

I certify that this is a copy of the authorised version of this Act as at 1 April 2015, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 April 2015.

Robyn Webb
Chief Parliamentary Counsel
Dated 27 August 2021



TASMANIA

LAND USE PLANNING AND APPROVALS ACT 1993

No. 70 of 1993

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**SCHEDULE 5 – SAVINGS AND TRANSITIONAL PROVISIONS –
LAND USE PLANNING AND APPROVALS AMENDMENT
(STREAMLINING OF PROCESS) ACT 2014**



LAND USE PLANNING AND APPROVALS ACT 1993

No. 70 of 1993

An Act to make provision for land use planning and approvals

[Royal Assent 9 November 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Land Use Planning and Approvals Act 1993*.

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2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

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

–

accredited person means a person accredited or approved for the purposes of this Act under –

- (a) the *Fire Service Act 1979*; or
- (b) any other prescribed legislation;

agreement means an agreement entered into under Part 5;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

authorised officer means a person who, under section 65I, is, or is authorised to be, an authorised officer;

building includes –

- (a) a structure and part of a building or structure; and

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(b) fences, walls, out-buildings, service installations and other appurtenances of a building; and

(c) a boat or a pontoon which is permanently moored or fixed to land;

bushfire hazard management plan means a plan showing means of protection from bushfires in a form approved in writing by the Chief Officer;

certifiable scheme or order means a planning scheme, or special planning order, prescribed for the purposes of section 50A;

certifiable permitted use or development means a use, or development, that is prescribed for the purposes of section 50A;

Chief Officer means the person appointed as Chief Officer under section 10 of the *Fire Service Act 1979*;

Commission means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*;

conservation includes preservation, maintenance, sustainable use and restoration of the natural and cultural environment;

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council has the same meaning as in the *Local Government Act 1993*;

development includes –

- (a) the construction, exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and
- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land, including buildings or airspace; and
- (e) the placing or relocation of a building or works on land; and
- (f) the construction or putting up for display of signs or hoardings –

but does not include any development of a class or description, including a class or description mentioned in paragraphs (a) to (f), prescribed by the regulations for the purposes of this definition;

discretionary permit means a permit to which section 57 applies;

Executive Commissioner means the person from time to time holding that office under the *Tasmanian Planning Commission Act 1997*;

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interim planning directive means an interim planning directive, issued under section 12A(2), that is in force;

interim planning scheme means an interim planning scheme, declared under section 30F, or an interim planning scheme made under section 30M, that is in force;

land includes –

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, servitude, privilege or right in or over land;

modification includes elaboration, enlargement, alteration and substitution;

municipality means a council;

municipal district means a municipal area;

owner means –

- (a) in the case of a fee simple estate in land, the person in whom that estate vested; or
- (b) in the case of land not registered under the *Land Titles Act 1980*

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and subject to a mortgage, the person having, for the time being, the equity of redemption in that mortgage; or

- (c) in the case of land held under a tenancy for life, the person who is the life tenant; or
- (d) in the case of land held under a lease for a term of not less than 99 years or for a term of not less than such other prescribed period, the person who is the lessee of the land; or
- (e) in the case of land in respect of which a person has a prescribed interest, that person; or
- (f) in the case of Crown land within the meaning of the *Crown Lands Act 1976*, the Crown in right of the State of Tasmania –

but does not include the holder of an interest in land other than the Crown in right of Tasmania if the interest of the holder cannot reasonably be discovered by a search of the Register, within the meaning of the *Land Titles Act 1980*, or a search conducted at the Registry, within the meaning of the *Registration of Deeds Act 1935*.

permit means any permit, approval or consent required by a planning scheme or special

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planning order to be issued or given by a municipality in respect of the use or development of any land;

permitted use or development certificate means a certificate, issued under section 50B, that is in force;

person includes a department, or other agency of Government of the State or the Commonwealth and an authority of the State or the Commonwealth;

planning appeal means an appeal under section 61;

planning authority means a council;

planning certifier means a person to whom has been issued an authorisation, under section 80C, that is in force;

planning compliance certificate means a planning compliance certificate, within the meaning of section 60ZE(1), that has been issued under section 60ZD and is in force;

planning directive means a planning directive issued under section 13, or an interim planning directive issued under section 12A, that is in force;

planning scheme means –

- (a) a planning scheme in force under section 29; and

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- (b) an interim planning scheme; and
- (c) a planning scheme made under section 30N that is in force;

regional area means an area specified in a notice under section 30C to be a regional area;

regional land use strategy, in relation to a regional area, means the regional land use strategy declared under section 30C(3) in relation to the area;

relevant agency means –

- (a) a department or other agency of Government of the State or of the Commonwealth; or
- (b) an authority of the State or of the Commonwealth established for a public purpose; or
- (c) a person undertaking a function for the public benefit –

declared by the regulations to be a relevant agency for the purposes of the provision in which the expression occurs or for the purposes of a matter prescribed in the regulations;

representation, in relation to –

- (a) a draft planning scheme, an interim planning scheme or a

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draft amendment of a planning scheme; or

(b) an application for a permit or dispensation; or

(c) a project in respect of which a special permit may be granted –

includes a written statement of facts or reasons in support of or in opposition to the scheme, amendment, application or project;

special permit means a permit that is granted under section 60T and that is in force;

special planning order means an order in force under section 47;

State Policy means a Tasmanian Sustainable Development Policy made under section 11, or that comes into operation under section 12, of the *State Policies and Projects Act 1993*;

use, in relation to land, includes the manner of utilising land but does not include the undertaking of development;

water and sewerage certificate means a certificate issued under section 50D;

works includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of

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vegetation or topsoil, but does not include forest practices, as defined in the *Forest Practices Act 1985*, carried out in State forests.

- (2) Words and expressions used both in this Act and in the *Local Government Act 1993* have in this Act, unless the contrary intention appears, the same respective meanings as they have in that Act.

4. Application of Act

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Subject to subsection (3), this Act applies to all parts of the State except such parts as may from time to time be prescribed in the regulations and, in particular, applies to land in Wellington Park, as defined in the *Wellington Park Act 1993*.
- (3) Part 3 of this Act does not apply to public land, within the meaning of the *Public Land (Administration and Forests) Act 1991*, that is the subject of a reference to the Commission.

5. Objectives to be furthered

It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in Schedule 1.

6. Delegation

(1 - 2)

- (3) A planning authority may, by resolution, delegate any of its functions or powers under this Act other than this power of delegation to a person employed by the authority.
- (4) A delegation may be made either generally or as otherwise provided by the instrument of delegation.
- (5) Notwithstanding any delegation, a planning authority may continue to perform or exercise all or any of the functions or powers delegated.
- (6) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by a planning authority.

7. Municipalities may exercise powers in respect of accretions from sea, &c.

A municipality may exercise its powers under this Act in respect of –

- (a) any accretion from the sea, whether natural or unnatural, adjoining its municipal district; and
- (b) any part of the sea-shore to the low-water mark adjoining its municipal district; and
- (c) all bridges, jetties, wharves, boat-houses and other structures partly within its municipal district and partly in or over

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the sea adjacent to its municipal district;
and

- (d) any area of the sea directly adjoining its municipal district in, on, over or under which any use or development is related to, or affects, the use of any adjacent land, subject to section 20(7)(c) and (d).

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**PART 2 – FUNCTIONS OF COMMISSION UNDER
THIS ACT**

8. Functions of Commission

The functions of the Commission under this Act are to –

- (a) certify and approve planning schemes and amendments to planning schemes; and
- (b) perform such other functions as are imposed on it by or under this Act.

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Part 2A – Planning Directives

PART 2A – PLANNING DIRECTIVES

9. Planning directive

A planning directive may be made in accordance with this Part in respect of the following matters:

- (a) issues relating to use, development, protection or conservation of any land requiring consistency for all municipal areas;
- (b) issues relating to use, development, protection or conservation of any land unique to one municipal area or only some municipal areas;
- (c) procedural matters arising from the operation of this Act or a State Policy;
- (d) the application of a State Policy;
- (e) any other matter the Minister considers appropriate.

10. Draft planning directive

- (1) The following persons may prepare a draft planning directive at any time:
 - (a) the Commission;
 - (b) a planning authority;
 - (c) a State Service Agency;
 - (d) any other person.

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- (2) A draft planning directive is to be lodged with the Commission.
- (3) The Commission must forward to the Minister a draft planning directive lodged with it or prepared by it together with a recommendation as to whether or not an assessment of the draft planning directive should be undertaken.

11. Determination to proceed with draft planning directive

- (1) On receipt of a draft planning directive and the recommendation of the Commission under section 10(3), the Minister may –
 - (a) direct the Commission to undertake an assessment of the draft planning directive; or
 - (b) determine that no further proceedings are to be undertaken in respect of the draft planning directive.
- (2) A direction to undertake an assessment of a draft planning directive is to be provided to the Commission in writing.
- (3) If the Minister determines that no further proceedings are to be undertaken in respect of the draft planning directive, the Minister is to give written notice of that determination to the person who prepared the draft planning directive.

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12. Assessment of draft planning directive

- (1) On receipt under section 11 of a direction to undertake an assessment of a draft planning directive, the Commission must undertake that assessment.
- (2) Before undertaking the assessment, the Commission must –
 - (a) give written notice to the person (other than the Commission) who prepared the draft planning directive and any planning authority or State Service Agency likely to be affected by the planning directive, if issued, that it will be undertaking the assessment; and
 - (b) invite representations from any person given notice under paragraph (a); and
 - (c) publish notice that it will be undertaking the assessment in a newspaper circulating generally in Tasmania or that part of Tasmania likely to be affected by the planning directive, if issued.
- (3) In undertaking an assessment, the Commission may inform itself of any matter in any manner it considers appropriate, including by the conduct of a hearing.
- (4) Part 3 of the *Tasmanian Planning Commission Act 1997* applies in respect of a hearing held by the Commission for the purposes of an assessment.

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- (5) On the completion of an assessment, the Commission must provide to the Minister a report of its findings and its recommendations as to whether or not a planning directive in the terms of the draft planning directive, or the draft planning directive modified as recommended by the Commission, should be issued.

12A. Issue of interim planning directives

- (1) The Commission may recommend to the Minister that the Minister issue under subsection (2) an interim planning directive that is in the terms of a draft planning directive –
- (a) that is lodged with the Commission or prepared by the Commission; and
 - (b) in relation to which the Commission has made under section 10(3) a recommendation that an assessment should be undertaken.
- (2) After considering a recommendation made to him or her under subsection (1) to issue an interim planning directive in the terms of a draft planning directive, the Minister may –
- (a) issue an interim planning directive that is in the terms of the draft planning directive; or
 - (b) determine not to issue an interim planning directive that is in the terms of the draft planning directive.

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- (3) An interim planning directive may include a statement that –
- (a) any or all of the provisions of the interim planning directive are to have effect, during the period in which it is in force, in the place of any or all of the provisions of a planning directive issued under section 13(1); and
 - (b) the provisions, of the planning directive issued under section 13(1), that are specified in the statement are accordingly suspended for that period.
- (4) If an interim planning directive includes a statement in accordance with subsection (3) in relation to any or all of the provisions of a planning directive issued under section 13(1) –
- (a) the provisions of the interim planning directive specified in the statement are to have effect, during the period in which it is in effect, in the place of the provisions, of the planning directive issued under section 13(1), specified in the statement; and
 - (b) the provisions, of the planning directive issued under section 13(1), that are specified in the statement are accordingly suspended for that period.
- (5) The Minister may only issue an interim planning directive that is in the terms of a draft planning directive if the Minister issues, or has issued, a direction under section 11 that an assessment of

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the draft planning directive be undertaken by the Commission, despite that a report in relation to the interim planning directive has not been provided to the Minister under section 12(5).

- (6) If the Minister issues an interim planning directive, the Minister must –
 - (a) give written notice of the interim planning directive to the Commission and all planning authorities affected by the interim planning directive; and
 - (b) publish in the *Gazette* notice of the issue of the interim planning directive and of the day on which the interim planning directive is to take effect, which is to be the day on or after the day on which the notice is so published.
- (7) If the Minister determines not to issue an interim planning directive, the Minister must give written notice of that determination to the Commission.
- (8) An interim planning directive issued under this section takes effect on the day specified, in the notice of its issue published in the *Gazette*, as the day on which the interim planning directive is to take effect.
- (9) An interim planning directive that is in the terms of a draft planning directive remains in effect until –

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- (a) the end of the period of 12 months from the day on which the interim planning directive took effect; or
- (b) the day on which a planning directive, issued under section 13(1), that is in the same terms as –
 - (i) the draft planning directive; or
 - (ii) the draft planning directive, modified as recommended by the Commission in a report, in relation to the draft planning directive, provided to the Minister under section 12(5) –takes effect; or
- (c) a revocation of the interim planning directive under section 12B(1) takes effect –

whichever occurs first.

- (10) For the purposes of subsection (9)(b), a planning directive issued under section 13(1) (*the relevant directive*) is to be taken to be in the same terms as a draft planning directive despite that it does not contain a statement of the kind referred to in subsection (3) suspending any or all provisions, of a planning directive issued under section 13(1), that have been suspended by an interim planning directive in the same terms as the draft planning directive, if the relevant directive –

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- (a) states that the suspension of the provisions is to cease on a date specified in the relevant directive; or
- (b) contains a provision modifying or revoking any or all of the provisions, of a planning directive issued under section 13(1), that have been suspended by the interim planning directive (whether or not it also modifies or revokes any other provisions of that planning directive issued under section 13(1)).

12B. Revocation or modification of interim planning directive

- (1) The Minister –
 - (a) may revoke an interim planning directive; or
 - (b) may modify an interim planning directive.
- (2) If the Minister revokes or modifies under subsection (1) an interim planning directive, the Minister must –
 - (a) give written notice of the revocation or modification to the Commission and all planning authorities affected by the interim planning directive; and
 - (b) publish in the *Gazette* notice of the revocation or modification and of the day

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on which the revocation or modification
is to take effect.

- (3) A revocation or modification of an interim planning directive under subsection (1) takes effect on the day specified, in the notice of its issue published in the *Gazette*, as the day on which the revocation or modification is to take effect.

13. Issue of planning directive

(1AA) In this section –

planning directive does not include an interim
planning directive.

- (1) After considering the report and recommendations of the Commission made under section 12(5) in respect of a draft planning directive, the Minister may –
- (a) issue a planning directive; or
 - (b) determine not to issue a planning directive.
- (2) If the Minister issues a planning directive, the Minister must –
- (a) give written notice of the planning directive to the Commission and all planning authorities affected by the planning directive; and
 - (b) publish notice of the issue of the planning directive in the *Gazette*.

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- (3) If the Minister determines not to issue a planning directive, the Minister must –
 - (a) give written notice of that determination to the person who prepared the draft planning directive and the Commission; and
 - (b) publish notice of that determination in the same newspaper in which notice of the assessment of the draft planning directive was published under section 12(2)(c).
- (4) A planning directive may be issued in the same terms as the draft planning directive or in the terms of the draft planning directive modified as recommended by the Commission.
- (5) A planning directive takes effect on the day on which notice of its issue is published in the *Gazette* or on a later day specified in the planning directive.

