribunal under the *Heritage Act 2018*; or

(b) more than 28 days after the application was made to the State Administrative Tribunal; or

(c) after a final determination has been made in relation to the application.

(4) The Minister, within 14 days after a direction is given, is to cause a copy of it to be published in the *Gazette* and, as soon as

is practicable, is to cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

(5) If the Minister gives a direction under subsection (2)(a), each party to the proceeding may present the case of that party to the Minister.

(6) The Minister is to have regard to the submissions of the parties and may have regard to any other submission received by the Minister.

(7) A copy or transcript of any submission to which the Minister has regard is to be —

(a) given to each party; and

(b) published in the manner prescribed by the regulations.

[Section 246 amended: No. 28 of 2010 s. 48; No. 22 of 2018 s. 186(15); No. 34 of 2023 s. 78.]

247. Determination of application by Minister

(1) In determining an application the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest.

(2) When the Minister determines an application that determination has effect according to its tenor.

(3) When an application is referred to the Minister under section 246(2)(b) the executive officer of the State Administrative Tribunal is to —

(a) give a copy of the recommendations that accompanied the referral to each party within a reasonable time after the referral; and

(b) make a copy of the recommendations available during office hours for inspection by any person without charge.

(4) The Minister is to —

(a) give to each party written reasons for the determination of the Minister on the application; and

(b) as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament; and

(c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.

(5) The decision of the Minister is final.

*[**248.** Deleted: No. 28 of 2010 s. 49.]*

Division 2 — Decisions which may be reviewed

249. Decision as to development under interim development order

(1) Subject to subsection (2), if an applicant for approval to carry out development under an interim development order is aggrieved by the refusal to grant the approval or by the conditions subject to which the approval is granted, the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision to refuse or to impose the conditions.

(2) No application for a review is to be made or heard in respect of a development that contravenes a provision of —

(a) a local planning scheme; or

(b) a local law of a local government that is not superseded by the interim development order; or

(c) an order made under the *Heritage Act 2018* Part 4 or Part 11 Division 4.

(3) The Commission is to be taken to have refused an application for approval to carry out development under a regional interim development order, and a local government is to be taken to have refused an application for approval to carry out

development under a local interim development order, if the Commission or the local government, as the case requires, has not given its decision on that application to the applicant —

(a) within a period of 60 days after the receipt by the local government or Commission of the application; or

(b) in the case of land in relation to which the application has been referred to the Heritage Council in accordance with the interim development order, within a period of 60 days after referring the application.

[Section 249 amended: No. 22 of 2018 s. 186(16).]

250. Decision as to development in planning control area

(1) An applicant whose application under section 115 has been —

(a) approved subject to conditions which are unacceptable to the applicant; or

(b) refused,

may apply to the State Administrative Tribunal for a review, in accordance with this Part, of that approval or refusal.

[(2) deleted]

(3) If the Commission has not within 60 days of receiving an application forwarded to it under section 115(3) given its decision on that application to the applicant, the application is to be taken to have been refused.

[Section 250 amended: No. 22 of 2018 s. 186(17).]

251. Some decisions made under Part 10

(1) An applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of a decision of the Commission to refuse to approve any plan, application for title, transfer, conveyance, lease, licence to use and occupy, or mortgage, in respect of which an application for approval was made to the Commission.

(2) An applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of conditions affixed to the granting of an approval referred to in subsection (1).

(3) An applicant who makes a request under section 144(1) or 151(1) may apply to the State Administrative Tribunal for a review, in accordance with this Part, of a decision of the Commission made under section 144(2) or 151(2).

(4) An applicant given approval of a plan of subdivision who is aggrieved by the Commission's decision to refuse to endorse its approval on a diagram or plan of survey of the subdivision submitted to the Commission under section 145 may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision of the Commission.

(5) If the Commission refuses to endorse a plan or diagram of survey of a subdivision because a condition affixed to the approval of the plan of subdivision has not been complied with, an application under subsection (4) may include an application for a review of that condition.

(6) An applicant for an extension under section 145A(2) who is aggrieved by the Commission's decision to refuse to grant the extension may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision of the Commission.

[Section 251 amended: No. 26 of 2020 s. 92.]

252. Decision made in exercise of discretionary power under planning scheme

(1) Subject to subsection (3), if —

(a) under a planning scheme, the grant of any consent, permission, approval or other authorisation is in the discretion of a responsible authority; and

(b) a person has applied to the responsible authority for such a grant; and

(c) the responsible authority has —

(i) refused the application; or

(ii) granted it subject to any condition,

the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the responsible authority's decision.

(2) Subject to subsections (1) and (3), an applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the responsible authority's decision under a local planning scheme, an improvement scheme or the Swan Valley Planning Scheme as to —

(a) the classification of a use under the planning scheme; or

(b) the permissibility of a use that is not listed under the planning scheme.

(3) Subsections (1) and (2) do not affect the operation of a right given or taken to be given by a planning scheme to apply for a review of a decision, but where rights are given or taken to be given by a planning scheme and under subsection (1) or (2), the exercise of one of those rights extinguishes the other right to apply for a review of the same decision.

[Section 252 amended: No. 28 of 2010 s. 22; No. 45 of 2020 s. 91.]

253. Failure of responsible authority to make decision within decision period

(1) In this section —

applicant includes a person making a request under section 144(1), 145(1) or 151(1);

decision period means —

(a) in the case of an application for approval of a plan of subdivision, the period of 90 days specified in section 143(2) or any longer period after that day as may

be agreed between the Commission and the applicant under section 143(2); and

(b) in the case of an application for endorsement of approval on a diagram or plan of survey, the period of 30 days specified in section 145(5) or any longer period after that day as may be agreed between the Commission and the applicant under section 145(5); and

(ba) in the case of an application under section 145A(2), the period of 30 days specified in section 145A(6) or any longer period as may be agreed between the Commission and the applicant under section 145A(6); and

(c) in the case of any other application, or a request, referred to in subsection (2), the period of 60 days from the day on which the application or request was made, or any longer period after that day as may be agreed in writing between the responsible authority and the applicant or person so requesting.

(2) If at any time after the end of the decision period the responsible authority has not —

(a) approved, or refused to approve, an application under section 145A(2) or referred to in section 251(1); or

(b) given notice of a decision on the request made under section 144(1) or 151(1); or

(c) endorsed, or refused to endorse, a diagram or plan of survey under section 145(4),

the applicant may give written notice of default to the responsible authority.

(3) Where a notice of default is given to a responsible authority under subsection (2), the applicant may apply to the State Administrative Tribunal for a review, in accordance with this Part, as if the responsible authority had refused to approve the application, plan or diagram, or had refused to alter or revoke

the condition, as the case requires, on the day on which the notice of default was given to the responsible authority.

[Section 253 amended: No. 26 of 2020 s. 93.]

Division 3 — Other applications for review

254. Decision made under EP Act s. 48I

If a responsible authority makes a decision under section 48I(3)(c) or (d) of the EP Act in respect of a proposal under an assessed scheme, the applicant promoting the proposal may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision.

255. Direction given under s. 214

(1) A person to whom a direction is given under section 214 may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision to give the direction.

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

(3) Nothing in subsection (2) limits the functions of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

Part 15 — Subsidiary legislation

[Heading deleted: No. 26 of 2020 s. 73.]

256. Regulations for content of local planning schemes

(1) The Governor may, on the recommendation of the Minister, make regulations prescribing provisions that deal with any or all of the following —

(a) carrying out the general objects of local planning schemes;

(b) any matter set out in Schedule 7.

(2) Before making a recommendation under subsection (1) the Minister —

(a) must consult with the EPA and local governments; and

(b) may consult with any other public authority or person the Minister considers is likely to be affected by the proposed regulations; and

(c) must have regard to any submissions made pursuant to consultation under paragraphs (a) and (b).

(3) Consultation under subsection (2) may be undertaken in any way and within such period as the Minister considers appropriate in the circumstances.

(4) Unless the regulations otherwise provide, provisions prescribed under subsection (1) apply to all local planning schemes.

(5) The regulations must designate each provision prescribed under subsection (1) as —

(a) a model provision, being a provision to which section 257A applies; or

(b) a deemed provision, being a provision to which section 257B applies.

(6) The regulations may include provisions of a savings or transitional nature that are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on the prescribing of a model provision or a deemed provision under this section.

(7) Without limiting subsection (6), regulations made under that subsection may provide that specified model provisions or deemed provisions of a local planning scheme —

(a) do not apply; or

(b) apply with specified modifications,

to or in relation to any matter.

[Section 256 inserted: No. 28 of 2010 s. 64; amended: No. 26 of 2020 s. 74.]

257A. Model provisions, effect of

(1) In this section —

model provision means a provision designated as a model provision under section 256(5)(a).

(2) Subject to subsection (3), a local planning scheme prepared or adopted by a local government must include any model provisions that —

(a) are prescribed by regulations in force at the time the scheme is approved under section 87; and

(b) apply to the scheme.

(3) When approving a local planning scheme under section 87, the Minister may approve the exclusion from, or variation in, the scheme of a model provision.

[Section 257A inserted: No. 28 of 2010 s. 64.]

257B. Deemed provisions, effect of

(1) In this section —

deemed provision means a provision designated as a deemed provision under section 256(5)(b).

(2) Deemed provisions, as amended from time to time, have effect and may be enforced as part of each local planning scheme to which they apply, whether they are prescribed before or after the scheme comes into force.

(3) If a deemed provision that has effect as part of a local planning scheme is inconsistent with another provision of the scheme, the deemed provision prevails and the other provision is to the extent of the inconsistency of no effect.

(4) It is sufficient compliance with section 54(a), 87(3)(a), 91(1) or 92(2)(b) if a local planning scheme is published under that provision without the deemed provisions.

(5) Each local government, in preparing a local planning scheme or a consolidation of a local planning scheme, must ensure that the scheme is consistent with any deemed provision that applies to the scheme.

[Section 257B inserted: No. 28 of 2010 s. 64.]

*[**257.** Deleted: No. 28 of 2010 s. 65.]*

257C. Regulations dealing with performance of functions under local planning schemes in relation to single house development

(1) In this section —

ancillary structure means a building, structure, fixture, or feature, that is ancillary or incidental to a single house;

CEO, in relation to a local government, means the chief executive officer of the local government;

development approval function means a function of a local government under a local planning scheme in relation to development applications, approvals of development or ancillary or incidental matters;

Examples for this definition:

1. Receiving, administering or considering development applications.
2. Granting or refusing approvals of development.
3. Imposing conditions on approvals of development.
4. Receiving, administering or considering applications for any of the following —
   (a) an amendment to an approval of development;
   (b) an amendment to conditions imposed on an approval of development;
   (c) the cancellation of an approval of development.
5. Amending approvals of development or conditions imposed on approvals of development.
6. Cancelling approvals of development.

single house means a dwelling, other than a dwelling on land that is, or is to be, subject to —

(a) a strata scheme under the *Strata Titles Act 1985*; or

(b) a community titles (building) scheme under the *Community Titles Act 2018*;

single house development means development that consists of —

(a) the erection of, or alterations or additions to, a single house; or

(b) the erection or installation of, or alterations or additions to, an ancillary structure.

(2) Without limiting section 256, regulations under section 256(1) may prescribe provisions that —

(a) specify development approval functions of the local government (the ***prescribed development approval functions***); and

(b) provide that, when the prescribed development approval functions are performed in relation to single house development, or single house development of a specified class, the functions —

(i) must be performed for and on behalf of the local government by the CEO or employees of the local government authorised by the CEO; and

(ii) cannot be performed by the local government in any other manner (for example, by the council of the local government or a committee of that council);

and

(c) otherwise deal with or regulate —

(i) the performance of the prescribed development approval functions as referred to in paragraph (b); and

(ii) authorisations referred to in paragraph (b)(i); and

(iii) supplementary or incidental matters.

(3) Provisions of a kind referred to in subsection (2), and regulations prescribing those provisions, have effect despite any provision of the *Local Government Act 1995*.

[Section 257C inserted: No. 34 of 2023 s. 21.]

258. Regulations for procedure and costs for local planning schemes

(1) The Governor may make regulations for regulating the procedure to be observed —

(a) with respect to the preparation or adoption of a local planning scheme;

(b) with respect to obtaining the approval of the Minister to a local planning scheme so prepared or adopted;

(c) with respect to the review, amendment or repeal of a local planning scheme;

(d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation, adoption or approval of a local planning scheme, or preliminary to the preparation, adoption or approval of the scheme.

(2) Provision is to be made by the regulations for ensuring that —

(a) notice of the proposal to prepare or adopt a scheme is to be given, at the earliest stage possible, to any local government interested in the land; and

(b) the local government of the district in which any land proposed to be included in a scheme is given —

(i) a notice of any proposal to prepare or adopt such a scheme; and

(ii) a copy of the draft scheme before the scheme is made;

and

(c) the local government is entitled to be heard at any inquiry held by the Minister in regard to the scheme.

