

METROPOLITAN REGION TOWN PLANNING SCHEME ACT 1959-1982.

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Approved for reprint 20 February 1984.

WESTERN AUSTRALIA.

METROPOLITAN REGION TOWN PLANNING SCHEME.

8 Elizabeth II., No. LXXVIII.

No. 78 of 1959.

(Affected by Act Nos. 47 of 1902, 56 of 1964,¹ 113 of 1965,² and 60 of 1966.)

[As amended by Acts:

No. 39 of 1960, assented to 3 November 1960;
No. 44 of 1962,³ assented to 1 November 1962;
No. 29 of 1963, assented to 13 November 1963;
No. 7 of 1965, assented to 15 September 1965;
No. 95 of 1965, assented to 8 December 1965;
No. 84 of 1966,⁴ assented to 12 December 1966;
No. 62 of 1968,⁵ assented to 13 November 1968;
No. 69 of 1968,⁶ assented to 18 November 1968;
No. 104 of 1969, assented to 25 November 1969;
No. 7 of 1970, assented to 29 April 1970;
No. 21 of 1970,⁷ assented to 8 May 1970;
No. 103 of 1973, assented to 28 December 1973;
No. 12 of 1974, assented to 27 September 1974;
No. 80 of 1975, assented to 17 November 1975;
No. 8 of 1976,⁸ assented to 27 May 1976;
No. 115 of 1979,⁹ assented to 21 December 1979;
No. 30 of 1980, assented to 28 October 1980;
No. 73 of 1980, assented to 26 November 1980;
No. 78 of 1980,¹⁰ assented to 5 December 1980;
No. 79 of 1981,¹¹ assented to 9 November 1981;
No. 73 of 1982, assented to 29 October 1982,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

¹ Clean Air Act 1964.

² Decimal Currency Act 1965.

³ Came into operation on 16 August 1963. See *Government Gazette* 16/8/63, p. 2377.

⁴ Came into operation on 31 March 1967. See *Government Gazette* 31/3/67, p. 629.

(Except section 3 which operated from 19/6/67.)

⁵ Came into operation on 14 January 1969. See *Government Gazette* 14/1/69, p. 154.

⁶ Deemed to have operated from 19 February 1960, i.e. same date as the principal Act. See s. 2 of Act 69 of 1968.

⁷ Came into operation on 1 July 1970. See *Government Gazette* 26/6/70, p. 1831.

⁸ Operative from 1 July 1976. See s. 2 of Act No. 3 of 1976.

⁹ Came into operation on 15 February 1980. See *Government Gazette* 15/2/80, p. 457.

¹⁰ Environmental Protection Amendment Act 1980. Came into operation on 30 January 1981. See *Government Gazette* 30/1/81, p. 441.

¹¹ Came into operation on 18 December 1981. See *Government Gazette* 18/12/81, p. 5166.

Metropolitan Region Town Planning Scheme.

AN ACT to provide for and relating to the Planning and Development of land within the Metropolitan Region, for the purposes of constituting the Metropolitan Region Planning Authority, to regulate the assessment of a Metropolitan Improvement Tax and for incidental and other purposes.

[Assented to 14 December 1959.]

BE it enacted—

PART I.—PRELIMINARY.

Short title. 1. This Act may be cited as the *Metropolitan Region Town Planning Scheme Act 1959-1982*.

Commence-
ment. 2. (1) This Act shall come into operation on a day to be fixed by proclamation.¹

(2) It shall not be necessary to proclaim that the whole Act shall commence on one day, but the several Parts and sections may be proclaimed to commence on such days as are respectively fixed by proclamation.

Construction. 3. This Act shall be construed in conjunction with the Town Planning Act, as if the provisions of this Act were incorporated with and formed part of that Act, but where the provisions of this Act are in conflict or are inconsistent with the provisions of that Act, the provisions of this Act prevail to the extent to which they are so in conflict or inconsistent.

[Section 4 repealed by No. 73 of 1982, s. 3.]

Application
of this Act. 5. (1) The provisions of this Act apply only to the metropolitan region.

¹ Came into operation on 19 February 1960. See *Government Gazette* 19/2/60, p. 412.

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

6. In this Act, unless the context requires otherwise—

Interpre-
tation.
Amended by
No. 115 of
1979, s. 3;
No. 79 of
1981, s. 5;
No. 73 of
1982, s. 4.

“Authority” means The Metropolitan Region Planning Authority constituted under this Act;

“Chairman” means the person holding or acting in the office of Chairman of the Authority;

“functions” includes powers and duties;

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

“member” means a person appointed to be a member of the Authority and includes the Chairman of the Authority;

“metropolitan region” means the region described in the Third Schedule to this Act;

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

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

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- (d) a subsequent scheme that has the force of law and any such subsequent scheme as varied or amplified by any amendment that has the force of law;

“order” means an interim development order made under section seven A of the Town Planning Act¹;

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

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

PART II.—METROPOLITAN REGION PLANNING
AUTHORITY AND DISTRICT PLANNING COMMITTEES.

The Metro-
politan
Region
Planning
Authority.
Amended by
No. 84 of
1966, s. 32;
No. 103 of
1973, s. 2;
No. 80 of
1975, s. 2;
No. 78 of
1980, s. 26.

7. (1) For the purposes of this Act, an authority having the functions prescribed by this Act is constituted as provided in this section.

(2) The name of the authority is The Metropolitan Region Planning Authority.

(3) Thirteen members including the Chairman, each appointed in accordance with the provisions of this Act, constitute the Authority.

(4) Subject to the provisions of section eight of this Act, the members shall be—

- (a) the Chairman of the Authority appointed by the Governor;
- (b) five members, each one appointed by the Governor;

¹ Repealed by Act No. 120 of 1982, s. 5.

² Operated from commencement of Act 91 of 1966, i.e., 19/6/67.

- (c) a member being a mayor or councillor of the Municipality of The City of Perth who is nominated for appointment as a member by the Council of the Municipality and appointed by the Governor;
- (d) four members each representing one of the groups of local authorities in the First Schedule to this Act, who shall be a mayor, councillor or member as the case may be of one of the local authorities set out in the group which he represents;
- (e) the Co-ordinator General of Transport constituted under the State Transport Co-ordination Act 1981, by virtue of his office; and
- (f) the Director of Conservation and Environment appointed under the Environmental Protection Act 1971, by virtue of his office.

8. (1) Each of the four members referred to in paragraph (d) of subsection (4) of section seven of this Act shall be appointed by the Governor from a panel of the names of three persons nominated by the appropriate District Planning Committee constituted under the provisions of section twenty-three of this Act.

Appointment
of certain
members.

(2) The Minister shall by notice in writing invite each of the District Planning Committees to furnish the Governor within a time stipulated in the notice, being not less than twenty-one days from the giving of the notice, with a panel of the names of three persons nominated by the Committee for appointment and willing to accept office as member representing the group of local authorities from which the District Planning Committee is formed.

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(3) Where a District Planning Committee fails to so furnish the panel of names within the stipulated time as provided in subsection (2) of this section, the Governor shall appoint such person, having the necessary qualifications, as he thinks fit to represent the group from which a panel of names has not been received.

Authority
body
corporate.

9. (1) The Minister shall cause notice of appointments to the respective offices of members of the Authority to be published in the *Gazette*.

(2) By the publication of the first appointments the Authority is constituted a body corporate with perpetual succession and a common seal and is capable in its corporate name of acquiring, holding, leasing, exchanging, mortgaging and disposing of real and personal property and of suing and being sued and of doing or suffering all such other acts and things as bodies corporate may by law do and suffer.

(3) All Courts and Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and presume that it was duly affixed.

Appointment
to offices.

10. (1) Power to make the first appointments of persons to fill the offices of members, including that of Chairman, and to make subsequent appointments of persons to fill vacancies as they occur in those offices, is conferred on the Governor and is exercisable in accordance with the provisions of this Act.

(2) A person is not eligible for appointment and shall not be appointed to or hold office as member—

- (a) if he is bankrupt;
- (b) if within six years, he has as a bankrupt debtor, taken advantage of protection or relief under any law for the protection of bankrupt debtors;

- (c) if through mental or physical infirmity or sickness he would, if appointed, be unable satisfactorily to carry out the duties and perform the functions of office;
- (d) if he has been convicted of an indictable offence, or other offence which, in the opinion of the Governor, was of so serious a nature as to render him unsuitable for appointment.

(3) A person is eligible for appointment to the office of member notwithstanding that he has previously occupied office as such.

(4) A person shall not be appointed to the office of Chairman of the Authority unless he has had wide experience and has shown capacity in town planning, development of land and local government matters.

(5) The term of tenure of office of a person appointed to an office of member expires by effluxion of time on the expiration of a period of two years commencing on the day specified in the notice of the appointment published in the *Gazette* as the commencing date of that term.

(6) The term of tenure of office of a person appointed to office of member terminates, if during the term—

- (a) he becomes bankrupt, or as a debtor takes advantage of protection or relief under any law for the protection or relief of bankrupt debtors;
- (b) he absents himself from three consecutive meetings of the Authority, except with permission granted by the Minister who is hereby authorized to grant the permission from time to time;
- (c) he tenders resignation from the office in writing signed by him and addressed to the Governor, and the Governor who is hereby authorized to do so, accepts the resignation;

- (d) he dies;
- (e) he being a member representing a group of local authorities, ceases to be a mayor, councillor or a member as the case may be of a local authority in that group;
- (f) he being a member representing the Municipality of The City of Perth, ceases to be mayor or a councillor of that Municipality.

