

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**PLANNING LEGISLATION
AMENDMENT BILL 1998**

A BILL FOR

AN ACT to amend the *Town Planning and Development Act 1928* and the *Western Australian Planning Commission Act 1985*.

The Parliament of Western Australia enacts as follows:

No. 119 — 2B

cl. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Planning Legislation Amendment Act 1998*.

5 Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2 — AMENDMENTS TO *TOWN PLANNING AND DEVELOPMENT ACT 1928*

Principal Act

- 5 **3.** In this Part the *Town Planning and Development Act 1928** is referred to as the principal Act.

[* *Reprinted as at 21 February 1996.*
For subsequent amendments see 1996 Index to Legislation of Western Australia, pp. 230-1, and Act No. 57 of 1997.]

10 **Section 2 amended**

- 4.** Section 2 (1) of the principal Act is amended by inserting after the definition of “responsible authority” the following definition —

“ **“subdivision”** includes amalgamation; ”.

15 **Section 7 amended**

- 5.** Section 7 of the principal Act is amended by inserting after subsection (1) the following subsections —

20 “ (1a) The decision to prepare any amendment to a town planning scheme may be made by a local government of its own motion.

25 (1b) Without limiting subsection (1a), the decision to prepare an amendment to a town planning scheme to reclassify or re-zone land in the scheme area may be made by a local government on the application of the owner of the land.

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(1c) An application is required to be —

- (a) made in such manner and form; and
- (b) accompanied by such fee,

if any, as may be prescribed.

5 (1d) A local government may, by notice in writing, require an applicant for the amendment of a town planning scheme to provide the local government with information or draft documents of a kind, and in a form, specified in the notice.

10 (1e) In preparing an amendment to a town planning scheme, a local government may use or incorporate information or documents provided to it under subsection (1d).

15 (1f) If an applicant for the amendment of a town planning scheme is aggrieved by the local government's decision to —

- (a) refuse to prepare the amendment sought;
- (b) refuse to take a requisite step; or
- 20 (c) require an undertaking or impose any other requirement in connection with the preparation of the amendment or the taking of a requisite step,

the applicant may within 60 days after being notified of the decision, appeal against the decision to the Town Planning
25 Appeal Tribunal constituted under section 42.

(1g) If —

- (a) a period of 90 days, or such greater period as the local government and the applicant agree upon

in a particular case, has elapsed since the application was made; and

- 5 (b) the local government has failed to notify the applicant as to whether or not it has resolved to prepare an amendment,

the applicant may regard the failure as a refusal to prepare the amendment and may appeal under subsection (1f) (a).

- 10 (1h) If the local government has failed to take a requisite step within the time prescribed for taking that step or, if no time is prescribed, within a reasonable time, the applicant may regard the failure as a refusal to take the step and may appeal under subsection (1f) (b).

(1i) In subsections (1f) and (1h) —

- 15 “**requisite step**” means a step that is necessary for having the amendment prepared, approved, or take effect.

”.

Section 18B inserted

- 20 **6.** After section 18A of the principal Act the following section is inserted —

“

Minister may enforce certain Appeal Tribunal determinations

- 25 **18B.** (1) If the Minister is satisfied that a local government has failed to —

- (a) prepare an amendment to a town planning scheme; or
(b) take a requisite step as defined in section 7 (1i),

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in accordance with a determination made by the Town Planning Appeal Tribunal upon an appeal under section 7 (1f), the Minister may serve notice in writing on the local government under this section.

5 (2) The notice is to —

 (a) specify the Town Planning Appeal Tribunal's determination;

 (b) specify a day (which is not to be less than 90 days after the notice is served) before which the local government is required to have prepared the amendment or taken the requisite step; and

 (c) advise the local government that the Minister intends to exercise the powers conferred by subsection (3) if the local government does not comply with the requirement made under paragraph (b).

 (3) If the local government does not comply with the requirement made under subsection (2) (b), the Minister may take all such steps and prepare or cause to be prepared all such documents as are necessary for compliance with the requirement as if the Minister were the local government.

 (4) For the purposes of subsection (3) the Minister may by order direct the local government to provide the Minister with such reports or other information specified in the order as are necessary for the exercise of the Minister's powers under this section.

 (5) The Minister is to cause a copy of an order directed to a local government under subsection (4) to be served on the local government, and the local government is to comply with the order.

(6) For the purposes of subsection (3) the provisions of the regulations that would have applied to the local government apply to the Minister with such modifications as are necessary or are prescribed.

5 (7) Where an amendment that the Minister prepares or causes to be prepared under this section is published in the *Gazette*, that amendment has effect as if it were prepared by the local government and approved by the Minister, and the local government is to implement it accordingly.

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

15 (9) A reference in this or any other Act to an amendment prepared in accordance with section 7 is to be read and construed as including a reference to an amendment prepared or caused to be prepared by the Minister in accordance with this section.

20 ”.

