

Planning Appeals Bill 1999

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Western Australia

LEGISLATIVE ASSEMBLY

Planning Appeals Bill 1999

A Bill for

An Act to provide for the determination of —

- **appeals against planning or heritage decisions; and**
 - **referrals of planning or heritage matters,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Planning Appeals Act 1999*.

2. Commencement

5 This Act comes into operation on a day fixed by proclamation.

3. Interpretation

(1) In this Act unless the context otherwise requires —

“**Assessor**” means the Director or an Assessor appointed under section 39;

10 “**community representative**” means the person appointed under section 41;

“**Director**” means the Director of Planning Appeals appointed under section 36;

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

“**Heritage Council**” means the Heritage Council of Western Australia established under the *Heritage Act 1999*;

20 “**original decision maker**” means the person whose decision is the subject of an appeal;

“**party**” means an appellant or the original decision maker;

“**Planning Appeal Panel**” means a panel convened under section 21;

“**Registrar**” means the Registrar appointed under section 42.

- (2) If a mediation or investigation is assigned under this Act to more than one Assessor —
- (a) a reference in section 8, 9(2), 11, 16(2), 17, 18, 23(1), 23(3), 26(3)(a), 28(5) or 28(6) to “an Assessor”, “An Assessor” or “the Assessor” is a reference to those Assessors; and
 - (b) a reference in section 7(2), 9(1), 15(2), 15(5), 19, 20, 21(2), 23(2), 40(2) or 47 to “an Assessor” or “An Assessor” is a reference to any of those Assessors.

5

Part 2 — Appeals

Division 1 — Making an appeal

4. When appeals may be made

A person may appeal under this Act if a right to do so is
conferred on the person by —

5

- (a) the *East Perth Redevelopment Act 1991*;
- (b) the *Heritage Act 1999*;
- (c) the *Metropolitan Region Town Planning Scheme Act 1959* or the Metropolitan Region Scheme within the meaning of that Act;
- 10 (d) the *Strata Titles Act 1985*;
- (e) the *Subiaco Redevelopment Act 1994*;
- (f) the *Town Planning and Development Act 1928*, or any town planning scheme in force under that Act;
- 15 (g) the *Western Australian Planning Commission Act 1985*, or any regional planning scheme within the meaning of that Act; or
- (h) any other written law.

5. How appeal is to be made

(1) An appeal under this Act is to be made by —

20

- (a) completing a notice of appeal in the prescribed form;
- (b) lodging the notice with the Registrar in the prescribed manner together with —
 - (i) the prescribed fee; and
 - 25 (ii) any submissions the appellant wishes to make as to whether the appeal should, or should not, be set down for mediation;

and

- (c) serving a copy of the notice of appeal and any submissions made under subsection (1)(b)(ii) on the original decision maker.
- 5 (2) An appellant must give a copy of the notice of appeal to the prescribed people in the prescribed manner.
- (3) The original decision maker may, within 14 days of being served with the notice of appeal, make written submissions to the Director as to whether the appeal should be set down for mediation.
- 10 **6. Appeal to be set down for mediation or investigation**
- (1) After the expiry of the 14 days referred to in section 5(3), the Director is to set down an appeal for —
- (a) mediation under Division 2; or
- (b) investigation under Division 3.
- 15 (2) The Director is to set down an appeal for mediation unless the Director considers, having regard to any submissions made under section 5(1)(b)(ii) or (3) and any other matters the Director considers relevant, that —
- 20 (a) because of the subject matter of the appeal, mediation would be inappropriate;
- (b) mediation would be impractical; or
- (c) there is no reasonable prospect of any of the issues of the appeal being settled by mediation.
- 25 (3) The Registrar is to notify the parties that the appeal has been set down for mediation or investigation.

Division 2 — Mediation

7. Assignment of Assessor to mediate

- (1) On setting down an appeal for mediation the Director is to assign the mediation to one or more Assessors.
- 5 (2) If an Assessor becomes unavailable to complete the mediation, the Director —
- (a) if the mediation had been assigned to that Assessor alone, must; and
 - (b) otherwise, may,
- 10 assign the mediation to another Assessor.

8. Role of Assessor in mediation

- The function of an Assessor mediating an appeal is to encourage the settlement of the appeal by —
- 15 (a) arranging for the parties to hold informal discussions about the appeal;
 - (b) helping in the conduct of those discussions; and
 - (c) if possible, assisting the parties to reach an agreement under section 10.

9. Powers of Assessor mediating an appeal

- 20 (1) An Assessor mediating an appeal may require a party to —
- (a) attend a meeting with the Assessor, or with the Assessor and any other party;
 - (b) answer questions put by the Assessor; and
 - 25 (c) produce documents to the Assessor, or consent to another person who has relevant documents producing them to the Assessor.