14. Effect of planning directive

- (1) A planning authority is bound by a planning directive and must take all necessary steps to comply with it.
- (2) If a planning directive applies to all or part of the area of land to which a planning scheme relates, the Commission, with the approval of the Minister, may, for the purpose of –

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- (a) ensuring the scheme complies with the planning directive; or
 - (b) ensuring the effectiveness of the operation of the planning directive; or
 - (c) removing any inconsistency between the scheme and the planning directive –
modify the scheme.
- (2A) The modification of a planning scheme under subsection (2) may be effected –
- (a) by revoking or amending any provision of the scheme; or
 - (b) by inserting a new provision into the scheme; or
 - (c) if any or all provisions of a planning directive issued under section 13(1) have been suspended by an interim planning directive, by –
 - (i) annotating the planning scheme accordingly; and
 - (ii) inserting in the appropriate place in the planning scheme (including by being attached in accordance with subsection (6)) the provisions of the interim planning directive that are to have effect, during the period in which it is in force, in the place of any or all of the provisions inserted in the

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scheme in accordance with the relevant provisions of the planning directive issued under section 13(1).

- (3) Division 2 of Part 3 does not apply in respect of the modification of any planning scheme under subsection (2).
- (4) The modification of a planning scheme under subsection (2) takes effect on the day specified by the Commission.
- (5) On modifying a planning scheme under subsection (2), the Commission must give notice, as prescribed, of the modification.
- (6) If a planning directive applies in relation to all or part of the land to which a planning scheme relates, the Commission, with the approval of the Minister, may attach to the planning scheme, by appendix or by provisions inserted in between the provisions of the planning scheme, any provisions of the directive.
- (7) A provision of a planning directive may only be attached to a planning scheme under subsection (6) if the attached provision clearly indicates that it is a provision of a planning directive and does not form part of the planning scheme.
- (8) A provision that is attached to a planning scheme under subsection (6) does not form part of the planning scheme.

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- (9) On attaching a provision to a planning scheme under subsection (6), the Commission must give notice, as prescribed for the purposes of a modification under subsection (2), of the attachment as if it were such a modification, and state in the notice that the attachment does not form part of the planning scheme.

15. Modification or revocation of planning directive

A planning directive issued under section 13(1) may be modified or revoked and, except in the case of a modification or revocation under section 12B(1), this Part applies to the modification or revocation in the same manner as it applies to the making of a planning directive.

16. Power of Minister to dispense with certain requirements

(1AA) In this section –

planning directive does not include an interim planning directive.

- (1) Notwithstanding section 15, where the Minister is satisfied that –
- (a) the modification to a planning directive is for the purpose of –
 - (i) correcting any error; or
 - (ii) removing any anomaly; or

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- (iii) clarifying or simplifying; or
 - (iv) removing any inconsistency with any Act; or
 - (v) making procedural changes; or
 - (vi) amending a planning directive to bring it into conformity with a State Policy; or
 - (via) amending the planning directive so as to make it consistent with another planning directive; or
 - (vii) any other prescribed purpose; and
- (b) the public interest will not be prejudiced –

the Minister may, by notice in the *Gazette*, dispense with the requirements of sections 10, 11 and 12 in relation to the modification.

- (2) If the Minister dispenses with the requirements of sections 10, 11 and 12 in relation to a modification of a planning directive –
- (a) despite section 15, the planning directive, as in force before the modification, is revoked by virtue of this subsection; and
 - (b) the Minister must issue the modified planning directive as a planning directive under section 13(1) as if the requirements for issue under that section had been satisfied; and

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- (c) a notice required to be given under section 13 is to contain a statement that the planning directive, as in force before the modification, is revoked by virtue of this subsection.

17. Permit applications not determined before planning directive comes into, or ceases to have, effect

- (1) If an application that is made for a permit during the period before a planning directive is in effect is not determined by a planning authority before the directive comes into effect –
 - (a) the planning directive does not apply in relation to the application; and
 - (b) any decision, of the planning authority, in relation to the application is to be made in accordance with the planning scheme that applies to the land to which the application relates, despite the provisions of the planning directive; and
 - (c) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the planning directive were not in effect.

- (2) Subject to subsection (1), if an application that is made for a permit during the period in which a planning directive is in effect is not determined by a planning authority before the directive ceases to have effect –

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- (a) the planning directive continues in effect in relation to the application; and
- (b) any decision, of the planning authority, in relation to the application is to be made in accordance with the planning directive, despite the provisions of any planning scheme or another planning directive; and
- (c) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the planning directive continued in effect.

- (3) If a permit is granted, or a decision to grant a permit is deemed under section 59(1) to have been made, in relation to an application to which subsection (1) or (2) applies, a use or development, authorised under the permit, that takes place on the land to which the permit relates is to be taken, from the day on which the permit takes effect under this Act until the permit lapses or expires, if at all, to be lawfully established before the planning scheme that applies in relation to the land came into operation.

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PART 3 – PLANNING SCHEMES

Division 1 – Preparation of planning schemes

19A.

20. What can a planning scheme provide for?

- (1) A relevant decision-maker, in preparing, accepting, declaring or making a relevant scheme, or giving approval in relation to the making or approving of a relevant scheme, must, in the opinion of the relevant decision-maker–
 - (a) seek to further the objectives set out in Schedule 1 within the area covered by the scheme; and
 - (b) prepare the scheme in accordance with State Policies made under section 11 of the *State Policies and Projects Act 1993*; and
 - (c)
 - (d) have regard to the strategic plan of a council referred to in Division 2 of Part 7 of the *Local Government Act 1993* as adopted by the council at the time the planning scheme is prepared; and
 - (e) have regard to the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*.

(2A) For the purposes of subsection (1) –

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- (a) a planning authority, the Commission, or the Minister, is a relevant decision-maker in relation to a relevant scheme; and
 - (b) a draft planning scheme, a draft interim planning scheme, an interim planning scheme, or an amendment, or a draft amendment, of a planning scheme or of an interim planning scheme, is a relevant scheme.
- (2) A planning scheme may–
- (aa) make any provision which relates to the use, development, protection or conservation of any land in the area; and
 - (a) set out policies and specific objectives; and
 - (b) regulate or prohibit the use or development of any land; and
 - (c) designate land as being reserved for public purposes; and
 - (d)
 - (e) set out requirements for the provision of public utility services to land; and
 - (f) require specified things to be done to the satisfaction of the Commission, relevant agency or planning authority; and
 - (g) apply, adopt or incorporate any document which relates to the use, development or protection of land; and

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- (h) provide that any use or development of land is conditional on an agreement being entered into under Part 5; and
 - (ha) set out provisions relating to the implementation in stages of uses or developments; and
 - (i) provide for any other matter which this Act refers to as being included in a planning scheme; and
 - (j) provide for an application to be made to a planning authority to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme.
- (3) Subject to subsections (4), (5) and (6), nothing in any planning scheme is to be taken (including by virtue of requiring a permit to be obtained) to—
- (a) prevent the continuance of the use of any land, upon which buildings or works are not erected, for the purposes for which it was being lawfully used before the coming into operation of the scheme; or
 - (b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation, or the maintenance or repair of such a building; or

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- (c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or
 - (d) prevent the use of any building or works for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or
 - (e) require the removal or alteration of any lawfully constructed buildings or works; or
 - (f) prevent a development, which was lawfully commenced but not completed before the coming into operation of the scheme, from being completed within—
 - (i) 3 years of that coming into operation; or
 - (ii) any lesser or greater period specified in respect of the completion of that development under the terms of a permit or special permit granted before the coming into operation of the scheme.
- (3A) Subject to subsections (4) and (6), nothing in a planning scheme is to be taken to prevent (including by virtue of requiring a permit to be obtained) the reconstruction of a building, or restoration of works, destroyed or damaged,

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which was or were integral and subservient to a lawfully established existing use, whether or not the use or development conforms to the scheme, or a provision of the scheme, or a planning directive, if –

- (a) the destruction or damage was not caused intentionally by the owner of that building or those works; and
 - (b) the building or works was or were lawfully established before the coming into operation of the scheme, the provision of the scheme, or the planning directive, respectively.
- (4) Subsections (3) and (3A) do not apply to a use of land–
- (a) which has stopped for a continuous period of 2 years; or
 - (b) which has stopped for 2 or more periods which together total 2 years in any period of 3 years; or
 - (c) in the case of a use which is seasonal in nature, if the use does not take place for 2 years in succession.
- (5) Subsection (3) does not apply to the extension or transfer from one part of a parcel of land to another of a use previously confined to the first-mentioned part of that parcel of land.

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- (6) Subsections (3) and (3A) do not apply where a use of any land, building or work is substantially intensified.
- (7) Nothing in any planning scheme or special planning order affects –
- (a) forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985*; or
 - (b) the undertaking of mineral exploration in accordance with a mining lease, an exploration licence, or retention licence, issued under the *Mineral Resources Development Act 1995*, provided that any mineral exploration carried out is consistent with the standards specified in the Mineral Exploration Code of Practice; or
 - (c) fishing; or
 - (d) marine farming in State waters.
- (7A) In subsection (7)(a), “forestry operations” includes the processes and works connected with –
- (a) the establishment of forests; and
 - (b) the growing of timber; and
 - (c) the harvesting of timber; and
 - (d) land clearing, land preparation, burning off, road construction and associated quarry works conducted in relation to an

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activity specified in paragraph (a), (b) or (c).

- (8) The coming into operation of a planning scheme or a special planning order does not legitimize a use or development which was illegal under a planning scheme or a special planning order in force immediately before that coming into operation.
- (9) A planning scheme may require a use to which subsection (3) applies to comply with a code of practice approved or ratified by Parliament under an Act.
- (10) A planning scheme is not to prohibit or require a discretionary permit for the use or development of a proclaimed wharf area for port and shipping purposes.
- (11) Subsection (7)(d) does not apply in respect of the following:
 - (a) any bridge, jetty, wharf, boathouse, shed, pipeline or other structure used in connection with marine farming that is constructed wholly or in part on, or above, the high water mark;
 - (b) a use or development on any accretion from the sea.
- (12) In this section –

fishing means fishing as defined in the *Living Marine Resources Management Act 1995*

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and conducted in accordance with that Act;

marine farming means marine farming as defined in the *Marine Farming Planning Act 1995* and conducted in accordance with that Act and the *Living Marine Resources Management Act 1995*;

proclaimed wharf area means the area of a wharf the boundaries of which have been defined, altered or redefined under the *Marine Act 1976* before the commencement of the *Port Companies Act 1997*;

State waters means State waters as defined in the *Living Marine Resources Management Act 1995*.

21. Co-ordination of planning schemes

- (1) Subject to section 20(1), a planning scheme for an area must, in the opinion of the decision-maker, within the meaning of section 20(2A), as far as practicable, be consistent with and co-ordinated with the planning schemes applying to adjacent areas and must have regard for the use and development of the region as an entity in environmental, economic and social terms.
- (2) A planning scheme that includes an area referred to in section 7(d) is to be prepared in consultation with the Marine and Safety Authority established under the *Marine and Safety Authority Act 1997*.

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22. Initiation of preparation of draft planning schemes

- (1) A planning authority may prepare a draft planning scheme in respect of such area as it may determine.
- (2) The Commission may, with the approval of the Minister, give a written direction to a municipality to prepare a draft planning scheme in respect of the area specified in the direction and the municipality must prepare a draft planning scheme in accordance with the direction.
- (2A) The direction referred to in subsection (2) may require a municipality to prepare a draft planning scheme jointly with one or more municipalities if the Commission considers such a requirement would promote a regional approach to planning.
- (3 - 5)
- (6) An area in respect of which a planning scheme is prepared may comprise –
 - (a) the whole or any part, or parts, of a municipal district of the relevant municipality; and
 - (b) the whole or any part of the area referred to in section 7(d); and
 - (c) any area in that municipal district covered by an existing planning scheme or special planning order.

23. Notification of commencement of preparation of draft planning scheme

A planning authority must, not later than 14 days after making a decision to prepare a draft planning scheme, cause a copy of its decision to be given to the Commission, and must give such other notice as may be prescribed.

24. Certification by Commission of draft planning schemes prepared by planning authorities

- (1) Not later than 12 months after making a decision to prepare a draft planning scheme, or the receipt of a direction under section 22(2) or (3), or such longer period as the Commission may allow, the planning authority must cause a copy of the draft planning scheme prepared by it to be submitted to the Commission.
- (2) The Commission must, not later than 6 weeks after the submission of a draft planning scheme to it under subsection (1) or such longer period as the Minister may allow, examine the draft and—
 - (a) if it is suitable for exhibition, certify it accordingly and, by notice in writing given to the planning authority, direct that it be publicly exhibited; or
 - (b) if it is not suitable for exhibition—
 - (i) with the agreement of the authority, amend it so that it is so suitable, certify it accordingly

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- and, by notice in writing given to the authority, direct that the draft planning scheme, as amended, be publicly exhibited; or
- (ii) by notice in writing given to the authority, specify the respects in which the draft planning scheme is not suitable for exhibition and a period within which a revised draft planning scheme is to be submitted to the Commission.
- (3) For the purposes of subsection (2), a draft planning scheme is suitable for exhibition if –
- (a) it satisfies the requirements of section 20; or
- (b) the Commission, by notice in writing given to the planning authority, directs that the draft planning scheme be publicly exhibited together with a notice from the Commission indicating that its approval of the draft planning scheme will be conditional on issues identified in the notice being dealt with to the satisfaction of the Commission.
- (3A) Nothing in subsection (3)(b) limits the Commission’s obligations and powers under sections 27 and 28.
- (4) Where the Commission gives a notice to a planning authority under subsection (2)(b)(ii), the authority must, within the period specified in the notice or such longer period as the

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Commission may allow, revise the draft planning scheme and resubmit it to the Commission, and subsections (2) and (3) apply in relation to the revised draft planning scheme as if it had not previously been submitted to the Commission.

- (5) Where the Commission does not complete its examination within the period first referred to in subsection (2), the draft planning scheme is deemed to be certified as submitted and the Commission must, by notice in writing given to the planning authority, direct that the draft planning scheme be publicly exhibited.

25. Public exhibition of draft planning schemes

- (1) Where the Commission gives notice under section 24(2)(a), (2)(b)(i), (3)(b) or (5) directing the public exhibition of a draft planning scheme –

(a) the planning authority must –

- (i) within 3 weeks or such longer period as the Commission may allow, cause a copy of the draft planning scheme to be placed on public exhibition for a period of 2 months; and
- (ii) advertise, as prescribed, the exhibition of the draft planning scheme; and

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- (b) the Commission must cause a copy of the draft planning scheme to be placed on public exhibition at its office for that period.
- (2) For the purpose of determining the period of 2 months referred to in subsection (1)(a)(i), any days on which the office of the planning authority is closed during normal business hours, in that part of the State where the planning scheme will apply, are not to be included.

26. Representations in respect of draft planning schemes

- (1) Where a draft planning scheme is placed on public exhibition by a planning authority in accordance with section 25, representations in relation to that draft planning scheme may be submitted to the authority by any person before the expiration of the exhibition period referred to in section 25(1)(a)(i).
- (2) The planning authority must, not later than the expiration of 3 months after the exhibition period referred to in section 25(1)(a)(i) or such further period as the Commission allows, forward to the Commission a report comprising—
 - (a) a copy of each representation received by the authority in relation to the draft planning scheme or, where it has received no such representation, a statement to that effect; and

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- (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to—
 - (i) the need for modification of the draft planning scheme in the light of that representation; and
 - (ii) the impact of that representation on the draft planning scheme as a whole; and
- (ba) if the public exhibition of the draft planning scheme was required by notice under section 24(3)(b), a statement addressing how the issues identified in that notice and upon which approval of that scheme is conditional have been or may be dealt with; and
- (c) such recommendations in relation to the draft planning scheme as the authority considers necessary.