Section 20 amended

7. Section 20 (2) of the principal Act is repealed and the following subsection is substituted —

“

25 (2) The Registrar of Titles shall not create or register a certificate of title under the *Transfer of Land Act 1893* for land the subject of a plan of subdivision unless —

30 (a) in the case of a plan of subdivision to which this Act applies, the diagram or plan of survey of the subdivision of that land submitted to the Commission under section 20AA; or

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- (b) in the case of a plan of subdivision to which this Act does not apply, the application for title concerned,

has been endorsed with the approval of the Commission.

5

”.

Section 20AA inserted

8. After section 20 of the principal Act the following section is inserted —

10 “ **Endorsement of approval upon diagram or plan of survey**

15 **20AA.** (1) A person to whom approval of a plan of subdivision has been given may, within 3 years of the date on which the Commission approved the plan of subdivision —

- (a) submit to the Commission in the prescribed manner and form a diagram or plan of survey of the subdivision, accompanied by the prescribed fee; and

- 20 (b) request the Commission to approve the diagram or plan of survey of the subdivision.

(2) If the Commission is satisfied that —

- 25 (a) the diagram or plan of survey is in accordance with the plan of subdivision approved under section 20 (1) (a); and

- (b) if that approval given was subject to conditions, the conditions have been complied with,

the Commission shall endorse its approval on the diagram or plan of survey.

5 (3) If, at the expiration of 3 years from the date on which the Commission approved a plan of subdivision under section 20 (1) (a), a diagram or plan of survey of the subdivision has not been submitted to the Commission, the approval of the plan of subdivision ceases to have effect.

”.

Section 26 amended

10 **9.** (1) Section 26 (1) of the principal Act is amended by inserting after paragraph (ac) the following paragraph —

“

15 (ad) A person given approval of a plan of subdivision who is aggrieved by the Commission’s decision to refuse to endorse its approval on a diagram or plan of survey of the subdivision submitted to the Commission under section 20AA may appeal to the Minister from the decision of the Commission.

”.

20 (2) After section 26 (1) of the principal Act the following subsection is inserted —

“

25 (2) If the Commission refuses to endorse a plan or diagram of survey of a subdivision because a condition affixed to the approval of the plan of subdivision under section 20 (1) (a) has not been complied with, an appeal under subsection (1) (ad) of this section may include an appeal from that condition.

”.

cl. 10

Section 33B inserted

10. After section 33A of the principal Act the following section is inserted —

5 “ **Local government fees and charges**

33B. (1) In this section —

“**planning matter**” means any matter arising under this Act in relation to —

- (a) a town planning scheme;
- 10 (b) subdivision; or
- (c) approval for development.

(2) The Governor may make regulations providing for, or in respect of —

- 15 (a) the services in respect of planning matters for which fees or charges may be imposed by a local government;
- (b) the fees or charges that may be imposed for the provision of those services, and the recovery of those fees and charges;
- 20 (c) any formula, index or other base to be used for the purposes of calculating or ascertaining any fee or charge for the provision of those services;
- 25 (d) the payment or recovery of costs and expenses incurred by the local government in providing a service in relation to a planning matter, including costs and expenses incurred by the local government in obtaining specialist or expert advice where, in the opinion of the local government, the advice was necessary for the
- 30 purpose of providing the service; and

(e) the liability of persons for payment to the local government in respect of provision of services and related costs and expenses.

(3) A local government shall not —

5 (a) impose any fee or charge for provision of a service in relation to a planning matter; or

(b) require payment for costs and expenses incurred by the local government in providing a service in relation to a planning matter,

10 unless the service is prescribed under subsection (2) (a).

(4) A local government shall not impose a fee or charge for a service in relation to a planning matter that is inconsistent with a fee or charge prescribed under this section.

15 ”.

Section 37 amended

11. Section 37 of the principal Act is amended in the definition of “appeal” —

20 (a) by inserting after paragraph (a) the following paragraph —

“
(aa) an appeal to the Appeal Tribunal under section 7 (1f);
”;

25 (b) by deleting “and” after paragraph (d); and

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(c) by inserting after paragraph (e) the following paragraphs —

- 5 “
- (f) an appeal under section 25 of the *Western Australian Planning Commission Act 1985*; and
 - (g) an appeal under section 37E of the *Western Australian Planning Commission Act 1985*;
- ”.

10 Section 39 amended

12. Section 39 of the principal Act is amended by inserting after subsection (1) the following subsection —

- 15 “
- (1a) An appeal under section 7 (1f) can only be made to the Appeal Tribunal and subsection (1) does not apply to an appeal of that kind.
- ”.

**PART 3 — AMENDMENTS TO *WESTERN AUSTRALIAN
PLANNING COMMISSION ACT 1985***

Principal Act

5 **13.** In this Part the *Western Australian Planning Commission Act 1985** is referred to as the principal Act.