- (2) An Assessor may terminate the mediation process without an agreement being reached if —
- (a) a party fails to comply with a requirement under subsection (1);
 - 5 (b) a party indicates that it is no longer willing to participate in the mediation; or
 - (c) the Assessor considers there is no reasonable prospect of any of the issues of the appeal being settled by mediation.

10 **10. Agreements reached by mediation**

- (1) During mediation the parties may agree to settle —
- (a) the appeal by agreeing to —
 - (i) affirm the decision appealed against;
 - (ii) vary the decision appealed against; or
 - 15 (iii) set aside the decision appealed against and substitute a decision on terms agreed by the parties;
 - or
 - (b) particular issues raised by the appeal.

- 20 (2) An agreement under this section is to be in writing and signed by the parties.

11. Report by Assessor mediating an appeal

- (1) An Assessor mediating an appeal is to give the Director a written report on the outcome of the mediation of an appeal.
- 25 (2) An Assessor's report is to include —
- (a) details of any failure by a party to comply with a requirement under section 9(1); and
 - (b) a copy of any agreement under section 10.

- (3) The Registrar is to give each party a copy of the Assessor's report.

12. Director to review agreement

- 5 (1) The Director is to review any agreement under section 10(1)(a) to settle the appeal and is to confirm, or decline to confirm, the agreement.
- (2) The Director is to confirm an agreement to settle the appeal unless —
- 10 (a) the parties have agreed to vary the decision appealed against or to substitute a different decision and the Director considers that it would have been beyond the power of the original decision maker to have made a decision on the varied or substituted terms; or
- (b) the Director considers that the agreement —
- 15 (i) conflicts with the proper application of generally accepted planning principles; or
- (ii) is otherwise inappropriate;
- or
- (c) the Director considers that any party was improperly
- 20 induced or coerced into entering into the agreement.
- (3) The Registrar is to notify the parties of the Director's decision and, if the Director has declined to confirm the agreement, the reasons for that decision.
- (4) If the Director confirms an agreement —
- 25 (a) the agreement has effect as if the agreement were a determination of a Planning Appeal Panel under section 22(1); and
- (b) the Director may make orders under sections 22(2) and 24 as if the Director were a Planning Appeal Panel.

13. If mediation is unsuccessful

- (1) The Director is to set down an appeal for investigation under Division 3 if —
- (a) mediation of the appeal is terminated;
 - 5 (b) after mediation the parties have not agreed to settle the appeal; or
 - (c) the Director declines to confirm an agreement to settle the appeal reached during the mediation.
- (2) The Registrar is to notify the parties that the appeal has been set
10 down for investigation.

14. Protection of statements made during mediation

Unless otherwise agreed by the parties, evidence of anything said or admitted during the mediation of an appeal is not admissible during an investigation under Division 3 or 5 or in
15 any matter before a court, except proceedings for an offence against section 46.

Division 3 — Investigation of appeals

15. Assignment to an Assessor

- (1) On setting down an appeal for investigation the Director is to
20 assign the investigation to one or more Assessors.
- (2) The Director may only assign the investigation of an appeal to an Assessor who mediated the appeal if the parties agree.
- (3) The Director is to assign at least 2 Assessors (including one who has expertise in environmental science) to investigate an appeal —
- 25 (a) under section 8B of the *Town Planning and Development Act 1928*; or
 - (b) that relates to an environmental condition as defined in that Act.

(4) The Director is to assign at least 3 Assessors (including one who is a legal practitioner and one who has expertise in heritage matters) to investigate an appeal under the *Heritage Act 1999*.

5 (5) If an Assessor becomes unavailable to complete an investigation the Director —

(a) if the investigation had been assigned to that Assessor alone, must; and

(b) otherwise, may,

assign the investigation to another Assessor.

10 **16. Notice of setting down for investigation**

(1) When an appeal is set down for investigation the Registrar is to notify the person specified in Schedule 1 in respect of appeals of that type unless that person was served with a copy of the notice of appeal under section 5(1)(c).

15 (2) A person notified of an appeal under subsection (1) may make written submissions to the Assessor in relation to the appeal.

(3) The Registrar is to give each party a copy of any submission made under subsection (2).

20 (4) If a submission made under subsection (2) contains confidential information the person making the submission may request that the information be excluded from the copy of the submission given to the parties under subsection (3).

25 (5) If a request is made under subsection (4) and the Director considers it desirable to do so, the Registrar is to exclude the confidential information from the copy of the submission given to the parties under subsection (3).