27. Consideration by Commission of draft planning scheme and relevant representations

- (1) As soon as practicable after receipt by it of a report under section 26(2), the Commission must consider the draft planning scheme and the representations, statements and recommendations contained in the report.
- (2) For the purposes of its consideration under subsection (1), the Commission must hold a

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hearing in relation to each representation contained in the report.

- (3) The Commission may consolidate any of the representations and hold a hearing in relation to the consolidated representations.

28. Modification or rejection, &c., of draft planning schemes before approval

- (1) The Commission may, after its consideration under section 27 of a draft planning scheme prepared by a planning authority—
- (a) require the planning authority to modify the draft planning scheme after having regard to the report made under section 26, and any evidence and submissions made in a hearing under section 27 in relation to it; or
 - (ab) modify the draft planning scheme; or
 - (b) by notice in writing given to the authority—
 - (i) reject the draft planning scheme; or
 - (ii) direct that a specified part of the draft planning scheme be done again.

- (2) Where the Commission rejects a draft planning scheme, the planning authority must, within such period as the Commission may allow, prepare and submit to the Commission another draft

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planning scheme, and the provisions of this Division (other than sections 22, 23 and 24(1)) apply in relation to that other draft planning scheme as if it had been prepared under section 22(1).

- (3) Where the Commission directs that a specified part of a draft planning scheme be done again–
 - (a) the planning authority must, within such period as the Commission may allow, prepare and submit to the Commission a substitute version of that part; and
 - (b) the provisions of this Division (other than sections 22, 23, 24(1) and 29) apply in relation to the substitute part as if it were a draft planning scheme prepared under section 22(1).
- (4) When directing a part of a draft planning scheme to be done again, the Commission may give directions as to the explanatory material to be included in the public notification of the substitute part and to be available for public inspection with it.
- (5) Where the Commission requires the planning authority to modify the draft planning scheme, the planning authority must not issue a permit or do any other thing that would, if the draft planning scheme modified as required had at that time been approved as a planning scheme, be a contravention of that approved planning scheme.

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28AA. Direction to undertake modification of draft planning scheme

- (1) If a draft planning scheme is required to be modified under section 28(1)(a), the Commission, by notice in writing to the planning authority, must—
 - (a) direct that it undertake the modification; and
 - (b) specify the manner in which the scheme is to be modified.
- (2) A planning authority must undertake a modification to a draft planning scheme in accordance with a direction of the Commission under subsection (1) and submit the modified scheme to the Commission within 28 days from the receipt of that direction or such longer period as the Commission may allow.
- (3) The period referred to in section 29(2) does not run after a direction to modify the draft scheme has been made until the period referred to in subsection (2) of this section expires.

28A. Application for withdrawal of draft planning scheme

- (1) A planning authority may apply to the Commission to withdraw a draft planning scheme.
- (2) An application may only be made if –

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- (a) a report under section 26(2) has not been forwarded to the Commission; and
 - (b) the planning authority proposes to prepare a further draft planning scheme for an area the same as, or greater than, the area to which the scheme to be withdrawn relates; and
 - (c) the planning authority has complied with section 28B.
- (3) An application is to –
- (a) be in writing; and
 - (b) attach a statement outlining the proposed replacement draft planning scheme; and
 - (c) attach a copy of any representation made under section 28B; and
 - (d) state the planning authority’s opinion as to the merit of the representation.

28B. Notice of intention to withdraw draft planning scheme

- (1) Before making an application under section 28A, the planning authority, by notice in a daily newspaper circulating generally in the area, must notify its intention to withdraw a draft planning scheme.
- (2) A notice is to –

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- (a) advise that any person may make representations to the planning authority relating to its intention to withdraw a draft planning scheme within 28 days after the date on which the notice was advertised; and
- (b) specify the places at which, and the hours during which, any person may make representations; and
- (c) specify the place at which any person may examine the draft planning scheme which the planning authority intends to withdraw; and
- (d) specify why the draft planning scheme is to be withdrawn.

28C. Approval of withdrawal of draft planning scheme

- (1) The Commission must consider an application made under section 28A and any representation made in connection with that application.
- (2) In considering any representation, the Commission may hold a hearing.
- (3) The Commission, after considering an application and any representation and with the Minister's approval, may–
 - (a) approve the withdrawal of a draft planning scheme; or
 - (b) refuse to approve the withdrawal.

28D. Conditions of withdrawal of draft planning scheme

- (1) An approval to withdraw a draft planning scheme is subject to any condition the Commission specifies.
- (2) The Commission, with the Minister's approval, may revoke an approval if the planning authority fails to comply with any condition specified by the Commission.

28E. Notification of withdrawal of draft planning scheme

- (1) The Commission is to notify the planning authority of—
 - (a) its approval of the withdrawal of a draft planning scheme; or
 - (b) its refusal to approve the withdrawal.
- (2) The planning authority, by notice published in a daily newspaper circulating generally in the area, must notify –
 - (a) that the draft planning scheme is withdrawn; and
 - (b) the date on which the withdrawal takes effect.

28F. Date of withdrawal of draft planning scheme

The withdrawal of a draft planning scheme comes into effect –

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- (a) 7 days after the date on which the Commission approved the withdrawal; or
- (b) if the withdrawn planning scheme is in operation as a special planning order, on the date on which the draft planning scheme prepared under section 28A comes into operation as a planning scheme or a special planning order.

29. Approval of draft planning schemes

- (1) Where, after consideration by the Commission, under section 27, of a draft planning scheme (including any modifications made or substitute parts required under section 28), the Commission is satisfied that the draft planning scheme is in order, it must, subject to the approval of the Minister, give its approval to the draft planning scheme.
- (2) The Commission must give its approval to a draft planning scheme not later than–
 - (a) 6 months after–
 - (i) the submission to it, under section 26(2), of the report of the planning authority in relation to the draft planning scheme; or
 - (ii) where any part of it is required, under section 28, to be done again, the day on which the report of the authority in relation to the substitute part was submitted to

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-
- the Commission under section 26(2) or, where more than one such report was so submitted, the day on which the last such report was so submitted; or
- (b) such later day as the Minister may approve.
- (3) When the Commission gives its approval to a draft planning scheme—
- (a) the scheme must be signed –
- (i) by the chairperson of the Commission; or
- (ii) if for any reason the chairperson is unavailable or unable to sign the scheme, by another member of the Commission approved by the Commission under subsection (3A); and
- (b) notwithstanding any failure to comply with a procedural provision of this Part, the planning scheme comes into operation on such date as is specified by the Commission, being a date not earlier than the date on which it is signed; and
- (c) the Commission must advise the planning authority of its approval; and
- (d) the planning authority must give notice of the Commission's approval as prescribed.

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- (3A) For the purposes of subsection (3)(a)(ii), the Commission may approve a member of the Commission –
- (a) to sign a particular draft planning scheme if the chairperson is unavailable or unable to sign it; or
 - (b) to sign draft planning schemes as required during any period during which the chairperson is unavailable or unable to sign them.
- (4) If a date is not specified under subsection (3)(b), the planning scheme comes into operation 7 days after the date on which the Commission gives its approval.
- (5) When a planning scheme comes into operation, any existing planning scheme covering the area to which the new planning scheme applies does not apply to that area.

30. Failure to comply with provision of this Division

- (1) Where a planning authority fails to comply with a provision of this Division within the period referred to in that provision –
- (a) the Commission may assume the responsibilities and obligations of the authority under this Division in relation to the preparation of a draft planning scheme; and

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- (b) the authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations of the authority in relation to the preparation of the draft planning scheme.
- (2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate a planning scheme approved by the Commission under this Division.

Division 1A – Regional land use strategies and interim planning schemes

Subdivision 1 – Purposes and interpretation

30A. Purposes of Division

The purposes of this Division are –

- (a) to ensure greater consistency between planning schemes within regional areas; and
- (b) to ensure greater consistency between planning schemes across the State as a whole –

including by ensuring that there are regional land use strategies for all regional areas of the State.

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30B. Interpretation: Division 1A

In this Division, unless the contrary intention appears –

common provision means a provision, of an interim planning scheme or of a planning scheme made under section 30N, that is –

- (a) a mandatory common provision;
or
- (b) an optional common provision;

conflicting local provision means a provision that is specified in a planning purposes notice to be a conflicting local provision;

local provision means a provision, of an interim planning scheme or of a planning scheme made under section 30N, that is not a common provision, and includes a zoning of a particular area of land;

mandatory common provision means a provision that –

- (a) is specified in a planning directive; and
- (b) is specified in that directive to be a provision that a planning scheme that is made after the directive comes into force must contain;

optional common provision means a provision that –

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- (a) is specified in a planning directive; and
- (b) is specified in that directive to be a provision that a planning scheme that is made after the directive comes into force may, but is not required to, contain;

overriding local provision means a provision that is specified in a planning purposes notice to be an overriding local provision;

planning purposes notice means a notice in force under section 30EA.

Subdivision 2 – Regional areas and land use strategies

30C. Regional areas and regional land use strategies

- (1) The Minister, by notice in the *Gazette*, may specify the regional areas into which the State is divided for the purposes of this Act.
- (2) A notice under subsection (1) is to specify the municipal areas that are within a regional area specified in the notice.
- (3) The Minister, by notice in the *Gazette*, may declare a regional land use strategy for each regional area.
- (4) The Minister must keep all regional land use strategies under regular and periodic review.

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Subdivision 3 – Interim planning schemes

30D. Interim planning schemes to be provided to Minister

- (1) A planning authority may provide to the Minister a draft interim planning scheme for the authority's municipal area.
- (2) The Minister, by notice in writing to a planning authority, may request the planning authority to provide to the Minister a draft interim planning scheme for the authority's municipal area.
- (3) The Minister may direct the Commission to prepare a draft interim planning scheme for a municipal area.
- (4) The Minister may only direct the Commission to prepare a draft interim planning scheme under subsection (3) for a municipal area if the Minister is satisfied that –
 - (a) the planning authority for the area has not provided such a scheme to the Minister under subsection (1) within 21 days after being requested by the Minister to do so under subsection (2); and
 - (b) such a scheme would further the purposes of this Division.
- (5) The Commission must provide to the Minister a draft interim planning scheme prepared by the

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Commission in accordance with a direction under subsection (3).

- (6) The Minister, by notice in writing to a planning authority, may request the planning authority to provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under subsection (1) and that is amended, in accordance with the directions specified in the notice –
- (a) to remove or amend any local provision that is, under section 30EA, inconsistent with another provision; or
 - (b) to ensure that the draft interim planning scheme complies with this Act; or
 - (c) to ensure the effective operation of a planning purposes notice; or
 - (d) to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme.
- (7) A planning authority to which a notice is given under subsection (6) may provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under subsection (1) and that is amended, in accordance with the directions specified in the notice.
- (8) The Minister may direct the Commission to amend a draft interim planning scheme for a

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municipal area that has been provided to the Minister under subsection (1) or (5).

- (9) The Commission must provide to the Minister a draft interim planning scheme prepared by the Commission in accordance with a direction under subsection (8).
- (10) If a draft interim planning scheme has been provided to the Minister under subsection (9), the Minister must –
 - (a) notify the planning authority for the area of land to which the scheme, if declared, would relate, that the scheme has been provided to the Minister and that the comments of the planning authority may be provided to the Minister within 14 days after the notice is given; and
 - (b) provide to the planning authority a copy of the scheme so provided to the Minister by the Commission; and
 - (c) consider any comments in relation to the scheme that are provided to the Minister by the planning authority within 14 days after the notice is given.

30E. Contents of interim planning schemes

- (1) A draft interim planning scheme and an interim planning scheme must contain the mandatory common provisions.

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- (2) A draft interim planning scheme and an interim planning scheme may contain optional common provisions.
- (3) Subject to this Act, a draft interim planning scheme and an interim planning scheme may contain a provision (a *local provision*) that is not a common provision.
- (4) Subject to section 30EA, a draft interim planning scheme and an interim planning scheme may only contain a local provision if the provision is not directly or indirectly inconsistent with –
 - (a) a mandatory common provision; or
 - (b) an optional common provision that is contained in the planning scheme; or
 - (c) an overriding local provision.
- (4A) A draft interim planning scheme and an interim planning scheme may only contain a local provision if the provision is not a conflicting local provision.
- (5) Subsection (4) does not apply in relation to a local provision that applies to an area of land, if a planning directive allows a planning scheme in relation to the land to specify that some or all of the common provisions are not to apply to such an area of land.
- (6) Subject to section 20(1), a draft interim planning scheme and an interim planning scheme are to be, in the opinion of the decision-maker, within the meaning of section 20(2A), as far as

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practicable consistent with the regional land use strategy, if any, for the regional area in which the schemes are to apply.

- (7) Apart from sections 20 and 21, Division 1 does not apply to draft interim planning schemes and interim planning schemes.

30EA. Overriding local provisions and conflicting local provisions

- (1) In this section –

relevant scheme means –

- (a) a draft interim planning scheme;
or
 - (b) an interim planning scheme; or
 - (c) an interim planning scheme modified under section 30M.
 - (d)
- (2) The Minister, on the recommendation of the Commission, by notice to the Commission, may issue a planning purposes notice.
- (3) A planning purposes notice may specify –
- (a) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, an overriding local provision; and

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- (b) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, a conflicting local provision.
- (4) If there is an inconsistency between an overriding local provision of a relevant scheme and a common provision of the scheme, the overriding local provision prevails to the extent of the inconsistency.
- (5) If there is an inconsistency between a conflicting local provision of a relevant scheme and a common provision of the scheme, the conflicting local provision is of no effect.
- (6) If a planning purposes notice is issued under subsection (2), the Minister must ensure that, as soon as practicable, a notice is published in the *Gazette* specifying –
 - (a) that the planning purposes notice has been issued; and
 - (b) the date on which it was issued; and
 - (c) the relevant schemes to which the notice relates; and
 - (d) the general purport or effect of the notice.
- (7) If a planning purposes notice is issued under subsection (2), the Commission, as soon as practicable –

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- (a) must notify each planning authority in respect of a relevant scheme to which the planning purposes notice relates of the issue of the planning purposes notice; and
 - (b) make copies of the planning purposes notice available to the public at the offices of the Commission.
- (8) If a planning purposes notice that applies in relation to a relevant scheme is issued under subsection (2), the Commission must –
 - (a) amend the relevant scheme to ensure the effective operation of the planning purposes notice and the scheme as so amended; or
 - (b) direct a planning authority to amend the relevant scheme in accordance with the directions of the Commission, to ensure the effective operation of the planning purposes notice and the scheme as so amended.
- (9) The Minister, on the recommendation of the Commission, by notice, may amend or revoke a planning purposes notice.
- (10) If a planning purposes notice that applies in relation to a relevant scheme is amended or revoked, the Commission must –
 - (a) amend the relevant scheme to ensure the effective operation of the amendment or

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- revocation of the planning purposes notice and the scheme as so amended; or
- (b) direct a planning authority to amend the relevant scheme, in accordance with the directions of the Commission, to ensure the effective operation of the amendment or revocation of the planning purposes notice and the scheme as so amended.
- (11) If an amendment or revocation of a planning purposes notice that applies in relation to a relevant scheme is to the effect that a provision of the relevant scheme has ceased to be an overriding local provision or a conflicting local provision, the Commission may amend, or direct a planning authority to amend, any local provision of the scheme, that, in the opinion of the Commission, requires amendment to ensure the effective operation of the scheme after a provision has ceased to be an overriding local provision or a conflicting local provision.
- (12) The amendments that may be made, to a relevant scheme, under this section include, but are not limited to including, the following:
- (a) removing or amending any local provision that is, under this section, inconsistent with another provision;
- (b) amendments to ensure that the scheme complies with this Act;
- (c) amendments to ensure that the local provisions of the scheme are consistent with one another and any planning

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directive, to the extent that the directive applies in relation to the scheme.