(3) Without limiting the generality of subsection (1) regulations made under that subsection with regard to the amendment of a scheme may require the payment by the owner of land of the costs incurred in the publication under the regulations of any notice prescribed in the regulations relating to an amendment to a local planning scheme where the amendment is made at the request of that owner and is in respect of land owned by that owner.

[Section 258 amended: No. 28 of 2010 s. 66; No. 26 of 2020 s. 75.]

258A. Regulations as to procedure and costs for region planning schemes

(1) The Governor may make regulations for regulating the procedure to be observed —

(a) with respect to the preparation of a region planning scheme; and

(b) with respect to obtaining the approval of the Governor to a region planning scheme so prepared; and

(c) with respect to the review, amendment or repeal of a region planning scheme; and

(d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation or approval of a region planning scheme, or preliminary to the preparation or approval of the scheme.

(2) Section 258(2) and (3) apply to regulations made under subsection (1) as if a region planning scheme were a local planning scheme.

[Section 258A inserted: No. 26 of 2020 s. 52.]

259. Regulations for environmental review expenses

The Governor may make regulations with respect to the persons from whom, and the means by which, a responsible authority may recover expenses incurred by it in undertaking an environmental review required by the EP Act under section 48C(1)(a) of the EP Act.

[Section 259 amended: No. 26 of 2020 s. 76.]

*[**260.** Deleted: No. 26 of 2020 s. 77.]*

[Heading deleted: No. 26 of 2020 s. 78.]

261. Local government fees for planning matters etc., regulations as to

(1) In this section —

fee includes charge;

issue includes grant, give or renew;

licence includes registration, right, permit, authority, approval or exemption;

planning matter means any matter arising under this Act in relation to —

(a) a local planning scheme; or

(b) subdivision; or

(c) approval of development.

(2) The Governor may make regulations providing for, or in respect of —

(a) the licences and services in respect of planning matters for which fees may be imposed by a local government; and

(b) the fees that may be imposed for those licences and the provision of those services, and the recovery of those fees; and

(c) any formula, index or other base to be used for the purposes of calculating or ascertaining the fee; and

(d) the payment or recovery of costs and expenses incurred by the local government in issuing a licence or providing a service in relation to a planning matter, including costs and expenses incurred by the local government in obtaining specialist or expert advice where, in the opinion of the local government, the advice was necessary for the purpose of taking the action or providing the service; and

(e) the liability of persons for payment to the local government in respect of the issuing of a licence and the provision of services and related costs and expenses.

(3) A local government is not to —

(a) impose any fee for the issue of a licence or the provision of a service in relation to a planning matter; or

(b) require payments for costs and expenses incurred by the local government in issuing a licence or providing a service in relation to a planning matter,

unless the licence or service is prescribed under subsection (2)(a).

(4) A fee imposed for an application for approval of development that has commenced or been carried out may include an amount prescribed by way of penalty.

(5) A local government is not to impose a fee for an action or service in relation to a planning matter that is inconsistent with a fee prescribed or provided for under this section.

262. Uniform general local laws

(1) The Governor may make uniform general local laws, or separate sets of general local laws adapted for areas of any special character, for carrying into effect all or any of the purposes mentioned in Schedule 8.

(2) Local laws made under subsection (1) —

(a) have the force of law in the district of any local government which the Governor may from time to time prescribe; and

(b) supersede the local laws made for the same or similar purpose by the local government of the district so prescribed.

(3) The Governor may at any time repeal any by-law made under section 248 of the *Local Government Act 1960* [3].

(4) If a by-law made under section 248 of the *Local Government Act 1960* [3], or a local law made under subsection (1), is inconsistent with any planning scheme approved before or after the making of the by-law or local law, and having effect in the district, or in part of the district, in which the by-law or local law is in force, then to the extent of such inconsistency, and in the part of the district in which the planning scheme has effect, the provisions of the planning scheme prevail.

(5) In subsection (4) a reference to a planning scheme includes a reference to —

(a) an approved redevelopment scheme as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3; and

(b) a master plan approved under the *Hope Valley-Wattleup Redevelopment Act 2000*.

(6) If any property is injuriously affected by the operation of any by-law made under section 248 of the *Local Government Act 1960* [3] or local law under subsection (1), the provisions of Part 11 apply as if the by-law or local law were a planning scheme, and as if the resolution making the by-law or local law were a resolution to prepare a planning scheme.

[Section 262 amended: No. 28 of 2010 s. 23; No. 45 of 2011 s. 141(10).]

263. Regulations: general

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting any other provision of this Act, regulations may —

(a) make provision for or with respect to the making of applications and the manner in which applications are to be made and the procedure to be followed;

(b) prescribe forms and fees;

(c) prescribe the rights, powers and privileges given to, and duties imposed on, a covenantee or other person or authority specified in the regulations where road access is restricted or prohibited as set out in a condition referred to in section 150 and provide for the modification or discharge of, and other matters related to, a covenant referred to in that section;

(d) prescribe the rights, powers and privileges given to a specified person or authority where an easement for a specified purpose has effect in favour of that person or authority under section 167;

(ea) provide for and regulate reporting by local governments in relation to planning matters;

(eb) regulate procedures in relation to the carrying out and enforcement of region planning schemes or local planning schemes;

(e) impose a penalty not exceeding $50 000 for offences against the regulations.

(3) A fee imposed for an application for approval of development that has commenced or been carried out may include an amount prescribed by way of penalty.

(4) To the extent that a regulation made under this section is inconsistent with or contrary to a regulation made under sections 256 to 259, the regulation made under sections 256 to 259 prevails.

(5) If a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency.

[Section 263 amended: No. 28 of 2010 s. 67; No. 26 of 2020 s. 79; No. 26 of 2020 s. 53.]

[Heading deleted: No. 26 of 2020 s. 80.]

264. Regulations may adopt codes and other texts

(1) A regulation made under this Act may adopt the text of any code, rules, specifications or standard issued by the Standards Association of Australia or by such other body as is specified in the regulation.

(2) A regulation prescribing fees payable on application to the Board of Valuers may adopt the text of all or any of the maximum amount of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted, are to be taken to be fees prescribed as fees payable on application to the Board of Valuers.

(3) The text may be adopted —

(a) wholly or in part;

(b) as modified by the regulations;

(c) as it exists at a particular date or as amended from time to time.

(4) The adoption may be direct, by reference made in the regulation, or indirect, by reference made in any text that is itself directly or indirectly adopted.

Part 16 — Miscellaneous

265. Delegation by Minister

(1) The Minister may, by instrument, delegate to a person or body any function of the Minister under this Act, except this power of delegation.

(2) The Minister is to cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.

(3) A delegate cannot subdelegate the exercise or performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.

(4) A delegate exercising or performing a function as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Minister to act through an officer or agent.

266. Duties and liabilities of persons performing functions under this Act or *Swan Valley Planning Act 2020*

(1) In this section —

function means a function in connection with the carrying out of this Act or the *Swan Valley Planning Act 2020*;

meeting means a meeting held in connection with the carrying out of this Act or the *Swan Valley Planning Act 2020*;

member means any of the following —

(a) a member;

[(b) deleted]

(c) a member of a committee established under Schedule 2 or the *Swan Valley Planning Act 2020* section 33;

(d) a member of a public authority;

(e) a member of a local government;

(f) a member of a DAP.

(2) A member must at all times act honestly in the performance of a function.

Penalty: $5 000.

(3) Where a matter is before a meeting for consideration and a member participating in the meeting has a direct or indirect pecuniary interest in the matter, the member —

(a) as soon as possible after the relevant facts have come to the member's knowledge is to disclose that the member has such an interest to the other members participating in the meeting; and

(b) after disclosure of the interest is not to —

(i) be present during any consideration or discussion of the matter; or

(ii) vote on the matter.

Penalty: $5 000.

(4) A disclosure under subsection (3) is to be recorded in the minutes of the meeting.

(5) A member is not to disclose any information acquired by virtue of the performance of any function unless the disclosure is made —

(a) in connection with the carrying out of this Act or the *Swan Valley Planning Act 2020* or under a legal duty; or

(b) for the purposes of any proceedings arising out of this Act or the *Swan Valley Planning Act 2020* or any report of such proceedings.

Penalty: $5 000.

(6) A member is not to make improper use of information acquired by virtue of the performance of any function to gain, directly or

indirectly, an advantage for himself or herself or to cause detriment to the Commission or any other person.

Penalty: $5 000.

(7) A member who commits a breach of any provision of this section is liable for any profit made by the member or for any damage suffered by the Commission as a result of the breach of that provision.

(8) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

[Section 266 amended: No. 28 of 2010 s. 44; No. 45 of 2020 s. 92; No. 34 of 2023 s. 44.]

267A. Crown and State land, who may sign documents as to

(1) If the approval or signature of the owner of Crown land or freehold land in the name of the State is required for the purposes of this Act, the approval or signature may be given by —

(a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the ***Minister for Lands***); or

(b) a person who is authorised in writing by the Minister for Lands to do so.

(2) Nothing in this section limits the ability of the Minister for Lands to otherwise perform a function through an officer or agent.

(3) Nothing in this section affects —

(a) a right or obligation that any other person, as an owner of land mentioned in subsection (1), has under this Act in relation to that land; or

(b) how that right may be exercised or that obligation may be satisfied.

[Section 267A inserted: No. 8 of 2010 s. 25.]

267B. Electronic planning maps

(1) In this section —

minor modification, in relation to spatial data, means —

(a) for cadastral data produced by the Authority — a minor modification to that data made by the Authority to reflect updated survey information; or

(b) for other spatial data produced by the Commission — the replacement of that data with cadastral data produced by the Authority to reflect updated survey information, where the effect of that replacement is minor;

planning instrument means —

(a) a planning scheme; or

(b) an interim development order; or

(c) a declaration under section 112 in relation to a planning control area;

planning markings, in relation to a map, means the markings on the map that indicate different zones, reserves or other areas or boundaries relevant to planning requirements;

spatial data means cadastral data produced by the Authority or other spatial data produced by the Commission.

(2) A map (the ***original map***) that forms part of a planning instrument may be prepared by the Commission as an electronic map (the ***electronic planning map***) in a format approved by the Commission.

(3) The electronic planning map must —

(a) replicate the planning markings on the original map in a form defined by reference to spatial data; and

(b) include —

(i) any key or other information on the original map that is associated with the planning markings and is necessary to interpret the map; and

(ii) any other information required by the Commission.

(4) The electronic planning map is not required to replicate the original map except to the extent required by subsection (3).

(5) For the purposes of subsection (3)(a), the planning markings on the electronic planning map are taken to replicate the planning marks on the original map even if —

(a) 1 or more minor modifications to the spatial data by reference to which the planning markings are defined have occurred since the electronic planning map was first prepared; and

(b) the planning markings on the electronic planning map are defined by reference to the spatial data as modified by those modifications.

(6) The Commission must make the electronic planning map available for public inspection on its website.

(7) An electronic planning map that is prepared and made available in accordance with this section is taken to be the original map for the purposes of the planning instrument, this Act and any other written law.

[Section 267B inserted: No. 26 of 2020 s. 99.]

267C. Certified copies of electronic planning maps

In any proceedings, a copy certified by the Commission of an electronic planning map prepared under section 267B, or part of such a map, is evidence of the contents of the electronic planning map or part of the map.

[Section 267C inserted: No. 26 of 2020 s. 99.]

267. Protection from personal liability

(1) An action in tort does not lie against —

(a) a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act; or

(b) a person acting under an authority mentioned in section 152(5)(c) or 267A(1) for anything that the person has done, in good faith, in the performance or purported performance of a function to which the authority applies.

[(2) deleted]

(3) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act or any other written law had been enacted.

(4) Despite subsection (1), neither the Commission, the State nor a local government is relieved of any liability that it might have for another person having done anything as described in that subsection.

(5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 267 amended: No. 8 of 2010 s. 26.]

268A. Laying documents before House of Parliament that is not sitting

(1) If a provision of this Act requires the Minister or the Premier, as soon as is practicable after the occurrence of an event, to cause a document to be laid before each House of Parliament, or dealt with under this section, and —

(a) on the day after the event occurs, a House of Parliament is not sitting; and

(b) the Minister or the Premier (as the case requires) is of the opinion that the House will not sit during the period of 14 days after the day on which the event occurs,

the Minister or the Premier (as the case requires) must transmit the document to the Clerk of that House.

(2) A document transmitted to the Clerk of a House is to be taken to have been laid before that House.

(3) The laying of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 268A inserted: No. 28 of 2010 s. 50; amended: No. 45 of 2011 s. 141(11); No. 34 of 2023 s. 12.]

268. Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this section.

(2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

Part 17 — Special provisions for COVID-19 pandemic relating to development applications

[Heading inserted: No. 26 of 2020 s. 4.]

Division 1 — Preliminary

[Heading inserted: No. 26 of 2020 s. 4.]