Deputies.
Substituted
by No. 115
of 1979, s. 4.

11. (1) The Governor may appoint a member to be Deputy Chairman to act in performing the functions and duties of the Chairman when the Chairman is absent, whether on account of illness or otherwise, and the Deputy Chairman, while acting in performing the functions and duties of the Chairman, shall be regarded as the Chairman for the purposes of this Act.

(2) The Governor may appoint a person to be the deputy for a member, other than the Chairman, and any person so appointed is, in the event of the absence, whether on account of illness or otherwise, of the member for whom he is the deputy, authorized to exercise the functions and duties of a member under this Act.

(3) Notwithstanding subsection (2) of this section, a person who is deputy for the Deputy Chairman of the Authority, is, at any time that the Deputy Chairman is performing the functions and duties of the Chairman, authorized to exercise the functions and duties that the Deputy Chairman may exercise as a member as though the Deputy Chairman were absent.

Vacancies
in office.

12. (1) The Governor may fill a vacancy in the office of member that occurs otherwise than by the retirement of a member on the expiration of the term of his office.

(2) The person appointed to fill the vacancy holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed.

13. (1) Subject to this section, the Chairman of the Authority and other members shall be paid such remuneration and allowances as the Governor may from time to time determine for him or them.

Remuneration and expenses. Substituted by No. 115 of 1979, s. 5.

(2) The Governor shall not determine the remuneration and allowances to be paid to any member who is a person to whom the Public Service Act 1978 applies except on the recommendation of the Public Service Board constituted under the Public Service Act 1978.

14. Acceptance of or acting in the office of member or deputy for a member shall not of itself render the provisions of the Public Service Act 1978, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or deputy for a member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in such office.

Protection of rights of public servants. Substituted by No. 115 of 1979, s. 5.

15. (1) The Chairman shall convene the first meeting of the Authority to be held at a time and place appointed by him, and the Authority shall meet accordingly, and shall hold subsequent meetings at times and places appointed by the Authority.

Convening of meetings. Amended by No. 115 of 1979, s. 6.

(2) The Chairman shall preside at all meetings of the Authority at which he is present and the Deputy Chairman shall preside at all meetings of the Authority at which he, but not the Chairman, is present, but where neither the Chairman nor the Deputy Chairman is present at a meeting of the Authority, the members present shall elect one of their number present to act as Chairman at the meeting.

[*Subsection (3) repealed by No. 115 of 1979, s. 6.*]

Quorum.
Amended by
No. 115 of
1979, s. 7.

16. (1) A quorum which is constituted by seven members who are present at any meeting of the Authority at, or within half an hour after, the time appointed for the commencement of the meeting, may exercise any function of the Authority as effectively as if all members were present.

(2) Where at a meeting of the Authority any question arises for determination by the Authority each member or deputy present is entitled to, and shall exercise, one vote only.

(3) If a majority of those present vote in favour of a motion for the determination of a question, the question shall be deemed to be determined in accordance with their votes, but if the votes in favour equal votes against the motion, it shall be deemed lost.

Vacancy in
or defect in
appointment
to office no
ground for
invalidity.

17. An act or determination of the Authority is not invalid or defective on the ground that when the act was done or the determination was made, a vacancy existed in the office of a member or deputy, or on the ground of a defect in the appointment of a member or deputy.

Transitional
and
validation
provision.
Inserted by
No. 73 of
1980, s. 2.

17A. (1) In this section "amending Act" means the Metropolitan Region Town Planning Scheme Amendment Act (No. 2) 1980.

(2) Notwithstanding anything to the contrary in this Act, or in any notice of appointment of a member published in the *Gazette*, the terms of office of the persons most recently appointed to each of the respective offices of members of the Authority before the coming into operation of the amending Act shall expire by effluxion of time on 31 August 1982 and shall be deemed to have always been terms of office expiring on that date.

(3) Where, before the coming into operation of the amending Act, any act, matter, or thing was done under or for the purposes of this Act by, to or in relation to a person mentioned in subsection (2) of this section, or a person acting or purporting to act by reason of being the deputy for the first-mentioned person, that act, matter, or thing shall be, and be deemed to have always been, as valid and effectual as it would have been if, at the time it was done, the first-mentioned person had been holding office, and entitled to hold office, as a member for a term commencing on the day specified in the notice of his appointment published in the *Gazette* as the commencing date of his term and ending on the day specified in subsection (2) of this section.

18. (1) The Authority shall cause to be kept minutes of all its proceedings in such manner and form as the Minister directs or approves and is hereby authorized to direct and approve from time to time.

Minutes and
conduct of
proceedings.

(2) The Authority shall conduct its proceedings in such manner as may be prescribed and until prescribed, as the Authority determines.

18A. (1) In this section—

“eligible person” means a member of the Authority or a deputy for a member.

Authority
may
appoint
Committees.
Inserted by
No. 115 of
1979, s. 8.
Amended by
No. 73 of
1982, s. 5.

(2) The Authority may from time to time—

- (a) constitute Committees by appointing any number of eligible persons to be members of the Committees and abolish a Committee so constituted;
- (b) assign names to the Committees so constituted;
- (c) remove any member of a Committee and appoint another eligible person to the office of the member so removed; and

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(d) appoint eligible persons to be additional members to any Committee.

(3) The Authority shall appoint as Chairman of a Committee one of the members thereof.

[*Subsection (4) repealed by No. 73 of 1982, s. 5.*]

(5) A Committee appointed pursuant to this section is answerable to the Authority and shall, as and when required by the Authority to do so, report fully on its activities to the Authority.

Delegation.
Amended by
No. 115 of
1979, s. 9;
No. 79 of
1981, s. 6.

19. (1) The Authority may, in relation to any particular matter or class of matters, by written authorization, signed by the Chairman, delegate to a Committee constituted pursuant to section eighteen A of this Act, any member, the members of a District Planning Committee, public authority or local authority power to exercise any of the functions conferred or imposed on the Authority by this Act, except this power of delegation and the functions conferred or imposed on the Authority by Part IVA of this Act.

(2) A delegation of power conferred by this section has the effect and may be exercised according to its tenor, but is revocable at the will of the Authority and does not preclude the Authority from exercising the power.

(3) Where the Authority delegates any power under the provisions of this section, the Authority shall publish, or cause to be published, a copy of the instrument of delegation in the *Government Gazette*.

Exemption
from
personal
liability.

20. A person who is or has been a member, deputy for a member, or delegate, of the Authority is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed on the Authority by this Act.

21. (1) The Governor may suspend a member from office on the Authority and may, and where the member so suspended requests shall, direct an inquiry to be held in manner prescribed, by a stipendiary magistrate appointed by the Minister to inquire into the ground of suspension.

Suspension.

(2) A member so suspended is not entitled to any remuneration, expenses, or to act in office, during the suspension, unless the stipendiary magistrate, as he is hereby authorized to do, orders otherwise.

(3) The stipendiary magistrate hearing the inquiry is hereby authorized to recommend to the Governor that—

- (a) the suspension be confirmed and the Governor terminate the appointment of the member; or
- (b) the suspension be cancelled and the member be reinstated a member of the Authority.

(4) The Governor shall give effect to the recommendation.

22. An office on the Authority shall be deemed not to be—

Office of member not office of profit.

- (a) an office or place of profit under or in the gift or disposal of a council of a municipality, by holding which office or place, a person is rendered incapable of being or continuing mayor or councillor of the municipality; or
- (b) an office of profit under the board of a road district, by holding which office a person is rendered incapable of being elected or as acting as member of the board.

Constitution
of District
Planning
Committees.
Amended by
No. 80 of
1975, s. 3.

23. (1) For the purposes of assisting and advising the Authority, the Council of the Municipality of The City of Perth and the groups of local authorities referred to in the First Schedule to this Act, shall each appoint from among their mayors, councillors or members, as the case may be, a District Planning Committee as provided in this section.

(2) In the case of the Municipality of The City of Perth, the District Planning Committee for the Municipality is the Town Planning Committee of the Council for the time being.

(3) (a) In the case of the groups of local authorities referred to in subsection (1) of this section each local authority in each group shall, as soon as practicable after the passing of this Act, appoint one person as a member of the Committee to represent that local authority on the Committee.

(b) Where a local authority fails to make an appointment, the Governor may appoint a person having the necessary qualifications to be a member representing that local authority.

(c) When the members are duly appointed, the District Planning Committee for the group of local authorities is constituted.

(4) Subject to the direction and approval of the Minister, who is hereby authorized to direct and approve from time to time, procedural matters relating to the holding and conduct of meetings of each Committee, including the election of chairman, the appointment of deputies, the constitution and powers of a quorum, are such as each Committee determines.

Functions
of District
Planning
Committees.

24. (1) Each District Planning Committee may, and at the direction of the Authority shall, within the time stipulated by the direction or within such extended time as the Minister may authorize, make inquiries into and report and formulate recommendations in respect to the Metropolitan Region

Scheme so far as it relates to the area or part of the area comprising the districts of the local authorities which the Committee represents.

(2) Each Committee shall present its reports and recommendations to the Authority.