- (13) If an amendment to a relevant scheme is made under this section –
- (a) the amendment must be signed by the chairperson of the Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and
 - (b) the amendment comes into effect –
 - (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
 - (ii) if no such date is specified, 7 days after the amendment is made; and
 - (c) the Commission must notify the planning authority in respect of the scheme of the amendment; and
 - (d) the Commission must give notice of the amendment in a newspaper circulating generally in the area to which the scheme relates.

30F. Declaration of interim planning scheme

- (1) The Minister, by notice in the *Gazette*, may declare to be an interim planning scheme a draft interim planning scheme that is provided to the Minister under section 30D(1), (5), (7) or (9).
- (2) The Minister may decide not to declare to be an interim planning scheme a draft interim planning scheme that is provided to the Minister under section 30D(1), (5), (7) or (9).
- (3) The Minister may only declare a draft interim planning scheme to be an interim planning scheme if –
 - (a) the scheme complies with sections 20 and 21 and section 30E; and
 - (b) where the scheme is required under section 30EA or section 30IA to be amended, it is amended under section 30EA or section 30IA respectively; and
 - (c) where the planning scheme has been provided to the Minister under section 30D(9), section 30D(10) has been complied with in relation to the scheme.
- (4) An interim planning scheme comes into operation –
 - (a) on the date on which it is notified under subsection (1); or

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- (b) if a later date is specified in the notice under subsection (1), on that later date.
- (5) On and from the day on which an interim planning scheme that is declared in relation to an area of land comes into operation –
 - (a) the interim planning scheme applies to the land until an interim planning scheme is made under section 30M in relation to the land; and
 - (b) the planning scheme that applied to the land immediately before the interim planning scheme came into operation ceases to have effect; and
 - (ba)
 - (c) a draft planning scheme may not be approved under section 29 in relation to the land while the interim planning scheme applies to the land.
- (6)

30FA. Permit applications not resolved before interim planning scheme in operation

- (1) Despite any other provision of this Act, on and from the day on which an interim planning scheme comes into operation, an application, for a permit in relation to land to which the scheme relates, that –
 - (a) is made before that day; and

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- (b) is an application to which a request under section 43A relates; and
 - (c) is not determined by the planning authority before that day; and
 - (d) is not an application in relation to which, before that day, a decision to grant a permit is deemed under section 59(1) to have been made –
ceases to have effect.
- (2) On and from the day on which an interim planning scheme comes into operation, subsection (3) applies to, and in relation to, an application, for a permit in relation to land to which the scheme relates, that –
- (a) is, before that day, made in accordance with this Act, valid under section 86 and a valid application within the meaning of section 51(1AC); and
 - (b) is not an application to which a request under section 43A relates; and
 - (c) is not determined by the planning authority before that day; and
 - (d) is not an application in relation to which, before that day, a decision to grant a permit is deemed under section 59(1) to have been made.
- (3) Despite any other provision of this Act, other than section 17, or an interim planning scheme,

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on and from the day on which an interim planning scheme comes into operation in relation to land to which an application, to which this subsection applies, relates –

- (a) a planning scheme, or special planning order, as in force in relation to the land immediately before that day (*the former scheme or former order*), continues to apply in relation to the application; and
- (b) any decision of the planning authority in relation to the application is to be made in accordance with the provisions of the former scheme or former order; and
- (c) this Act applies in relation to the application; and
- (d) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the former scheme or former order continued in operation, and the interim planning scheme did not apply, in relation to the land.

- (4) If a permit is granted, or a decision to grant a permit is deemed under section 59(1) to have been made, in relation to an application to which subsection (3) applies, a use or development, authorised under the permit, that takes place on the land to which the permit relates is to be taken, from the day on which the permit takes effect under this Act until the permit lapses or expires, if at all, to be lawfully established

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before the interim planning scheme that applies in relation to the land came into operation.

- (5) Nothing in this section is to be taken to apply to an application that is determined by a planning authority, or is an application in relation to which a decision to grant a permit is deemed under section 59(1) to have been made, before the day on which this section comes into operation.

30G. Notice of declaration of scheme or decision not to declare scheme

- (1) The Minister must give to the following persons notice in writing of the declaration under section 30F(1) of an interim planning scheme for an area of land that is within a regional area:
- (a) the planning authority for the land;
 - (b) each other planning authority for an area of land within the regional area;
 - (c) the Commission;
 - (d) those State Service Agencies that the Minister considers to have an interest in the scheme.
- (2) The notice under subsection (1) may specify that public exhibition of the scheme is to begin on a date specified in the notice.
- (3) The Minister must give to the following persons notice in writing of a decision under section 30F(2) not to declare a draft interim

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planning scheme for an area of land in a regional area to be an interim planning scheme, and the reasons for the decision:

- (a) the planning authority for the land;
- (b) each other planning authority for an area of land within the regional area;
- (c) the Commission.

30H. Notification and public exhibition of interim planning schemes

- (1) A planning authority notified under section 30G(1)(a) of the declaration of an interim planning scheme must ensure that a copy of the scheme is –
 - (a) publicly exhibited at the offices of the planning authority in accordance with this section; and
 - (b) made available for viewing at a website address specified in the notice in relation to the scheme in accordance with subsection (6)(e).
- (2) The public exhibition of an interim planning scheme by the planning authority is to begin –
 - (a) on the date, if any, specified in the notice under section 30G(1)(a) in relation to the scheme as the date on which public exhibition of the scheme is to begin; or

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- (b) if the notice under section 30G(1)(a) does not specify such a date, on a date, chosen by the planning authority, that is within 3 weeks after the authority receives the notice.
- (3) The interim planning scheme is to be publicly exhibited by the planning authority for a period of 42 days.
- (4) The planning authority notified under section 30G(1)(a) of the declaration of an interim planning scheme must ensure that a notice is published in a daily newspaper circulating generally in the area to which the scheme applies.
- (5) The notice under subsection (4) is to be published on or before the day on which the exhibition of the planning scheme begins under subsection (2).
- (6) The notice under subsection (4) is to –
 - (a) specify that an interim planning scheme has been declared; and
 - (b) indicate generally the area to which the scheme applies; and
 - (c) specify that the area to which the scheme applies is indicated with more particularity on a plan that is displayed at an office, of the planning authority, the address of which is specified in the notice; and

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- (d) specify that a copy of the interim planning scheme is or will be on public exhibition at the address of the offices of the planning authority, and the address of the offices of the Commission, specified in the notice; and
 - (e) specify that a copy of the interim planning scheme is available for viewing at a website address specified in the notice; and
 - (f) specify the date on which the scheme came into operation; and
 - (g) specify that representations in relation to the interim planning scheme may be made to the planning authority –
 - (i) at the address of the planning authority specified in the notice; and
 - (ii) at any time within 42 days from the date, specified in the notice, on which, under subsection (2), the public exhibition of the scheme is to begin.
- (7) If the public exhibition of 2 or more interim planning schemes for areas of land in the same regional area is required under subsection (2)(a) to begin on the same day, the planning authorities in respect of the areas of land may combine into a single notice, in one or more newspapers, all the notices for the schemes that

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are required under this section to be published in a daily newspaper.

- (8) The Commission must cause a copy of an interim planning scheme to be publicly exhibited at its office during the period in which the planning authority notified under section 30G(1)(a) of the declaration of the scheme is required under this section to publicly exhibit the scheme.
- (9) If a period, in relation to an interim planning scheme, referred to in this section includes any days on which the office of a planning authority is closed during normal business hours in that part of the State in which the scheme applies, that period is to be extended by the number of those days.

30I. Representations in relation to interim planning schemes

- (1) A person may make to a planning authority a representation in relation to an interim planning scheme that is exhibited at the offices of the authority in accordance with section 30H.
- (2) A representation in relation to an interim planning scheme may only be made within the period that is, under section 30H(6)(g), specified in the notice in relation to the scheme as the period in which representations may be made.
- (3 - 4)

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30IA. Urgent amendment of interim planning schemes

- (1) The Commission may issue to the Minister a notice –
 - (a) specifying that the Commission is of the opinion that an authorisation under subsection (2) is urgently required or is recommended under section 30K(4)(a); and
 - (b) specifying the purposes for which the authorisation is sought; and
 - (c) recommending to the Minister that the authorisation be issued.
- (2) The Minister, on his or her own motion or on receiving a notice under subsection (1), may issue to the Commission a notice (an authorisation).
- (3) The Minister may only issue an authorisation under subsection (2) if he or she is of the opinion that the interim planning scheme requires amendments for any of the purposes that are specified in section 37(1)(a), or in the notice under subsection (1), and he or she is satisfied that the public interest will not be prejudiced.
 - (a - e)
- (4) If an authorisation is issued to the Commission in relation to an interim planning scheme that applies to land in a regional area, the Commission must prepare and submit to the

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Minister a draft amendment to the interim planning scheme –

- (a) in accordance with the amendments, if any, specified in the authorisation; and
 - (b) for any of the purposes specified in subsection (3).
- (5) The Minister, by notice to the Commission, may –
- (a) accept a draft amendment to an interim planning scheme submitted to the Minister under subsection (4); or
 - (b) direct the Commission to submit to the Minister under that subsection another draft amendment, as modified in accordance with the notice.
- (6) If the Minister accepts a draft amendment to an interim planning scheme submitted to the Minister under subsection (4) –
- (a) the Commission must amend the interim planning scheme in accordance with the draft amendment; and
 - (b) the amendment must be signed by the chairperson of the Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and
 - (c) the amendment comes into effect –

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- (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
 - (ii) if no such date is specified, 7 days after the amendment is made; and
- (d) the Commission must cause a copy of the interim planning scheme that has commenced public exhibition to be publicly exhibited, as so amended, at its office for the remainder, if any, of the period in which the planning authority in respect of the scheme is required under section 30H to publicly exhibit the scheme that commenced public exhibition; and
- (e) the Commission must give notice of the amendment to the interim planning scheme to –
 - (i) the planning authority for the land to which the interim planning scheme relates; and
 - (ii) each other planning authority for an area of land within the regional area; and
 - (iii) those State Service Agencies that the Commission considers to have an interest in the scheme; and

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- (f) the planning authority notified under paragraph (e)(i) must ensure that notice (which may be a notice in relation to one or more interim planning schemes) of the amendment is published in a newspaper generally circulating in the regional area; and
- (g) the planning authority notified under paragraph (e)(i) must ensure that a copy of the interim planning scheme, as amended in accordance with paragraph (a) is, as soon as practicable after the notification, for a period of at least 14 days –
 - (i) publicly exhibited at the offices of the planning authority; and
 - (ii) made available for viewing at the website address specified under section 30H(6)(e) in relation to the interim planning scheme before the scheme was amended under paragraph (a); and
- (h) the interim planning scheme as amended is to be taken to have been exhibited for the purposes of section 30H if the requirements of paragraph (d), if applicable, are satisfied; and
- (i) a reference in section 30I, 30J, 30K, 30L or 30M to an interim planning scheme is to be taken to be a reference to the

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interim planning scheme as amended under paragraph (a); and

- (j) any amendment in force in relation to an interim planning scheme is to be taken to be an amendment in relation to the interim planning scheme as amended under paragraph (a).

30J. Report to be provided to Commission

- (1) A planning authority that has exhibited an interim planning scheme under section 30H must provide to the Commission a report in relation to the scheme.
- (2) The report in relation to an interim planning scheme is to be provided to the Commission not later than –
 - (a) 3 months after the end of the period for which the scheme is publicly exhibited in accordance with section 30H; or
 - (b) the end of a further period that the Commission allows.
- (3) The report is to contain a copy of each representation made under section 30I in relation to the interim planning scheme, or, if no representations have been made in relation to the interim planning scheme, a statement to that effect.
- (4) The report is also to contain a statement of the planning authority's views as to the merit of

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each representation made to the authority under section 30I in relation to a local provision in the interim planning scheme.

- (5) The statement as to the merit of a representation in relation to a local provision is to include, in particular, the planning authority's views as to –
 - (a) the need for modification of the interim planning scheme in the light of that representation; and
 - (b) the impact of that representation on the scheme as a whole.
- (6) The report is also to contain a statement of the planning authority's views as to the merit of each representation made under section 30I in relation to a common provision in the interim planning scheme.
- (7) The statement as to the merit of a representation in relation to a common provision is to include, in particular, the planning authority's views as to the impact of that representation on the interim planning scheme as a whole, if –
 - (a) the relevant planning directive were to be modified to take into account the representation and the scheme were to be modified accordingly; or
 - (b) where the common provision is an optional common provision, the provision were, in accordance with the representation, to be –

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- (i) taken out of the scheme; or
 - (ii) taken out of the scheme and replaced by another optional common provision.
- (8) The report may also contain a statement of the planning authority's views, and recommendations, in respect of the operation of the interim planning scheme.
- (9) If 2 or more planning authorities within a regional area are required under section 30H(2)(a) to begin to publicly exhibit interim planning schemes on the same day, the planning authorities must provide –
 - (a) one joint statement as to the matters referred to in subsections (6) and (7); and
 - (b) one joint statement as to the matters referred to in subsection (8) –instead of each providing a separate report in relation to those matters.
- (10) A joint statement for the purposes of subsection (9) is to include the views of all the planning authorities, whether they are in agreement or not.

30K. Commission to consider scheme and representations

- (1)

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-
- (2) The Commission, after receiving a report under section 30J(1) in relation to an interim planning scheme, must, within 3 months or such longer period as the Minister allows, consider the applicable matters in relation to the scheme.
- (3) The applicable matters in relation to an interim planning scheme are –
- (a) the interim planning scheme itself; and
 - (b) any documents in relation to the scheme that are provided to the Commission under section 30J; and
 - (c)
 - (d) the regional land use strategy, if any, for the regional area in which the scheme is to apply; and
 - (e) any applicable State policy.
- (4) After considering the applicable matters in relation to an interim planning scheme, the Commission must consider whether to, and may do, either or both of the following:
- (a) if an authorisation may be issued under section 30IA in relation to a provision of the scheme (including the zoning of an area of land), issue a notice under section 30IA(1) recommending to the Minister that an authorisation be issued in relation to the provision;

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- (b) seek the approval of the Minister under section 34(2) to the giving under that section of a written direction to a planning authority in relation to a provision of the scheme (including the zoning of an area of land).

30L. Commission may report to Minister about common provisions

- (1) The Commission, within 2 months after complying with section 30K in relation to an interim planning scheme, may prepare a report in relation to the common provisions of the interim planning scheme and provide a copy of the report to the Minister.
- (2) The Minister, after receiving a report under subsection (1) in relation to the common provisions of an interim planning scheme, must consider whether the planning directive that contains such common provisions ought to be amended or replaced.