[* *Act No. 91 of 1985.*

*For subsequent amendments, see 1996 Index to
Legislation of Western Australia, Table 1, p. 248 and
Act No. 57 of 1997.]*

10 **Section 3 amended**

14. Section 3 of the principal Act is amended by inserting in their appropriate alphabetical positions the following definitions —

“

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

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

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

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

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

”.

cl. 15

Division heading deleted

15. Part II of the principal Act is amended before section 4 by deleting “***Division 1 — Western Australian Planning Commission.***”.

5 **Section 18 amended**

16. (1) Section 18 (1) of the principal Act is amended by inserting after paragraph (d) the following paragraph —

- “
- 10 (da) in relation to any part of the State to which a regional planning scheme applies —
- (i) to keep under review the strategic planning for that part of the State and to make recommendations to the Minister on strategic planning;
- 15 (ii) to keep under review the regional planning scheme and to review the scheme completely whenever requested by the Minister to do so, and to submit for approval in accordance with subsection (1a) any amendment of the regional
- 20 planning scheme considered necessary as a result of a review;
- (iii) to develop, maintain and manage land held by it that is reserved under the regional planning scheme and to carry out such works, including the provision of facilities on the land, as may be
- 25 incidental to the development, maintenance and management or be conducive to the use of the land for any purpose for which it is reserved; and
- (iv) to do all things that are necessary for the purpose of carrying out Parts IIA, IIB, IIC and IID and the regional planning scheme;
- 30
- ”.

(2) Section 18 of the principal Act is amended by inserting after subsection (1b) the following subsections —

“

5 (1ba) A regional planning scheme may be prepared for all or any of the objects, purposes, provisions, powers or works referred to in section 6 of the *Town Planning and Development Act 1928* and may provide for planning, replanning or reconstructing the whole or any part of its region.

10 (1bb) If a regional planning scheme has effect under section 33 (5) of the Metropolitan Scheme Act as read with subsections (1a) and (1b) —

15 (a) a town planning scheme made under the *Town Planning and Development Act 1928* by a local government shall not be approved by the Minister to whom the administration of that Act is for the time being committed by the Governor; and

20 (b) local laws which if made would affect or be likely to affect the regional planning scheme shall not be made by a local government,

25 unless the provisions of the town planning scheme or local laws, as the case requires, are in accordance with and consistent with the regional planning scheme.

”.

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Parts IIA, IIB, IIC and IID inserted

17. After section 20 of the principal Act the following Parts are inserted —

“

5 **PART IIA — REGIONAL INTERIM DEVELOPMENT**

Commission may make and administer regional interim development orders

21. (1) Subject to this Part, the Commission may, if —

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

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

20 (2) Before making a regional order the Commission shall —

- 25 (a) inform each local government of a district which lies within or partly within the area to which the proposed regional order will apply of the proposal;
- (b) invite that local government to make submissions on the proposal within 28 days; and

- (c) provide the Minister with a copy of any submission received under paragraph (b).
- (3) A regional order —
 - (a) may be made by the Commission at any time —
 - 5 (i) after resolving under section 18 (1a) to prepare a regional planning scheme; and
 - 10 (ii) before the relevant procedures set out in the provisions of the Metropolitan Scheme Act referred to in section 18 (1a), as read with section 18 (1a) and (1b), have been fully complied with in respect of the regional planning scheme; and
 - (b) is to specify the land affected by the regional order.
- 15 (4) On the making of a regional order, the Commission shall cause to be published once in the *Gazette* and 3 times in a daily newspaper circulating in the part of the State to which the regional order applies a notice —
 - (a) containing a summary of the regional order; and
 - 20 (b) stating that copies of the regional order will be made available by the Commission for inspection by any person free of charge at the offices of the Commission and of the local government or local governments within the area affected by the
 - 25 regional order.
- (5) The Commission shall, at the same time or before acting under subsection (4), publish in the *Gazette* —
 - (a) a summary of the relevant resolution made under section 18 (1a); and

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

5 (6) The Commission shall administer each regional order.

Duration of regional orders

22. (1) Subject to subsection (2), a regional order —

10 (a) comes into operation on the day of publication of the relevant notice in the *Gazette* under section 21 (4); and

(b) has effect as though its provisions were enacted in this Act.

(2) A regional order ceases to have effect in its regional order area —

15 (a) when the relevant regional planning scheme comes into operation in respect of that regional order area;

(b) when the regional order is revoked under section 23; or

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

25 whichever is the sooner, but the Commission may, by notice published in the *Gazette* before the regional order ceases to have effect, extend its operation for a further period not exceeding 12 months and may, if the Commission thinks fit, exercise that power of extension more than once.

Revocation and amendment of regional orders

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

- (a) once in the *Gazette*; and
- 5 (b) 3 times in a daily newspaper circulating in the part of the State to which the relevant regional order applies,

revoke a regional order.

10 (2) An order made under subsection (1) comes into operation on the day after the day on which it is published in the *Gazette*.

15 (3) The Commission may, with the approval of the Minister, at any time make an order amending a regional order and sections 21 (4) and 22 (1) apply with any necessary modifications to such an order as if that order were a regional order.