(3) Each Committee shall exercise such functions of the Authority as the Authority may delegate to it under the provisions of section nineteen of this Act.

(4) Each Committee, except that representing the Municipality of The City of Perth, shall furnish to the Governor a panel of names in accordance with the provisions of section eight of this Act.

25. Subject to the Minister the functions of the Authority are—

Functions of
Authority.
Amended by
No. 73 of
1982, s. 6.

- (a) to formulate and promulgate a Metropolitan Region Scheme for the metropolitan region or such part thereof as the Authority from time to time deems fit so to do, having due and particular regard to the recommendations contained in the publications known as "Plan for the Metropolitan Region, Perth and Fremantle 1955 Report" and "Atlas", as printed and published by the Government Printer of the State, and to any order;
- (b) on a date to be fixed by proclamation¹ and thereafter to administer and carry out any order, and for that purpose the powers conferred on the Board by section seven A of the Town Planning Act² and any order shall cease to be exercisable by the Board and be conferred on and be exercisable by the Authority;

¹ 8 July 1960 was the fixed date. See *Government Gazette* 8/7/60, p. 2023.

² Repealed by Act No. 120 of 1982, s. 5.

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- (c) to present the Metropolitan Region Scheme for approval in accordance with the provisions of this Act;
- (d) notwithstanding section five of the Town Planning Act to administer and carry out the Metropolitan Region Scheme;
- (e) to keep the Metropolitan Region Scheme from time to time under review, and in any case to review completely the Scheme whenever requested by the Minister so to do at any time after a period of two years of its having effect as if its provisions were enacted in this Act and to submit for approval in accordance with the provisions of Part III. of this Act, any variation, amplification or revocation of the Scheme, considered necessary as a result of any review;
- (ea) to maintain and manage land held by it that is reserved under the Metropolitan Region Scheme for the purposes of parks and recreation and, where approval of the Minister has been first obtained, to carry out such works as may be incidental to such maintenance and management or be conducive to the use of the land for such purposes; and
- (f) whether before or after the Metropolitan Region Scheme becomes so effective to do, notwithstanding section five of the Town Planning Act, all such matters and things as are proper and necessary for the purposes and administration of this Act and the Scheme.

General provisions of Scheme. Amended by No. 113 of 1965, s. 8; No. 73 of 1982, s. 7.

26. (1) The Authority may make regulations prescribing a set of general provisions or separate sets of general provisions adapted for the whole of, or areas within, the metropolitan region of any special character, for carrying out the general

objects of the Metropolitan Region Scheme and in particular for dealing with the matters set out in the First Schedule to the Town Planning Act, and the general provisions or set of general provisions appropriate to the area for which the Metropolitan Region Scheme is made shall take effect as part of the Scheme.

(2) Regulations may be so made as to impose for a breach of a regulation a maximum penalty of \$500 with or without provision for a maximum daily penalty of \$50 for every day the breach continues.

(3) The court by or before which a person is found guilty of an offence against regulations made under this section may, whether or not it imposes any other punishment, order that the person convicted pay compensation to the Authority for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence, and upon a certified copy of the order under the hand of the officer having the custody of the record of the order being delivered to the Authority and registered by the Authority in the Local Court nearest to the place where the order was made the order may be enforced in the same way as if it had been a judgment of that Local Court.

(4) An order made against a person under subsection (3) of this section, or the institution of proceedings or the finding of a person to be guilty under regulations made under this section, does not affect any civil remedy against the person.

(5) In any civil proceedings arising from the same circumstances—

- (a) any sum recovered pursuant to an order made under subsection (3) of this section shall be taken into account in the assessment of any damages awarded; and
- (b) the record of any criminal proceedings under regulations made under this section

in relation to an offence shall be admissible as evidence of the matters determined in those criminal proceedings and relevant to the issues.

Power of Authority to co-opt services.
Amended by No. 115 of 1979, s. 10.

27. (1) Subject to this section, with the consent of the Minister administering any department of the Public Service of the State, the Authority may, for the purposes of this Act, co-opt the services, whether of an administrative, technical or other nature, of any person employed in that department upon such terms as may be agreed between that Minister and the Authority.

(2) Subject to subsection (3) of this section, the cost of any services provided, pursuant to any agreement under subsection (1) of this section, by any person employed in a department of the Public Service of the State shall not be paid out of the Fund but shall be paid from the moneys appropriated by Parliament in respect of the department in which that person is employed.

(3) Where the Minister administering a department of the Public Service of the State certifies to the Authority in relation to any services to be provided pursuant to an agreement under subsection (1) of this section that those services are not to be paid for from the moneys appropriated by Parliament in respect of the department the Authority may, subject to the approval of the Treasurer and such conditions as may be determined by the Public Service Board constituted under the Public Service Act 1978, provide the moneys for the cost of the services so provided.

Powers relating to land reserved for parks and recreation.
Inserted by No. 73 of 1982, s. 8.

27A. The Authority may, with the approval of the Minister, carry out on land held by it that is reserved under the Scheme for the purposes of parks and recreation such works as may be incidental to the maintenance and management of the land or be conducive to the use of the land for such purposes and may, in order to facilitate the maintenance and

management of such land, 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 such land.

28. No contract made or expenditure incurred in respect of any one work by the Authority, the consideration or cost of which exceeds one hundred thousand dollars, shall be made or incurred unless approved in writing by the Minister.

Approval of Minister to certain expenditure. Amended by No. 113 of 1965, s. 8; No. 103 of 1973, s. 3; No. 73 of 1980, s. 3.

29. (1) The Authority shall in each year prepare an annual report of its proceedings under this Act during the preceding year, and deliver the report as soon as practicable to the Minister.

Annual report to be made by Authority.

(2) The report shall in each year be laid on the Table of both Houses of Parliament by the Minister within fourteen days of its receipt by him, or if at the time Parliament is not in Session, then within fourteen days of the commencement of the next Session of Parliament.

29A. (1) In this section—

“function” means a function in connection with the execution of this Act;

“meeting” means a meeting held in connection with the execution of this Act;

“member” means a member of—

(a) the Authority;

(aa) a Committee constituted pursuant to section eighteen A of this Act;

(b) a District Planning Committee;

(c) a public authority; or

(d) a local authority.

Duty and liability of persons exercising functions under this Act. Inserted by No. 103 of 1973, s. 4. Amended by No. 115 of 1979, s. 11.

Metropolitan Region Town Planning Scheme.

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

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

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

(4) A member shall not disclose any information acquired by virtue of the exercise of any function unless the disclosure is made—

- (a) in connection with the execution of this Act or under any statutory duty; or
- (b) for the purposes of any proceedings arising out of this Act or any report of such proceedings.

(5) A member shall not make use of any information acquired by virtue of the exercise of any function to gain directly or indirectly an improper advantage to himself or to cause detriment to the Authority.

(6) A member who commits a breach of any of the provisions of this section is—

- (a) liable to the Authority for any profit made by him or for any damage suffered by the Authority as a result of the breach of any of those provisions; and
- (b) guilty of an offence against this Act.

Penalty: One thousand dollars.

(7) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

PART III.—METROPOLITAN REGION SCHEME.

30. (1) The Authority shall make the Metropolitan Region Scheme in accordance with the provisions of this Act, with respect to the whole or any part of the land within the metropolitan region.

Metropolitan
Region
Scheme.

(2) The Scheme may be made for all or any of the objects or purposes, provisions, powers or works, referred to in section six of the Town Planning Act and may provide for planning, replanning or reconstructing the whole or a part of the metropolitan region.

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

Procedure for
submission
and approval
of plan.
Amended by
No. 44 of
1962, s. 3.

- (a) The Scheme when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the Scheme, for public inspection during ordinary business hours free of charge—

at the office of the Town Planning Department;

at the Council Offices of the Municipalities of The Cities of Perth and Fremantle;

in at least three other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the Scheme.

Metropolitan Region Town Planning Scheme.

- (c) As soon as practicable after the deposit of the copies of the Scheme as provided for in paragraph (b) of this section, the Authority shall cause to be inserted at least three times in each of the following publications—

the *Gazette*;

two daily newspapers circulating in the metropolitan region; and

one Sunday newspaper circulating in the metropolitan region;

a notice—

stating shortly the purpose of the Scheme;

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

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

- (d) Objections to the Scheme may be made at any time within the period prescribed in the notice being not less than three months from the date the notice is first published in the *Gazette*.
- (e) The Authority shall take such other steps as it considers necessary to make public the details of the Scheme.
- (f) (i) The Authority shall consider all objections duly lodged and shall not dismiss an objection until the person objecting or his agent has been given the opportunity of being heard on the objection either by the Authority or

a sub-committee of the Authority appointed by it for the purpose and which it is hereby authorized to appoint.

- (ii) Where an objection is made by a group of persons, the group shall appoint one person to represent the group and he only shall be heard on the objection.
- (g) The Authority shall submit the Scheme with or without such modifications as it thinks fit to make after considering the objections, together with a copy of all written objections and a report by the Authority on the objections, to the Minister for presentation to the Governor for his consideration.
- (h) Before presenting the Scheme to the Governor for his consideration, if the Minister is of opinion that any modification made to the Scheme by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the Scheme as so modified or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the Scheme as he deems appropriate.
- (j) The Authority shall comply with the directions.
- (k) A person who objects to any modifications so made by the Authority may notify the Minister in writing on the prescribed form, and the Minister shall direct the Authority to consider and report on the objection to the Minister in accordance with the procedure set out in paragraphs (f) and (g) of this section.