30M. Substitution of interim planning scheme

- (1) After the Commission has considered under section 30K the applicable matters in relation to an interim planning scheme (in this section referred to as the *existing interim planning scheme*) in relation to which hearings have, before the repeal of section 30K(1), been completed, the Commission may –

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- (a) direct the planning authority in respect of the scheme to prepare under this section an interim planning scheme, as specified in the direction, that is to replace the existing interim planning scheme; or
 - (b) itself prepare under this section an interim planning scheme that is to replace the existing interim planning scheme.
- (2) A planning authority that is directed to prepare an interim planning scheme under subsection (1)(a) must, in the period the Commission allows, prepare and submit to the Commission the interim planning scheme.
- (3) An interim planning scheme that is prepared or made under this section may –
 - (a) contain a copy of a local provision that is in the existing interim planning scheme; or
 - (b) if the Commission is satisfied that the public interest will not be prejudiced by the modification – contain a copy of a local provision of the existing interim planning scheme, modified as the Commission thinks fit.
- (4) An interim planning scheme that is prepared or made under this section –
 - (a) must contain all the common provisions that are required to be contained in an

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- interim planning scheme so as to comply with a planning directive; and
- (b) may contain a copy of a common provision that was contained in the existing interim planning scheme, modified to ensure the effective operation of a planning purposes notice; and
 - (c) may contain, or not contain, an optional common provision, whether or not the provision was, or was not, in the existing interim planning scheme.
- (5) If the Commission is satisfied that an interim planning scheme prepared under this section is in order, the Commission, with the approval of the Minister, must make an interim planning scheme consisting of the interim planning scheme that was prepared.
- (6) Apart from sections 20 and 21, Divisions 1, 2 and 2A do not apply in relation to the preparation or making of an interim planning scheme under this section.
- (7) This Subdivision, apart from sections 30E, 30EA and 30IA, does not apply in relation to an interim planning scheme prepared or made under this section.
- (8) The Commission, by notice in the *Gazette*, must declare that an interim planning scheme has been made under this section.

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- (9) An interim planning scheme made under this section comes into effect –
- (a) on the day on which the notice of the declaration in relation to the scheme is given under subsection (8); or
 - (b) on a later day specified in the notice.
- (10) On the day on which an interim planning scheme made under this section in relation to an area of land comes into effect –
- (a) the existing interim planning scheme that applied to the area of land immediately before that day is revoked; and
 - (b) an application for a permit that –
 - (i) was made under the existing interim planning scheme; and
 - (ii) had not been determined by a planning authority by the date on which the existing interim planning scheme is revoked –is to be taken to be an application made, under the interim planning scheme made under this section, on the day on which that scheme comes into effect under this section.
- (11) If an interim planning scheme is made under this section, the Commission, as soon as practicable, must give notice in writing of the making of the scheme to –

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- (a) all the planning authorities for land in the regional area in which is situated the land to which the scheme applies; and
- (b) the State Service Agencies that the Minister notified under section 30G(1)(d) in respect of the existing interim planning scheme that the interim planning scheme made under this section replaces.

30N.

30O. Amendments under Divisions 2 and 2A of interim planning schemes

- (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker within the meaning of section 20(2A), practicable, consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the scheme applies.
- (2) An amendment, of a planning scheme, that would amend a local provision of the scheme or insert a new provision into the scheme may only be made under Division 2 or 2A if –
 - (a) the amendment is not such that the local provision as amended or inserted would

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- be directly or indirectly inconsistent with the common provisions, except in accordance with section 30EA, or an overriding local provision; and
- (b) the amendment does not revoke or amend an overriding local provision; and
 - (c) the amendment is not to the effect that a conflicting local provision would, after the amendment, be contained in the scheme.
- (3) Subject to section 30EA, an amendment may be made to a local provision if –
- (a) the amendment is to the effect that a common provision is not to apply to an area of land; and
 - (b) a planning directive allows the planning scheme to specify that some or all of the common provisions are not to apply to such an area of land.
- (4) An amendment may not be made under Division 2 or 2A to a common provision of a planning scheme unless the common provision, as so amended, would not be inconsistent with a planning directive that requires or permits the provision to be contained in the planning scheme.
- (5) Subject to section 30EA, an amendment of a planning scheme may be made under Division 2 or 2A if the amendment consists of –

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- (a) taking an optional common provision out of the scheme; or
- (b) taking the provision out of the scheme and replacing it with another optional common provision.

Subdivision 4 –

30P - 30ZB.

Division 2 – Amendment of planning scheme

31. Interpretation: Division 2

In this Division, *amend*, in relation to a planning scheme, includes –

- (a) revoke, in whole or in part, the planning scheme; and
- (b) alter the area covered by the planning scheme.

32. Requirements for preparation of amendments

(1) A draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A)–

(a - d)

- (e) must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the

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planning scheme applying to the adjacent area; and

(ea) must not conflict with the requirements of section 30O; and

(f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.

(2) The provisions of section 20(2), (3), (4), (5), (6), (7), (8) and (9) apply to the amendment of a planning scheme in the same manner as they apply to planning schemes.

33. Request for amendment of planning scheme

(1) A person may request a planning authority to amend a planning scheme administered by it.

(2) A request is to be in a form approved by the planning authority or, if a form has been approved by the Commission, is to be in that form.

(2A) If a request under subsection (1) is in respect of one parcel or several parcels of land covered by the planning scheme and is requested by a person who is not the owner of the land to which the proposed amendment applies, the request must be –

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- (a) signed by the owner or owners of the land; or
 - (b) accompanied by the written permission of the owner or owners to the making of the request.
- (2B) Before making a decision as to whether or not to initiate an amendment of the planning scheme, the planning authority must consider –
 - (a) whether the requested amendment is consistent with the requirements of section 32; and
 - (ab) any representation made under section 30I, and any statements in any report under section 30J as to the merit of a representation, that may be relevant to the amendment; and
 - (b) any advice referred to in section 65 of the *Local Government Act 1993* received by it.
- (3) A planning authority must, within 42 days of the receipt of a request or such longer time as the Commission may allow, make a decision as to whether or not to initiate an amendment of the planning scheme and serve on the person who made the request notice of its decision within 7 days of making the decision.
- (3AA) If the planning authority decides under subsection (3) to initiate an amendment of a planning scheme after receipt of a request from a person under subsection (1), it must –

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(a) initiate the amendment under section 34;
and

(b) certify the draft amendment under
section 35 –

within 42 days of receiving the request or such
longer time as the Commission allows.

(3A) Where a planning authority decides not to
initiate an amendment of the planning scheme,
the person who requested the amendment may,
within 14 days of being notified of that decision,
request the Commission to review the process by
which the planning authority reached its
decision.

(3B) Where the Commission has been requested to
review the process by which the planning
authority reached its decision, the Commission
may request the planning authority to provide it
with any material relevant to that process.

(3C) A planning authority must provide the material
requested by the Commission within 7 days of
receiving that request.

Penalty: Fine not exceeding 100 penalty units.

(3D) The Commission must, not later than 28 days
after receiving the material requested by it or
such longer period as the Minister may allow –

(a) direct the planning authority to
reconsider the amendment; or

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- (b) confirm that in reaching its decision the planning authority took into account the matters specified in subsection (2B).
- (3E) The Commission must, within 7 days of making its decision, notify the planning authority and the person who requested the review of its decision.
- (4) Where a planning authority decides not to initiate an amendment of the planning scheme, a person may not request the authority to initiate an amendment which is substantially the same as the first-mentioned amendment within a period of 2 years from the date on which the planning authority made its decision.
- (5) If –
 - (a) an interim planning scheme has been declared under section 30F or an interim planning scheme has been made under section 30M; and
 - (b) a local provision of the scheme consists of a change to the zoning of an area of land from the zoning that applied in relation to the area of land before the scheme was declared or made; and
 - (c) an owner, or occupier, of all or part of the area of land made a representation under section 30I in respect of the change of zoning; and
 - (d) the planning authority receives a request under subsection (1) from the owner or

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occupier, respectively, to amend the zoning of the area of land –

the planning authority must give to the Commission, within 14 days after receiving the request, a notice in relation to the request.

- (6) A notice under subsection (5) in relation to a request from an owner or occupier under subsection (1) must specify –
- (a) the area of land to which the notice relates; and
 - (b) the zoning of the area of land under the planning scheme that applies to the area of land; and
 - (c) the zoning of the area of land that applied in relation to the area of land before an interim planning scheme in relation to the area of land was declared; and
 - (d) the planning authority’s opinion as to the merits of the proposed alteration of the zoning of the area of land.
- (7) The Commission, within 30 days after receiving from a planning authority a notice under subsection (5) in relation to a request under subsection (1) in respect of an area of land, must decide whether to seek the approval of the Minister under section 34(2) to the giving under that section of a written direction to a planning authority in relation to the request.

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33A. Additional information

- (1) A planning authority may, within the period of 28 days from the day on which it receives from a person a request under section 33(1), by notice in writing served on the person, require the person to provide it with additional information before it considers the application.
- (2) If the planning authority requires a person to provide it with additional information under subsection (1), the period referred to in section 33(3) or (3AA), whichever is applicable, does not run while the requirement has not been, in the opinion of the planning authority, satisfied.

33B. Review of requirement for additional information

- (1) Where a planning authority requires additional information under section 33A(1) from a person, the person may, within 14 days of receiving notice of that requirement, request the Commission to review the process by which the planning authority reached its decision to make the requirement.
- (2) Where the Commission has been requested under subsection (1) to review the process by which the planning authority reached its decision, the Commission may require the planning authority to provide it with any relevant material that is in the possession of the planning authority before the day on which the requirement is made.

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- (3) A planning authority must provide the relevant material required by the Commission under subsection (2) within 7 days of receiving notice of the requirement under that subsection.

Penalty: Fine not exceeding 100 penalty units.

- (4) The Commission, not later than 28 days after receiving the request under subsection (1) or such longer period as the Minister may allow, must –

(a) direct the planning authority to reconsider the planning authority's decision to require the information under section 33A(1); or

(b) determine that the requirement under section 33A(1) was appropriate.

- (5) If the Commission requires a planning authority to provide it with relevant material under subsection (2), the period referred to in subsection (4) does not run while the requirement has not been, in the opinion of the Commission, satisfied.

- (6) The Commission, within 7 days of making a direction or determination under subsection (4) in relation to a request under subsection (1), must notify the planning authority and the person who made the request.

34. Amendment of planning scheme

- (1) A planning authority may –

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- (a) in response to a request under section 33;
or
 - (b) of its own motion –

initiate an amendment of a planning scheme administered by it.
- (2) The Commission may, with the approval of the Minister, give a written direction to a planning authority to initiate an amendment of a planning scheme administered by the authority and the authority must initiate the amendment of the planning scheme in accordance with the direction within 10 weeks after receiving the direction or such longer period as the Commission allows.
- (3) A planning authority may at any time determine to withdraw an amendment, of a planning scheme administered by it, that it has initiated of its own motion.
- (4) The withdrawal of an amendment of a planning scheme comes into effect 7 days after the date on which the planning authority determines to withdraw the amendment.
- (5) The planning authority is to –
 - (a) notify the Commission of the withdrawal of the amendment; and
 - (b) give notice, in a daily newspaper circulating generally in the area, that the amendment has been withdrawn and of

the date on which the withdrawal takes effect.

35. Certification of draft amendments by planning authorities

- (1) After preparing a draft amendment of a planning scheme, the planning authority must determine whether the draft amendment meets the requirements specified in section 32 and –
 - (a) if satisfied that it does, certify the draft amendment as so meeting those requirements; or
 - (b) if not so satisfied, proceed to modify the draft amendment until it does meet those requirements and then certify the modified draft amendment as so meeting those requirements.
- (2) For the purposes of subsection (1), the planning authority must certify the draft amendment by instrument in writing affixed with the common seal of the planning authority.
- (3)
- (4) Within 7 days after certifying under subsection (1) that the draft amendment of a planning scheme meets the requirements specified in section 32, the planning authority must give a copy of the draft amendment and the instrument containing that certification to the Commission.

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37. Power of Commission to dispense with certain requirements

(1) Where, on the submission to the Commission of a draft amendment of a planning scheme, the Commission is satisfied that –

(a) the draft amendment is for the purpose of –

- (i) the correction of any error in the planning scheme; or
- (ii) the removal of any anomaly in the planning scheme; or
- (iii) clarifying or simplifying the planning scheme; or
- (iv) removing any inconsistency between the planning scheme and any Act; or
- (v) making procedural changes to the planning scheme; or
- (vi) amending the planning scheme to bring it into conformity with the model planning scheme framework; or
- (via) the removal or amendment of any local provision of the scheme that

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- is, under section 30EA,
inconsistent with another
provision; or
- (vib) ensuring the effective operation of a planning purposes notice; or
 - (vic) ensuring that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme; or
 - (vid) enabling an alteration of the zoning of land to which an interim planning scheme applies, or has applied, so that the zoning that applied to the land before the interim planning scheme applied (*the former zoning*) may become the zoning that most closely corresponds to the former zoning; or
 - (vie) implementing an agreed amendment; or
 - (vii) for any other prescribed reason; and
- (b) the public interest will not be prejudiced –

the Commission may, by notice in writing given to the planning authority, dispense with the requirements of sections 38, 39, 40 and 41 in

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relation to the draft amendment and give its approval to the draft amendment in accordance with section 42.

- (1A) For the purposes of subsection (1)(a)(vie), an agreed amendment is an amendment, to a provision of an interim planning scheme, that –
- (a) is proposed in a representation that is included in a report under section 30J in relation to the interim planning scheme; and
 - (b) is not in conflict with any other representations in relation to the provision; and
 - (c) is agreed to by the planning authority.
- (1B) For the purpose of determining whether or not the public interest will be prejudiced in respect of an amendment of a planning scheme for a purpose referred to in subsection (1)(a)(vid) or (vie) –
- (a) the Commission must –
 - (i) cause a copy of the draft amendment to be placed on public exhibition for a period of 14 days or a longer period agreed to by the planning authority and the Commission; and
 - (ii) cause an invitation, for submissions to be made within the period for which the draft

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amendment is placed on public exhibition, to be publicly exhibited together with the copy of the amendment; and

(iii) advertise, as prescribed, the exhibition of the draft amendment and the invitation; and

(iv) cause a copy of the draft amendment and the invitation to be placed on public exhibition at its office for that period; and

(b) after the end of the period referred to in paragraph (a)(i), take into account any submissions made in relation to the amendment under subsection (1C).

(1C) A person may, within the period referred to in paragraph (a)(i) in relation to a draft amendment of a planning scheme, make a submission in relation to the draft amendment.

(2) Before approving the draft amendment in accordance with section 42, the Commission may modify the amendment to correct any errors or remove any anomalies.

38. Public exhibition of draft amendment

(1) After giving to the Commission a copy of a draft amendment of a planning scheme and the instrument certifying that the amendment meets

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the requirements specified in section 32, the planning authority must –

- (a) cause a copy of the draft amendment to be placed on public exhibition for a period of 28 days or a longer period agreed to by the planning authority and the Commission; and
 - (b) advertise, as prescribed, the exhibition of the draft amendment.
- (2) If the period referred to in subsection (1)(a) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the planning scheme to be amended applies, that period is to be extended by the number of those days.

39. Representations in respect of draft amendments

- (1) Where a draft amendment of a planning scheme is placed on public exhibition by a planning authority in accordance with section 38, representations in relation to that draft amendment may be submitted to the authority by any person before the expiration of the exhibition period referred to in section 38(1)(a).
- (2) The planning authority must, not later than the expiration of 35 days after the exhibition period referred to in section 38(1)(a) or such further period as the Commission allows, forward to the Commission a report comprising–

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- (a) a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and
- (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to—
 - (i) the need for modification of the draft amendment in the light of that representation; and
 - (ii) the impact of that representation on the draft amendment as a whole; and
- (c) such recommendations in relation to the draft amendment as the authority considers necessary.

40. Consideration by Commission of draft amendment and relevant representations

- (1) As soon as practicable after receipt by it of a report under section 39(2), the Commission must consider the draft amendment and the representations, statements and recommendations contained in the report.
- (1A) The Commission, in considering the draft amendment, and any representations, in relation to a planning scheme, may also consider –

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- (a) any representation made under section 30I in relation to the planning scheme; and
- (b) any statements in a report under section 30J as to the merit of a representation made under section 30I in relation to the planning scheme –

that, in its opinion, are relevant to the draft amendment and the representations.