269. Terms used

(1) In this Part —

applicable legal instrument, in relation to a development application, means a legal instrument under which the application could, apart from this Part, be determined;

development, in relation to a development application that is an application for approval under the *Swan and Canning Rivers Management Act 2006* section 72(1) or (4) or to a determination of such an application, has the meaning given in section 3(1) of that Act;

development application —

(a) means a development application as defined in section 4(1); and

(b) includes (to avoid doubt) a development application as defined in section 4(1) that is to be determined, or could be determined, by a Development Assessment Panel; and

(c) includes an application under Part 7 for approval of development in a planning control area; and

(d) includes an application for approval under the *Swan and Canning Rivers Management Act 2006* section 72(1) or (4);

extended recovery period means the period that —

(a) begins when the *Planning and Development Amendment Act 2022* section 4 comes into operation; and

(b) ends immediately before 5 pm on 29 December 2023;

legal instrument means any of the following —

(a) this Act, other than this Part, Part 11C, any Part 17 regulations and any orders under section 284;

(b) any of the following enactments —

(i) the *Contaminated Sites Act 2003*;

(ii) the *Heritage Act 2018*;

(iii) the *Swan and Canning Rivers Management Act 2006*;

(iv) the *Swan Valley Planning Act 2020*;

(v) the *Local Government Act 1995*;

(c) any enactment, other than the following —

(i) this Act;

(ii) an enactment covered by paragraph (b);

(iii) the EP Act;

(d) a planning scheme or an interim development order;

(e) any other scheme, code, policy, plan, local law, by-law, rule, condition, notice or other instrument made under any enactment covered by paragraph (a), (b) or (c);

mining has the meaning given in the *Mining Act 1978* section 8(1);

normal decision-maker, in relation to a development application, means a person or body who could, apart from this Part, determine the application under an applicable legal instrument;

Part 17 regulations means regulations under section 286(1);

recovery period means the period of 18 months beginning on the day on which the *Planning and Development Amendment Act 2020* section 4 comes into operation;

significant development, subject to subsections (2) and (3), means —

(a) development that has an estimated cost of —

(i) in the case of a development that is wholly or partly in the metropolitan region — $20 million or more;

or

(ii) in any other case — $5 million or more;

or

(b) development that is of a class or kind prescribed by Part 17 regulations for the purposes of this paragraph;

substantially commenced, subject to subsection (4), has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 as in force at the beginning of the recovery period;

warehouse means a building or outdoor facility, or a part of a building or outdoor facility, used for 1 or both of the following —

(a) the storage of goods, equipment, plant or materials;

(b) the display or sale by wholesale of goods.

(2) Development that is of a class or kind prescribed by Part 17 regulations for the purposes of this subsection —

(a) is not to be regarded as significant development or as being part of any significant development; and

(b) is not to be taken into account in determining whether any larger development of which the development forms part is significant development.

(3) Development of a warehouse —

(a) is not to be regarded as significant development or as being part of any significant development; and

(b) is not to be taken into account in determining whether any larger development of which the development forms part is significant development.

(4) For the purposes of the definition of ***substantially commenced*** in subsection (1), the definition of that term in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 applies as if the reference to a development approved under a planning scheme or under an interim development order were a reference to a development approved by the Commission under section 274.

[Section 269 inserted: No. 26 of 2020 s. 4; amended: No. 45 of 2020 s. 93; No. 17 of 2022 s. 4; No. 34 of 2023 s. 13.]

270. Effect of Part

(1) This Part has effect despite any legal instrument.

(2) However, this Part does not apply in relation to any of the following —

(a) land to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies;

(b) land in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*;

(c) land to which a Government agreement applies;

(d) mining, or proposed mining, that is, or would be, authorised under the *Mining Act 1978*.

(3) To avoid doubt, this Part is subject to section 5 of the EP Act.

[Section 270 inserted: No. 26 of 2020 s. 4.]

Division 2 — Commission to determine certain development applications

[Heading inserted: No. 26 of 2020 s. 4.]

Subdivision 1 — Applications and referrals

[Heading inserted: No. 26 of 2020 s. 4.]

271. Development applications that may be made directly to Commission during recovery period or extended recovery period

(1) During the recovery period, a person may make a development application to the Commission for determination under section 274 if the application is for approval of significant development.

(2) During the extended recovery period, a person may make a development application to the Commission for determination under section 274 if the application is for approval of significant development.

[Section 271 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 5.]

272. Development applications that may be referred to Commission by Premier during recovery period or extended recovery period

(1) During the recovery period, the prospective applicant in relation to a development application that has not yet been made may notify the Minister that they want the application to be determined under section 274.

(2) Subsection (3) applies if the Minister —

(a) is notified under subsection (1); and

(b) considers that the development application raises issues of such State or regional importance that it would be

appropriate for the application to be determined under section 274.

(3) During the recovery period, the Premier, on the Minister's recommendation, may refer the development application to the Commission for determination under section 274.

(3A) During the extended recovery period, the prospective applicant in relation to a development application that has not yet been made may notify the Minister that they want the application to be determined under section 274.

(3B) Subsection (3C) applies if the Minister —

(a) is notified under subsection (3A); and

(b) considers that the development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.

(3C) During the extended recovery period, the Premier, on the Minister's recommendation, may refer the development application to the Commission for determination under section 274.

(4) Subsection (5) applies if —

(a) before or during the extended recovery period, a person makes a development application (otherwise than to the Commission under section 271); and

(b) the Minister considers that the development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.

(5) During the extended recovery period, the Premier, on the Minister's recommendation, may —

(a) direct any person or body who is dealing with the development application to refer the application to the Commission for determination under section 274; or

(b) if the Commission is dealing with the development application — direct the Commission to determine the application under section 274.

(6) However, the Premier cannot give a direction under subsection (5) if the development application has already been determined, or been taken to be determined, by a normal decision-maker (whether or not the determination is to be reviewed by the State Administrative Tribunal or otherwise challenged).

(7) The Premier, within 14 days after the day on which a direction is given under subsection (5), must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

[(8) deleted]

[Section 272 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 6; No. 34 of 2023 s. 14.]

273. Supplementary provisions for applications and referrals

(1) A development application that is made under section 271 must be made in the manner and form required by the Commission and, without limitation, include any documents or information required by the Commission.

(2) A notification under section 272(1) or (3A) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

(3) A person or body who is given a direction under section 272(5) to refer a development application to the Commission —

(a) must refer the development application within the period specified in the direction; and

(b) in referring the development application, must provide the Commission with the application and any documents or information that accompanied the application.

(4) Without limiting section 270(1), in imposing requirements under subsection (1) or (2), the Commission or Minister is not bound or restricted by any legal instrument that would, apart from this Part, regulate, or otherwise apply in relation to, any of the following —

(a) the making of the development application;

(b) the development application itself;

(c) the consideration or determination of the development application.

[Section 273 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 7.]

Subdivision 2 — Determinations

[Heading inserted: No. 26 of 2020 s. 4.]

274. Determination of development applications by Commission

(1) A development application must be determined under this section (and not any applicable legal instrument) if —

(a) the development application is made or referred to the Commission under section 271 or 272(3), (3C) or (5); or

(b) the Commission is directed under section 272(5) to determine the development application under this section.

(2) The Commission must consider the development application and determine it by —

(a) granting approval for the development without conditions; or

(b) granting approval for the development with conditions; or

(c) refusing approval for the development.

(3) The Commission must determine the development application as soon as is reasonably practicable but, subject to that, does not have to determine the application before the end of the recovery period or the extended recovery period.

(4) For the purposes of subsection (2)(a) and (b) —

(a) approval can be granted —

(i) for the development for which approval is sought; or

(ii) for that development, except for a part or aspect of that development specified in the approval; or

(iii) for a part or aspect of that development specified in the approval;

but

(b) approval cannot be granted as referred to in paragraph (a)(ii) or (iii) —

(i) in the case of a development application made under section 271 — for development that is not significant development; or

(ii) in any other case — for development that is substantially different from the development for which approval is sought.

(5) For the purposes of subsection (2)(b), the Commission may impose any conditions that the Commission considers appropriate, including (without limitation) the following —

(a) a condition limiting the time period for which approval is granted;

(b) a condition requiring further details of the development specified in the approval to be, before the development is commenced, submitted to, and approved by, the Commission.

(6) The Commission can impose a condition of the kind referred to in subsection (5)(b) only if the Commission considers that the further details to be approved would not substantially change the approved development.

(7) When the Commission determines the development application, the Commission must —

(a) give the applicant written notice of the determination, including the Commission's reasons for the determination; and

(b) make copies of the determination and reasons publicly available on a website maintained by, or on behalf of, the Commission.

[Section 274 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 8.]

275. Application of legal instruments and matters to which Commission must have due regard

(1) This section applies if the Commission is required to consider and determine a development application under section 274.

(2) Subsections (3) and (4) apply in relation to any legal instrument that would, apart from this Part, regulate, or otherwise apply in relation to, any of the following —

(a) the making of the development application;

(b) the development application itself;

(c) the consideration or determination of the development application.

(3) Without limiting section 270(1), for the purposes of the Commission's consideration and determination of the development application —

(a) the legal instrument does not apply; and

(b) the Commission is not otherwise bound or restricted by the legal instrument.

(4) However, in considering and determining the development application, the Commission may do any of the following —

(a) anything that a normal decision-maker, or any other person or body dealing with the development application, could, apart from this Part, have done under the legal instrument;

(b) request any person or body to perform (in whole or in part and with or without modifications) any functions that the person or body would, apart from this Part, have had in relation to the development application under the legal instrument;

(c) otherwise involve, or consult, a person or body referred to in paragraph (b);

(d) otherwise apply (with or without modifications), or have regard to, the legal instrument.

(5) Without limiting subsection (3), the Commission —

(a) in considering and determining the development application, is not limited to planning considerations and may have regard to any other matter affecting the public interest; and

(b) may grant approval for development even if —

(i) there has been a contravention by any person or body of a legal instrument referred to in subsection (2); or

(ii) there would, apart from this Part, have been such a contravention.

(6) In considering and determining the development application, the Commission must have due regard to —

(a) the purpose and intent of any planning scheme that has effect in the locality to which the development application relates; and

(b) the need to ensure the orderly and proper planning, and the preservation of amenity, of that locality; and

(c) the need to facilitate development in response to the economic effects of the COVID-19 pandemic; and

(d) any relevant State planning policies and any other relevant policies of the Commission.

[Section 275 inserted: No. 26 of 2020 s. 4.]

276. Consultation, submissions and other input

(1) This section applies for the purposes of the Commission's consideration of a development application under section 274 (but does not limit what the Commission may or must do under section 275).

(2) The Commission must —

(a) consult the Minister; and

(b) if required by the Minister — give the Minister a reasonable opportunity to make submissions to the Commission; and

(c) have due regard to any submissions made by the Minister.

(3) The Commission must —

(a) consult the CEO (as defined in the *Contaminated Sites Act 2003* section 3(1)) if the development is of land referred to in section 58(1)(a)(i) of that Act in respect of which a memorial is registered under section 58 of that Act; and

(b) consult the Heritage Council if the development would, or would be likely to, affect any of the following —

(i) a place that is a registered place under the *Heritage Act 2018*;

(ii) a place that is the subject of a protection order under the *Heritage Act 2018* Part 4 Division 1;

(iii) a place that is the subject of a heritage agreement made by the Heritage Council under the *Heritage Act 2018* Part 7;

and

(c) consult the Swan River Trust if the development —

(i) is of land that is wholly or partly in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or

(ii) is of land that abuts that development control area; or

(iii) would, or would be likely to, affect any waters in that development control area;

and

(d) have due regard to any submission made, or advice given, to the Commission in the course of a consultation under paragraph (a), (b) or (c).

(4) The Commission must —

(a) give any local government to whose district the development application relates an opportunity to make submissions to the Commission within a period specified by the Commission; and

(b) have due regard to any submissions made by the local government within that period.

(5) The Commission may require the applicant to do any of the following within a period specified by the Commission —

(a) provide the Commission with any document or information;

(b) do anything else that the Commission considers appropriate.

(6) The Commission must —

(a) consult any person or body not referred to in subsections (2) to (5) whom the Commission considers it appropriate to consult; and

(b) in the manner the Commission considers appropriate, advertise the development application, inviting submissions from members of the public generally or from a class or group of members of the public that the Commission considers appropriate; and

(c) have due regard to any submissions made by members of the public in response to the invitation under paragraph (b).

(7) The Commission may do anything else that is not covered by subsections (2) to (6) and that the Commission considers it appropriate to do in order to obtain a document, information, an opinion or any other contribution from any person or body.

(8) If the Commission does anything under subsection (6)(a) or (b) or (7), the Commission must, as it considers appropriate, set a limit on the time within which, as the case requires —

(a) a person or body who is being consulted by the Commission may respond to the Commission on any matter; or

(b) members of the public may make submissions; or

(c) a person or body may provide any document, information, opinion or other contribution.

[Section 276 inserted: No. 26 of 2020 s. 4.]

277. Effect of Commission determination under s. 274

(1) This section applies if the Commission determines a development application under section 274.

(2) The Commission's determination has effect, and is valid, for all purposes as if it had been made by a normal decision-maker under an applicable legal instrument.