- (1) The Minister shall then present the Scheme to the Governor who may approve the Scheme with or without such modifications as he deems necessary to make and which he is hereby authorized to make.

Scheme to
be submitted
to
Parliament.

32. (1) When the Governor has approved the Scheme whether with or without modifications—

- (a) the Scheme or the Scheme as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
- (b) the Scheme together with the report of the Authority on the objections made to it referred to in paragraphs (g) and (k) of section thirty-one of this Act, shall be laid before each House of Parliament within six sitting days of the House next following the date of the publication of the Scheme in the *Gazette*.

(2) If either House does not pass a resolution disallowing the Scheme, of which resolution notice was given at any time within twenty-one sitting days of that House after the Scheme was laid before it, the Scheme has effect, from and after the last day on which the Scheme might have been disallowed, as though its provisions were enacted by this Act, but if the Scheme is disallowed the disallowance does not affect the validity, or cure the invalidity, of anything done or omitted to be done before the disallowance.

Scheme
may be
amended.
Substituted
by No. 115
of 1979, s. 12.
Amended by
No. 73 of
1982, s. 9.

33. (1) The Scheme may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme formulated by the Authority submitted and approved in accordance with this section.

(2) Subject to sections thirty-three A and thirty-three B of this Act, the Authority shall adopt the procedure set forth in this section for submitting and obtaining approval of any amendment to the Scheme and any revocation of the Scheme by a subsequent Scheme (in this section referred to as "the amendment") formulated by the Authority:—

- (a) The amendment when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the amendment, for public inspection during ordinary business hours free of charge—
 - (i) at the office of the Town Planning Department;
 - (ii) at the Council Offices of the Municipalities of the City of Perth and City of Fremantle; and
 - (iii) in at least three other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the amendment.
- (c) As soon as practicable after the deposit of the copies of the amendment as provided for in paragraph (b) of this subsection the Authority shall cause to be inserted at least three times in each of the following publications—
 - (i) the *Gazette*;
 - (ii) two daily newspapers circulating in the metropolitan region; and

Metropolitan Region Town Planning Scheme.

- (iii) one Sunday newspaper circulating in the metropolitan region,

a notice stating—

- (iv) in short, the purpose of the amendment; and

- (v) that the amendment has been deposited and the places and times where it may be inspected free of charge,

and notifying all persons who desire to make submissions on any provision of the amendment that such submissions may be made to the Authority in writing in the form prescribed by the Authority in the notice.

- (d) Submissions on the amendment may be made at any time within the period prescribed in the notice being not less than three months from the date the notice is first published in the *Gazette*.
- (e) The Authority may take such other steps as it considers necessary to make public the details of the amendment.
- (f) (i) The Authority shall consider all submissions that have been duly lodged and where a submission contains an objection to the amendment the Authority shall not dismiss the objection until the person making the submission or his agent has been given the opportunity of being heard on the objection by the Authority or by a subcommittee of the Authority appointed by it for the purpose and which it is hereby authorized to appoint.

- (ii) The Authority shall not uphold an objection to the amendment until it has given every person who has duly lodged a submission supporting the provision to which the objection relates, or his agent, the opportunity of being heard in support of that provision by the Authority or a subcommittee of the Authority.
- (iii) Where a submission is made by a group of persons, the group shall appoint one person to represent the group and only he shall be heard under subparagraph (i) or subparagraph (ii) of this paragraph.
- (g) The Authority shall submit the amendment with or without such modifications as it thinks fit to make after considering the submissions, together with a copy of all written submissions and a report by the Authority on the submissions, to the Minister for presentation to the Governor for his consideration.
- (h) Before presenting the amendment to the Governor for his consideration, if the Minister is of opinion that any modification made to the amendment by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the amendment as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the amendment as he deemes appropriate.
- (j) The Authority shall comply with the directions.

Metropolitan Region Town Planning Scheme.

- (k) A person who desires to make any submissions on any modifications so made by the Authority may notify the Minister in writing in the form prescribed by the Authority in any notice of the modification published pursuant to paragraph (i) of this subsection, and the Minister shall direct the Authority to consider and report on the submission to the Minister in accordance with the procedure set out in paragraphs (f) and (g) of this subsection.
 - (l) The Minister shall then present the amendment to the Governor who may approve the amendment with or without such modifications as he deems necessary to make and which he is hereby authorized to make.
 - (m) At any time before the amendment is published in the *Gazette* pursuant to subsection (3) of this section, the Governor may revoke the approval given under paragraph (l) of this subsection.
- (3) Except where the approval has, pursuant to paragraph (m) of subsection (2) of this section, been revoked, when the Governor has approved the amendment whether with or without modifications—
- (a) the amendment or the amendment as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
 - (b) a copy of the amendment together with a copy of the report of the Authority on the submissions made on the Scheme referred to in paragraphs (g) and (k) of subsection (2) of this section, shall be laid before each House of Parliament within six sitting days of the House next following the date of the publication of the amendment in the *Gazette*.

(4) Either House may, by resolution of which resolution notice has been given at any time within twelve sitting days of such House after a copy of the amendment has been laid before it, pass a resolution disallowing the amendment.

(5) As soon as the amendment is no longer subject to disallowance under subsection (4) of this section the amendment shall have effect as though its provisions were enacted by this Act.

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

33A. (1) Notwithstanding section thirty-three of this Act, where the Authority sends to the Minister a copy of a proposed amendment together with a written certificate certifying that, in the opinion of the Authority, the proposed amendment does not constitute a substantial alteration to the Scheme, the amendment is not required to be submitted and approved in accordance with the procedure prescribed in subsections (2), (3) and (4) of section thirty-three of this Act.

Procedure for amendments not constituting substantial alteration to the Scheme. Inserted by No. 115 of 1979, s. 12.

(2) Where pursuant to subsection (1) of this section an amendment is not required to be submitted and approved in the manner prescribed under subsections (2), (3) and (4) of section thirty-three of this Act—

- (a) a notice of the amendment describing the amendment and stating where and when the proposed amendment will be available for inspection shall, as soon as practicable after the receipt by the Minister of the certificate of the Authority, be published by the Authority in the *Gazette* and in a daily newspaper circulating in the metropolitan region; and

Metropolitan Region Town Planning Scheme.

(b) the Authority shall, within seven days after the date of the last such publication of that notice, notify in writing such owners of land directly affected by the amendment as the Minister directs shall be so notified.

(3) A proposed amendment to the Scheme shall have the force of law on the day on which notice of the proposed amendment is published in the *Gazette* and a newspaper pursuant to subsection (2) of this section.

(4) A person who feels aggrieved by an amendment notice of which is published pursuant to subsection (3) of this section, may, within the time and in the manner prescribed appeal to the Minister against the amendment and the Minister shall hear the appeal in accordance with the regulations.

(5) The Minister may dismiss or uphold the appeal and if the Minister upholds the appeal he shall order that the amendment be cancelled or modified and from the date of the order the amendment has no force or effect or has force and effect as so modified.

Pending amendment of Scheme. Inserted by No. 115 of 1979, s. 12. Amended by No. 73 of 1982, s. 10.

33B. (1) In this section—

“amending Act” means the Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1979;

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

- (a) approved, pursuant to paragraph (a) of section thirty-one of this Act, by the Minister; or
- (b) certified, pursuant to the substituted section, by the Authority as not being a substantial alteration,

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

“proclaimed date” means the date on which section twelve of the amending Act comes into operation¹;

“Second Schedule” means the Second Schedule to this Act as in force immediately before the proclaimed date;

“substituted section” means section thirty-three of this Act as in force immediately before the proclaimed date.

(2) Notwithstanding sections thirty-three and thirty-three A of this Act, but subject to subsection (3) of this section pending amendments shall be continued and dealt with in accordance with the substituted section and the Second Schedule as if those provisions were in force after the proclaimed date.

(3) Paragraph (m) of subsection (2) of section thirty-three of this Act with such modifications as are necessary applies to a pending amendment.

(4) Nothing in subsection (2) of this section affects the operation of the Interpretation Act 1918.

33C. (1) The Scheme, or any amendment to the Scheme made before the coming into operation of the Metropolitan Region Town Planning Scheme Act Amendment Act 1975 or any act or thing done pursuant to the Scheme or such an amendment to the Scheme shall not be regarded as invalid by reason only of one or more of the following reasons, namely—

(a) that, in the notice of the Scheme or that amendment to the Scheme, as the case may be, the period prescribed for the making of objections was less than the proper period;

Validation.
Inserted as
section 33A
by No. 80 of
1975, s. 5.
Renumbered
by No. 115 of
1979, s. 13.

¹ Came into operation on 15/2/80; see *Government Gazette* 15/2/80, p. 457.

- (b) that the Authority did not accept for consideration an objection to the Scheme or that amendment to the Scheme, as the case may be, being an objection that was made within the proper period but was not made within the period prescribed for the making of objections in the notice of the Scheme or that amendment;
- (c) that a form for making objections to the Scheme or any amendment to the Scheme was not prescribed.

(2) In this section—

“notice”, in relation to the Scheme or an amendment to the Scheme, means the notice published pursuant to paragraph (c) of section thirty-one of this Act in respect of the Scheme or that amendment, as the case may be;

“proper period”, in relation to the Scheme or an amendment to the Scheme, means the period of three months from the date the notice of the Scheme or that amendment, as the case may be, was first published in the *Gazette*.