- (2) For the purposes of its consideration under subsection (1), the Commission must hold a hearing in relation to each representation contained in the report.
- (2A) Despite subsection (2), the Commission may dispense with the holding of a hearing in relation to a representation contained in the report if, after examining each representation—
 - (a) the Commission is satisfied that all the representations received by the planning authority are in support of the draft amendment; or
 - (b) the Commission has consulted with a person who made a representation and that person has advised the Commission in writing that he or she does not wish to attend a hearing.
- (2B) The Commission must, within 14 days of making a decision to dispense with the holding of a hearing under subsection (2A), give notice in writing to each person who made a

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representation under section 39(1) of its decision to dispense with the holding of a hearing.

- (2C) The Commission must hold a hearing in respect of a representation if a person who has been notified under subsection (2B) requests the Commission in writing, within 7 days after the date of that notice, that a hearing be held.
- (3) The Commission may consolidate any of the representations and hold a hearing in relation to the consolidated representations.
- (4) For the purposes of its consideration under subsection (1), the Commission may, where there are no representations, hold a hearing into issues that in the Commission's opinion require consideration.
- (5) The Commission must, within 14 days of its decision to hold a hearing, give notice, as prescribed, of its intention to hold a hearing under subsection (4).

41. Modification or rejection of draft amendment before approval

The Commission may, after its consideration under section 40 of a draft amendment prepared by a planning authority—

- (a) require the planning authority to modify, or alter to a substantial degree, the draft amendment after having regard to the report made under section 39, and any evidence and submissions made in a

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hearing under section 40, in relation to it;
or

- (ab) modify, or alter to a substantial degree, the draft amendment after having regard to the report made under section 39 and any evidence and submissions made in a hearing under section 40; or
- (b) by notice in writing given to the authority, reject the draft amendment.

41A. Direction to undertake modification or alteration of draft amendment

- (1) If a draft amendment is required to be modified, or altered to a substantial degree, under section 41(a), the Commission, by notice in writing to the planning authority, must—
 - (a) direct that it undertake the modification or alteration; and
 - (b) specify the manner in which the draft amendment is to be modified or altered.
- (2) A planning authority must undertake a modification, or an alteration to a substantial degree, to a draft amendment in accordance with a direction by the Commission under subsection (1) and submit the modified or altered amendment to the Commission within 28 days from the receipt of that direction or such longer period as the Commission may allow.

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- (3) The period referred to in section 42(2) does not run after a direction to modify or alter the draft amendment has been made until the period referred to in subsection (2) of this section expires.

41AB. Limitation on planning authority's actions

If a draft amendment to a planning scheme is required to be modified, or altered to a substantial degree, under section 41(a), the planning authority must not issue a permit or do any other thing that would, if the draft amendment modified as required had at that time become operative, be a contravention of that planning scheme as amended by that amendment.

41B. Certification of altered draft amendments

- (1) If a draft amendment has been altered to a substantial degree in accordance with section 41A, the Commission must, within 28 days of receipt of the altered draft amendment–
- (a) certify the altered draft amendment; and
 - (b) by notice in writing to the planning authority, direct that it be publicly exhibited, as prescribed.
- (2) Sections 38 to 43 apply to a draft amendment certified under subsection (1).

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42. Approval of draft amendments

- (1) Where, after consideration by the Commission, under section 40, of a draft amendment (including any modifications made under section 41), the Commission is satisfied that the draft amendment is in order, it must give its approval to the draft amendment.
- (2) The Commission must give its approval to a draft amendment not later than—
 - (a) 3 months after the submission to it, under section 39(2), of the report of the planning authority in relation to the draft amendment; or
 - (b) such later day as the Minister may approve.
- (3) When the Commission gives its approval to a draft amendment—
 - (a) the amendment must be signed –
 - (i) by the chairperson of the Commission; or
 - (ii) if for any reason the chairperson is unavailable or unable to sign the amendment, by another member of the Commission approved by the Commission under subsection (3A); and
 - (b) notwithstanding any failure to comply with a procedural provision of this Part,

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- the amendment comes into operation on such date as is specified by the Commission, being a date not earlier than the date on which it is signed; and
- (c) the Commission must advise the planning authority of its approval; and
 - (d) the authority must give notice of the Commission's approval, as prescribed.
- (3A) For the purposes of subsection (3)(a)(ii), the Commission may approve a member of the Commission –
- (a) to sign a particular amendment if the chairperson is unavailable or unable to sign it; or
 - (b) to sign draft amendments as required during any period during which the chairperson is unavailable or unable to sign them.
- (4) If a date is not specified under subsection (3)(b), the amendment comes into operation 7 days after the date on which the Commission gives its approval.

43. Failure to comply with provision of this Division

- (1) Where a planning authority fails to comply with a provision of this Division within the period referred to in that provision –
 - (a) the Commission may assume the responsibilities and obligations of the

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authority under this Division in relation to the preparation and certification of a draft amendment; and

(b) the authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations of the authority in relation to the preparation and certification of the draft amendment.

(2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate an amendment to a planning scheme approved by the Commission under this Division.

Division 2A – Combined permit and amendment process

43A. Application for a permit when amendment requested

(1) A person who requests a planning authority to amend a planning scheme may also request the planning authority to consider, in accordance with this Division, an application for a permit which would not be allowed if the planning scheme were not amended as requested.

(2) Where a planning authority has decided to initiate an amendment under section 33(3), it may consider the application for a permit referred to in subsection (1) concurrently with the preparation of the requested amendment to the planning scheme.

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- (3) An application may be made for a permit under this section even if it could not be granted under the existing planning scheme.

43B. Application of certain provisions to draft amendment

If the planning authority agrees to a request under section 43A, Division 2 of Part 3, except sections 37 and 43, applies to the amendment of the planning scheme referred to in section 43A(1).

43C. Applications referred to in section 43A

- (1) In determining an application referred to in section 43A, a planning authority, in its opinion –
- (a) must seek to further the objectives set out in Schedule 1; and
 - (b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application.
- (2) If an undertaking is in respect of –
- (a) a combination of uses; or
 - (b) a combination of developments; or
 - (c) a combination of one or more uses and one or more developments –

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and under a planning scheme or special planning order any of those uses or developments requires a permit to be granted in respect of them, a person, in one application, may apply to the planning authority for a permit with respect to that undertaking.

- (2A) Section 57(3), (4), (5), (5A) and (5B) does not apply in respect of an application for a permit referred to in subsection (2).
- (3) The decision of a planning authority on an application referred to in section 43A or subsection (2) is to be made by reference to the provisions of the planning scheme or special planning order as in force at the date of its decision, as if the planning scheme or special planning order had been amended in accordance with the draft amendment which has been initiated by the planning authority in response to a request under section 43A.
- (4) A permit to which this section applies may be subject to such conditions or restrictions as the planning authority may impose.

43D. What if applicant referred to in section 43A is not the owner?

- (1) If the applicant referred to in section 43A is not the owner of the land in respect of which a permit is required and a planning scheme or special planning order does not provide otherwise, an application is to –
 - (a) be signed by the owner of the land; or

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- (b) be accompanied by the written permission of the owner to the making of the application.
- (2) Subsection (1) does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.
- (3) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

Penalty: Fine not exceeding 20 penalty units.

43E. Additional information

- (1) A planning authority that receives an application for a permit referred to in section 43A may, within the period of 28 days from the day on which it receives the application, require the applicant to provide it with additional information before it considers the application.
- (2) If the planning authority requires the applicant to provide it with additional information, the period referred to in section 33(3) or (3AA) or 36(1), whichever is applicable, does not run while the request for information has not been answered to the satisfaction of the planning authority.

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43EA. Review of request for additional information

- (1) Where a planning authority requires additional information under section 43E(1) from a person, the person may, within 14 days of receiving notice of that requirement, request the Commission to review the process by which the planning authority reached its decision to make the requirement.
- (2) Where the Commission has been requested under subsection (1) to review the process by which the planning authority reached its decision, the Commission may require the planning authority to provide it with any relevant material that was in the possession of the planning authority before the requirement was made.
- (3) A planning authority must provide the relevant material required by the Commission under subsection (2) within 7 days of receiving notice of the requirement under that subsection.

Penalty: Fine not exceeding 100 penalty units.

- (4) The Commission, not later than 28 days after receiving the request under subsection (1) or such longer period as the Minister may allow, must –
 - (a) direct the planning authority to reconsider the planning authority's decision to require the information under section 43E(1); or

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- (b) determine that the requirement under section 43E(1) was appropriate.
- (5) If the Commission requires a planning authority to provide it with relevant material under subsection (2), the period referred to in subsection (4) does not run while the requirement has not been, in the opinion of the Commission, satisfied.
- (6) The Commission, within 7 days of making a direction or determination under subsection (4) in relation to a request under subsection (1), must notify the planning authority and the person who made the request.

43F. Procedure for determining an application for a permit under this Division

- (1) Before a draft amendment of a planning scheme referred to in section 43A is placed on public exhibition in accordance with section 38 –
 - (a) the planning authority must determine the application for the permit in accordance with section 43C(1); and
 - (b) the planning authority must –
 - (i) grant the permit unconditionally or subject to such conditions or restrictions as the planning authority may impose; or
 - (ii) notwithstanding section 43C(3), refuse to grant the permit.

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- (c)
- (2) Within 7 days of making its decision under subsection (1)(b), the planning authority must forward to the Commission –
- (a) a copy of the application for the permit and any documentation submitted with that application; and
 - (b) a copy of the planning authority’s decision under subsection (1)(b) and, if a permit is granted, a copy of the permit.
- (3) When the planning authority advertises the exhibition of the draft amendment in accordance with section 38(1)(b), it must advertise the exhibition of the material referred to in subsection (2).
- (4) When the planning authority causes a copy of the draft amendment to be placed on public exhibition in accordance with section 38, it must cause a copy of the material referred to in subsection (2) to be placed on public exhibition with the draft amendment for the same period as the draft amendment is on exhibition.
- (5) Where the material referred to in subsection (2) has been placed on public exhibition, any person may make representations to the planning authority in relation to the application for the permit and the planning authority’s decision under subsection (1)(b).
- (6) When the planning authority forwards to the Commission a report in accordance with

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section 39(2), it must forward to the Commission –

- (a) a copy of each representation received by the planning authority in relation to the application for the permit or the planning authority's decision under subsection (1)(b), or where it has received no such representation, a statement to that effect; and
 - (b) a statement of its opinion as to the merit of each representation including, in particular, its views as to the need for modification of the planning authority's decision in the light of that representation; and
 - (c) such recommendations in relation to the planning authority's decision as the planning authority considers necessary.
- (7) Where the application for a permit referred to in section 43A has been referred to the Board of the Environment Protection Authority under section 24 or section 25 of the *Environmental Management and Pollution Control Act 1994* –
- (a) the planning authority must, not later than 7 days after the expiration of the exhibition period referred to in section 38, forward copies of all representations received under subsection (5) to the Board of the Environment Protection Authority; and

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- (b) the Board of the Environment Protection Authority must, within 28 days of receiving the representations referred to in paragraph (a), provide a report to the Commission containing –
 - (i) the information specified in subsection (6)(b); and
 - (ii) such recommendations in relation to the planning authority's decision as the Board considers necessary.

43G. Consideration by Commission of planning authority's decision and relevant representations

- (1) When the Commission considers the draft amendment in accordance with section 40, it must, at the same time, consider the representations, statements and recommendations referred to in section 43F.
- (2) Section 40 applies to representations, statements and recommendations referred to in subsection (1) as if they were representations, statements and recommendations referred to in that section.

43H. Review of planning authority's decision referred to in section 43F

- (1) At the same time as the Commission makes its decision to reject or approve the draft amendment, it must –

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- (a) confirm the decision of the planning authority under section 43F(1) in relation to the permit; or
 - (b) if the planning authority's decision was to grant a permit –
 - (i) refuse the permit; or
 - (ii) modify or delete conditions or restrictions attached to the permit or add new conditions or restrictions to the permit; or
 - (c) if the planning authority's decision was to reject the permit, grant a permit subject to such conditions or restrictions as the Commission thinks necessary; or
 - (d) if the Commission's decision is to reject the draft amendment in accordance with section 41(b), refuse the permit.
- (2) When the Commission makes its decision in relation to a permit under subsection (1), the Commission must give notice in writing of its decision to –
- (a) the planning authority; and
 - (b) the applicant for the permit; and
 - (c) if representations have been made in relation to the permit, to all persons who made such representations; and
 - (d) if the permit application has been referred to the Board of the Environment

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Protection Authority under section 24 or section 25 of the *Environmental Management and Pollution Control Act 1994*, the Board.

43I. When does a permit referred to in section 43H take effect?

- (1) If the Commission makes a decision under section 43H(1) which confirms, or results in, a permit being granted, the permit takes effect on the date of the Commission's approval of the draft amendment under section 42.
- (2) The day on which a permit takes effect may be specified in the permit as being a day later than the day on which the permit would otherwise have taken effect under subsection (1).
- (3) Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.
- (4) If the use or development in respect of which a permit was granted is not substantially commenced, the permit lapses –
 - (a) after a period of 2 years from the date on which the permit was granted; or
 - (b) if the planning authority has granted an extension under subsection (4A), after a further period of 2 years; or

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- (c) if the planning authority has granted a further extension under subsection (6), at the end of a further period of 2 years from the end of the further period of 2 years for which the permit was extended under subsection (4A).
- (4A) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under subsection (4)(a), the planning authority may grant (once only) an extension of the period during which that use or development must be substantially commenced.
- (5) If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.
- (6) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under subsection (4)(b), the planning authority may grant (once only) a further extension of the period during which that use or development must be substantially commenced.
- (7) An application may be made under subsection (4A) or (6), for an extension of a period during which a use or development in respect of which a permit was granted must be substantially commenced, at any time before the end of the period of 6 months from the day on which the permit has lapsed and, if the extension

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is granted, the permit is to be taken to not have lapsed on that day.

43J. Correction of mistake in permits referred to in section 43H

A planning authority may correct a permit referred to in section 43H if the permit contains –

- (a) a clerical mistake or an accidental omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.

43K. Minor amendment of permits referred to in section 43H

- (1) The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit referred to in section 43H which applies to that land.
- (2) The planning authority may amend the permit if it is satisfied that the amendment –
 - (aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Commission or the Appeal Tribunal; and
 - (a) does not change the effect of a condition or restriction, specified in the permit, that

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- is required, imposed or amended by the Commission or the Appeal Tribunal; and
- (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.
- (2A) An amendment of a condition or restriction specified in a permit is not to be taken to contravene subsection (2)(a) by reason only that other conditions or restrictions have been specified in the permit, or amended, by the Commission or the Appeal Tribunal.
- (2B) A condition or restriction (*the fresh condition or restriction*) specified by the Commission or the Appeal Tribunal in a permit is not to be taken, for the purposes of this section, to be required or imposed by the Commission or the Appeal Tribunal if –
- (a) the fresh condition or restriction is to the same effect as a condition or restriction that was specified in the permit by the planning authority before the Commission or the Appeal Tribunal specified the fresh condition or restriction in the permit; and
 - (b) the fresh condition or restriction is not referred to in the decision, in relation to the permit, of –

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- (i) the Appeal Tribunal under section 23 of the *Resource Management and Planning Appeal Tribunal Act 1993*; or
 - (ii) the Commission under section 43H.
- (3) If the planning authority amends a permit referred to in section 43H, it must, by notice in writing served on –
- (a) the person who requested the permit to be amended; and
 - (b) if that person is not the owner of the land, the owner; and
 - (c) the owner or occupier of any property which adjoins the land; and
 - (d) any person who made a representation under section 43F(5) in relation to the application for the permit –

notify those persons of the amendments made to the permit.