Contents and effect of regional orders

24. (1) A regional order may —

- 20 (a) require a person, before commencing to carry out any specified development within the regional order area, to obtain the written permission of the Commission;
- (b) regulate, restrict or prohibit any specified class of development within the regional order area;
- 25 (c) exempt from the operation of the regional order any development of a specified class within the regional order area;

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- (d) in the case of land which is in the regional order area and to which the *Heritage of Western Australia Act 1990* applies, require the Commission —
- 5 (i) before granting an application for permission to carry out development referred to in paragraph (a), to refer that application to the Heritage Council for advice and to notify the applicant of that referral;
- 10 (ii) not to deal with that application unless the advice of the Heritage Council has been received; and
- (iii) to have regard to that advice;
- 15 (e) provide that the permission of the Commission for the carrying out of any development referred to in the regional order may, if granted, be granted subject to such conditions as the Commission considers necessary to impose,
- 20 including, without limiting the generality of those conditions —
- (i) a condition limiting the period during which that development may be carried out; and
- 25 (ii) a condition requiring the cessation of the development and removal of any structure or building erected under that permission at the expiry of the period so limited;
- 30 (f) provide that the Commission may refuse to grant to an applicant its permission for carrying out development of a specified class in a specified part of the regional order area;

5 (g) subject to subsection (4), suspend, vary, supplement or supersede any of the provisions of the local laws in force under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* in the regional order area.

(2) Before granting an application for permission to carry out development referred to in paragraph (a), the Commission shall —

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

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

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

(3) Despite section 28, nothing in a regional order in force in respect of a regional order area empowers the Commission to grant to an applicant permission to carry out a development if that development contravenes a provision of the town planning scheme operating in the regional order area.

(4) Nothing in a regional order prevents —

25 (a) the continuance of the use of any land or building for the purposes for which the land or building was being used immediately prior to the coming into operation of the regional order; or

30 (b) the carrying out of any development for which, immediately prior to the coming into operation of the regional order, a permit or permits, if any, required under the *Town Planning and Development Act 1928* or any other Act

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authorizing that development to be carried out had been obtained and were current.

(5) In subsection (1) —

5 “**specified**” means specified in the regional order concerned.

Appeals against refusals of permission, etc.

25. (1) Subject to subsection (3), a person who is aggrieved by —

- (a) the refusal of permission; or
- 10 (b) a condition subject to which permission is granted,

under a regional order as read with section 24 (1) may within 60 days after the refusal is communicated, or permission is granted, to that person appeal against that refusal or condition under Part V of the *Town Planning and*
15 *Development Act 1928*.

(2) Subject to subsection (3), if the Commission does not grant or refuse permission —

- 20 (a) within a period of 60 days after the receipt by the Commission of an application to carry out any development referred to in this Part; or
- (b) in the case of land in relation to which the Commission has referred such an application to the Heritage Council under section 24 (1) (d) and has notified the applicant for permission of that referral, within a period of 60 days after that notification,
- 25

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

(3) An appeal shall not be made or heard under this section in respect of any development that contravenes a provision of —

- (a) a town planning scheme;
- 10 (b) a local law that is not superseded or suspended by the regional order; or
- (c) an Order made under Part 6, or Order in Council made under section 80, of the *Heritage of Western Australia Act 1990*.

15 **Contravention of regional orders**

26. (1) A person shall not —

- (a) contravene a regional order; or
- (b) commence or continue to carry out any development which is required to comply with a regional order otherwise than in accordance with —
 - 20 (i) the regional order; or
 - (ii) any condition imposed in respect of that development by the Commission under the regional order as read with section 24 (1).

25

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

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

Non-conforming work or development

27. (1) If —

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

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

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

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

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

25 (b) restrict, regulate or permit,

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

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

28. If there is an inconsistency between —

- 5 (a) a town planning scheme operating in a regional order area, or a local law in force in a regional order area under the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* or any Act for which the latter Act is in substitution; and
- 10 (b) the regional order in force in respect of the regional order area,

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

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

29. (1) Compensation for injurious affection to any land within a regional order area or for loss arising from any other cause is not payable under this Act as a result of the operation of the relevant regional order unless —

- 20 (a) the Commission —
- (i) refuses an application made under that regional order for permission to carry out development on that land; or
- 25 (ii) grants such an application subject to conditions,

on the ground that the proposed regional planning scheme for the regional order area is to include that land within a reservation for public purposes; and

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- (b) an appeal, if lawfully made by the claimant under section 25, has been disallowed wholly or in part.

5 (2) When compensation of the kind referred to in subsection (1) is claimed —

- (a) that compensation shall be determined by arbitration under the *Commercial Arbitration Act 1985* or by some other method agreed by the parties; or

10 (b) the Commission may, and shall if the claimant so requests, purchase any land injuriously affected at a price not exceeding the value of that land at the time of —

- (i) the refusal of permission; or

15 (ii) the grant of permission subject to conditions,

20 without regard to any increase in value attributable wholly or in part to the proposed regional planning scheme for the regional order area in which the land is situated.