17. Investigation of appeals

- (1) The purpose of an investigation into an appeal is to gather sufficient information to enable a Planning Appeal Panel to properly determine the appeal in accordance with section 22.
- 5 (2) An Assessor investigating an appeal may inform himself or herself on any issue raised by the appeal in any manner the Assessor considers appropriate, including —
- 10 (a) by assessing written statements made by the parties, witnesses, experts and anyone else the Assessor considers appropriate;
- (b) by having discussions with the parties, witnesses, experts and anyone else the Assessor considers appropriate;
- (c) by conducting hearings; and
- (d) by inspecting any relevant land or place.
- 15 (3) Discussions, hearings and inspections conducted under subsection (2) are not open to the public unless the Assessor determines otherwise.
- (4) Cross examination is not permitted at a hearing unless —
- 20 (a) the Assessor determines that in the particular case cross-examination is appropriate; and
- (b) the cross-examination is conducted in accordance with any directions of the Assessor.
- (5) An Assessor investigating an appeal is not bound by the rules of evidence and may, subject to this Act and the regulations, determine his or her own procedures.
- 25

18. Matters to be considered by Assessor investigating appeal

- (1) While investigating an appeal an Assessor is to have regard to all relevant matters including —
- (a) generally accepted planning principles;

- 5 (b) any agreements under section 10(1)(b) to settle particular issues;
- (c) any submissions made in relation to the appeal under section 16(2);
- 10 (d) any relevant town planning schemes, orders, statements, policies and plans;
- (e) if the appeal is made under the *Heritage Act 1999*, the provisions of that Act;
- (f) any relevant management programmes in force under Part 3 of the *Swan River Trust Act 1988*;
- (g) if the appeal relates to land in the redevelopment area as defined in the *East Perth Redevelopment Act 1991*, the redevelopment scheme in force under that Act; and
- 15 (h) if the appeal relates to land in the redevelopment area as defined in the *Subiaco Redevelopment Act 1994*, the redevelopment scheme in force under that Act.
- (2) An Assessor investigating an appeal may investigate all issues arising in relation to the decision the subject of the appeal and is not limited to investigating the issues specifically raised in the notice of appeal.
- 20

19. Powers of Assessor investigating an appeal

- (1) Without limiting section 40(2)(a) an Assessor investigating an appeal may —
- 25 (a) by written notice, require a person to —
- (i) attend before the Assessor to provide information; or
- (ii) produce to the Assessor any document or other thing in the possession or under the control of the person,
- 30 at a time and place specified in the notice;

- 5 (b) if the Assessor considers it to be necessary, require any person appearing before the Assessor —
- (i) to take an oath or make an affirmation; and
 - (ii) to answer any relevant question put to the person;
- (c) administer an oath or affirmation to a person and examine the person on oath or affirmation;
- 10 (d) inspect, copy and retain for such reasonable period as the Assessor thinks fit, any document or other thing produced to the Assessor; and
- (e) after giving reasonable written notice to the occupier, enter any land or place relevant to the appeal for the purpose of inspecting it.
- 15 (2) A person who fails to comply with a requirement of an Assessor under subsection (1) commits an offence.
Penalty: \$2 000.
- (3) A notice under subsection (1)(a) is to —
- 20 (a) contain sufficient details of the matters being investigated to enable the person to prepare himself or herself; and
 - (b) be given to the person at least 7 days before the person is required to attend or produce the document or other thing.

20. Report on investigation

- 25 (1) An Assessor investigating an appeal is to give to the Director a written report on the investigation which is to include the Assessor's recommendations as to how the appeal ought to be determined.

- (2) The Director is to give the report to the Planning Appeal Panel convened to determine the appeal.

Division 4 — Determination of appeals

21. Convening a Planning Appeal Panel

- 5 (1) On receipt of a report under section 20 the Director is to convene a panel, consisting of —
- (a) the Director;
 - (b) the community representative; and
 - (c) 2 or more other Assessors,
- 10 to determine the appeal.
- (2) The Planning Appeal Panel convened in respect of an appeal —
- (a) may include an Assessor who investigated the appeal; but
 - (b) must not include an Assessor who mediated the appeal
- 15 unless the parties agree.
- (3) If an Assessor becomes unavailable to complete the determination of an appeal, the Director is to appoint another Assessor to the Planning Appeals Panel in his or her place.
- (4) A Planning Appeal Panel is not a court and a person does not
- 20 have any judicial status by reason of being a member of a Planning Appeal Panel.