Consolidation of Scheme. Substituted by No. 73 of 1980, s. 4.

33D. (1) Whenever the Minister is of the opinion that it is necessary or desirable to consolidate the Scheme he may direct the Authority to deliver to him a consolidation of the Scheme as in force at the date specified in the direction.

(2) On receipt of a direction under subsection (1) of this section the Authority shall cause to be prepared a consolidation of the Scheme incorporating all amendments to the Scheme in force on the day specified in the direction.

(3) In the preparation of the consolidation there may be included, in addition to or in substitution for any maps, plans and diagrams forming part of the Scheme, such maps, plans or diagrams, prepared on such scale or scales, as, in the opinion of the Authority are necessary to state and represent the

scope, effect and details of the Scheme, as amended, in an informative and convenient form, and where such an addition or substitution necessitates the making of any consequential amendment to the text of the Scheme that amendment shall be made in the consolidation.

(4) Without limiting the generality of subsection (3) of this section, on the first occasion upon which a consolidation is prepared under this section the maps, plans and diagrams forming part of the Scheme shall be omitted for the purpose of substituting maps, plans and diagrams which have been prepared on a scale or scales consistent with the metric system of measurement as defined in the Metric Conversion Act 1972 and which show information in a manner consistent with that system.

(5) Where any addition, substitution or other amendment is effected under subsection (3) or (4) of this section the Scheme shall be deemed to have been amended accordingly on and from the publication of notice of the consolidation under subsection (8) of this section but the provisions of—

(a) sections thirty-three and thirty-three A of this Act; and

(b) the Metric Conversion Act 1972,

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

(6) Having prepared the consolidation of the Scheme the Authority shall cause the consolidation to be examined by the Surveyor General in the Department of Lands and Surveys.

(7) If the Surveyor General certifies that the maps, plans and diagrams in the consolidation are correct the Authority shall—

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

(b) deliver the consolidation to the Minister.

(8) If the Minister approves of the consolidation and endorses his signature thereon the Authority shall publish notice of the consolidation in the *Gazette* and as from the publication of the notice the consolidation shall in all courts and by all tribunals, bodies and persons be judicially noticed and shall be deemed to be a correct statement and representation of the Scheme as in force on the date specified in the Minister's direction unless the contrary is shown.

(9) Where in the opinion of the Minister it is expedient to do so he may instead of directing the Authority to deliver to him a consolidation of the whole Scheme direct the Authority to deliver to him a consolidation of such portion of the Scheme (whether by reference to a map of the Scheme or any other portion thereof) as is specified in his direction and the provisions of this section apply to and in relation to the consolidation of the portion of the Scheme so specified in the direction as though the portion of the Scheme so specified were the whole Scheme.

[Section 33E inserted by No. 115 of 1979, s. 13.
Repealed by No. 73 of 1980, s. 4.]

PART IV.—LOCAL AUTHORITY TOWN
PLANNING SCHEMES.

34. If the Scheme is not disallowed by Parliament under the provisions of section thirty-two of this Act—

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

No town
planning
schemes or
by-laws to be
made unless
consistent
with Scheme.
Amended by
No. 7 of
1965, s. 2;
No. 80 of
1975, s. 6.

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

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

35. (1) Subject to subsections (1a) and (1b) of this section, within a period of three years from the day the Scheme has the force of law as provided in section thirty-two of this Act, the Council of the Municipality of The City of Perth and each local authority referred to in the First Schedule to this Act shall—

Local authorities to make town planning schemes consistent with Metropolitan Region Scheme.
Amended by No. 7 of 1965, s. 3; No. 80 of 1975, s. 7.

- (a) where on the day the Scheme has the force of law no town planning scheme made under the provisions of the Town Planning Act is operating in its district, prepare and submit, under the provisions of that Act, to the Minister to whom the administration of that Act is for the time being committed by the Governor, for approval, a town planning scheme for its district which is in accordance and consistent with the provisions of the Scheme;
- (b) where on that day a town planning scheme is operating in its district, take such steps to amend the scheme so that it shall conform with the provisions of the Scheme.

(1a) Where the Council or any local authority referred to in subsection (1) of this section makes application in writing to the Minister to have the period of three years, referred to in that subsection, extended, if the application is made at any time being more than one month before the expiration of that period, the Minister may extend the period, in so far as it applies to the applicant, as he thinks fit.

(1b) Where the Minister extends the period pursuant to subsection (1a) of this section, subsection (1) of this section, so far as it applies to the applicant in respect of which the period is so extended, shall be read and applied as though the reference therein to three years, were a reference to the period as so extended.

(2) Where a local authority has not observed the provisions of subsection (1) of this section, the Minister may at any time by notice in writing direct the local authority to so comply within a period specified in the notice and being not less than six months from the giving of the notice.

(3) (a) If the local authority fails to comply with the direction, the Minister on behalf of the local authority may cause a town planning scheme to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is so committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority.

(b) If the local authority fails to adopt the scheme within ninety days of the delivery of the scheme to the local authority by the Minister, the Minister to whom the administration of the lastmentioned Act is so committed may approve of the scheme and cause it to be published in the *Gazette* and thereupon the scheme has effect as if it were made, published and adopted by the local authority and approved by that Minister under the Town Planning Act.

(4) All costs, charges and expenses incurred by the Minister in the exercise of any of the powers conferred on him by subsection (3) of this section may be recovered from the local authority as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority.

35A. (1) If for the time being the Scheme delineates land comprised in a town planning scheme under the Town Planning Act as a reserve for a public purpose the town planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act or the Town Planning Act, amended to such extent (if any) as is necessary to give effect to the Scheme.

Effect of amendment of the Scheme on local authority town planning scheme. Inserted by No. 115 of 1979, s. 14.

(2) Where—

- (a) under the Scheme land is reserved for a public purpose; and
- (b) as a result of an amendment to the Scheme or a revocation of the Scheme the land so reserved becomes available for any other purpose,

the local authority of the district in which the land directly affected by the amendment or the revocation is situate or the responsible authority in relation to the land under the Town Planning Act, as the case requires, shall, not later than six months after the date on which the amendment to, or revocation of, the Scheme, as the case may be, has the force of law, forward to the Minister a town planning scheme, or an amendment to an existing town planning scheme, in relation to the land providing for the zoning of the land.

(3) If the local authority or the responsible authority, as the case requires, fails to comply with subsection (2) of this section the Minister, on behalf of the local authority, or the responsible authority, as the case may be, may cause a town planning scheme, or an amendment to an existing town planning scheme, to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority or the responsible authority and if, within a period of ninety days after the scheme is delivered

to it by the Minister the local authority or the responsible authority fails to adopt the scheme, or an amendment to an existing town planning scheme, as the case requires, the Minister to whom the administration of the Town Planning Act is committed may approve of the Scheme and cause it to be published in the *Gazette*.

(4) A town planning scheme, or an amendment to an existing town planning scheme, as the case requires, published in the *Gazette* pursuant to subsection (3) of this section takes effect from the date of such publication and has effect as if it were made, published and adopted by the local authority or the responsible authority and approved under the Town Planning Act by the Minister to whom the administration of that Act is committed.

(5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on him by subsections (3) and (4) of this section may be recovered from the local authority or the responsible authority, as the case requires, as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority or the responsible authority.

PART IVA.—PLANNING CONTROL AREAS.

35B. (1) This Part of this Act shall prevail over anything in—

- (a) any other Part of this Act;
- (b) any town planning scheme that has effect under section 7 of the Town Planning Act;
- (c) the Scheme; or
- (d) the Town Planning Act,

to the extent of any inconsistency therewith.

(2) Nothing in this Part affects—

- (a) the continued use of any land in a planning control area for the purpose for which it was lawfully being used; or

- (b) the continuation and completion of the development of any land in a planning control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out,

immediately before the declaration of the planning control area.

35C. (1) If the Authority considers that any land situated in the metropolitan region may be required for one or more of the purposes specified in the Second Schedule to this Act, the Authority may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a planning control area.

Declaration of planning control areas. Inserted by No. 79 of 1981, s. 7.

(2) The Authority may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under subsection (1) of this section.

(3) A declaration made under subsection (1) of this section remains in force until—

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

or

- (b) revoked under subsection (2) of this section,

whichever is the sooner.

35D. A person shall not commence and carry out development in a planning control area except—

- (a) with the prior approval of that development obtained under section 35E of this Act; and

No development in planning control areas without prior approval. Inserted by No. 79 of 1981, s. 7.

- (b) in a manner which is in conformity with the approval referred to in paragraph (a) of this section and in accordance with the conditions, if any, subject to which that approval was given.

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

Applications
for approval
of develop-
ment in
planning
control
areas.
Inserted by
No. 79 of
1981, s. 7.

35E. (1) A person who wishes to commence and carry out development in a planning control area shall apply in the prescribed form to the local authority in the district of which the planning control area is situated for approval of that development and submit to that local authority such plans and other information as that local authority may reasonably require.

(2) The local authority to which an application is made under subsection (1) of this section shall, within 30 days of receiving the application, forward the application, together with its recommendation thereon, to the Authority for determination.