**PART IIB — APPLICATION OF SECTIONS 11 AND 12
OF *TOWN PLANNING AND DEVELOPMENT
ACT 1928* TO REGIONAL PLANNING SCHEMES**

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

30. The provisions of sections 11 and 12 of the *Town Planning and Development Act 1928* apply, with such modifications as are necessary, to the provisions of a

regional planning scheme and for that purpose the former provisions shall be read and construed as if —

- 5
- (a) the Commission were the “responsible authority” or “local government” wherever referred to in those sections; and
 - (b) the passage, “varied, amplified or revoked by the Commission” were substituted for the passage “altered or revoked by an order of the Minister under this Act” in section 11 (3) of that Act; and
 - 10 (c) those provisions included section 33 (1), (2), (3) and (4) and section 34.

Claims for injurious affection

15 **31.** (1) A regional planning scheme may provide that when compensation for injurious affection is claimed as a result of the operation of the provisions of section 12 (2a) (b) (i) or (ii) of the *Town Planning and Development Act 1928* the Commission may at its option elect to acquire the land so affected instead of paying compensation.

20 (2) The Commission shall, within 3 months of the claim for injurious affection being made, by notice in writing given to the claimant —

- (a) elect to acquire the land; or
- (b) advise that it does not intend to acquire the land.

25 **Price of land acquired by Commission in absence of agreement**

32. (1) When the Commission elects to acquire the land as provided in section 31, if the Commission and the owner

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of the land are unable to agree as to the price to be paid for the land by the Commission, the price at which the land may be acquired by the Commission shall be the value of the land as determined in accordance with subsection (2).

5 (2) The value of the land referred to in subsection (1) shall be the value of the land on the date the Commission elects to acquire the land under that subsection, and that value shall be determined —

10 (a) by arbitration in accordance with the *Commercial Arbitration Act 1985*; or

 (b) on the application of the owner of the land, made in the prescribed manner —

15 (i) if the value of the land claimed by the owner thereof is not more than the prescribed amount, by a Local Court sitting at a place nearest to where the land lies; or

 (ii) if the value of the land claimed by the owner thereof is more than the prescribed amount, by the Supreme Court;

20 or

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

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

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

Compensation for injurious affection to land reserved for public purpose

5 **33.** (1) Subject to subsection (3), when under a regional planning scheme any land has been reserved for a public purpose, no compensation is payable by the Commission for injurious affection to that land alleged to be due to or arising out of such reservation until —

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

(2) Compensation for injurious affection to any land is payable only once under subsection (1) and is so payable —

- 20 (a) under paragraph (a) of that subsection to the person who was the owner of the land at the date of reservation; or
- (b) under paragraph (b) of that subsection to the person who was the owner of the land at the date of application,

25 referred to in that paragraph, unless after the payment of that compensation further injurious affection to the land results from —

- (c) an alteration of the existing reservation thereof; or
- (d) the imposition of another reservation thereon.

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(3) Before compensation is payable under subsection (1) —

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

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

(ii) that the owner before selling the land gave notice in writing to the Commission of the owner's intention to sell the land; and

15 (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

20 (b) when the Commission refuses an application made under the regional planning scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of
25 compensation shall be satisfied that the application was made in good faith.

30 (4) A claim for compensation under subsection (1) shall be made at any time within 6 months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

Amount of compensation

5 **34.** (1) Subject to this Part, the compensation payable for injurious affection due to or arising out of the land being reserved under a regional planning scheme for a public purpose, where no part of the land is purchased or acquired by the Commission, shall not exceed the difference between —

- (a) the value of the land as so affected by the existence of such reservation; and
- 10 (b) the value of the land as not so affected.

(2) The values referred to in subsection (1) (a) and (b) shall be assessed as at the date on which —

- (a) the land is sold as referred to in section 33 (1) (a);
- 15 (b) the application for permission to carry out development on the land is refused; or
- (c) the permission is granted subject to conditions that are unacceptable to the applicant.

Caveat may be lodged if compensation paid

20 **35.** (1) When compensation for injurious affection to any land has been paid under section 33 (1), the Commission may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a caveat against the land specifying —

- 25 (a) the date of payment of compensation;
- (b) the amount of compensation so paid; and

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- (c) the proportion (expressed as a percentage), which the compensation bears to the unaffected value of the land as assessed under section 34 (2).

5 (2) On receipt of the caveat from the Commission, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall register the caveat.

Commission may recover compensation if reservation revoked or reduced

10 **36.** (1) When —

- (a) compensation for injurious affection to land (the “**original compensation**”) has been paid to an owner of the land in the circumstances set out in section 33 (1); and

15 (b) as a result of the regional planning scheme being amended or revoked the reservation of the land for a public purpose is revoked or the area of the land the subject of the reservation is reduced,

20 the Commission is entitled to recover from the owner of the land at the date of the revocation or reduction of the reservation an amount (“**the refund**”) which is determined by calculating the relevant proportion (as determined under subsections (4) to (7)) of the value of the land as at the date on which the refund becomes payable under subsection (2).