22. Determination of appeal by Planning Appeal Panel

- (1) A Planning Appeal Panel is to determine the appeal in respect of which it was convened by —
- 25 (a) affirming the decision appealed against;
- (b) varying the decision appealed against; or

- (c) setting aside the decision appealed against and —
 - (i) substituting the Panel's own decision; or
 - (ii) remitting the matter to the original decision maker, either with or without directions.

5 (2) A Planning Appeal Panel may also make any incidental or ancillary orders.

23. Procedure

- (1) In determining an appeal the Planning Appeal Panel is to have regard to any report of an Assessor who investigated the appeal.
- 10 (2) The Planning Appeal Panel is not bound by the recommendations of an Assessor.
- (3) The Planning Appeal Panel is not to conduct any further investigation of an appeal in respect of which it is convened but may refer the appeal back to an Assessor for further
15 investigation if it considers it necessary to do so.
- (4) The determination of a majority of members of a Planning Appeal Panel is the determination of the Panel.
- (5) If the Planning Appeal Panel is equally divided in opinion, the opinion of the Director is to prevail.
- 20 (6) A determination of a Planning Appeal Panel is to be in writing and is to include the Panel's reasons.
- (7) The Registrar is to give each party a copy of the Panel's decision.

24. Costs

- 25 (1) Subject to subsection (2), each party is to bear the party's own costs in relation to an appeal.

- (2) When determining an appeal a Planning Appeal Panel may make such orders as to costs as the Panel thinks fit against a party who —
- 5 (a) failed to comply with a requirement under section 9(1);
- (b) being the appellant, withdraws from the appeal; or
- (c) the Panel considers has acted unreasonably, vexatiously or frivolously in relation to the appeal.
- (3) A party in whose favour costs have been awarded may recover the amount so awarded in a court of competent jurisdiction as a
- 10 debt due to that party by the party against whom the order was made.

Division 5 — Calling in of appeals by the Minister

25. Minister may call in certain appeals

- (1) The Minister may, by written notice to the Director, call in an
- 15 appeal if the Minister considers the appeal raises issues of such State, regional or other public importance that it would be more appropriate for it to be determined by the Minister than by a Planning Appeal Panel.
- (2) The Minister cannot call in an appeal —
- 20 (a) made under section 7(1f) of the *Town Planning and Development Act 1928*;
- (b) made under the *Heritage Act 1999*; or
- (c) after a determination has been made in relation to it under section 22.
- (3) When the Minister calls in an appeal —
- 25 (a) the Director is to give control of the appeal to the Minister;

- 5 (b) any mediation being carried out under Division 2 is to be discontinued;
- (c) subject to section 26(3), any investigation being carried out under Division 3 is to be discontinued; and
- 5 (d) the Registrar is to notify the parties that the appeal has been called in by the Minister.
- (4) The annual report submitted by the relevant accountable authority under section 62 of the *Financial Administration and Audit Act 1985* is to include details of the appeals called in by
- 10 the Minister during the year.

26. Investigation of called in appeals

- (1) The Minister is to deal with a called in appeal by —
- 15 (a) personally investigating the appeal;
- (b) directing the Director to investigate the appeal;
- (c) appointing a person or persons, whom the Minister considers to be suitably qualified or experienced, to investigate the appeal; or
- (d) doing any combination of those things.
- (2) If the Minister —
- 20 (a) personally conducts investigations; or
- (b) appoints a person under subsection (1)(c),
- sections 16 (if it has not already been complied with in relation to the appeal) to 19 apply as if the Minister or other person were an Assessor investigating an appeal.
- 25 (3) If the Minister directs the Director to investigate the appeal the Director is to —
- (a) if the appeal is already being investigated under Division 3, direct the Assessor to continue the investigation; or

(b) otherwise assign, in accordance with section 15, an Assessor to investigate the appeal.

5 (4) An Assessor acting under subsection (3) is to investigate and report on the appeal in accordance with sections 16 to 20, except that reports under section 20 are to be given to the Minister instead of the Director.

27. Determination by the Minister

10 (1) After a called in appeal has been investigated the Minister is to determine the appeal in accordance with section 22(1) as if the Minister were a Planning Appeal Panel.

(2) Sections 22(2), 23 and 24 apply as if the Minister were a Planning Appeal Panel.

Division 6 — General

28. Representation

15 (1) Subject to subsections (4) and (5) a party who is a natural person must attend in person if required to attend during the mediation or investigation of an appeal.

(2) A party that is not a natural person is to be represented —

20 (a) during the mediation of an appeal by a natural person who has authority to enter into, on behalf of the party, an agreement to settle the appeal; and

(b) during the investigation of an appeal by a natural person who is able to provide all relevant information necessary for the proper investigation of the appeal.