Example for this subsection:

1. If the development application would, apart from this Part, have been determined by a local government for the purposes of a local planning scheme, the Commission's determination has the same effect for the purposes of the local planning scheme as if the determination had been made by the local government.
2. Accordingly, if the determination is to grant approval for development —
   (a) the development may be commenced and carried out as if the approval had been granted by the local government; and
   (b) any conditions imposed by the Commission on the approval must be complied with as if they were conditions imposed on the approval by the local government; and
   (c) section 218(c) applies in relation to a failure to comply with any of those conditions.

(3) Subsection (2) applies even if the Commission's determination could not have been made by a normal decision-maker under an applicable legal instrument.

(4) Without limiting subsections (2) and (3), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the Commission's determination could not have been made by a normal decision-maker under an applicable legal instrument.

(5) Subsections (2) to (4) are subject to sections 278 and 279 and Division 4.

(6) If the Commission's determination is to grant approval for development, the determination does not affect the operation of any legal instrument that requires the obtaining, in relation to the development, of any other type of approval, consent, licence, permit, registration or other authority (however described).

Examples for this subsection:

1. A consent under the *Aboriginal Heritage Act 1972* section 18.
2. A building permit or demolition permit under the *Building Act 2011*.

3. A licence under the *Liquor Control Act 1988*.

Note for this subsection:

Part 11C applies despite this Part (see section 171ZF(1)).

(7) If the Commission's determination is to grant approval for development, references in subsections (2) to (6) to the Commission's determination are to the determination as amended from time to time under section 279 or by an order under section 284.

[Section 277 inserted: No. 26 of 2020 s. 4; amended: No. 27 of 2021 s. 350(2); No. 23 of 2023 s. 31; No. 34 of 2023 s. 15.]

277A. Enforcement powers of Commission in relation to conditions

(1) If development is commenced, continued or carried out otherwise than in accordance with any of the conditions on an approval of development granted under section 274, the Commission has the powers of a responsible authority under sections 214, 215 and 216 in relation to the development.

(2) Subsection (1) does not limit any powers of a responsible authority under sections 214, 215 and 216 (including any powers that a responsible authority has under those sections because of section 277(2)).

(3) In subsection (1), the reference to the conditions on an approval of development granted under section 274 is a reference to the conditions as amended from time to time under section 279 or by an order under section 284.

[Section 277A inserted: No. 34 of 2023 s. 16.]

278. Substantial commencement of development approved by Commission under s. 274

(1) This section applies if the Commission grants approval for development under section 274.

(2) The development must be substantially commenced —

(a) within the period specified in the approval for the purposes of this subsection; or

(b) if no period is specified in the approval — within the period of 24 months beginning on the day on which the approval is granted.

(3) The approval lapses if the development is not substantially commenced within the period referred to in subsection (2).

Note for this subsection:

The period referred to in subsection (2) can be extended by an amendment to the approval made under section 279 or made by an order under section 284 — see, in particular, subsections (4) and (5) and sections 279(2)(aa) and (6A) and 284(2)(aa).

(4) The application referred to in section 279(6A) can be made or determined even if the approval has lapsed under subsection (3) and, if the application is granted after the approval has lapsed, the approval comes back into effect accordingly when the application is granted.

(5) An order under section 284 may make an amendment of the kind referred to in section 284(2)(aa) even if the approval has lapsed under subsection (3), in which event the approval comes back into effect accordingly when the amendment is made.

[Section 278 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 9.]

279. Amendment or cancellation of approval granted by Commission under s. 274

(1) This section applies if the Commission grants approval for development under section 274 in respect of any land.

(2) An owner of the land, or a person who is of a class or kind prescribed by Part 17 regulations for the purposes of this

subsection, may apply to the Commission for the Commission —

(aa) for the purposes of section 278(2), to amend the approval —

(i) to extend the period specified in the approval; or

(ii) if no period is specified in the approval — to specify a period that is longer than the period of 24 months referred to in section 278(2)(b);

or

(a) to amend or remove any of the conditions imposed on the approval; or

(b) to amend any part or aspect of the approved development; or

(c) to amend the approval in any other way; or

(d) to cancel the approval.

(3) An amendment of the kind referred to in subsection (2)(b) —

(a) cannot substantially change the approved development; and

(b) in the case of approval granted on a development application made under section 271 — cannot result in the approved development no longer being significant development.

[(4) deleted]

(5) The Commission must consider an application made under subsection (2) and determine it by —

(a) granting it (with or without conditions); or

(b) refusing it.

(6) Sections 273(1), 274(3) and (5) to (7), 275 and 276 apply with any necessary modifications to an application made under subsection (2) as they apply to a development application made under section 271.

(6A) No more than 1 application can be made under subsection (2) for an amendment of the kind referred to in subsection (2)(aa) and, accordingly, the Commission can make an amendment of that kind only once under this section.

(7) Subject to Division 4, no person or body, apart from the Commission acting under this section, can do any of the following in relation to the approval referred to in subsection (1) —

(aa) make an amendment of the kind referred to in subsection (2)(aa);

(a) amend or remove any of the conditions imposed on the approval;

(b) impose new conditions on the approval;

(c) amend any part or aspect of the approved development;

(d) amend the approval in any other way;

(e) cancel the approval.

(8) In subsections (2) and (7), references to the conditions imposed on the approval, the approved development or the approval are to the conditions, development or approval as amended from time to time under this section or by an order under section 284.

[Section 279 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 10.]

[Division 3 (s. 280-282) deleted: No. 34 of 2023 s. 17.]

Division 4 — Oversight of Commission

[Heading inserted: No. 26 of 2020 s. 4.]

283. State Administrative Tribunal

(1) This section applies if the Commission determines a development application under section 274 or an application under section 279.

(2) The applicant may apply to the State Administrative Tribunal (the ***Tribunal***) for a review of the Commission's decision to make the determination.

(3) For the purposes of the Tribunal's jurisdiction under this section, the member, or at least 1 of the members, who constitute the Tribunal must be a judicial member (as defined in the *State Administrative Tribunal Act 2004* section 3(1)).

(4) For a review under this section, the Commission is the decision-maker for the purposes of the *State Administrative Tribunal Act 2004*.

(5) In conducting a review under this section, the Tribunal must give the Minister a reasonable opportunity to make submissions to the Tribunal on any matter relating to the review.

(6) Sections 242 and 243 apply to a review under this section as they apply to a review in accordance with Part 14.

(7) Except as set out in this section, the Tribunal has no jurisdiction in relation to anything done under this Part or any Part 17 regulations.

[Section 283 inserted: No. 26 of 2020 s. 4; amended: No. 34 of 2023 s. 18.]

284. Governor may amend or cancel approval granted by Commission under s. 274

(1) This section applies if the Commission grants approval for development under section 274.

(2) The Governor may, by order, do any of the following —

(aa) for the purposes of section 278(2), amend the approval —

(i) to extend the period specified in the approval; or

(ii) if no period is specified in the approval — to specify a period that is longer than the period of 24 months referred to in section 278(2)(b);

(a) amend or remove any of the conditions imposed on the approval;

(b) impose new conditions on the approval;

(c) amend any part or aspect of the approved development;

(d) amend the approval in any other way;

(e) cancel the approval.

(3) An amendment of the kind referred to in subsection (2)(c) —

(a) cannot substantially change the approved development; and

(b) in the case of approval granted on a development application made under section 271 — cannot result in the approved development no longer being significant development.

(4) In subsection (2), references to the conditions imposed on the approval, the approved development or the approval are to the conditions, development or approval as amended from time to time under section 279 or by an order under this section.

(5) An order under this section may include directions for giving effect to the order.

(6) The Commission cannot do anything under section 279 that would override, or otherwise be inconsistent with, the provisions of an order under this section.

(7) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(8) The *Interpretation Act 1984* section 42 applies to an order under this section as if it were a regulation.

[Section 284 inserted: No. 26 of 2020 s. 4; amended: No. 17 of 2022 s. 12.]

Division 5 — Final matters

[Heading inserted: No. 26 of 2020 s. 4.]

285. Fees

(1) The Minister may, by notice published in accordance with the *Interpretation Act 1984* section 41(1)(a) —

(a) set fees to be charged in respect of any matter under, or relating to, this Part or any Part 17 regulations; and

(b) make provision for determining the persons by whom the fees are payable.

(2) Despite section 274(3), the Commission is not required to consider or determine a development application, or to do any other thing under this Part or Part 17 regulations, unless any fee relating to the application or other thing has been paid.

(3) Section 20 does not apply in relation to this Part.

[Section 285 inserted: No. 26 of 2020 s. 4; amended: No. 34 of 2023 s. 19.]

286. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

(2) Without limiting subsection (1), Part 17 regulations may prescribe powers, duties, procedures or any other matters for the purposes of, or in relation to —

(a) applications, notifications, referrals or directions under this Part; or

(b) the consideration or determination of applications or notifications under this Part.

[Section 286 inserted: No. 26 of 2020 s. 4.]

Part 18 — Extension of time for endorsement of diagram or plan of survey due to COVID-19 pandemic

[Heading inserted: No. 26 of 2020 s. 4.]

287. Term used: COVID-19 emergency start date

In this Part —

COVID-19 emergency start date means 16 March 2020, being the day on which the state of emergency declaration under the *Emergency Management Act 2005* section 56 in relation to the COVID-19 pandemic came into effect.

[Section 287 inserted: No. 26 of 2020 s. 4.]

288. Extension of time for endorsement of diagram or plan of survey of approved subdivision

(1) This section applies to —

(a) a plan of subdivision approved by the Commission under section 143(1)(a) or (c) before the COVID-19 emergency start date if, immediately before that date —

(i) the Commission had not endorsed its approval on the diagram or plan of survey of the subdivision under section 145(4); and

(ii) the approval of the plan of subdivision had not ceased to have effect under section 145(7);

or

(b) a plan of subdivision approved by the Commission under section 143(1)(a) or (c) on or after the COVID-19 emergency start date if the application for the Commission's approval of the plan of subdivision was made before that date.

(2) Despite any provision of Part 10 Division 2, the period within which the person to whom the approval of the plan of subdivision was given under section 143(1)(a) or (c) must

submit, and request approval of, a diagram or plan of survey of the subdivision under section 145(1) is, and is taken always to have been —

(a) in relation to a plan of subdivision creating more than 5 lots — the period of 6 years beginning on the day on which the Commission approved the plan of subdivision; and

(b) in any other case — the period of 5 years beginning on the day on which the Commission approved the plan of subdivision.

(3) The Commission cannot, after the coming into operation of the *Planning and Development Amendment Act 2020* Part 12 Division 1, grant an extension under section 145A in relation to the plan of subdivision.

[Section 288 inserted: No. 26 of 2020 s. 4.]

Part 19 — Transitional provisions

[Heading inserted: No. 26 of 2020 s. 105; amended: No. 17 of 2022 s. 13.]

Division 1 — Provisions for *Planning and Development Amendment Act 2020*

[Heading inserted: No. 17 of 2022 s. 14.]

289. LDAP or JDAP continues as DAP for district or districts

(1) In this section —

commencement day means the day on which the *Planning and Development Amendment Act 2020* Part 3 comes into operation;

JDAP has the meaning given in section 4(1) as in force immediately before commencement day;

LDAP has the meaning given in section 4(1) as in force immediately before commencement day.

(2) If, immediately before commencement day, there is an LDAP for a district, the LDAP is taken, on and after commencement day, to be a DAP established under section 171C(1) for the district.

(3) If, immediately before commencement day, there is a JDAP for 2 or more districts, the JDAP is taken, on and after commencement day, to be a DAP established under section 171C(1) for those districts.

(4) An order establishing an LDAP or a JDAP to which subsection (2) or (3) applies continues to have effect on and after commencement day as if it were an order establishing a DAP under section 171C(1) and may be amended or revoked accordingly.

[Section 289 inserted: No. 26 of 2020 s. 105; amended: No. 34 of 2023 s. 6.]

290. Preparation and approval of planning schemes where process commenced before commencement day

(1) In this section —

amended Act means this Act as amended by the *Planning and Development Amendment Act 2020* Part 6 Division 1;

commencement day means the day on which the *Planning and Development Amendment Act 2020* Part 6 Division 1 comes into operation;

former Act means this Act as in force immediately before commencement day;

preparation and approval process, in relation to a planning scheme or amendment to a planning scheme —

(a) means the process for the preparation or adoption, submission and approval of the scheme or amendment; and

(b) includes, without limitation, any consultation, referral, advertisement, hearings, reports and consideration of submissions that occur as part of that process.

(2) The regulations may make provision for how the preparation and approval process for a planning scheme or an amendment to a planning scheme is to be completed if —

(a) 1 or more steps in the preparation and approval process for the scheme or amendment are taken before commencement day under the former Act; but

(b) the scheme or amendment is not approved under the former Act before commencement day.

(3) Without limiting subsection (2), the regulations may provide that any requirement of the preparation and approval process under the amended Act is taken to be satisfied in relation to a planning scheme or amendment referred to in that subsection in circumstances prescribed by the regulations.

[Section 290 inserted: No. 26 of 2020 s. 105.]