(3) After receiving an application and recommendation forwarded to it under subsection (2) of this section, the Authority may—

- (a) consult with any authority that in the circumstances it thinks appropriate; and
- (b) having regard to—
 - (i) the purpose for which the land to which that application relates is zoned or reserved under the Scheme;
 - (ii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates; and
 - (iii) the orderly and proper planning, and the amenities, of the locality in which the land to which that application relates is situated,

approve, subject to such conditions as it thinks fit, or refuse to approve that application.

(4) If the Authority approves an application forwarded to it under subsection (2) of this section and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to which that approval was given are not complied with, the Authority may revoke that approval, but this subsection does not prevent proceedings for an offence against section 35D of this Act in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.

(5) The Authority shall issue in the prescribed form to the applicant its decision on an application forwarded to it under subsection (2) of this section.

(6) If the Authority has not within 60 days of receiving an application forwarded to it under subsection (2) of this section issued its decision on that application to the applicant, that application shall be deemed to have been refused.

35F. An applicant whose application has under section 35E of this Act been—

Appeals.
Inserted by
No. 79 of
1981, s. 7.

- (a) approved subject to conditions which are unacceptable to him; or
- (b) refused,

may, except when that approval or refusal—

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

appeal against that approval or refusal under Part V of the Town Planning Act.

PART V.—COMPENSATION, BETTERMENT, ACQUISITION.

Application of sections 11 and 12 of Town Planning Act to Scheme. Amended by No. 44 of 1962, s. 5; No. 29 of 1963, s. 2; No. 62 of 1968, s. 3; No. 104 of 1969, s. 2.

36. (1) For the purposes of applying the provisions of sections eleven and twelve of the Town Planning Act to the provisions of the Scheme, the former provisions shall be read and construed as if—

- (a) the Authority were the “responsible authority or local authority” wherever referred to in the sections; and
- (b) the passage, “varied, amplified or revoked by the Authority” were substituted for the passage, “altered or revoked by an order of the Minister under this Act” in subsection (3) of section eleven; and
- (c) those provisions included subsections (3), (3a), (4), (5) and (6) of this section.

(2) (a) The Scheme may provide that where compensation for injurious affection is claimed as a result of the operation of the provisions of subparagraph (i) or (ii) of paragraph (b) of subsection (2a) of section twelve of the Town Planning Act the Authority may at its option elect to acquire the land so affected instead of paying compensation.

(b) The Authority shall, within three months of the claim for injurious affection being made, or where such a claim is made before the date of the coming into operation of the Metropolitan Region Town Planning Scheme Act Amendment Act 1968, within three months of that date, by notice in writing given to the claimant, either elect to acquire the land or advise that it does not intend to acquire the land.

(2a) Where the Authority elects to acquire the land as provided in subsection (2) of this section, if the Authority and the owner of the land are unable to agree as to the price to be paid for the land by the Authority, the price at which the land may be acquired by the Authority shall be the value of the land as determined in accordance with subsection (2b) of this section.

(2b) The value of the land referred to in subsection (2a) of this section shall be the value thereof on the date the Authority elects to acquire the land under that subsection, and that value shall be determined—

- (a) by arbitration in accordance with the Arbitration Act 1895; or
- (b) on the application of the owner of the land, made in the prescribed manner—
 - (i) by a Local Court, sitting at a place nearest to where the land lies—if the value of the land claimed by the owner thereof is not more than one thousand dollars; or
 - (ii) by the Supreme Court—if the value of the land claimed by the owner thereof is more than one thousand dollars;

or

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

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

(3) Subject to subsection (4) of this section, where under the Scheme any land has been reserved for a public purpose, no compensation is payable by the responsible authority for injurious affection to that land alleged to be due to or arising out of such reservation until—

- (a) the land is first sold following the date of the reservation; or
- (b) the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant.

(3a) Compensation for injurious affection to any land is payable only once under paragraph (a) of subsection (3) of this section and is payable to the person who was the owner of the land at the date of reservation referred to in that paragraph, unless after the payment of that compensation further injurious affection to the land results thereafter from an alteration of the existing reservation on the land or the imposition of another reservation thereon.

(4) Before compensation is payable under subsection (3) of this section—

(a) where the land is sold, the person lawfully appointed to determine the amount of the compensation shall be satisfied—

(i) that the owner of the land has sold the land at a lesser price than he might reasonably have expected to receive had there been no reservation of the land under the Scheme;

(ii) that the owner before selling the land gave notice in writing to the responsible authority of his intention to sell the land; and

(iii) that the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land; or

(b) where the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of compensation shall be satisfied that the application was made in good faith.

(5) A claim for compensation under subsection (3) of this section shall be made at any time within six months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

(6) (a) Subject to this section, the compensation payable for injurious affection due to or arising out of the land being reserved under the Scheme for a public purpose, where no part of the land is purchased or acquired by the Authority, shall not exceed the difference between—

(i) the value of the land as so affected by the existence of such reservation; and

(ii) the value of the land as not so affected.

(b) The value referred to in subparagraphs (i) and (ii) of paragraph (a) of this subsection shall be assessed as at the date the land is sold as referred to in paragraph (a) of subsection (3) of this section or the date on which the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

(7) Where compensation for injurious affection to any land has been paid under subsection (3) of this section, the Authority may lodge with the Registrar of Titles a caveat against the land specifying the amount of compensation so paid and the date of the payment.

(8) On receipt of the caveat from the Authority, the Registrar of Titles shall enter it in the Register Book.

36A. 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 Authority, in the same circumstances and to the

Compensation in relation to planning control areas.

Inserted by No. 79 of 1981, s. 10.

same extent as if the land in the planning control area, instead of being in a planning control area, had been reserved under the Scheme for a public purpose.

Board of
Valuers.
Inserted by
No. 84 of
1968, s. 4.
as s. 36A.
Redesignated
s. 36B by
No. 79 of
1981, s. 8.

36B. (1) A Board of Valuers (in this section and in succeeding sections of this Act called "the Board") is established.

(2) The Board shall consist of four members, including the Chairman, appointed by the Governor, each to hold office for two years and to be eligible for re-appointment.

(3) Each of the persons appointed to the Board shall be an Associate or a Fellow of the Commonwealth Institute of Valuers Incorporated, an association incorporated under the laws of South Australia, and, of those persons,—

(a) one, who shall be Chairman, shall be nominated by the Authority; and

(b) three shall be nominated by the body known as The Real Estate Institute of Western Australia, incorporated pursuant to the Associations Incorporation Act 1895.

(4) The Board is constituted by the Chairman and any two members and may meet notwithstanding there being a vacancy on the Board.

(5) A vacancy on the Board occurs where a member dies, resigns or is removed by the Governor on the ground of his inefficiency, incapacity or misconduct.

(6) The members of the Board are entitled to such fees and expenses, in respect of attendances at meetings of, or while engaged in the business of, the Board, as the Governor may from time to time determine.

(7) Judicial notice shall be taken of the signature of the Chairman subscribed to any finding of the Board.

36C. (1) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under the Scheme for a public purpose who gives notice of his intention to sell the land and claim compensation shall, unless the Authority waives the requirement apply to the Board, in the prescribed manner, for a valuation of the land as not so affected and the Board shall thereupon make such a valuation.

Valuations
by the
Board.
Inserted by
No. 84 of
1966, s. 5
as s. 36B.
Amended by
No. 62 of
1968, s. 4.
Redesignated
by No. 79 of
1981, s. 9.

(2) Subject to subsection (3a) of this section, a valuation made by the Board pursuant to subsection (1) of this section shall be communicated to the applicant and to the Authority and, for the purposes of section thirty-six of this Act, a valuation so made is final.

(3) Upon receipt of a valuation made by the Board under this section, the Authority shall advise the owner of the subject land of the minimum price at which the land may be sold without affecting the amount of compensation (if any) payable to him under section thirty-six of this Act.

(3a) Where any land with respect to which a valuation has been made under this section is not sold within a period of one year from the making of the valuation, the Board may, at the request of the owner of the land, if in the circumstances of the case it thinks it just to do, review the valuation and either confirm the valuation or vary it.

(3b) Where the Board reviews a valuation pursuant to subsection (3a) of this section, it shall notify the owner of the land and the Authority accordingly and thereupon subsection (3) of this section, with such modification as circumstances require, applies to the valuation as reviewed by the Board.

(4) The Governor may make regulations prescribing procedures for, and the fees payable on, applications to the Board and those regulations may make provision for the applicant to be heard and for his submissions to be supported by statutory declarations made under, and by virtue of, section one hundred and six of the Evidence Act 1906.

Authority is responsible authority. Amended by No. 29 of 1963, s. 3; No. 95 of 1965, s. 2; No. 84 of 1966, s. 6; No. 115 of 1979, s. 15; No. 79 of 1981, s. 11.

37. (1) For the purposes of this Act and the Town Planning Act in relation to a Scheme, the Authority shall be deemed to be the responsible authority and has all the powers, rights, duties and authority conferred or imposed on a responsible authority.

(2) Any purchase moneys or rents or profits or other money received by the Authority from land acquired by it or arising out of the use or occupation of the land by the Authority shall be paid into the Fund.

(3) If before the Scheme, or an amendment to the Scheme, has the force of law the Authority is satisfied that any land is or is likely to be comprised in the Scheme, it may purchase the land.