- (4) If the planning authority amends a permit referred to in section 43H containing a condition or restriction which the Board of the Environment Protection Authority has required under section 25(5) of the *Environmental Management and Pollution Control Act 1994*, the planning authority must, by notice in writing served on the Board, notify it of the amendments made to the permit.

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- (5) If the planning authority amends a permit in respect of which the Commission has modified, deleted or added conditions or restrictions under section 43H(1)(b)(ii), the planning authority must, by notice in writing served on the Commission, notify it of the amendments made to the permit.
- (6) If the planning authority amends a permit referred to in section 43H containing a condition or restriction which the Heritage Council has required under section 39(6) of the *Historic Cultural Heritage Act 1995*, the planning authority must, by notice in writing served on the Heritage Council, notify the Council of the amendment.

43L. Application of section 56A

Section 56A applies to an amendment of a permit referred to in section 43H.

43M. Failure to comply with certain provisions

- (1) Where a planning authority fails to comply with a provision of section 43B or 43F within the period referred to in that provision –
 - (a) the Commission may assume the responsibilities and obligations of the planning authority under this Division in relation to the preparation of a draft amendment or the decision in relation to the permit; and

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- (b) the planning authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations referred to in paragraph (a).
- (2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate an amendment to a planning scheme approved by the Commission or a decision in relation to a permit under this Division.

Division 2B –

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Division 3 – Reviews of planning schemes

44. Review of planning schemes

- (1) The Commission must direct a planning authority to undertake, on every fifth anniversary of the date on which its planning scheme came into operation under section 29, a review of the planning scheme in accordance with a notice issued under subsection (2).
- (2) The notice must –
 - (a) specify matters that the planning authority must address in the review of its planning scheme; and

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- (b) include a requirement that public comments be sought on the review for a period of not less than 3 weeks; and
- (c) include a requirement for the planning authority to prepare and submit to the Commission a report, comprising a statement of its opinion as to whether the planning scheme –
- (i) requires amendment; or
 - (ii) needs to be replaced with another planning scheme; or
 - (iii) can continue without amendment –
- after taking into account public comments received; and
- (d) specify the period by the end of which the report is to be submitted to the Commission, being a period not less than 3 months.
- (3) If the Commission is of the opinion that the report under subsection (2) has not been prepared in accordance with the notice, the Commission must direct the planning authority to revise the report and resubmit it within 2 months or such longer period as the Commission may allow.
- (4) If the Commission is of the opinion, based on the report under subsection (2), that the planning scheme requires replacement or amendment, the

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Commission, with the approval of the Minister, must direct the planning authority to initiate the preparation of a draft planning scheme in accordance with section 22 or initiate an amendment or amendments in accordance with section 34 not later than 2 months from the date on which the Commission receives the report under subsection (2) or a revised report under subsection (3).

- (5) If the Commission directs that an amendment or amendments be initiated under subsection (4), the Commission must specify the manner in which the draft amendment or amendments are to be prepared.
- (6) The planning authority must initiate the preparation of a draft planning scheme in accordance with section 22 or initiate an amendment or amendments in accordance with section 34 not later than 2 months from the date on which the direction is given under subsection (4) or such longer period as the Commission may allow.
- (7) If a planning authority fails to comply with a direction under subsection (1) within the period specified in the notice relating to the direction, or fails to comply with subsection (3) or (6) –
 - (a) the Commission may assume the responsibilities and obligations of the planning authority under this section; and
 - (b) the authority must pay to the Commission all costs incurred by the

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Commission in assuming the responsibilities and obligations of the authority under this section.

- (8) Subsection (1) does not apply if a planning authority has initiated the preparation of a draft planning scheme under section 22 that, if approved under section 29, would replace the planning scheme required to be reviewed.
- (9) The time period specified in subsection (1) does not apply to planning schemes in operation immediately before the commencement of this section.
- (10) The Commission must direct a planning authority to undertake a review of any of its planning schemes that are in operation immediately before the commencement of this section, in accordance with a notice issued under subsection (2), by the date prescribed in the regulations in respect of a planning scheme of that planning authority and on every fifth anniversary of that date.

Division 3A – Abolition of, or change of boundaries of, municipal districts

44A. Abolition of, or change of boundaries of, municipal districts

If a municipal district is abolished or a boundary of a municipal district is changed, the Commission may, by notice published in the *Gazette*, designate which planning authority has jurisdiction over a planning scheme or part of a

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planning scheme or a special planning order or
part of a special planning order.

Division 4 – Provisions relating to existing interim orders

45. Interpretation of Division 4

In this Division, *existing interim order* means an interim order administered by a planning authority immediately before the commencement of the *Land Use Planning and Approvals Amendment Act (No. 2) 1995*.

45A. Validation of existing interim orders

An existing interim order is valid and effectual and is always taken to have been valid and effectual.

46. Existing interim order taken to be planning scheme

An existing interim order is taken to be a planning scheme for the purposes of this Act.

Division 5 – Special planning orders

47. Making of special planning orders

- (1) Subject to subsection (2), the Commission, of its own volition or at the request of a planning authority, may make a special planning order providing for any of the matters for which a planning scheme may provide if it considers that—

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- (a) there are contradictions in, or inconsistencies between, the provisions of a planning scheme; or
- (b) it is necessary to introduce planning provisions for an area for which a planning scheme is not in force or will cease to operate–

and it is satisfied that the provisions of Division 1 or 2 would result in an unacceptable delay in addressing the matters referred to in paragraph (a) or (b).

- (2) The Commission must not exercise its powers under subsection (1) unless it considers that it is in the public interest to do so.
- (3) The Commission or a planning authority may prepare a special planning order.
- (4) If a special planning order has been prepared by a planning authority, it must submit the special planning order to the Commission, and the Commission must–
 - (a) either –
 - (i) make the special planning order in the same terms as the order submitted to it; or
 - (ii) if the planning authority agrees, modify the order submitted to it and then make the special planning order in the terms of the modified order; or

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- (iii) refuse to make the special planning order; and
 - (b) notify the planning authority of its decision.
- (5) A special planning order must satisfy the requirements of section 32 and may be made in such form and on such terms and conditions as the Commission thinks fit.
- (6) If the Commission makes a special planning order it must–
- (a) cause notice of the making of the order to be published in the *Gazette* and in a daily newspaper published in Tasmania and circulating generally in the area to which the order relates; and
 - (b) nominate a place at which the order may be inspected.

47A. Operation of special planning orders

- (1) A special planning order operates from the date specified in the notice published in the *Gazette* under section 47(6).
- (2) A special planning order overrides any existing planning scheme applying to the same area to the extent of any inconsistency.
- (3) A special planning order ceases to operate –
 - (a) if the Commission, by notice published in the *Gazette*, revokes the order; or

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- (b) if either House of Parliament passes a resolution disallowing it; or
- (c) when a planning scheme or amendment to a planning scheme applying to the area the subject of the special planning order comes into operation.

47B. Revocation of special planning orders

- (1) The Commission, of its own volition or at the request of a planning authority, may revoke a special planning order.
- (2) If the Commission revokes a special planning order it must cause notice of the revocation of the order to be published in the *Gazette* and in a daily newspaper published in Tasmania and circulating generally in the area to which the order relates.
- (3) The revocation of a special planning order operates from the date specified in the notice published in the *Gazette* under subsection (2).

PART 4 – ENFORCEMENT OF PLANNING CONTROL

Division 1 – General

48. Enforcement of observance of planning schemes and interim orders

Where a planning scheme or special planning order is in force, the planning authority must, within the ambit of its power, observe, and enforce the observance of, that planning scheme or special planning order in respect of all use or development undertaken within the area to which the planning scheme or special planning order relates, whether by the authority or by any other person.

48AA. Enforcement of special permits

A planning authority must, within the ambit of its power, enforce the observance of any condition or restriction to which a special permit is subject.

48A. Notice to remove signs

- (1) If a person is erecting or placing, or has erected or placed, a sign for which the issue of a permit is required under the provisions of a planning scheme or special planning order, unless the planning authority which administers the scheme or order has granted a permit in respect of that sign and the permit is in effect, the planning authority may do one or more of the following:

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- (a) by written notice given to the person, require the person to cease erecting or placing the sign;
 - (b) by written notice given to the person, require the person to remove the sign or that part of the sign that has been erected or placed;
 - (c) by written notice given to the person, require the person to take all action necessary to restore the land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign;
 - (d) take all action necessary to remove the sign or that part of the sign that has been erected or placed and restore the land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign.
- (2) If the planning authority takes any action under subsection (1)(d), the planning authority, by written notice given to the person who is erecting or placing or has erected or placed a sign, may require the person to pay the reasonable costs of that action, and those costs –
- (a) are a debt due and payable to the planning authority; and
 - (b) may be recovered in a court of competent jurisdiction.

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- (3) If the planning authority takes any action under subsection (1)(d), the planning authority is not liable for any damages caused to the sign, or any structure to which the sign was affixed, through the removal of the sign or the storage of the sign on its removal.
- (4) The planning authority may dispose of the sign after 2 months from the date on which the planning authority took action under subsection (1)(d) if the sign has not been collected by the person who erected or placed the sign.
- (5) For the purposes of this section, a “**person**” includes the owner and the occupier of the property on which the sign is being erected or placed or has been erected or placed.

49. Effect of Divisions 2 and 3 on certain planning schemes and interim orders

- (1) A planning scheme or special planning order, whether made before or after the commencement of this section, has effect subject to Divisions 2 and 3, and, to the extent to which a planning scheme or special planning order is inconsistent with those Divisions, it is of no effect.
- (2) Without prejudice to the generality of subsection (1), any provision in a planning scheme or special planning order that –
 - (a) requires notification or publication of an application for a planning approval; or

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- (b) gives a right of appeal in respect of any decision of a planning authority –

is deemed to be inconsistent with Divisions 2 and 3.

Division 2 – Development control

50. Certain applications deemed to be applications for permits

An application of the kind referred to in section 20(2)(j) is deemed to be an application for a permit.

51. Permits

- (1) A person must not commence any use or development which, under the provisions of a planning scheme or special planning order, requires a permit unless the planning authority which administers the scheme or order has granted a permit in respect of that use or development and the permit is in effect.
- (1A) A person may apply to a planning authority which administers a planning scheme or special planning order for the granting of a permit for a use or development which under that scheme or order requires a permit to be granted in respect of that use or development.
- (1AA) An application is to be in a form, if any, approved by the Commission.

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- (1AB) A planning authority must not refuse to accept a valid application for a permit, unless the application does not include a declaration that the applicant has –
- (a) notified the owner of the intention to make the application; or
 - (b) obtained the written permission of the owner under section 52.
- (1AC) For the purposes of subsection (1AB), a valid application is an application that contains all relevant information required by the planning scheme applying to the land that is the subject of the application.
- (1B) If an undertaking is in respect of –
- (a) a combination of uses; or
 - (b) a combination of developments; or
 - (c) a combination of one or more uses and one or more developments –
- and under a planning scheme or special planning order any of those uses or developments requires a permit to be granted in respect of them, a person, in one application, may apply to the planning authority for a permit with respect to that undertaking.
- (2) In determining an application for a permit, a planning authority –
- (a) must seek to further the objectives set out in Schedule 1; and

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- (b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and
 - (c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5); and
 - (d) must accept –
 - (i) any relevant bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been certified as acceptable by an accredited person or a State Service Agency; or
 - (ii) any certificate issued by an accredited person or a State Service Agency and stating that the proposed use or development will result in an insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.
- (3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

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- (a) to the provisions of the planning scheme or special planning order as in force at the date of that decision; or
 - (b) if the planning authority has been required under section 28(1)(a) to modify a draft planning scheme and that draft planning scheme has not been approved by the Commission at the date of that decision, to the provisions of the draft planning scheme modified as required; or
 - (c) if the planning authority has been required under section 41(a) to modify, or alter to a substantial degree, a draft amendment to a planning scheme and that draft amendment has not become operative at the date of that decision, to the provisions of the planning scheme as they would be if the draft amendment modified, or altered to a substantial degree, as required had become operative.
- (3A) A permit to which section 57 applies may be subject to such conditions or restrictions as the planning authority may impose.
- (4) A permit to which section 58 applies may be granted subject to such conditions or restrictions as the planning authority may impose with respect to any matter specified in the relevant planning scheme or special planning order.

52. What if applicant is not the owner?

(1) If –

- (a) the applicant for a permit is not the owner of the land in respect of which the permit is required; and
- (b) the land is not –
 - (i) Crown land, within the meaning of the *Crown Lands Act 1976*; or
 - (ii) land owned by a council; or
 - (iii) land administered by the Crown or a council; and
- (c) the planning scheme or special planning order does not provide otherwise –

the applicant must include in the application for the permit a declaration that the applicant has notified the owner of the intention to make the application.

(1A) Subsection (1) does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.

(1B) If land in respect of which an application for a permit is required is Crown land, within the meaning of the *Crown Lands Act 1976*, is owned by a council or is administered or owned by the Crown or a council and a planning scheme or

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special planning order does not provide otherwise, the application must –

- (a) be signed by the Minister of the Crown responsible for the administration of the land or by the general manager of the council; and
 - (b) be accompanied by the written permission of that Minister or general manager to the making of the application.
- (1C) In subsection (1B), “**general manager**” has the same meaning as in the *Local Government Act 1993*.
- (1D) The Minister of the Crown administering the *Crown Lands Act 1976* may delegate his or her functions under subsection (1B) to the Director-General of Lands.
- (1E) The Director-General of Lands may delegate to a person prescribed for the purposes of section 71(2) of the *Crown Lands Act 1976* a function delegated to the Director-General under subsection (1D).
- (1F) A Minister of the Crown administering land administered or owned by the Crown, other than the Minister of the Crown administering the *Crown Lands Act 1976*, may delegate to any person the Minister considers appropriate his or her functions under subsection (1B).
- (1G) The general manager of a council may delegate to an employee of the council his or her functions under subsection (1B).

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(1H) If land in respect of which an application for a permit is required is Crown land, within the meaning of the *Crown Lands Act 1976*, subsection (1B) does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.

(2) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

Penalty: Fine not exceeding 20 penalty units.

(3) A provision in a planning scheme or a special planning order is of no effect to the extent that it provides that an application for a permit by a person who is not the owner of the land in respect of which the permit is required must be signed by, or accompanied by the written permission of, the owner.

52A. Permit for development of land in Wellington Park

If any land in respect of which an application for a permit is required is in Wellington Park, as defined in the *Wellington Park Act 1993*, in assessing the application for the permit, the relevant planning authority must take into account the standards, values and conditions set out in each management plan, within the meaning of the *Wellington Park Act 1993*, in

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force as at the date of the application for the permit.

(a - b)

53. When does a permit take effect?

- (1) Where a planning authority grants a permit, the permit, subject to subsections (2), (3) and (4), takes effect on the day on which it is granted by the authority or, where there is a right of appeal against the granting of the permit, at the expiration of 14 days from the day on which the notice of the granting of the permit was served on the person who has the right of appeal.
- (1A) If the applicant is the only person with a right of appeal under section 61 in relation to a permit and does not intend to exercise that right, the use or development in respect of which the permit is granted may, subject to subsections (1B) and (4), be commenced before the expiration of the 14 day period specified in subsection (1).
- (1B) If the applicant referred to in subsection (1A) proposes to commence the use or development before the expiration of the 14 day period specified in that subsection, the applicant must notify the planning authority in writing of his or her intention to commence that use or development.
- (1C) If the applicant notifies the planning authority under subsection (1B), the applicant is taken to have forfeited the right to appeal in relation to the permit.