25 (2) The refund is not payable by the owner of the land until the land is first sold or subdivided following the date of the revocation or reduction referred to in subsection (1) (b) unless otherwise agreed by the owner and the Commission.

30 (3) If the land is owned by 2 or more people they are jointly and severally liable to pay the refund.

(4) When the reservation has been revoked the relevant proportion for the purposes of subsection (1) is the same as the proportion referred to in section 35 (1) (c) in relation to the original compensation.

5 (5) When the area of the reservation has been reduced, the relevant proportion for the purposes of subsection (1) shall be determined as follows —

(a) a notional amount of compensation is determined under sections 33 (1) and 34 as if —

- 10 (i) the reservation had never occurred;
- (ii) a reservation of the reduced area had occurred when the reduction occurred; and
- (iii) the land were being sold;

15 (b) the proportion (expressed as a percentage) which that notional amount of compensation bears to the current value of the land (unaffected by the existence of the reservation) is calculated; and

20 (c) the relevant proportion is then determined by deducting the proportion calculated under paragraph (b) from the proportion referred to in section 35 (1) (c) in relation to the original compensation.

Example:

Original compensation proportion	25%
less	
Notional compensation proportion	<u>15%</u>
Relevant proportion =	10%

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5 (6) Despite subsection (4), when the reservation is revoked after an amount has been recovered under subsection (2) in respect of a previous reduction of the reservation, the relevant proportion is the same as the notional compensation proportion calculated under subsection (5) (a) and (b) in respect of the previous reduction.

10 (7) Despite subsection (5), when the reservation is reduced after an amount has been recovered under subsection (2) in respect of a previous reduction of the reservation, the relevant proportion shall be determined as follows —

- 15 (a) a notional compensation proportion is calculated under subsection (5) (a) and (b) in respect of the subsequent reduction; and
- 20 (b) the relevant proportion is then determined by deducting the proportion referred to in paragraph (a) from the notional compensation proportion calculated under subsection (5) (a) and (b) in respect of the previous reduction.

Example:

	Notional compensation proportion calculated under subsection (5) (a) and (b) on previous reduction	15%
25	less	
	Notional compensation proportion calculated under subsection (5) (a) and (b) on subsequent reduction	<u>8%</u>
30	Relevant proportion on subsequent reduction	= 7%

5 (8) For the purposes of subsections (1) and (5) (b) the value of the land shall be determined by one of the methods set out in section 34 (2) (a), (b) or (c), but that value is to be determined without regard to any increase in value attributable to factors unrelated to the reservation or to its revocation or reduction.

10 (9) When the Commission has an entitlement to recover an amount under subsection (1) it has an interest in the land and may lodge with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, a caveat against the land giving notice of the existence of that interest, and may withdraw any caveat so lodged.

15 (10) On receipt of the caveat from the Commission, the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall register the caveat.

(11) Before selling or subdividing land against which a caveat is lodged under subsection (9), the owner of the land shall give notice in writing to the Commission of the intention of the owner to sell or subdivide the land.

20 (12) When a caveat is lodged under subsection (9) the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, shall not register a transfer of the land without the consent of the Commission.

Valuation by Board of Valuers

25 **37.** (1) In this section —

“**Board**” means the Board of Valuers established under section 36B of the Metropolitan Scheme Act.

30 (2) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under a regional planning scheme for a public purpose who

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gives notice of his or her intention to sell the land and claim compensation shall, unless the Commission waives the requirement, apply to the Board for a valuation of the land as not so affected and the Board shall make that valuation.

5

(3) The provisions of section 36C of the Metropolitan Scheme Act and the regulations made under that section apply, with such modifications as are necessary, to an application and valuation under subsection (2).

10 **PART IIC — REGIONAL PLANNING CONTROL AREAS**

Effect of Part IIC

37A. (1) This Part shall prevail over anything in —

(a) any other Part;

15 (b) any town planning scheme that has effect under section 7 of the *Town Planning and Development Act 1928*;

(c) a regional planning scheme; or

(d) the *Town Planning and Development Act 1928*,

20 to the extent of any inconsistency therewith.

(2) Nothing in this Part affects —

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

25 (b) the continuation and completion of the development of any land in a regional planning

5 control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out,

immediately before the declaration of the regional planning control area.

10 (3) This Part and the operation of any approval of development granted under this Part shall have effect subject to section 78 of the *Heritage of Western Australia Act 1990*.

Declaration of regional planning control areas

15 **37B.** (1) If the Commission considers that any land situated in a region to which a regional planning scheme applies may be required for one or more of the purposes specified in Schedule 2, the Commission may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a regional planning control area.

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

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

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

(b) revoked under subsection (2),

30 whichever is the sooner.