25 (3) Subject to subsection (4) a representative under subsection (2) must not be a legal practitioner.

- (4) A party may apply to an Assessor for leave to be represented by a legal practitioner or other representative during the mediation or investigation of an appeal.
- 5 (5) The Assessor is to grant an application under subregulation (4) if the Assessor is satisfied that —
- (a) the applicant would, if leave were not granted, be unfairly disadvantaged; or
 - (b) the mediation or investigation will not be effective without that representation.
- 10 (6) A person attending a mediation or investigation may not be assisted by another person unless the Assessor considers that the attendance of the other person will assist the mediation or investigation.

29. Appeals to Supreme Court

- 15 (1) Subject to subsection (2) no appeal lies against the determination of an appeal by a Planning Appeal Panel or the Minister.
- (2) A party aggrieved by the determination of an appeal by a Planning Appeal Panel may appeal to the Supreme Court on a question of law, but not otherwise.
- 20 (3) An appeal under subsection (2) is to be —
- (a) made to the Supreme Court; and
 - (b) determined by a single judge of the Supreme Court, in accordance with the rules of the Court.
- 25 (4) On an appeal under subsection (2) the Supreme Court is to —
- (a) affirm the Panel's determination;
 - (b) vary the Panel's determination; or

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- (c) set aside the Panel's determination and —
 - (i) substitute the Court's own determination; or
 - (ii) remit the matter to the original decision maker either with or without directions.
- 5 (5) The Supreme Court may also make any incidental or ancillary orders, including orders as to costs.

Part 3 — Referrals

30. Referral of submissions under *Metropolitan Region Town Planning Scheme Act 1959*

5 (1) Submissions referred under section 33A(5)(b) of the *Metropolitan Region Town Planning Scheme Act 1959* are to be dealt with as if they were an appeal —

10 (a) by the people who made the submissions against the Western Australian Planning Commission's decision to propose the amendment to which the submissions relate; and

(b) that the Director has set down for investigation.

15 (2) When dealing with submissions under subsection (1), instead of making a determination under section 22, the Planning Appeal Panel is to make a recommendation to the Minister as to what action the Panel considers the Minister should take under section 33A(7) of the *Metropolitan Region Town Planning Scheme Act 1959*.

31. Referral of matters under *Town Planning and Development Act 1928*

20 (1) A referral under section 18(2) of the *Town Planning and Development Act 1928* is to be dealt with and determined as if it were an appeal by the aggrieved person against a decision of the local government not to enforce the scheme or provision, or not to carry out the works, referred to in that section.

25 (2) When dealing with a matter under subsection (1), instead of making a determination under section 22, the Planning Appeal Panel is to make a recommendation to the Minister as to what action the Panel considers the Minister should take under section 18(2a) of the *Town Planning and Development Act 1928*.

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32. Referrals under the *Heritage Act 1999* where objection to: an interim entry being made permanent; to changing the area of a registered place or state heritage area; or to the removal of an entry from the Register

- 5 (1) A referral under section 38 of the *Heritage Act 1999* is to be dealt with as if it were an appeal —
- (a) by the people who made the submissions objecting to —
 - 10 (i) making the interim entry in the Register permanent;
 - (ii) increasing or decreasing the area of the registered place or the state heritage area; or
 - (iii) removing the permanent entry from the Register, as is relevant to the case;
 - 15 and
 - (b) that the Director has set down for investigation.
- (2) When dealing with a matter under subsection (1), instead of making a determination under section 22, the Planning Appeal Panel is to make a recommendation to the Minister referred to in section 38 of the *Heritage Act 1999* as to whether the Minister should direct that —
- 20 (a) the interim entry in the Register be made permanent;
 - (b) the area of the registered place or the state heritage area be increased or decreased; or
 - (c) the permanent entry be removed from the Register,
- 25 as is relevant to the case.

33. Referrals under the *Heritage Act 1999* of orders for the payment of remitted taxes, rates or charges

- (1) A referral under section 82(4) of the *Heritage Act 1999* is to be dealt with as if it were an appeal —
- 5 (a) by the person who is aggrieved by a notice under section 82(3)(b)(i) of that Act; and
- (b) that the Director has set down for investigation.
- (2) If a person refers a matter in accordance with section 82(4) of the *Heritage Act 1999*, the person must, in addition to the requirements of section 5(1)(c), give the Heritage Council a copy of the notice of appeal and any submissions made under section 5(1)(b)(ii) within 7 days of lodgment of the notice.
- 10
- (3) When dealing with a matter under subsection (1), instead of making a determination under section 22, the Planning Appeal Panel may —
- 15 (a) determine on the balance of probabilities whether a provision of the *Heritage Act 1999* or a heritage agreement has been contravened;
- (b) determine how liability should be apportioned where land has ceased to be held or occupied by the person in whose favour the tax, rate or charge was remitted; or
- 20 (c) determine whether or not the making of the proposed order would be just in the circumstances.