(4) After the Authority is appointed to administer and carry out any order as provided in section twenty-five of this Act, it becomes the public authority responsible for the payment of compensation or the cost of purchasing any land under the provisions of paragraph (b) of subsection (12) of section seven A of the Town Planning Act.¹

(5) (a) Notwithstanding anything contained in the Public Works Act 1902, the value of any land or improvements thereon which is compulsorily acquired by the Authority under this section or section thirteen of the Town Planning Act shall for the purpose of assessing the amount of compensation to be paid for the land and improvements, be assessed without regard to any increase or decrease in value attributed wholly or in part to any of the provisions contained in, or to the operation or effect of, the Scheme and having regard to values current at the time of acquisition but in assessing the amount of compensation regard shall be had to any amounts of compensation already paid or payable in respect of the land under section thirty-six of this Act.

(b) Where compensation has been paid, or is payable, in respect of land pursuant to section thirty-six of this Act, then, subject to the succeeding

¹ Repealed by Act No. 120 of 1982, s. 5.

provisions of this subsection, there shall be deducted from the compensation assessed pursuant to paragraph (a) of this subsection an amount that bears the same ratio to the compensation so assessed as the compensation paid or payable pursuant to that section bears to the unaffected value of the land, as determined under this Act.

(c) In assessing the amount to be deducted from compensation under the provisions of paragraph (b) of this subsection, the person lawfully appointed to determine the amount of compensation shall have regard to—

- (i) any improvements or demolitions lawfully made to or on the land, subsequently to the determination of the unaffected value of the land; and
- (ii) to the earlier termination of the tenure of the land, where the compensation might otherwise have been affected by an assurance given by the Authority, and which the Authority is authorized by this subparagraph to give, that the tenure was to be of a greater period.

(6) (a) The Authority shall hold for the purposes of the Scheme any land acquired by it under this Act or the Town Planning Act, including land purchased under section 36A of this Act or subsection (3) of this section, and may, subject to paragraphs (b) and (c) of this subsection, dispose of or alienate that land—

- (i) for or in furtherance of the provisions or likely provisions of the Scheme; or
- (ii) if that land is no longer required by the Authority.

(b) Subject to paragraph (c) of this subsection, the Authority shall not except with the consent of the Governor dispose of or alienate any land

compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the Scheme.

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

(7) (a) Where any land held, taken, resumed or otherwise acquired under the Public Works Act 1902 or any other Act, for any public work, is in the opinion of the Governor not required for that work and is required for the purposes or likely purposes of the Scheme, the Governor notwithstanding the provisions of section twenty-nine of the firstmentioned Act, may declare by notice published in the *Gazette*, that the land shall be held and may be used for the purposes of the Scheme.

(b) From the date of the publication of the notice the land described therein, by force of this subsection, vests in the Authority for the purposes of the Scheme.

Power of Authority to acquire certain land.
 Inserted by No. 95 of 1965, s. 3.
 Amended by No. 84 of 1966, s. 7; No. 7 of 1970, s. 2; No. 80 of 1975, s. 8.

37A. (1) Where the Authority certifies in writing to the Minister that for the purpose of advancing the planning, development and use of any land within the metropolitan region—

- (a) the land should be dealt with in all or any of the following ways, namely—planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or
- (b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other

uses, buildings, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary,

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

(2) If the Governor accepts the recommendation of the Authority, the Authority may while the Scheme has the force of law as provided in this Act, purchase or otherwise acquire any land included in the improvement plan by agreement with the owner thereof or in default of such agreement, the Authority may acquire the land compulsorily under and subject to the Public Works Act 1902, as modified by this section.

(3) Subject to this section, the provisions of the Public Works Act 1902, apply to the taking of any land compulsorily under this section, with such modifications as circumstances require and in so applying those provisions any reference to the Minister for Works shall be read as a reference to the Minister for Town Planning.

(4) For the purpose of advancing the development of land in the metropolitan region in accordance with an improvement plan referred to in subsection (1) of this section the Authority, with the approval of the Governor, may—

- (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;

- (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land howsoever acquired by the Authority under this Act, to any person, or public authority upon such terms and conditions as the Authority with the approval of the Governor thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Authority in the *Government Gazette*;
- (c) in respect of the land included in an improvement plan but not acquired or held by it under this Act, enter into an agreement with any owner of the land relating to—
 - (i) the planning, replanning, design, redesign, consolidation, resub-division, clearing, development, reconstruction or rehabilitation of the land;
 - (ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land;
 - (iii) the sale, purchase, exchange, surrender, vesting, allocation or other disposal of the land, the adjustment or alteration of the boundaries of the land, the pooling of the lands of several owners, the adjustment of rights between owners of the land or other persons interested in the land whether by payments of money or transfers or exchanges of land or otherwise, the valuation of the land and the provision of land for any public open space, public work as defined by the Public Works Act 1902 or any other public purpose;

- (iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and
- (v) such other acts, matters or things as are or may be necessary to give effect to the improvement plan;
- (d) do any act, matter or thing for the purpose of carrying out any agreement entered into pursuant to paragraph (c) of this subsection.

(4a) The validity of any agreement entered into by the Authority before the date of the coming into operation of the Metropolitan Region Town Planning Scheme Act Amendment Act 1975, pursuant to this section as in force before that date or of any act, matter or thing done pursuant to such an agreement shall not be challenged or called in question in any court by reason only that this section did not at the time that the agreement was entered into confer power on the Authority to enter into such an agreement.

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

PART VI.—FINANCE.

38. (1) (a) For the purpose of making, carrying out and giving effect to the Scheme, a fund called The Metropolitan Region Improvement Fund is established at the Treasury.

The Metropolitan Region Improvement Fund. Amended by No. 95 of 1965, s. 4; No. 115 of 1979, s. 16; No. 73 of 1982, s. 11.

(b) The Authority shall control the Fund and the Fund may be operated upon for the purpose in such manner as from time to time the Treasurer approves and is hereby authorized to approve.

(c) The Authority shall keep such records relating to operations on the Fund, in such manner as the Treasurer approves and is hereby authorized to approve.

Metropolitan Region Town Planning Scheme.

(2) The Authority shall pay or cause to be paid to the Fund—

- (a) the proceeds of the Metropolitan Region Improvement Tax referred to in section forty-one of this Act;
- (b) money borrowed by the Authority from time to time under authority conferred by this Act; and
- (c) any other payments made to the Authority.

(3) The Authority is authorized to apply money represented in the Fund to payment of all expenditure incurred by it for the purpose of formulating, promulgating, carrying out and giving effect to the Scheme, including without limiting the generality of that authorization—

- (a) payment of capital expenditure, costs and other expenses incurred by the Authority in and in connection with, the acquisition, whether by agreement or compulsorily, of any property under any provisions of this Act;
- (b) all expenses incurred by the Authority in or in connection with the Scheme or an order or the establishment and maintenance of any works in connection with the Scheme or order or the maintenance and management of any land held by the Authority that is reserved under the Scheme for the purposes of parks and recreation or the carrying out of any works incidental to such maintenance and management or conducive to the use of such land for those purposes; and
- (c) payment of the remuneration and expenses of the members.

[Subsection (4) repealed by No. 115 of 1979, s. 16.]

39. (1) If the money represented in the Fund is insufficient at any time to meet expenditure incurred or proposed to be incurred by the Authority in carrying out its functions, the Treasurer with the approval of the Governor, who is hereby authorized to grant the approval, may make, and the Authority may borrow, from the Public Account advances of such amounts as the Governor approves, on such conditions as to repayment and payment of interest as the Governor imposes and is hereby authorized to approve and impose.

Power of Authority to borrow from Treasury.

(2) Where an advance is made under this section—

- (a) the Authority shall repay the amount of the advance; and
- (b) shall pay interest,

in accordance with the conditions imposed under subsection (1) of this section and shall comply with any other conditions so imposed.

(3) By virtue of this subsection the Fund and the assets of the Authority are charged with the performance by the Authority of conditions imposed under this section in respect of an advance so made.

40. (1) The provisions of this section are in addition to, and do not derogate from those of section thirty-nine of this Act.

Power to borrow generally.

(2) For the purpose of carrying out its functions under this Act and for any of the purposes and provisions of this Act, the Scheme or an order, the Authority has power to borrow money.

(3) Where the Authority proposes to raise a loan for any of those purposes and desires the Treasurer of the State to guarantee repayment of the amount

Metropolitan Region Town Planning Scheme.

of the proposed loan and payment of interest thereon, the Authority shall cause particulars of the proposed loan to be submitted to the Treasurer for presentation to the Governor.

(4) If the Governor approves the particulars of the proposed loan and the guarantee by the Treasurer and advises the Authority accordingly, the Authority may proceed to negotiate the proposed loan, but shall not finalize the negotiations for, or execute any form of instrument of security required in respect of, the proposed loan, until the form has been submitted to and approved by the Treasurer.

(5) If the Governor approves the particulars of the proposed loan and the Treasurer approves the form of instrument, or if more than one, instruments of security, the Treasurer on behalf of the State shall guarantee repayment of the amount of the loan and payment of interest thereon in accordance with the provisions of that instrument or those instruments of security, which the Treasurer is hereby authorized to execute on behalf of the State.

(6) The due payment of money payable by the Treasurer under a guarantee given by him under the authority of this section—

(a) is hereby guaranteed by the State; and

(b) shall be paid out of the money referred to in section four of the Audit Act as "Public Moneys".