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(4) When any land is comprised within an area which the Commission considers should become a regional planning control area and is land to which the *Heritage of Western Australia Act 1990* applies, the Commission shall
5 satisfy the Minister before seeking approval to the declaration of that land as a regional planning control area that full disclosure has been made to, and consultations concluded with, the Heritage Council as to the likely effect
10 of the declaration as regards places to which that Act applies.

No development in regional planning control areas without prior approval

37C. A person shall not commence and carry out development in a regional planning control area except —

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

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

Applications for approval of development in regional planning control areas

25 **37D.** (1) A person who wishes to commence and carry out development in a regional planning control area shall apply in the prescribed form to the local government in the district of which the regional planning control area is
30 situated for approval of that development and submit to

that local government such plans and other information as that local government may reasonably require.

5 (2) A local government to which an application is made under subsection (1) shall, within 30 days of receiving the application, forward the application, together with its recommendation on the application, to the Commission for determination.

10 (3) After receiving an application and recommendation forwarded to it under subsection (2), the Commission may —

(a) consult with any authority that in the circumstances it thinks appropriate; and

(b) having regard to —

15 (i) the purpose for which the land to which that application relates is zoned or reserved under the relevant regional planning scheme;

20 (ii) any special considerations relating to the nature of the regional planning control area concerned and of the development to which that application relates; and

25 (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.

30 (4) If the Commission approves an application forwarded to it under subsection (2) and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to

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5 which that approval was given are not complied with, the Commission may revoke that approval, but this subsection does not prevent proceedings for an offence against section 37C in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.

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

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

Appeals

15 **37E.** (1) An applicant whose application has under section 37D been —

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

20 may, except when that approval or refusal —

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

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

5 (2) An appeal under subsection (1) in relation to any condition which is imposed in consequence of advice furnished by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* shall be referred to the Heritage Council for advice, and section 53 (2) of the *Town Planning and Development Act 1928* applies in relation to the appeal referred.

PART IID — MISCELLANEOUS POWERS OF COMMISSION AND MINISTER

10 **Commission has powers of responsible authority**

15 **37F.** Subject to this Act, in relation to a regional planning scheme the Commission has all the powers, rights, duties and authority conferred or imposed on a responsible authority under the *Town Planning and Development Act 1928* in relation to a Scheme within the meaning of that Act.

Power of Commission to acquire land to which proposed regional planning scheme or amendment is to apply

20 **37G.** The Commission may, if it considers that any land in the part of the State to which a proposed regional planning scheme or amendment to a regional planning scheme is to apply is likely to be reserved for public purposes under that regional planning scheme or
25 amendment, acquire that land by agreement with its owner.

Power of Commission to dispose of land

37H. (1) The Commission shall hold for the purposes of a regional planning scheme any land acquired by it under

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this Act and may, subject to subsections (2) and (3), dispose of or alienate that land —

- (a) for or in furtherance of the provisions or likely provisions of the regional planning scheme; or
- 5 (b) if that land is no longer required by the Commission.

(2) Subject to subsection (3), the Commission shall not, except with the consent of the Governor, dispose of or alienate any land compulsorily acquired by it other than for
10 or in furtherance of the provisions or likely provisions of the relevant regional planning scheme.

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

20 Powers of Commission in relation to regional improvement plans

37I. (1) When the Commission certifies in writing to the Minister that for the purpose of advancing the planning, development and use of any land within a part of the State to which a regional planning scheme applies —

- 25 (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
- 30 (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,

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

(2) If the Governor accepts the recommendation of the Commission, the Commission may while the relevant
15 regional planning scheme has the force of law as provided in this Act, purchase or otherwise acquire any land included in the regional improvement plan by agreement with the owner thereof or in default of such agreement, the Commission may acquire the land compulsorily under the
20 *Land Administration Act 1997*, as modified by this section.

(3) The Commission may —

- (a) amend a regional improvement plan by notice of amendment; or
- (b) revoke a regional improvement plan by a notice
25 of revocation,

and subsection (1) applies to a notice of amendment or revocation under paragraph (a) or (b) as if it were a regional improvement plan.

(4) Subject to this section, the provisions of Parts 9 and
30 10 of the *Land Administration Act 1997* apply to the taking of any land compulsorily under this section, with such modifications as circumstances require, and in so applying those provisions any reference to the Minister

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administering that Act shall be read as a reference to the Minister.

5 (5) For the purpose of advancing the development of land in a region in accordance with a regional improvement plan referred to in subsection (1) the Commission, with the approval of the Governor, may —

- 10 (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;
- 15 (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land acquired by the Commission under this Act, to any person, or public authority upon such terms and conditions as the Commission, with the approval of the Governor, thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Commission in the *Gazette*;
- 20 (c) in respect of the land included in a regional improvement plan but not acquired or held by it under this Act, enter into an agreement with any owner of the land relating to —
 - 25 (i) the planning, replanning, design, redesign, consolidation, resubdivision, clearing, development, reconstruction or rehabilitation of the land;
 - 30 (ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land;

- 5 (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;
- 10
- 15 (iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and
- (v) such other acts, matters or things as are or may be necessary to give effect to the regional improvement plan;
- 20 (d) do any act, matter or thing for the purpose of carrying out any agreement entered into under paragraph (c).