34. Minister's request to extend protection orders under the *Heritage Act 1999*

- 25 (1) A request under section 88(1) of the *Heritage Act 1999* to extend the time in which a protection order under that Act has effect is to be dealt with as if it were an appeal —
- (a) by the Minister;

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(b) with the person who was served with the protection order as the respondent; and

(c) that the Director has set down for investigation.

5 (2) When dealing with a matter under subsection (1), instead of making a determination under section 22, the Planning Appeal Panel may determine that the conservation order continue to have effect —

(a) for a specified period of time; or

(b) until a specified event.

10 **35. Effect of determinations**

A determination under section 33 or 34 has effect according to its tenor and is to be complied with despite any other provision of a written law.

Part 4 — Director, Assessors, Registrar and staff

36. Director of Planning Appeals

- (1) The Governor is to appoint a person as Director of Planning Appeals.
- 5 (2) The person appointed as Director is to have expertise in, or in a field relating to, urban and regional planning.
- (3) The office of the Director of Planning Appeals is not an office in the Public Service and is not to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.
- 10 (4) Schedule 2 has effect with respect to the tenure, salary and conditions of service of the Director.
- (5) If the Director is unable to act by reason of illness, absence or other cause, the Minister may appoint another person to act temporarily in the Director’s place and, while so acting according to the tenor of that appointment, that other person is to be taken to be the Director.
- 15 (6) No act or omission of a person acting in place of the Director under subsection (5) is to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.
- 20

37. Powers of the Director

- (1) The Director has power to do all things that are necessary or convenient to be done in the performance of the functions conferred on the Director under this Act or any other written law.
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- (2) In addition to any other powers conferred on the Director, the Director may advise the Minister generally on matters —
- (a) arising under this Act;
 - (b) concerning appeals against decisions relating to planning or heritage matters; or
 - (c) concerning planning and heritage generally.

38. Delegation by Director

- (1) The Director may delegate the performance of any of the Director's functions, except this power of delegation, to —
- (a) one or more Assessors;
 - (b) the Registrar;
 - (c) one or more members of staff; or
 - (d) any other person.
- (2) A function performed by a delegate under this section is to be taken to be performed by the Director.
- (3) Where a delegate performs a function under this section the delegate is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

39. Assessors

- (1) The Minister is to appoint so many people as Assessors as the Minister considers necessary for the purposes of this Act.
- (2) A person appointed as an Assessor is to have expertise in, or in a field relating to, urban and regional planning.
- (3) Of the Assessors there must be —
- (a) at least one who has expertise in urban and regional planning;
 - (b) at least one who has expertise in environmental science;

- (c) at least one who is a certificated practitioner within the meaning of the *Legal Practitioners Act 1893*; and
- (d) at least one who has expertise in heritage matters.

5 (4) A person employed under Part 3 of the *Public Sector Management Act 1994* may be appointed under subsection (1) as an Assessor.

10 (5) An Assessor who is not employed under Part 3 of the *Public Sector Management Act 1994* is to be paid the remuneration and allowances determined by the Minister on the recommendation of the Minister for Public Sector Management.

(6) An Assessor may resign from office by written notice to the Minister.

40. Powers and duties of Assessors

15 (1) An Assessor has power to do all things that are necessary or convenient to be done in the performance of the functions conferred on Assessors under this Act or any other written law.

(2) While mediating or investigating an appeal an Assessor is to —

- 20 (a) act with as little formality and technicality, and as speedily, as the requirements of this Act and proper mediation or investigation of the matter permit;
- (b) be impartial and act in accordance with equity, good conscience and the principles of natural justice;
- (c) ensure that each party has a reasonable opportunity to present the party's case; and
- 25 (d) ensure, as far as practicable, that no party is unfairly disadvantaged by reason of the party's —
 - (i) unfamiliarity with the operation of this Act;
 - (ii) lack of professional advice or assistance; or

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- (iii) age, cultural background, level of education, lack of fluency in English, or any other similar circumstances.

41. Community representative

- 5 (1) The Minister is to appoint a person as community representative and may appoint a person as deputy community representative.
- (2) The person appointed as community representative or deputy community representative —
 - 10 (a) is to have expertise in public administration, commerce, industry or community affairs; and
 - (b) may be a person appointed as an Assessor.
- (3) Schedule 3 has effect with respect to the community representative.
- 15 (4) References in Schedule 3 to the community representative include references to the deputy community representative.