(7) By virtue of this subsection any sum paid by the Treasurer under any guarantee given under this section is a charge on the Fund and assets of the Authority, and the Fund and the assets are charged with the performance and observance by the Authority of any covenants and conditions which the Governor requests, and is hereby authorized to request, the Authority to agree with the Treasurer to perform and observe as a condition of approval of the guarantee.

PART VII.—ADMINISTRATION, PENALTIES.

41. (1) Subject to the provisions of subsection (2) of this section, every person who, at midnight on the thirtieth day of June, one thousand nine hundred and fifty-nine, and at that time in each year thereafter, is the owner of land situate within the metropolitan region shall in accordance with the provisions of this Act pay Metropolitan Region Improvement Tax on the land which is hereby chargeable with the tax imposed by and at the rate imposed by section two of the Metropolitan Region Improvement Tax Act 1959, for the then current financial year.

Owners' liability to pay Metropolitan Region Improvement Tax.
Amended by No. 21 of 1970, s. 21; No. 8 of 1976, s. 3; No. 30 of 1980, s. 2.

(1a) An owner of land situate within the metropolitan region is also liable to pay Metropolitan Region Improvement Tax in accordance with section 15A of the Land Tax Assessment Act 1976 and, for that purpose, the said section shall apply as if references therein to land tax and the Land Tax Act 1976 were respectively references to Metropolitan Region Improvement Tax and the Metropolitan Region Improvement Tax Act 1959.

(2) For the purposes of this Act the provisions of the Land Tax Assessment Act 1976, relating to land tax and land so far as they can be made applicable with all necessary modifications or adaptations apply to the Metropolitan Region Improvement Tax and land situate within the metropolitan region.

[Subsection (3) repealed by No. 8 of 1976, s. 3.]

(4) Notwithstanding anything contained in any other law, the amount of the tax which the Commissioner of State Taxation shall treat as having come into his possession under this Act in each financial year commencing with the financial year that commenced on the first day of July, one thousand nine hundred and fifty-nine, shall be the amount of the tax which becomes payable in that financial year.

Land of Authority not subject to rates etc. Inserted by No. 69 of 1968, s. 3.

41A. No rate, tax, or assessment shall be imposed, levied, charged or made upon any land acquired by the Authority under and for the purposes of this Act while the Authority is the owner of the land, but if any such land is leased by the Authority, the Authority shall pay in respect thereof out of the rent received therefrom by the Authority, 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 Authority certifies in writing to be available for the purpose.

Offences and penalties. Amended by No. 113 of 1965, s. 8; No. 115 of 1979, s. 16.

42. A person who—

- (a) after the Scheme has the force of law commences or continues to carry out any development in any part of the metropolitan region the subject of the Scheme otherwise than in accordance with the provisions of the Scheme or commences or continues to carry out any such development otherwise than in accordance with any condition imposed by the Authority or a local authority pursuant to this Act with respect to the development or otherwise fails to comply with any such condition; or
- (b) at any time contravenes the provisions of this Act,

commits an offence.

Penalty: Two thousand dollars and in the case of a continuing offence, a further fine of two hundred dollars for each day during which the offence continues.

Power to Authority to direct removal, etc. of development contrary to Scheme. Amended by No. 115 of 1979, s. 18; No. 79 of 1981, s. 12.

43. (1) The Authority or a local authority exercising the powers of the Authority, may by notice in writing served on the owner of any land situate in the metropolitan region direct him within such period, being not less than forty days after the service of the notice, as is specified in the notice,

to remove, pull down, take up, or alter any building or work or cease any development commenced, continued or carried out on the land in contravention of the Scheme.

[*Previous subsection (2) repealed by No. 115 of 1979, s. 18.*]

(2) The Authority may by notice in writing served on the owner of any land situated in a planning control area direct him within such period, being not less than 40 days after the service of that notice, as is specified in that notice to cease any development carried out on that land in contravention of section 35D of this Act.

(3) The owner on whom a notice is so served may, within the period specified in the notice, appeal in manner prescribed to the Minister against any direction contained therein, and the Minister after considering the appeal may confirm, vary or cancel the direction and the Minister may, where he confirms or varies the direction, by written notice, direct that the owner shall comply with the direction as so confirmed or varied, as the case requires, within such period, being not less than forty days after the service of the notice, as is specified in the notice.

(4) Where the direction appealed against is confirmed or varied, the owner to whom the direction was given shall comply with it to the extent to which it is so confirmed or varied and within the time specified in the notice giving the direction.

(5) Where—

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

(i) carry out the directions; or

(ii) appeal against the direction pursuant to subsection (3) of this section,

within the time specified in the notice; or

- (b) on appeal by an owner of any land a direction specified in a notice served on him under subsection (1) is confirmed or varied pursuant to subsection (3) of this section and the owner fails to carry out the direction as confirmed or varied pursuant to that subsection within the time specified by the Minister in the notice given under subsection (3) of this section,

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

Injunction.
Inserted by
No. 115 of
1979, s. 19.
Amended by
No. 79 of
1981, s. 13.

43A. (1) Without prejudice to any proceedings for an offence against this Act, where—

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

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

- (c) where the application is with respect to a contravention of the Act or the Scheme, restraining the person from engaging in any conduct or doing any act, that constitutes or is likely to constitute a contravention of this Act or the Scheme; or

(d) where the application is with respect to the commencement, continuation or completion of a development contrary to or otherwise than in accordance with any condition imposed by the Authority or the local authority with respect to the development—

(i) in the case where the development is commenced but not completed, restraining the continuation or completion of the development or any use thereof;

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

until the condition is complied with.

(2) An injunction granted under subsection (1) of this section—

(a) shall have effect for such period specified therein or until further order of the Court;

(b) may be varied or rescinded by the Court.

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

Power to
Governor
to make
regulations.
Amended by
No. 113 of
1965, s. 8;
No. 115 of
1979, s. 20.

45. The Scheme binds the Crown.

Crown
bound.
Substituted
by No. 115 of
1979, s. 2.

[Section 46 repealed by No. 39 of 1960, s. 2.]

*Metropolitan Region Town Planning Scheme.*FIRST SCHEDULE.¹

(Section 7)

Heading amended by No. 80 of 1975, s. 9. Schedule amended by No. 73 of 1982, s. 12.

South-West Group—Councils of the Cities of Fremantle and Melville, of the Towns of Cockburn, East Fremantle and Kwinana, and of the Shire of Rockingham.

North-West Group—Councils of the Cities of Nedlands, Stirling and Subiaco, of the Towns of Claremont, Cottesloe and Mosman Park, and of the Shires of Peppermint Grove and Wanneroo.

South-East Group—Councils of the Cities of Canning, Gosnells and South Perth, Council of the Town of Armadale-Kelmscott, and Councils of the Shires of Armadale-Kelmscott, Belmont and Serpentine-Jarrahdale.

Eastern Group—Councils of the Town of Bassendean, of the Shires of Bayswater, Kalamunda, Mundaring and Swan.

[*Previous Second Schedule repealed by No. 115 of 1979, s. 22.*]

Second Schedule. Inserted by No. 79 of 1981, s. 14.

SECOND SCHEDULE

(Section 35C)

PURPOSES FOR WHICH LAND MAY BE REQUIRED.

<i>Item.</i>	<i>Purpose.</i>
1.	Car parks.
2.	Civic and cultural amenities.
3.	Commonwealth Government.
4.	Highways and important regional roads.
5.	Hospitals.
6.	Metropolitan Water Supply, Sewerage, and Drainage Board.
7.	Parks and Recreation areas.
8.	Port installations.
9.	Prisons.
10.	Railways.
11.	Schools.
12.	Special uses.
13.	State Energy Commission.
14.	State forests.
15.	Universities.
16.	Water catchments.
17.	Waterways.

¹ The names of the bodies originally contained in this Schedule have been varied to the names set out in the First Schedule as printed above to accord with the changes in the names or status of certain of these bodies effected by Orders in Council made under the Local Government Act 1960, as amended. See *Government Gazettes* 1961, pp. 1995 and 3086; 1962, pp. 221 and 2680; 1968, p. 1245; 1970, pp. 477, 3346, 3707 and 3842; 1975, p. 1152; 1977, pp. 471 and 1821; 1978, pp. 3295 and 3746.

THIRD SCHEDULE (Section 6).

DESCRIPTION OF METROPOLITAN REGION.

Third
Schedule.
Inserted by
No. 73 of
1982, s. 13.

All that portion of the State bounded by a line starting from the southwestern 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 district of the Shire 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 district of the Shire of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost southeastern corner of Location 1817, being a point on the northernmost northern boundary of the district of the Shire 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 district of the Shire 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 northeastern corner of the district of the Shire of a Kalamunda; thence southerly along the easternmost eastern boundary of the district of the Shire of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a northeastern corner of the district of the Town of Armadale; thence generally southerly, generally southeasterly, westerly and southwesterly along the boundaries of the district of the Town of Armadale to the 33 Mile Post on the northeastern side of Albany Highway, being a northeastern corner of the district of the Shire of Serpentine-Jarrahdale; thence generally southeasterly, southerly, generally westerly and northerly along boundaries of the district of the Shire of Serpentine-Jarrahdale to the northeastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909, being a southeastern corner of the district of the Shire of Rockingham; thence generally westerly along the boundaries of the district of the Shire of Rockingham to the southwestern 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.