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

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

30 **37J.** (1) The Commission or a local government exercising the powers of the Commission may by notice in writing served on the owner of any land situated in a

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regional order area or a part of the State to which a regional planning scheme applies direct that owner —

- (a) to cease any development begun, continued or carried out; or
- 5 (b) to remove, pull down, take up or alter any building or work erected,

on that land in contravention of the regional order or regional planning scheme.

10 (2) The Commission may by notice in writing served on the owner of any land situated in a regional planning control area direct the owner to cease any development carried out on that land in contravention of section 37C.

15 (3) The Commission or a local government exercising the powers of the Commission may, in a notice served under subsection (1) or (2) specify a time, being not less than 40 days after the service of that notice, within which the directions in the notice are to be complied with.

20 (4) The owner on whom a notice is served under subsection (1) or (2) may, within the period specified in the notice, appeal in the manner prescribed to the Minister against any direction in the notice.

25 (5) The Minister after considering an appeal under subsection (4) 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 40 days after the service of the notice, as is specified in the notice.

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

- (7) When —
- (a) a notice is served under subsection (1) or (2) on an owner of any land and the owner does not —
 - (i) carry out the directions; or
 - 5 (ii) appeal against the direction under subsection (4),
within the time specified in the notice; or
 - 10 (b) on appeal by an owner of any land a direction specified in a notice served on the owner under subsection (1) or (2) is confirmed or varied under subsection (5) and the owner fails to carry out the direction as confirmed or varied under subsection (5) within the time specified by the Minister in the notice given under subsection (5),
15 the Commission or local government, as the case requires, may itself cause —
 - (c) the relevant development to be stopped; or
 - (d) the relevant building or work to be removed, pulled down, taken up or altered.
 - 20 (8) Any expenses incurred by the Commission or a local government under subsection (7) may be recovered from the owner of the land on which —
 - (a) the relevant development was stopped; or
 - 25 (b) the relevant building or work was removed, pulled down, taken up or altered,
as a debt due in a court of competent jurisdiction.

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Injunctions

37K. (1) Without prejudice to any proceedings for an offence against this Act, when —

5 (a) a person contravenes a provision of this Act, a regional order or a regional planning scheme; or

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

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

20 (c) if the application is with respect to a contravention of this Act, a regional order or a regional planning scheme, restraining the person from engaging in any conduct, or doing any act, that constitutes or is likely to constitute a contravention of this Act, the regional order or the regional planning scheme; or

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

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

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

until the condition is complied with.

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

10 **Powers of Minister to ensure that environmental conditions are met**

37L. (1) In this section —

“**assessed scheme**” means regional planning scheme that is an assessed scheme within the meaning of the EP Act;

15 “**environmental condition**” means condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act;

“**EP Act**” means *Environmental Protection Act 1986*;

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

“**pollution**” has the same meaning as it has in the EP Act.

25 (2) After receiving advice from the Minister for the Environment under section 48H (4) of the EP Act the

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Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.

5 (3) For the purposes of subsection (2) the Minister may —

10 (a) by order in writing served on the person who is undertaking the development, direct that person to stop doing so for such period, beginning immediately and lasting for not more than 24 hours, as is specified in that order;

15 (b) cause the Commission, or a local government exercising the powers of the Commission, to serve a notice on the person who is undertaking the development directing that person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —

20 (i) complying with; or
(ii) preventing any non-compliance with,
the environmental condition to which the advice of the Minister for the Environment relates; or

25 (c) advise the Commission, or a local authority exercising the powers of the Commission, to cause such steps to be taken as are necessary for the purpose of —

(i) complying with; or
(ii) preventing any non-compliance with,
the environmental condition to which the advice of the Minister for the Environment relates.

(4) A person shall comply with an order or notice served on the person under subsection (3) (a) or (b).

(5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —

- 5
- (a) a development referred to in subsection (2); or
 - (b) pollution caused by any non-compliance with an environmental condition referred to in subsection (3).

Crown bound

10 **37M.** A regional planning scheme binds the Crown. ”.

Section 58 amended

18. Section 58 of the principal Act is amended —

15 (a) by inserting after the section designation “**58.**” the subsection designation “(1)”; and

(b) by inserting the following subsection —

20 “
(2) A regulation may create an offence punishable by a penalty not exceeding \$50 000.
”.

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Schedule 2 inserted

19. The principal Act is amended by inserting after Schedule 1 the following Schedule —

“

SCHEDULE 2

[Section 37B (1)]

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.	Cultural heritage conservation.
5.	Highways and important regional roads.
6.	Hospitals.
7.	Parks and recreation areas.
8.	Port installations.
9.	Prisons.
10.	Public utilities.
11.	Railways.
12.	Schools.
13.	Special uses.
14.	State forests.
15.	Universities.
16.	Water catchments.
17.	Waterways.

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