42. Registrar

- (1) The Minister is to appoint a person as Registrar.
- 20 (2) Subject to the control of the Director, the Registrar is responsible for, and has the necessary powers to administer, the day to day operation of this Act.
- (3) The Registrar is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

43. Other staff and facilities

- 25 (1) The Minister is to ensure that the Director, Assessors and Registrar are provided with such services and facilities as are reasonably necessary to enable them to perform their functions.

(2) Without limiting subsection (1) the Minister may arrange for —

(a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in the right of the State; and

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(b) any facilities of a department of the Public Service or of a State agency or instrumentality,

to be made available to the Director, Assessors and Registrar.

(3) An arrangement under subsection (2) is to be made between the Minister, after consultation with the Director, and the relevant employing authority on such terms as they agree.

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Part 5 — General

44. Register

- (1) The Registrar is to establish and maintain a register of appeals made under this Act.
- 5 (2) The register may be maintained in an electronic, digital or other form so long as the details recorded in it —
- (a) will remain in the form in which they were originally recorded; and
- (b) are capable of being reproduced in written form.
- 10 (3) The form and contents of the register are to be determined by the Director.
- (4) A person may at any time during normal office hours —
- (a) inspect the register free of charge; and
- (b) purchase a copy of all or part of the register.
- 15 (5) The Registrar is to ensure that copies of the register are available for purchase and that the price at which they are sold does not exceed the cost of providing them.

45. Publication of significant appeals

- 20 (1) The Director may publish the reasons for determinations made on an appeal under this Act.
- (2) The Director is to give priority to the publication of reasons for determinations that the Director considers —
- (a) are of significance to future planning policy or practice;
- (b) establish new planning principles; or
- 25 (c) are otherwise of significant public interest or importance.

46. False or misleading statements

A person must not —

- (a) make a statement in a notice of appeal; or
- (b) make a statement or provide information during the mediation or investigation of an appeal,

that the person knows to be —

- (c) false or misleading in a material particular; or
- (d) likely to deceive in a material way.

Penalty: \$2 000.

47. Hindering an Assessor

A person must not hinder or obstruct an Assessor, or a person investigating an appeal under section 26, while he or she is exercising powers under this Act.

Penalty: \$2 000.

48. Confidentiality

- (1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of the person's functions under this Act except —

- (a) for the purpose of performing those functions;
- (b) as required or allowed by law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 or imprisonment for 12 months.

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- 5 (2) Subsection (1) applies to any person who is, or has been, the Director, an Assessor, the Registrar, the community representative, the deputy or acting community representative, a person appointed under section 26(1)(c) or a person made available under section 43.

49. Protection from liability

- 10 (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- 10 (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- 15 (3) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

50. Protection of persons providing information

20 A person providing information under this Act has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

51. Minister may give directions

- 25 (1) Subject to subsection (2), the Minister may give directions in writing to the Director with respect to the operation of this Act and the Director is to ensure that effect is given to any such direction.

- (2) Subject to Part 2 Division 5, directions under subsection (1) are to be limited to matters of administration and are not to deal with the mediation, investigation or determination of appeals.
- 5 (3) The text of a direction given under subsection (1) is to be included in the annual report submitted by the relevant accountable authority under section 62 of the *Financial Administration and Audit Act 1985*.
- 10 (4) A copy of a direction given under subsection (1) is to be —
- (a) laid before each House of Parliament within 14 days after the direction is given; or
 - (b) if a House of Parliament is not sitting when the direction is given and the Minister is of the opinion that the House will not sit during those 14 days, given to the Clerk of that House.
- 15 (5) A document given to the Clerk of a House is to be taken —
- (a) to have been laid before that House; and
 - (b) to be a document published by order or under the authority of that House.
- 20 (6) The laying of a document that is taken to have occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the document is given to the Clerk.

52. Minister to have access to information

- 25 (1) The Minister is entitled —
- (a) to have information in the possession of any person exercising a function under this Act; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.

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- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Director to furnish information to the Minister;
 - (b) request the Director to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of a person available to the Director under section 43 to obtain the information and furnish it to the Minister.
- (3) The Director is to comply with a request under subsection (2) and make members of staff and other facilities available to the Minister for the purposes of subsection (2)(c).
- (4) In this section —
- “information”** means information specified, or of a description specified, by the Minister that relates to the operation of this Act.

53. Judicial notice of appointment and signature

All courts and persons acting judicially are to take judicial notice of —

- (a) the fact that a person holds or held the office of Director; and
- (b) the signature of a person who holds or held the office of Director.

54. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the purposes of this Act.