291. R-Codes taken to be planning codes

(1) In this section —

commencement day means the day on which the *Planning and Development Amendment Act 2020* section 65 comes into operation;

R-Codes means the Residential Design Codes prepared as a State planning policy under section 26(1), as in force immediately before commencement day.

(2) On and after commencement day, the R-Codes are taken to be planning codes.

(3) Subsection (2) does not prevent the R-Codes from being amended or repealed under Part 3A.

(4) A provision included before commencement day in a local planning scheme under section 77(1)(b), or an improvement scheme under section 77(1)(b) as it applies under section 122B(1), in relation to the R-Codes as State planning policies continues to apply on and after commencement day in relation to the R-Codes as planning codes.

[Section 291 inserted: No. 26 of 2020 s. 105.]

292. Regulations made by Minister continue in force

(1) In this section —

commencement day means the day on which the *Planning and Development Amendment Act 2020* Part 8 comes into operation.

(2) Regulations made by the Minister under section 256 before commencement day continue to have effect on and after commencement day as if they were made by the Governor under section 256 and may be amended or repealed accordingly.

(3) Regulations made by the Minister under section 258 before commencement day continue to have effect on and after

commencement day as if they were made by the Governor under section 258 and may be amended or repealed accordingly.

(4) Regulations made by the Minister under section 259 before commencement day continue to have effect on and after commencement day as if they were made by the Governor under section 259 and may be amended or repealed accordingly.

[Section 292 inserted: No. 26 of 2020 s. 105.]

293. Electronic planning maps prepared before commencement day

(1) In this section —

commencement day means the day on which the *Planning and Development Amendment Act 2020* Part 14 comes into operation.

(2) This section applies if, before commencement day, a map that forms part of a planning instrument (as defined in section 267B(1)) has been prepared as an electronic map.

(3) The Commission may, in writing, approve the electronic map if the Commission is satisfied that it substantially complies with the requirements for electronic planning maps under section 267B(3) to (5).

(4) On and after commencement day, a map approved under subsection (3) is taken to be an electronic planning map prepared in accordance with section 267B.

(5) A reference in subsection (2) or (3) to a subsection of section 267B is, before commencement day, a reference to that subsection as it will be in force on commencement day.

[Section 293 inserted: No. 26 of 2020 s. 105.]

294. Transitional regulations

(1) In this section —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act made by the *Planning and Development Amendment Act 2020*; and

(b) includes a saving or application matter.

(2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations may prescribe all matters that are required, or are necessary or convenient, to be prescribed for dealing with the matter.

(3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the *Planning and Development Amendment Act 2020* Part 17 comes into operation, the regulations have effect according to their terms.

(4) If regulations made under subsection (2) contain a provision of a kind described in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 294 inserted: No. 26 of 2020 s. 105.]

Division 2 — Provisions for *Planning and Development Amendment Act 2022*

[Heading inserted: No. 17 of 2022 s. 15.]

295. Amendments to development approvals

The amendments made by the *Planning and Development Amendment Act 2022* sections 9 to 12 apply to an approval for development whether granted by the Commission before, on or after the day on which those sections come into operation.

[Section 295 inserted: No. 17 of 2022 s. 15.]

296. Fees

(1) The development applications (as defined in section 269(1)) to which the *Planning and Development (Part 17 Fees) Notice 2020* clause 4(1)(a) and (2) apply (subject to clause 4(5)) include a development application (as defined in section 269(1)) to be determined by the Commission under section 274 as a result of an amendment made to Part 17 by the *Planning and Development Amendment Act 2022*.

(2) The applications made under section 279(2) to which the *Planning and Development (Part 17 Fees) Notice 2020* clause 4(1)(b) applies include an application made under section 279(2) for an amendment of the kind referred to in section 279(2)(aa) as inserted by the *Planning and Development Amendment Act 2022*.

(3) This section does not limit or otherwise affect the Minister's power to amend, repeal or replace the *Planning and Development (Part 17 Fees) Notice 2020* by a further notice published under section 285.

[Section 296 inserted: No. 17 of 2022 s. 15.]

Division 3 — Provisions for *Planning and Development Amendment Act 2023*

[Heading inserted: No. 34 of 2023 s. 82.]

Subdivision 1 — Preliminary

[Heading inserted: No. 34 of 2023 s. 82.]

297. Term used: 2023 amendment Act

In this Division —

2023 amendment Act means the *Planning and Development Amendment Act 2023*.

[Section 297 inserted: No. 34 of 2023 s. 82.]

Subdivision 2 — Avoiding conflicts with development approvals

[Heading inserted: No. 34 of 2023 s. 82.]

298. Provisions about avoiding conflicts with development approvals

(1) In this section —

commencement day means the day on which Part 3 of the 2023 amendment Act comes into operation;

former Part 17 Division 3 means Part 17 Division 3 as in force immediately before commencement day.

(2) If a term used in this section is given a meaning in section 171ZE, it has the same meaning in this section.

(3) This section applies for the purposes of the application of Part 11C on and from commencement day.

(4) Sections 171ZJ and 171ZK apply in relation to a relevant development approval whether it is granted before, on or after commencement day.

(5) Sections 171ZL and 171ZM —

(a) apply in relation to a relevant development approval whether it is granted before, on or after commencement day; and

(b) apply in relation to the performance of a function that conflicts with a relevant development approval —

(i) if the relevant development approval is an approval of development granted by the Commission under section 274 — whether the function is performed before, on or after commencement day; or

(ii) otherwise — only if the function is performed on or after commencement day.

(6) A notification or application of a kind referred to in column 1 of an item in the Table that was made before commencement day in relation to the performance or proposed performance of a function under a relevant legal instrument is, on and from commencement day, taken to be a notification or application of a kind referred to in column 2 of that item.

Table

Column 1	**Column 2**
Notification under s. 281(2)(a)	Notification under s. 171ZJ(2)(a)
Notification under s. 281(8)	Notification under s. 171ZK(6)
Application under s. 282(2)	Application under s. 171ZL(2)

(7) Despite the amendments made by sections 17 and 18 of the 2023 amendment Act, former Part 17 Division 3, and section 283(7) as in force immediately before commencement

day, continue to apply in relation to a direction given under section 281 or 282 before commencement day.

(8) A reference in subsection (6) or (7) to section 281 or 282, or a subsection or paragraph of section 281 or 282, is a reference to that provision as in force before commencement day.

[Section 298 inserted: No. 34 of 2023 s. 82.]

Subdivision 3 — Western Australian Planning Commission

[Heading inserted: No. 34 of 2023 s. 82.]

299. Terms used and interaction with *Interpretation Act 1984* s. 25

(1) In this Subdivision —

new board has the meaning given in section 301(1);

new section 10 means section 10 as to be inserted by section 38 of the 2023 amendment Act;

new section 11 means section 11 as to be inserted by section 38 of the 2023 amendment Act;

new section 12 means section 12 as to be inserted by section 38 of the 2023 amendment Act;

new section 19 means section 19 as to be inserted by section 43 of the 2023 amendment Act;

reconstitution day means the day on which Part 8 Divisions 1 and 2 of the 2023 amendment Act come into operation.

(2) Nothing in this Subdivision limits what can be done under the *Interpretation Act 1984* section 25 in relation to the enactment of the 2023 amendment Act.

[Section 299 inserted: No. 34 of 2023 s. 82.]

300. Membership of board

(1) In this section —

existing member means a person who, immediately before reconstitution day, holds office as a member, deputy member or associate member (as those terms are defined in section 4(1) immediately before reconstitution day).

(2) Before reconstitution day, the Minister may, as if section 38 of the 2023 amendment Act had come into operation, exercise the Minister's power under new section 10 to appoint persons to take office as members on reconstitution day.

(3) The Minister's power under subsection (2) includes the following —

(a) the power to appoint the chairperson under subsection (2) of new section 10 and 1 or more deputy chairpersons under subsection (3) of new section 10;

(b) the power to determine terms and conditions of appointments under subsection (5) of new section 10;

(c) the power to make determinations under new section 12 on the recommendation of the Public Sector Commissioner (which determinations cannot take effect before reconstitution day).

(4) Regulations under section 313 may (without limitation) make any provision referred to in subsections (1) and (2) of new section 11 for the purposes of, or otherwise in relation to, the operation of this section before reconstitution day.

(5) All existing members go out of office at the beginning of reconstitution day.

(6) Subsection (5) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

[Section 300 inserted: No. 34 of 2023 s. 82.]

301. New board may exercise powers of Commission before reconstitution day

(1) For the purposes of this Subdivision, the ***new board*** consists of the persons appointed by the Minister under section 300(2) (if any).

(2) Before reconstitution day, the new board may meet and do any of the following —

(a) exercise a power referred to in section 302(2), 303(2), 304(2), 305(3) or 306(2);

(b) do any other thing —

(i) that, on or after reconstitution day, the Commission or board will be able to do under this Act or otherwise (including as a result of an amendment made by the 2023 amendment Act); and

(ii) that the new board considers it appropriate to do in advance of reconstitution day;

(c) consider whether or how to exercise a power under paragraph (a) or do any other thing under paragraph (b).

Example for this subsection:

An example of something that could be done under paragraph (b) is delegating functions, or revoking delegations of functions, under section 16.

(3) A thing done by the new board under subsection (2)(b) —

(a) has effect as if done by the Commission or board (as the case requires); but

(b) cannot take effect before reconstitution day.

(4) If an appointment that can be made under subsection (2)(a), or any other thing that can be done under subsection (2)(b), requires the Minister's approval, the Minister may give the approval before reconstitution day.

(5) The Minister may, before reconstitution day, make determinations on the recommendation of the Public Sector Commissioner under subsection (2) of new section 19 as if section 43 of the 2023 amendment Act had come into operation (which determinations cannot take effect before reconstitution day).

(6) Subject to any directions of the Minister and any regulations made under section 313 —

(a) Schedule 1 clause 8 (as in force before reconstitution day) applies with any necessary modifications to a meeting of the new board under subsection (2); and

(b) the new board may otherwise determine its own procedures for the purposes of this section.

(7) Accurate records must be kept of any proceedings of the new board under this section.

(8) Section 22 applies in relation to the functions of the new board under this section.

(9) Regulations under section 313 may (without limitation) make any provision referred to in subsections (1) and (2) of new section 11, or subsections (3) and (4) of new section 19, for the purposes of, or otherwise in relation to, the operation of this section before reconstitution day.

(10) The Minister may, on the recommendation of the Public Sector Commissioner, determine remuneration and allowances to be paid to members of the new board in relation to the performance of the functions of the new board under this section.

[Section 301 inserted: No. 34 of 2023 s. 82.]

302. Membership of Executive, Finance and Property Committee

(1) In this section —

committee means the Executive, Finance and Property Committee established under Schedule 2 clause 3;

existing member means a person who, immediately before reconstitution day, is a member of the committee;

new Schedule 2 clause 3(2) means Schedule 2 clause 3(2) as to be inserted by section 48 of the 2023 amendment Act.

(2) Before reconstitution day, the new board may, as if new Schedule 2 clause 3(2) were in force, exercise the Commission's powers under new Schedule 2 clause 3(2) to appoint persons to take office as members of the committee on reconstitution day.

(3) All existing members go out of office at the beginning of reconstitution day.

(4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

[Section 302 inserted: No. 34 of 2023 s. 82.]

303. Membership of Statutory Planning Committee

(1) In this section —

committee means the Statutory Planning Committee established under Schedule 2 clause 4;

existing member means a person who, immediately before reconstitution day, is a member of the committee;

new Schedule 2 clause 4(2) means Schedule 2 clause 4(2) as to be inserted by section 49 of the 2023 amendment Act.

(2) Before reconstitution day, the new board may, as if new Schedule 2 clause 4(2) were in force, exercise the Commission's powers under new Schedule 2 clause 4(2) to appoint persons to take office as members of the committee on reconstitution day.

(3) All existing members go out of office at the beginning of reconstitution day.

(4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

[Section 303 inserted: No. 34 of 2023 s. 82.]

304. Membership of Swan Valley Statutory Planning Committee

(1) In this section —

amended section 33(2) means the *Swan Valley Planning Act 2020* section 33(2) as to be amended by section 54 of the 2023 amendment Act;

committee means the Swan Valley Statutory Planning Committee established under the *Swan Valley Planning Act 2020* section 33(1);

relevant existing member means a person who, immediately before reconstitution day, is a member of the committee under the *Swan Valley Planning Act 2020* section 33(2)(a) or (b).

(2) Before reconstitution day, the new board may, as if amended section 33(2) were in force, exercise the Commission's powers under paragraph (b) of amended section 33(2) to appoint persons to take office as members of the committee on reconstitution day.

(3) All relevant existing members go out of office at the beginning of reconstitution day.

(4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

[Section 304 inserted: No. 34 of 2023 s. 82.]

305. Other continuing committees

(1) In this section —

committee means a committee that is in place under Schedule 2 clause 1(1) immediately before reconstitution day;

existing member has the meaning given in section 300(1);

new Schedule 2 clause 1(1) means Schedule 2 clause 1(1) as to be inserted by section 46 of the 2023 amendment Act.