(2) Without limiting the operation of subsection (1), the Governor may make regulations providing for —

- (a) fees and charges to be paid;
- (b) forms to be used; and
- (c) the practice and procedure to be applied,

in relation to appeals made under this Act.

55. Review

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

(2) In the course of that review the Minister is to consider and have regard to —

- (a) the desirability of the continuation of the functions of the Director and Assessors; and
- (b) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister is to prepare a report based on the review carried out under subsection (1) and cause that report to be laid before each House of Parliament as soon as practicable.

Schedule 1 — Persons to be notified of investigation

[s. 16(1)]

Act conferring right of appeal • Section or subject matter	Persons to be notified
<i>Town Planning and Development Act 1928</i> <ul style="list-style-type: none">• s. 8B; or• an environmental condition	Minister to whom the administration of the <i>Environmental Protection Act 1986</i> is for the time being committed by the Governor
<i>Heritage Act 1999</i>	Heritage Council
<i>Metropolitan Region Town Planning Scheme Act 1959</i> <ul style="list-style-type: none">• s. 35F relating to heritage matters	Heritage Council
<i>Western Australian Planning Commission Act 1985</i> <ul style="list-style-type: none">• s. 37E relating to heritage matters	Heritage Council
<i>East Perth Redevelopment Act 1991</i> <ul style="list-style-type: none">• land in redevelopment area	East Perth Redevelopment Authority
<i>Subiaco Redevelopment Act 1994</i> <ul style="list-style-type: none">• land in redevelopment area	Subiaco Redevelopment Authority
<i>Swan Valley Planning Act 1995</i> <ul style="list-style-type: none">• land in the Swan Valley	Swan Valley Planning Committee
Prescribed Act <ul style="list-style-type: none">• prescribed section or subject matter	Prescribed person

Schedule 2 — Terms and conditions of appointment of Director

[s. 36(4)]

1. Term of office

5 Subject to clause 3, the Director holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for reappointment.

2. Salary and entitlements

Subject to the *Salaries and Allowances Act 1975*, the Director —

- 10 (a) is to be paid salary and allowances at a rate per year determined by the Minister on the recommendation of the Minister for Public Sector Management; and
- (b) has the same annual leave, sick leave and long service leave entitlements as a permanent officer of the Public Service.

15 3. Resignation and removal from office

(1) The Director may resign by written notice to the Governor.

(2) The Governor may remove the Director from office if the Director —

- (a) misbehaves or is incompetent;
- 20 (b) is suffering from a permanent physical or mental incapacity that impairs the performance of the Director's functions; or
- (c) becomes a bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of salary for their benefit.

25 (3) In subclause (2)(a) —

“**misbehaves**” includes behaving in a manner that renders the Director unfit to hold office even if the conduct does not relate to any function of the office of Director.

4. Superannuation

If the Director was a contributor under the *Superannuation and Family Benefits Act 1938* immediately before being appointed as Director, he or she may continue to be a contributor while he or she is Director.

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5. Appointment of public service officer

(1) A person who held an office in the Public Service (“**previous office**”) immediately before being appointed as Director —

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(a) retains existing and accruing leave entitlements as if service as the Director were a continuation of service in the previous office; and

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(b) if he or she ceases to hold office as the Director on the completion of a periodical appointment, is entitled to be appointed to an office in the Public Service, not lower in classification and salary than the previous office (as long as he or she is at that time eligible to hold such an office in the Public Service).

(2) A person appointed to an office in the Public Service under subclause (1)(b) retains existing and accruing leave entitlements as if service in the Public Service were a continuation of service as the Director.

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6. Other conditions of service

The Governor may, on the recommendation of the Minister for Public Sector Management, determine any other terms and conditions of service to apply to the Director.

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Schedule 3 — Community representative

[s. 41(3)]

1. Term of office and resignation

The community representative —

- 5 (a) is to be appointed for a term not exceeding 3 years specified in the instrument of appointment and is eligible for reappointment;
- (b) may be removed from office by the Minister; and
- (c) may resign from office by giving written notice to the Minister.

10 **2. Remuneration and allowances**

The community representative is to be paid the remuneration and allowances determined by the Minister on the recommendation of the Minister for Public Sector Management.

3. Acting community representative

- 15 (1) If the community representative becomes incapable of acting by reason of illness, absence or other cause —

- (a) the deputy community representative is to act as community representative; or
- 20 (b) if the deputy community representative is incapable of acting by reason of illness, absence or other cause, the Minister may appoint a qualified person to act temporarily as the community representative,

and while so acting that person is taken to be the community representative.

- 25 (2) No act or omission of a person acting under subclause (1) is to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