(2) The replacement of Schedule 2 clause 1(1) by section 46 of the 2023 amendment Act does not, of itself, affect the existence or membership of a committee.

(3) Before reconstitution day, the new board may, as if new Schedule 2 clause 1(1) were in force, exercise the Commission's powers under new Schedule 2 clause 1(1) to appoint members of the new board to take office as members of a committee on reconstitution day.

(4) An existing member who, immediately before reconstitution day, is also a member of a committee goes out of office as a member of the committee at the beginning of reconstitution day.

(5) Subsection (4) does not prevent a person who will go out of office under that subsection from being appointed under subsection (3).

[Section 305 inserted: No. 34 of 2023 s. 82.]

306. Board of management of Metropolitan Redevelopment Authority

(1) In this section —

board of management means the board of management established under section 76(1) of the MRA Act;

existing nominated member means the person who, immediately before reconstitution day, is the member of the board of management under section 77(1)(a) of the MRA Act;

MRA Act means the *Metropolitan Redevelopment Authority Act 2011*.

(2) Before reconstitution day, the new board may exercise the Commission's power under section 77(1)(a) of the MRA Act to

nominate a member of the new board to be a member of the board of management.

(3) If the new board nominates a person under subsection (2), the Minister may, before reconstitution day, appoint the nominated person to take office as the member of the board of management under section 77(1)(a) of the MRA Act on reconstitution day.

(4) The existing nominated member goes out of office at the beginning of reconstitution day.

(5) Subsection (4) does not prevent the person who will go out of office under that subsection from being nominated under subsection (2) and appointed under subsection (3).

[Section 306 inserted: No. 34 of 2023 s. 82.]

307. Certain committees abolished

(1) In this section —

committee means a committee that was established before reconstitution day under Schedule 2 clause 5, 7, 8 or 9 (as in force before reconstitution day).

(2) At the beginning of reconstitution day, all committees are abolished (and their members go out of office).

[Section 307 inserted: No. 34 of 2023 s. 82.]

Subdivision 4 — Consolidation of planning schemes

[Heading inserted: No. 34 of 2023 s. 82.]

308. Term used: repeal day

In this Subdivision —

repeal day means the day on which Part 9 of the 2023 amendment Act comes into operation.

[Section 308 inserted: No. 34 of 2023 s. 82.]

309. Proof of consolidation of region planning scheme

(1) In this section —

repealed section 66(2) means section 66(2) as in force immediately before repeal day.

(2) This section applies if, immediately before repeal day, repealed section 66(2) applies to a consolidation.

(3) Repealed section 66(2) continues to apply to the consolidation on and after repeal day as if section 62 of the 2023 amendment Act had not come into operation.

[Section 309 inserted: No. 34 of 2023 s. 82.]

310. Proof of consolidation of local planning scheme

(1) In this section —

repealed section 93 means section 93 as in force immediately before repeal day.

(2) This section applies if, immediately before repeal day, repealed section 93 applies to a consolidation.

(3) Repealed section 93 continues to apply to the consolidation on and after repeal day as if section 63 of the 2023 amendment Act had not come into operation.

[Section 310 inserted: No. 34 of 2023 s. 82.]

311. Application of amended s. 138(3)(a) and 171R(1)(b)(ii) in relation to previous review of local planning scheme

(1) In this section —

amended section 138(3)(a) means section 138(3)(a) as in force on repeal day;

amended section 171R(1)(b)(ii) means section 171R(1)(b)(ii) as in force on repeal day.

(2) For the purposes of the application on and after repeal day of amended section 138(3)(a) and amended section 171R(1)(b)(ii) in relation to a local planning scheme, a report on a review of the local planning scheme is taken to have been approved under section 132C(2) or (4) in the preceding 10 years if, in the preceding 10 years, the Commission made a decision in relation to a report of a review of the local planning scheme under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 67(1)(a) (as in force before repeal day).

[Section 311 inserted: No. 34 of 2023 s. 82.]

Subdivision 5 — Reviews of planning decisions

[Heading inserted: No. 34 of 2023 s. 82.]

312. Applications made to State Administrative Tribunal

The amendment made by section 78 of the 2023 amendment Act does not apply to applications made to the State Administrative Tribunal before the day on which that section comes into operation.

[Section 312 inserted: No. 34 of 2023 s. 82.]

Subdivision 6 — Regulations

[Heading inserted: No. 34 of 2023 s. 82.]

313. Transitional regulations

(1) In this section —

specified means specified or described in regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act, or to any other written law, made by the 2023 amendment Act; and

(b) includes a saving or application matter.

(2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.

(3) Without limiting subsection (2), regulations made for the purposes of that subsection may provide that specified provisions of this Act or any other written law —

(a) do not apply to, or in relation to, a specified matter or thing; or

(b) apply with specified modifications to, or in relation to, a specified matter or thing.

(4) If regulations made for the purposes of subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which Part 12 of the 2023 amendment Act comes into operation, the regulations have effect according to their terms.

(5) If regulations made for the purposes of subsection (2) contain a provision of a kind described in subsection (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 313 inserted: No. 34 of 2023 s. 82.]

[Schedule 1 deleted: No. 34 of 2023 s. 45.]

Schedule 2 — Committees

[s. 19]

1. General provisions as to committees

(1) In addition to the committees of the Commission established under clauses 3 and 4 and the *Swan Valley Planning Act 2020* section 33, the Commission may from time to time establish other committees of the Commission.

(2) Subject to this Schedule and the *Swan Valley Planning Act 2020*, the Commission may —

(a) prescribe the constitution of a committee;

(b) authorise a committee to establish a subcommittee;

(c) appoint —

(i) members; or

(ii) members and other persons; or

(iii) persons other than members,

to be members of a committee;

(d) discharge, alter or reconstitute a committee.

[(3), (4) deleted]

(5) The Commission may give directions to a committee with respect to the performance of its functions, either generally or with respect to a particular matter, and the committee is to give effect to those directions.

(6) Subject to the directions of the Commission and to the terms of any delegation under section 16 or the *Swan Valley Planning Act 2020* section 34, a committee may determine its own procedures.

[Clause 1 amended: No. 45 of 2020 s. 94; No. 34 of 2023 s. 46.]

*[**2.** Deleted: No. 34 of 2023 s. 47.]*

3. Executive, Finance and Property Committee

(1) The Commission is to establish a committee of the Commission to be known as the Executive, Finance and Property Committee.

(2) The Executive, Finance and Property Committee is to consist of the following persons —

(a) 2 or more members of the board appointed by the Commission;

(b) 1 or more persons appointed by the Commission with the approval of the Minister —

(i) who are not members of the board; and

(ii) who have knowledge, expertise and experience in the field of financial management;

(c) any 1 or more other persons, not being members of the board, appointed by the Commission with the approval of the Minister.

(3) The Executive, Finance and Property Committee is to perform such of the administrative, financial and property functions of the Commission under this Act or any other written law as are delegated to the Executive, Finance and Property Committee under section 16 and such other functions as are delegated to it under that section.

[Clause 3 amended: No. 34 of 2023 s. 48.]

4. Statutory Planning Committee

(1) The Commission is to establish a committee of the Commission to be known as the Statutory Planning Committee.

(2) The Statutory Planning Committee is to consist of the following persons —

(a) 2 or more members of the board appointed by the Commission;

(b) 1 or more persons appointed by the Commission with the approval of the Minister —

(i) who are not members of the board; and

(ii) who have knowledge, expertise and experience in the field of urban and regional planning;

(c) 1 or more persons, not being members of the board, appointed by the Commission with the approval of the Minister to represent the interests of local governments;

(d) any 1 or more other persons, not being members of the board, appointed by the Commission with the approval of the Minister.

[(3) deleted]

(4) The Statutory Planning Committee is to perform such of the functions of the Commission under this Act and Part 3 of the *Strata Titles Act 1985* as are delegated to the Statutory Planning Committee under section 16 and such other functions as are delegated to it under that section.

[(5) deleted]

[Clause 4 amended: No. 30 of 2018 s. 170; No. 34 of 2023 s. 49.]

*[**5-9.** Deleted: No. 34 of 2023 s. 50.]*

Schedule 3 — Metropolitan region

[s. 4]

All that portion of the State bounded by a line starting from the south-western corner of Swan Location 2745 (South Latitude 31 degrees 27 minutes 23.105 seconds, East Longitude 115 degrees 33 minutes 35.604 seconds), being a point on the northernmost northern boundary of the local government district of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the local government district of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost south-eastern corner of Location 1817, being a point on the northernmost northern boundary of the local government district of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the local government district of Mundaring to the intersection of the left bank of the Darkin River with the prolongation northerly of the western boundary of late pre-emptive Poison Right 8/228, being the easternmost north-eastern corner of the local government district of Kalamunda; thence southerly along the easternmost eastern boundary of the local government district of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the local government district of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the local government district of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the local government district of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the local government district of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office [4] Diagram 2909, being a south-eastern corner of the local government district of Rockingham; thence generally westerly along the boundaries of the local government district of Rockingham to the

south-western corner of Lot 236 as shown on Land Titles Office Plan 7931(2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes 30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees 27 minutes 23.105 seconds and thence east 148 metres to the starting point.

[Schedule 3 amended: No. 60 of 2006 s. 147(8).]

Schedule 4 — Other regions

[s. 4]

[Heading amended: No. 34 of 2023 s. 51.]

Item	*Region*
1.	**Gascoyne Region** The districts of Carnarvon, Exmouth, Shark Bay and Upper Gascoyne.
2.	**Goldfields-Esperance Region** The districts of Kalgoorlie-Boulder, Coolgardie, Dundas, Esperance, Laverton, Leonora, Menzies, Ngaanyatjarraku and Ravensthorpe.
3.	**Great Southern Region** The districts of Albany (Town), Albany (Shire), Broomehill, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet, Tambellup and Woodanilling.
4.	**Kimberley Region** The districts of Broome, Derby-West Kimberley, Hall's Creek and Wyndham-East Kimberley.
5.	**Mid West Region** The districts of Geraldton, Carnamah, Chapman Valley, Coorow, Cue, Greenough, Irwin, Meekatharra, Mingenew, Morawa, Mount Magnet, Mullewa, Murchison, Northampton, Perenjori, Sandstone, Three Springs, Wiluna and Yalgoo.
6.	**Peel Region** The districts of Mandurah, Boddington, Murray and Waroona.
7.	**Pilbara Region** The districts of Port Hedland, Ashburton, East Pilbara and Roebourne [5].

8. South West Region

The districts of Bunbury, Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup and Nannup.

9. Wheatbelt Region

The districts of Narrogin (Town), Northam (Town), Beverley, Brookton, Bruce Rock, Chittering, Corrigin, Cuballing, Cunderdin, Dandaragan, Dalwallinu, Dowerin, Dumbleyung, Gingin, Goomalling, Kellerberrin, Kondinin, Koorda, Kulin, Lake Grace, Merredin, Moora, Mount Marshall, Mukinbudin, Narambeen, Narrogin (Shire), Northam (Shire), Nungarin, Pingelly, Quairading, Tammin, Toodyay, Trayning, Victoria Plains, Wagin, Wandering, West Arthur, Westonia, Wickepin, Williams, Wongan-Ballidu, Wyalkatchem, Yilgarn and York.

Schedule 5 — Local governments — metropolitan region

[Sch. 2, cl. 9(1)(b)]

1. SOUTH-WEST GROUP

City of Cockburn

City of Fremantle

City of Melville

City of Rockingham

Town of East Fremantle

Town of Kwinana

2. WESTERN SUBURBS GROUP

City of Nedlands

City of Subiaco

Town of Cambridge

Town of Claremont

Town of Cottesloe

Town of Mosman Park

Shire of Peppermint Grove

3. NORTH-WEST GROUP

City of Stirling

City of Wanneroo

Town of Vincent [6]

City of Joondalup

4. SOUTH-EAST GROUP

City of Armadale

City of Canning

City of Gosnells

City of South Perth

Town of Victoria Park

Shire of Serpentine-Jarrahdale

5. EASTERN GROUP

City of Bayswater

Town of Bassendean

City of Belmont

Shire of Kalamunda

Shire of Mundaring

City of Swan

Schedule 6 — Planning control areas: purposes for which land may be required

[s. 112(1)]

Item	Purpose
1.	Car parks
2.	Civic and cultural amenity
3.	Commonwealth Government
4.	Cultural heritage conservation
5.	Highways, important regional roads and other roads that are necessary because of highways or important regional roads
6.	Hospitals
7.	Parks and recreation areas
8.	Port installations
9.	Power services, including electricity and gas supply
10.	Prisons
11.	Public purpose of the State
12.	Railways
13.	Schools
14.	Special uses
15.	State forests
16.	Universities
17.	Water catchments
18.	Water services, including sewerage and drainage
19.	Waterways
20.	Public transport

[Schedule 6 amended: No. 26 of 2020 s. 103.]

Schedule 7 — Matters which may be dealt with by planning scheme

[s. 69, 256(1)]

1. Generality preserved

The mention of a particular matter in this Schedule does not prejudice or affect the generality of any other matter.

2. Subdivision

(1) The subdivision of land generally.

(2) The submission of plans.

(3) The control of any activity, development or work arising as a consequence of subdivision.

3. Reconstruction

(1) The reconstruction of the scheme area, or any part of the scheme area, generally.

(2) In relation to the reconstruction —

(a) the pooling of the lands of several owners, or any land or roads adjacent or near to the land;

(b) re-planning by re-subdivision, readjustment of boundaries, adjustment of rights, exchanges of land, cancellation of subdivisions and vesting.

4. Preservation and conservation

(1) The preservation of places and objects of cultural heritage significance, including control of the demolition and alteration of any building, structure or works.

(2) The conservation of the natural environment of the scheme area including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological processes and genetic diversity.

(3) The conservation of water.

5. Roads, public works, community infrastructure, reservation of land, provision of facilities

(1) Roads, intersections, corners and all objects, works, trees or shrubs associated with, constructed or located on, below or adjacent to roads, intersections and corners.

(2) Public works and undertakings of any kind including lighting, water, sewerage, drainage, public transport and associated facilities on land and water.

(2A) Community infrastructure, including community centres, libraries, schools and other educational facilities, child care centres (including outside school hours care services) and sporting facilities.

(3) The reservation of land for public purposes.

(4) The provision and location of public facilities and conveniences and any other objects or works on the land.

(5) The designation of classes or kinds of development as public work.

[Clause 5 amended: No. 26 of 2020 s. 13 and 88(1).]

6. Zoning

(1) Zoning of the scheme area for appropriate purposes.

(2) Designation of uses in zones as permitted, prohibited or requiring approval.

7. Controls for land management

Controls for land or site management for matters to which this Act relates.

8. Development standards

Standards for the development of any class or kind of building, structure, work or advertisement including standards in respect of —

(a) size;

(b) appearance;

(c) placement;

(d) location;

(e) number;
(f) landscaping;
(g) open space;
(h) parking;
(i) measures to maximise energy efficiency;
(j) any other activity or requirement arising from the development.

9. Development controls

Approval, refusal or approval subject to conditions of any use or class or kind of development by a consideration of any matter to which the Act relates including the public interest.

10. Acquisition and purchase of land

Acquisition or purchase of land or buildings and any step necessary to give effect to the acquisition or purchase.

11. Powers

(1) The extinguishment or variation of any restrictive covenant, easement or right of way.

(2) Powers of entry and inspection.

(3) Powers to remove, alter, or demolish any building which obstructs the observance or carrying out of the scheme.

(4) Powers to recover expenses incurred or to be incurred in implementing, enforcing and giving effect to the scheme.

(5) The financial management of any expenses recovered as referred to in subclause (4).

[Clause 11 amended: No. 26 of 2020 s. 88(2).]

12. Agreements and cooperation

(1) Agreements and cooperation between the responsible authority and the owners of land.

(2) Agreements and cooperation between the responsible authority and public, statutory or responsible authority.

(3) Agreements and cooperation between owners of land.

13. Carrying out scheme

(1) The carrying out of the scheme.

(2) The limitation of time for the operation of a scheme, any provision of the scheme or works ancillary to the scheme.

(3) The responsibilities of any persons or authorities to which the scheme relates.

(4) Requiring or permitting the preparation and approval of documents ancillary to the carrying out of a scheme.

[Clause 13 amended: No. 28 of 2010 s. 68; No. 34 of 2023 s. 79.]

14. Review by SAT

Where a discretionary power is vested by the scheme in the responsible authority, the conferral on a person aggrieved by the exercise of the power of a right to apply to the State Administrative Tribunal for a review of the exercise of the power.

15. Policies and ancillary matters

(1) Policies in respect of any matter to which the Act relates.

(1A) Requiring or permitting the preparation and approval of plans or other documents relating to the future planning or coordination of subdivision, zoning or any other matter with respect to which the scheme may make provision.

(2) Any other matter necessary or incidental to the sustainable development or use of land.

[Clause 15 amended: No. 34 of 2023 s. 80.]

Schedule 8 — Matters for which local laws may be made by Governor

[s. 262(1)]

1. Purchase and reservation of land

Purchasing or reserving land for new main thoroughfares which it is desired to keep free of buildings by agreement between the owners of such land and the responsible authority or by cooperation between 2 or more local governments with regard to the lines, widths and direction of thoroughfares which connect adjacent parts of their respective areas.

2. Limiting and regulating building

Limiting the number of buildings, rooms, dwelling units or other accommodation units to the hectare generally or in any particular locality, or on any subdivision, allotment or parcel of land, particularly or generally, and the extent to which each subdivision, allotment or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience or amenity of the area to which local laws apply, and proper sanitary and hygienic conditions in connection with any buildings therein.

3. Classification and zoning

Classification or zoning reclassifying or re-zoning the area for residence, flats, trade, business, industry, commercial recreation, educational or other public or institutional purposes, and including areas for agricultural or rural use and for any other general or particular purposes whether of the same class or kind as the class or kind before enumerated or not, and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

4. Prohibiting unauthorised uses

Prohibiting any district or part of it from being used for any purpose other than that for which it has been classified.

5. Prescribing characteristics of buildings

Prescribing the height, location, purpose and dimensions or the general character of buildings to be erected or reconstructed as far as is reasonable for securing proper sanitary and hygienic conditions, convenience, or amenity of the area to which the local laws are to apply.

6. Prohibiting trade etc. or erection or use of building

Prohibiting the carrying on of any noxious trades or manufactures, or the erection or use of any buildings without adequate sanitary arrangements, or prohibiting or regulating the erection and use of buildings, advertisement hoardings, or structures for advertising purposes which are such as to be injurious to the amenity or natural beauty of the area to which the local laws are to apply.

7. Requirements of new subdivisions

(1) Prescribing and determining any requirements deemed necessary in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the area to which it is intended that the local laws are to apply, including drainage, size and shape of allotments (or separate parcels of land) and access thereto; also for the classification of and the prescribing and determining of any requirements in regard to the length or width of any road according to the use such road is likely to be put, or according to the physical features of the land, together with the design, method of construction, and completion of alignment, of any road.

(2) In this clause —

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

8. Building lines

(1) The making, fixing, altering and ascertaining of building lines irrespective of the width or alignment of any road, to secure as far as practicable, having regard to the physical features of the site and the depths of the existing subdivisions of land, that the distance between the buildings to be erected, or buildings likely to be reconstructed on the opposite sides of any road, are to be not less than that fixed by the local laws according to the prospective traffic requirements of such road, and the making, fixing and altering building lines generally and providing that buildings generally or a building of any specified class are not to be built nearer to a building line or an ocean or waterway than is prescribed in a local law.

(2) In this clause —

building line means the line between which and any public place or public reserve a building may not be erected;

road has the meaning given by clause 7(2).

9. Open space etc.

Limiting of open spaces, recreation grounds, or sites for public buildings, by purchase or agreement between owners of lands and the local government.

10. Heights of walls etc. at road corners

Limiting the height, at the corner of any road (as defined in clause 7(2)) of any wall, fence, hedge, tree, or shrub or other obstruction not being an authorised building.

11. Implementing of local laws

Providing for the authority or authorities responsible for carrying the local laws into effect and enforcing their observance.

Schedule 9 — Board of Valuers

[s. 182(5)]

1. Term used: Board

In this Schedule —

Board means the Board of Valuers established under section 182.

2. Term of office

Subject to clause 4 a member of the Board holds office for a term of 2 years and is eligible for reappointment.

3. Constitution of Board

The Board is constituted by the chairperson of the Board and any 2 other members of the Board and may meet despite there being a vacancy on the Board.

4. Resignation or removal from office

(1) A member of the Board may resign by written notice.

(2) The Governor may remove a member of the Board from office if the member —

(a) misbehaves or is incompetent; or

(b) is suffering from a permanent physical or mental incapacity that impairs the performance of the member's functions.

5. Remuneration of members

(1) The members of the Board are entitled to such fees and expenses, in respect of attendances at meetings of, or while engaged in the business of, the Board, as the Minister may from time to time determine.

(2) In determining under subclause (1) fees to which members of the Board are entitled while engaged in the business of the Board, the Minister may adopt —

(a) wholly or in part; and

(b) with or without alteration,

all or any of the maximum amounts of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted are to be taken to be fees determined under subclause (1) as fees to which the members of the Board are entitled while engaged in the business of the Board.

(3) An adoption made under subclause (2) may be made by reference to the citation of the relevant notice published in the *Gazette* under section 25 of the *Land Valuers Licensing Act 1978* and to any provisions of that notice, and it is not necessary to set out in the relevant determination made under subclause (1) the full text of that notice or of any provision of the notice.

Notes

This is a compilation of the *Planning and Development Act 2005* and includes amendments made by other written laws [7, 8, 9]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Planning and Development Act 2005	37 of 2005	12 Dec 2005	s. 1 and 2: 12 Dec 2005; Act other than s. 1, 2, 149, 150 and Pt. 13 Div. 3: 9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1077); s. 150 and Pt. 13 Div. 3: 1 Jul 2009 (see s. 2 and *Gazette* 19 Jun 2009 p. 2225)
Swan Valley Planning Legislation Amendment Act 2006 s. 20(3)	7 of 2006	19 Apr 2006	18 Jun 2006 (see s. 2 and *Gazette* 16 Jun 2006 p. 2109)
Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 s. 6	52 of 2006	6 Oct 2006	25 Sep 2007 (see s. 2 and *Gazette* 25 Sep 2007 p. 4835)
Land Information Authority Act 2006 s. 147	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and *Gazette* 8 Dec 2006 p. 5369)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 127	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Reprint 1: The *Planning and Development Act 2005* as at 23 Nov 2007 (includes amendments listed above except those in the *Planning and Development Act 2005* s. 149, 150 and Pt. 13 Div. 3)			
Acts Amendment (Justice) Act 2008 Pt. 18	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Legal Profession Act 2008 s. 690	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 100	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 8	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)
Approvals and Related Reforms (No. 4) (Planning) Act 2010 Pt. 2 Div. 1, Pt. 3, 4 and Pt. 5 Div. 1 [10]	28 of 2010 (as amended by No. 45 of 2011 s. 135)	19 Aug 2010	Pt. 2 Div. 1, Pt. 4 and Pt. 5 Div. 1: 22 Nov 2010 (see s. 2(b) and *Gazette* 19 Nov 2010 p. 5709); Pt. 3: 25 Mar 2011 (see s. 2(b) and *Gazette* 24 Mar 2011 p. 1035)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Reprint 2: The *Planning and Development Act 2005* as at 18 Feb 2011 (includes amendments listed above except those in the *Approvals and Related Reforms (No. 4) (Planning) Act 2010* Pt. 3)			
Heritage and Planning Legislation Amendment Act 2011 Pt. 3	4 of 2011	2 Mar 2011	3 Mar 2011 (see s. 2(b))
Building Act 2011 s. 168	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and *Gazette* 13 Mar 2012 p. 1033)
Metropolitan Redevelopment Authority Act 2011 s. 141	45 of 2011	12 Oct 2011	31 Dec 2011 (see s. 2(b) and *Gazette* 30 Dec 2011 p. 5573)
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 41	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Commercial Arbitration Act 2012 s. 45 it. 16	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and *Gazette* 6 Aug 2013 p. 3677)
Water Services Legislation Amendment and Repeal Act 2012 s. 222	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Reprint 3: The *Planning and Development Act 2005* as at 1 Mar 2013 (includes amendments listed above except those in the *Commercial Arbitration Act 2012*, *Water Services Legislation Amendment and Repeal Act 2012* and the *Road Traffic Legislation Amendment Act 2012*)			

Short title	Number and year	Assent	Commencement
Associations Incorporation Act 2015 s. 226	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and *Gazette* 24 Jun 2016 p. 2291-2)
Reprint 4: The *Planning and Development Act 2005* as at 1 Apr 2016 (includes amendments listed above except those in the *Associations Incorporation Act 2015*)			
Heritage Act 2018 s. 186	22 of 2018	18 Sep 2018	1 Jul 2019 (see s. 2(b) and *Gazette* 27 Jun 2019 p. 2375)
Infrastructure Western Australia Act 2019 s. 76	13 of 2019	24 Jun 2019	24 Jul 2019 (see s. 2(c))
Strata Titles Amendment Act 2018 Pt. 3 Div. 14	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Community Titles Act 2018 Pt. 14 Div. 14 (other than s. 224-226)	32 of 2018	19 Nov 2018	30 Jun 2021 (see s. 2(b) and SL 2021/69 cl. 2)
Planning and Development Amendment Act 2020 Pt. 2-5, Pt. 6 Div. 1, Pt. 7 Div. 1, Pt. 8, 10 and 11, Pt. 12 Div. 1 and Pt. 13-17	26 of 2020 (as amended by Act No. 45 of 2020 Pt. 10 Div. 10)	7 Jul 2020	Pt. 2 and 17: 8 Jul 2020 (see s. 2(1)(c)); Pt. 4, 5, 8, 10, 11, 13, 15 and 16: 12 Sep 2020 (see s. 2(1)(b) and SL 2020/155 cl. 2); Pt. 6 Div. 1, Pt. 12 Div. 1 and Pt. 14: 1 Aug 2023 (see s. 2(1)(b) and SL 2023/107 cl. 2); Pt. 3 and Pt. 7 Div. 1: 1 Mar 2024 (see s. 2(1)(b) and SL 2024/16 cl. 2)
Swan Valley Planning Act 2020 Pt. 9	45 of 2020	9 Dec 2020	Pt. 9 (other than s. 62): 1 Aug 2021 (see s. 2(1)(d)(i) and (e) and SL 2021/124 cl. 2); s. 62: 1 Mar 2024 (see s. 2(1)(b)(ii) and SL 2024/16 cl. 2)
Aboriginal Cultural Heritage Act 2021 s. 350	27 of 2021	22 Dec 2021	1 Jul 2023 (see s. 2(e) and SL 2023/40 cl. 2(b))
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)

Short title	Number and year	Assent	Commencement
Planning and Development Amendment Act 2022	17 of 2022	24 Jun 2022	s. 1 and 2: 24 Jun 2022 (see s. 2(a)); Act other than s. 1 and 2: 25 Jun 2022 (see s. 2(b))
Land and Public Works Legislation Amendment Act 2023 Pt. 4 Div. 11	4 of 2023	24 Mar 2023	10 Aug 2023 (see s. 2(b) and SL 2023/132 cl. 2)
Aboriginal Heritage Legislation Amendment and Repeal Act 2023 s. 31	23 of 2023	24 Oct 2023	15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)
Planning and Development Amendment Act 2023 Pt. 2-4, Pt. 5 Div. 1, Pt. 6 and 7, Pt. 8 Div. 1, Pt. 10 Div. 1, Pt. 11 and 12	34 of 2023	11 Dec 2023	Pt. 4, 6 and 7, Pt. 10 Div. 1, Pt. 11 (other than s. 76) and Pt. 12: 12 Dec 2023 (see s. 2(c)); Pt. 2 and 3 and Pt. 5 Div. 1 and s. 76: 1 Mar 2024 (see s. 2(b), (d) and (e) and SL 2024/15 cl. 2 and SL 2024/16 cl. 2); Pt. 8 Div. 1: 1 Jul 2024 (see s. 2(e) and SL 2024/98 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Planning and Development Act 2005 s. 149	37 of 2005	12 Dec 2005	To be proclaimed (see s. 2)
Aquatic Resources Management Act 2016 s. 377	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
Community Titles Act 2018 s. 224-226	32 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))
Planning and Development Amendment Act 2020 Pt. 9	26 of 2020	7 Jul 2020	To be proclaimed (see s. 2(1)(b))
Planning and Development Amendment Act 2023 Pt. 9	34 of 2023	11 Dec 2023	To be proclaimed (see s. 2(e))

Short title	Number and year	Assent	Commencement
Planning and Development Amendment (Metropolitan Region Scheme) Act 2024 Pt. 3	41 of 2024	29 Oct 2024	31 Mar 2025 (see s. 2(b) and SL 2024/251 cl. 2)

Other notes

[1M] Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7, modifications to State taxing laws may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007* Pt. 4 Div. 2.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1M appearing after the provision number.

[1MC] Under the *Commonwealth Places (Mirror Taxes) Act 1998* (Commonwealth) s. 8, modifications to State taxing laws, in their application as Commonwealth laws in Commonwealth places in Western Australia, may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes) (Modifications of Applied Laws (WA)) Notice 2007* (Commonwealth) Pt. 4 Div. 2.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1MC appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1MC appearing after the provision number.

[1] Repealed by the *Land Administration Act 1997*.

[2] Repealed by the *Mining Act 1978*.

[3] Now known as the *Local Government (Miscellaneous Provisions) Act 1960*. Section 248 was repealed by the *Local Government Act 1995* s. 9.70.

[4] Lands Titles Office diagrams are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

[5] Now district of Karratha.

[6] Now City of Vincent.

[7] The *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 3, s. 4, Sch. 1, Pt. 3 and 4 read as follows:

3. Interpretation

In this Act —

commencement day means the day on which this section comes into operation;

existing Commission means the Commission established under the WAPC Act;

MRTPS Act means the *Metropolitan Region Town Planning Scheme Act 1959*;

PD Act means the *Planning and Development Act 2005*;

TPD Act means the *Town Planning and Development Act 1928*;

WAPC Act means the *Western Australian Planning Commission Act 1985*.

4. Acts in Schedule 1 repealed

The Acts mentioned in Schedule 1 are repealed.

Schedule 1 — Acts repealed

[s. 4]

Metropolitan Region Town Planning Scheme Act 1959

Town Planning and Development Act 1928

Western Australian Planning Commission Act 1985

Part 3 — Transitional and saving provisions

Division 1 — Preliminary

17. Application of *Interpretation Act 1984*

(1) The provisions of the *Interpretation Act 1984* (for example, sections 16(1), 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the repeal of an Act mentioned in Schedule 1 as if that Act were repealed and re-enacted by the PD Act.

(2) The other provisions of this Act are additional to the provisions applied by subsection (1) and except in the case of section 14(3) and (4) do not affect the operation of the provisions applied by subsection (1).

18. Transitional regulations

(1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(2) In subsection (1) —

transitional matter means a matter that needs to be dealt with for the purpose of —

(a) effecting the transition from the provisions of the Acts repealed by this Act to the provisions of the PD Act; or

(b) effecting the transition from the provisions of an Act amended by a provision of this Act (the ***amending provision***) as in force before this Act comes into operation to the provisions of that Act as in force after the amending provision comes into operation.

(3) Regulations made under subsection (1) may provide that specified provisions of the PD Act as in force on or after the commencement of that Act, or of subsidiary legislation made under that Act, or of an Act amended by this Act —

(a) do not apply; or

(b) apply with specified modifications,

to or in relation to any matter.

(4) If regulations under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

(5) In subsections (3) and (4) —

specified means specified or described in the regulations.

(6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or

(b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

19. Construction of references in written laws

(1) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of the PD Act.

(2) A reference in a written law to a town planning scheme may, where the context so requires, be read as if it had been amended to include or be a reference to a local planning scheme under the PD Act.

(3) A reference in a written law to a regional planning scheme under the WAPC Act may, where the context so requires, be read as if it had been amended to include or be a reference to a region planning scheme under the PD Act.

(4) A reference in a written law to a statement of planning policy may, where the context so requires, be read as if it had been amended to include or be a reference to a State planning policy under the PD Act.

Division 2 — Continuation of various bodies, memberships and appointments

20. WAPC continues

(1) The Western Australian Planning Commission established under the PD Act is a continuation of and the same legal entity as the Western Australian Planning Commission established under the WAPC Act, with the same rights and obligations as the existing Commission.

(2) If in a written law or other document or instrument there is —

(a) a reference to the existing Commission; or

(b) a reference that is read and construed as a reference to the existing Commission,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the Commission established under the PD Act.

21. Membership of Commission

(1) The persons who were members and deputy members of the existing Commission (including the chairperson and deputy chairperson) immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the chairperson, deputy chairperson, members and deputy members of the board of the Commission established under the PD Act.

(2) A person to whom subsection (1) applies is to be regarded as having been appointed under the PD Act.

(3) If in a written law or other document or instrument there is —

(a) a reference to the chairperson or a member of the existing Commission; or

(b) a reference that is read and construed as a reference to the chairperson or a member of the existing Commission,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the chairperson or a member of the board of the Commission established under the PD Act.

22. Staff

(1) People who were engaged by the existing Commission immediately before the commencement of the PD Act continue, under and subject to that Act, as officers of the Commission.

(2) A person mentioned in subsection (1) is to be regarded as having been engaged under the PD Act.

(3) Except as otherwise agreed by the officer of the Commission, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of an officer of the existing Commission are not affected, prejudiced or interrupted by the operation of subsection (1) or the repeal of the WAPC Act.

(4) The rights under a superannuation scheme of a person who was an officer of the existing Commission are not affected, prejudiced or interrupted by the repeal of the WAPC Act.

23. Committees

(1) In this section —

existing committee means —

(a) the Executive, Finance and Property Committee established under the WAPC Act;

(b) the Statutory Planning Committee established under the WAPC Act;

(c) the Infrastructure Coordinating Committee established under the WAPC Act;

(d) the Coastal Planning and Coordination Council established under the WAPC Act;

(e) any regional planning committee established under the WAPC Act; and

(f) any District Planning Committee established under the MRTPS Act.

(2) A committee established under the PD Act is a continuation of and the same legal entity as the existing committee of the same name established under the WAPC or MRTPS Act with the same rights and obligations as the existing committee.

(3) The Sustainable Transport Committee established under the PD Act is a continuation of and the same legal entity as the Transport Committee established under the WAPC Act with the same rights and obligations as the existing committee.

(4) If in a written law or other document or instrument there is a reference to an existing committee, the reference may, where the context so requires, be read as if it had been amended to be a reference to the committee of the same name established under the PD Act.

(5) If in a written law or other document or instrument there is a reference to the Transport Committee, the reference may, where the context so requires, be read as if it had been amended to be a reference to the Sustainable Transport Committee established under the PD Act.

(6) The persons who were members of an existing committee immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the committee of the same name established under the PD Act.

(7) The persons who were members of the Transport Committee immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the Sustainable Transport Committee established under the PD Act.

24. Board of Valuers

(1) In this section —

existing Board means the Board of Valuers established under the MRTPS Act.

(2) The Board of Valuers established under the PD Act is a continuation of and the same legal entity as the existing Board with the same rights and obligations as the existing Board.

(3) If in a written law or other document or instrument there is a reference to the existing Board, the reference may, where the context so requires, be read as if it had been amended to be a reference to the Board of Valuers established under the PD Act.

(4) The persons who were members of the existing Board immediately before the commencement of the PD Act continue in office, under and subject to that Act, as the members of the Board of Valuers established under the PD Act.

Division 3 — Transitional provisions

25. Subsidiary legislation and fees

(1) Regulations made under —

(a) section 8 of the TPD Act or section 26 of the MRTPS Act continue in force as if they were made under section 256 of the PD Act;

(b) section 9(1) of the TPD Act continue in force as if they were made under section 258 of the PD Act;

(c) section 9(2b) of the TPD Act continue in force as if they were made under section 259 of the PD Act;

(d) section 33B of the TPD Act continue in force as if they were made under section 261 of the PD Act;

(e) section 44 of the MRTPS Act, section 58 of the WAPC Act or section 27A(5) or 34 of the TPD Act continue in force as if they were made under section 263 of the PD Act,

and may be amended or repealed accordingly.

(2) Local laws made under section 31 of the TPD Act continue in force as if they were made under section 262 of the PD Act and may be amended or repealed accordingly.

(3) Fees prescribed under section 29 of the TPD Act continue, until fees are set under section 20 of the PD Act, to be chargeable and payable as if the fees were set under section 20 of the PD Act.

26. Planning schemes in course of preparation

Any planning scheme that, on the commencement day, is being prepared under the TPD Act or the WAPC Act may continue to be prepared as if the steps taken under that Act were taken under the PD Act.

27. Caveats

(1) A caveat lodged under section 36 of the MRTPS Act or section 35 or 36 of the WAPC Act but not registered before the commencement day may be registered under section 180 or 181 of the PD Act, as the case requires, as if it were a notification under that section of the PD Act.

(2) A caveat —

(a) registered under section 36 of the MRTPS Act or section 35 or 36 of the WAPC Act; and

(b) subsisting immediately before the commencement day,

is taken to be a notification registered under section 180 or 181 of the PD Act, as the case requires.

Division 4 — Other savings

28. Section 9(4) and (5) TPD Act

The repeal of section 9(4) and (5) of the TPD Act does not affect the validity of any town planning scheme, amendment to a town planning scheme, act or thing referred to in section 9(4) of the TPD Act, and those subsections continue to apply in relation to those schemes, amendments, acts and things as if the subsections had not been repealed.

29. Section 28A(5) TPD Act

Section 28A(5) of the TPD Act continues to apply in relation to liability and matters referred to in that subsection as if section 28A had not been repealed.

30. Section 37A(4a) MRTPS Act

The repeal of section 37A(4a) of the MRTPS Act does not affect the validity of any agreement, act, matter or thing referred to in that subsection, and that subsection continues to apply in relation to those agreements, acts, matters and things as if the subsection had not been repealed.

Part 4 — Validation provision

31. Validation of certain endorsed approvals

Any approval of the Commission endorsed on a diagram or plan of survey of a stage of a subdivision under the *Town Planning and Development Act 1928* before the coming into operation of this section is taken to be, and always to have been, as valid and effective as it would have been if section 145 of the *Planning and Development Act 2005* had been in operation at the time of the endorsement and the approval had been endorsed under that section.

[8] Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1)

of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*.

9 Under the *Commonwealth Places (Mirror Taxes) Act 1998* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*.

10 The *Approvals and Related Reforms (No. 4) (Planning) Act 2010* s. 56(4) is a transitional provision that is of no further effect.

Defined terms

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

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