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- (2) A day later than the day on which a permit would otherwise have taken effect under subsection (1) may be specified in the permit as the day on which it takes effect.
- (3) Where an appeal has been instituted against the planning authority's decision to grant a permit, the permit does not take effect until the determination or abandonment of the appeal.
- (4) Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.
- (5) If the use or development in respect of which a permit was granted is not substantially commenced, the permit lapses –
 - (a) at the end of a period of 2 years from –
 - (i) the date on which the permit was granted; or
 - (ii) if an appeal has been instituted against the planning authority's decision to grant the permit, the date of the determination or abandonment of the appeal; or
 - (b) if the planning authority has granted an extension under subsection (5A), at the end of a further period of 2 years from the end of the relevant period referred to in paragraph (a); or

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- (c) if the planning authority has granted a further extension under subsection (5B), at the end of a further period of 2 years from the end of the further period of 2 years for which the permit was extended under subsection (5A).
- (5A) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under subsection (5)(a), the planning authority may grant (once only) an extension of the period during which that use or development must be substantially commenced.
- (5B) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under subsection (5)(b), the planning authority may grant (once only) a further extension of the period during which that use or development must be substantially commenced.
- (5C) An application may be made under subsection (5A) or (5B), for an extension of a period during which a use or development in respect of which a permit was granted must be substantially commenced, at any time before the end of the period of 6 months from the day on which the permit has lapsed and, if the extension is granted, the permit is to be taken to not have lapsed on that day.

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-
- (6) If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.
 - (7) The permit referred to in subsection (1) remains in effect until –
 - (a) it lapses under subsection (5); or
 - (b) it expires as a result of a condition or restriction contained in the permit; or
 - (c) it is cancelled under section 65G.

54. Additional information

- (1) A planning authority that receives an application for a permit (other than a permit referred to in section 43A) may –
 - (a) if the permit sought is a discretionary permit, by notice in writing served on the applicant within the period of 21 days from the day on which it receives the application; or
 - (b) if the permit sought is not a discretionary permit, by notice in writing served on the applicant within the period of 14 days from the day on which it receives the application –

require the applicant to provide it with additional information before it considers the application.

- (1A) If the period specified in subsection (1) includes any days on which the office of the planning

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authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

- (2) If the planning authority requires the applicant to provide it with additional information, the relevant period referred to in section 57(6)(b) or 58(2) does not run while the request for information has not been answered to the satisfaction of the planning authority.

- (2A) If the Appeals Tribunal determines that –

- (a) a planning authority had, in good faith, required an applicant under subsection (1) or (3) to provide the authority with additional information; but
- (b) the planning authority ought to have been satisfied with the information provided to the planning authority by the applicant before the requirement was served on the applicant –

the relevant period referred to in section 57(6)(b) or 58(2) does not run for the period beginning on the day on which the requirement was served on the applicant and ending at the end of the day that is 7 clear days after the day on which the determination was made by the Appeals Tribunal.

- (3) The planning authority must, within 14 days from the day it receives the additional information under subsection (1), notify the

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applicant if the request for information has not been answered to its satisfaction and in that notification require the applicant to provide it with the additional information.

55. Correction of mistakes

A planning authority may correct a permit granted by it if the permit contains –

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the approval.

56. Minor amendments of permits issued by a planning authority

- (1) The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit which applies to that land and which is a permit issued by the planning authority.
- (2) The planning authority may amend the permit if it is satisfied that the amendment –
 - (aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and

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- (a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and
 - (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.
- (2A) An amendment of a condition or restriction specified in a permit is not to be taken to contravene subsection (2)(a) by reason only that other conditions or restrictions have been specified in the permit, or amended, by the Appeal Tribunal.
- (2B) A condition or restriction (*the fresh condition or restriction*) specified by the planning authority in a permit is not to be taken, for the purposes of this section, to be required or imposed by the Appeal Tribunal if –
- (a) the fresh condition or restriction is to the same effect as a condition or restriction that was specified in the permit by the Appeal Tribunal before the planning authority specified the fresh condition or restriction in the permit; and
 - (b) the fresh condition or restriction is not referred to in the decision, in relation to the permit, of the Appeal Tribunal under

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section 23 of the *Resource Management and Planning Appeal Tribunal Act 1993*.

- (3) If the planning authority amends a permit, it must, by notice in writing served on –
- (a) the person who requested the permit to be amended; and
 - (b) if that person is not the owner of the land, the owner; and
 - (c) in the case of a permit granted under section 57, the owner or occupier of any property which adjoins the land; and
 - (d) any person who made a representation under section 57(5) in relation to the application for the permit –

notify those persons of the amendments made to the permit.

- (4) If the planning authority amends a permit containing a condition or restriction which the Board of the Environment Protection Authority has required under section 25(5) of the *Environmental Management and Pollution Control Act 1994*, the planning authority must, by notice in writing served on the Board, notify it of the amendments made to the permit.

56A. When amendments to permits take effect

- (1) If a planning authority amends a permit, the amendment, subject to subsections (5) and (6), takes effect on the day on which it is made by

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the planning authority or, if there is a right of appeal against the amendment, at the expiration of 14 days from the day on which the notice of the amendment was served on the person who has the right of appeal.

- (2) If the person who requested an amendment to a permit is the only person with a right of appeal under section 61 in relation to the amendment and does not intend to exercise that right, the use or development in respect of which the amendment is made may, subject to subsection (3), be commenced before the expiration of the 14 day period specified in subsection (1).
- (3) If the person referred to in subsection (2) proposes to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period specified in subsection (1), the person must notify the planning authority in writing of his or her intention to commence that use or development.
- (4) If the person who requested an amendment to a permit notifies the planning authority under subsection (3), the person is taken to have forfeited the right to appeal in relation to the amendment.
- (5) The day on which a permit takes effect may be specified in the permit as being a day later than the day on which the permit would otherwise have taken effect under subsection (1).

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- (6) If an appeal has been instituted against the planning authority's decision to amend a permit, the amendment does not take effect until the determination or abandonment of the appeal.
- (7) If the amendment requires an agreement to be entered into, the amendment does not take effect until the day on which the agreement is executed.

57. Applications for discretionary permits

- (1) This section applies to an application for a permit in respect of a use or development which, under the provisions of a planning scheme or special planning order –
 - (a) is of a kind specified as being a use or development which a planning authority has a discretion to refuse or permit; or
 - (b) may not proceed as proposed by the applicant unless a planning authority waives, relaxes or modifies a requirement of the scheme or order, or otherwise in its discretion consents to the use or development proceeding.
- (2) The planning authority may, on receipt of an application for a permit to which this section applies, refuse to grant the permit and, if it does so –
 - (a) it does not have to comply with subsection (3); and

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- (b)
 - (c) it must, within 7 days of refusing to grant the permit, serve on the applicant notice of its decision.
- (3) Unless the planning authority requires the applicant to give notice, the authority must give notice, as prescribed, of an application for a permit.
- (4) A notice referred to in subsection (3) is, in addition to any other matters required to be contained in it, to name a place where a copy of the application, and of all plans and other documents submitted with the application, will be open to inspection by the public at all reasonable hours during the period for which representations may be made.
- (4A) A person must not obscure or remove a notice of an application for a permit displayed on the land that is the subject of the application within the time period specified in subsection (5).
- Penalty: Fine not exceeding 10 penalty units.
- (5) Any person may make representations relating to the application during the period of 14 days commencing on the date on which notice of the application is given under subsection (3) or such further period not exceeding 14 days as the planning authority may allow.
- (5AA) If the time period specified in subsection (5) includes any days on which the office of the planning authority is closed during normal

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business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

- (5A) A person may, by notice in writing to a planning authority, withdraw a representation made under subsection (5) at any time before the planning authority grants or refuses to grant a permit under subsection (6).
- (5B) If a person withdraws a representation under subsection (5A), that person is taken not to have made a representation under subsection (5).
- (6) Unless the planning authority has refused to grant a permit under subsection (2), it must grant or refuse to grant the permit –
 - (a) not earlier than the expiration of the period of 14 days, or such further period as may be allowed under subsection (5), beginning on the date on which notice of the application for a permit is given under subsection (3); and
 - (b) not later than –
 - (i) in a case where the Heritage Council has not, under section 39(3) of the *Historic Cultural Heritage Act 1995*, required extra time to consider the application, on the expiration of the period of 42 days from the day on which the planning authority received the application or such further

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period as is agreed, in writing, by the planning authority and the applicant before the expiration of that 42-day period; or

- (ii) in a case where the Heritage Council has, under section 39(3) of the *Historic Cultural Heritage Act 1995*, required extra time to consider the application, on the expiration of the period of 56 days from the day on which the planning authority received the application or such further period as is agreed, in writing, by the planning authority and the applicant before the expiration of that 56-day period.
- (6A) A further period agreed to by a planning authority and an applicant under subsection (6)(b)(i) or (ii) may be extended or further extended by agreement, in writing, between the planning authority and applicant at any time before the expiration of the period to be extended and, when so extended, is taken to be the further period referred to in that subsection.
- (7) If a planning authority, on an application for a permit to which this section applies, grants or refuses to grant the permit, it must, within 7 days of granting or refusing to grant the permit, serve notice of its decision –
- (a) on the applicant; and

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(b) if representations have been made in relation to the application in accordance with this section, on all persons who made representations.

(c)

(8)

57A. Mediation

(1) In this section,

party means any of the following persons:

- (a) a person who made an application to a planning authority for a permit under section 57;
- (b) the planning authority to whom the application for a permit under section 57 was made;
- (c) any person who made a representation under section 57(5) in relation to the application for a permit under section 57.

(2) If the applicant for a permit under section 57 or any person who has made a representation under section 57(5) requires mediation to be conducted in relation to the application, the applicant or other person must notify, in writing, the planning authority.

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- (3) If the planning authority receives notification under subsection (2) or wishes mediation to be conducted in relation to an application for a permit under section 57, it must notify in writing any other party and seek the agreement of that party for mediation to be conducted in relation to the application.
- (4) If 2 or all parties agree that mediation should be conducted in relation to an application for a permit under section 57, the parties must agree on the person who is to conduct the mediation and on any other terms or conditions in relation to the conduct of the mediation.
- (5) If 2 or all parties agree that mediation should be conducted in relation to an application for a permit under section 57, the period within which the planning authority must make its decision in relation to the application may be extended under section 57(6A).

58. Application for other permits

- (1) This section applies to an application for a permit in respect of a use or development for which, under the provisions of a planning scheme or special planning order, a planning authority is bound to grant a permit either unconditionally or subject to conditions or restrictions.
- (2) If an application for a permit to which this section applies meets the requirements of the planning scheme to which the application relates, a planning authority must grant the

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application either unconditionally or subject to conditions or restrictions not later than the expiration of the period of 28 days from the day on which the planning authority received the application or such further period as is agreed to, in writing, by the planning authority and the applicant before the expiration of that 28-day period.

- (2A) A further period agreed to by a planning authority and an applicant under subsection (2) may be extended or further extended by agreement, in writing, between the planning authority and applicant at any time before the expiration of the period to be extended and, when so extended, is taken to be the further period referred to in subsection (2).
- (3) Where a planning authority grants a permit to which this section applies either unconditionally or subject to conditions or restrictions, it must, within 7 days of granting the permit, serve notice of its decision on the applicant.

58A. Permits requiring entering into of agreements

- (1) Without limiting section 51(3A) and despite section 51(4), a permit granted by a planning authority under section 30T or section 57 or 58 may include a condition that an agreement is required to be entered into in respect of a use or development.
- (2) If a planning authority grants a permit which includes a condition that an agreement is required to be entered into in respect of a use or

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development, the planning authority must specify in the condition the matters, and the requirements with respect to those matters, to be included in the agreement.

- (3) If a person is granted a permit which includes a condition under subsection (1) and that person is not the owner of the land in respect of which the agreement to be entered into relates, the planning authority must, within 7 days of granting the permit, serve notice of its decision on the owner.

59. Failure to determine an application for a permit

- (1) The failure of a planning authority to determine an application for a permit to which section 57 or 58 applies before the expiration of the period, or, where applicable, the further period, referred to in section 57(6)(b)(i) or (ii) or 58(2) is deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal.
- (2) Where the failure of a planning authority to determine an application for a permit to which section 57 or 58 applies is deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal, the planning authority must, within 7 days of the expiration of the period, or, where applicable, the further period, referred to in section 57(6)(b)(i) or (ii) or 58(2), serve notice—
 - (a) on the applicant; and

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(ab) if the Heritage Council has notified the planning authority under section 36(3)(b) of the *Historic Cultural Heritage Act 1995* that it wishes to be involved in the determination of the application, on the Heritage Council; and

(b) on any person who made representations under section 57(5)–

that the permit has been deemed to have been granted on conditions to be determined by the Appeal Tribunal.

(3) If a planning authority fails to determine an application before the expiration of the relevant period referred to in section 57(6)(b)(i) or (ii) or 58(2), the applicant may apply to the Appeal Tribunal for an order determining the conditions on which the permit is granted.

(3A) The Appeal Tribunal must notify the planning authority and, if the Heritage Council by reason of section 45(5) of the *Historic Cultural Heritage Act 1995* is joined as a respondent to the application, the Heritage Council of an application for an order under subsection (3).

(3B) The planning authority must, within 7 days of receiving notification from the Appeal Tribunal of an application under subsection (3), advise any person who made representations, under section 57(5), of that application unless the person has previously been notified under subsection (2).

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- (4) After hearing an application under subsection (3), the Appeal Tribunal may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* –
- (a) grant the permit unconditionally; or
 - (b) grant the permit and direct that the permit must contain specified conditions; or
 - (c) in the case of an application for a permit to which section 57 applies or is taken to apply, direct that a permit must not be granted.
- (5) Subject to subsection (5AA), after hearing an application under subsection (3), the Appeal Tribunal must direct the planning authority to pay–
- (a) to the Appeal Tribunal an amount determined by the Appeal Tribunal as being the costs of the appeal; and
 - (b) to each other party to the appeal an amount determined by the Appeal Tribunal as being the appeal costs of that party.
- (5AA) The Appeal Tribunal must not make an order under subsection (5) directing a planning authority to pay costs for a failure to determine an application within a period, or a further period, referred to in subsection (1), if the failure only arose because a purported decision of the authority within that period was of no effect in law.

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- (5A) If the Appeal Tribunal makes an order for costs under subsection (5), it –
- (a) is to specify the time within which those costs are to be paid; and
 - (b) may, by a further order, extend that time if it considers it reasonable in the circumstances.
- (5B) If the Appeal Tribunal makes an order for costs before the end of any proceedings, it may require that the order be complied with before it continues with the proceedings.
- (5C) An order for costs under this section may be registered in a court having jurisdiction for the recovery of debts of the amount ordered to be paid by or under the order.
- (5D) Proceedings for the enforcement of an order for costs under this section may be taken as if the order were a judgment of the court in which the order is registered.
- (6) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.
- (7) Notwithstanding the provisions of this Division, a planning authority may make a decision on an application for a permit to which section 57 or 58 applies at any time before the lodging of an application under subsection (3).

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- (8) Where a planning authority makes a decision under subsection (7) it must, within 7 days of making the decision, serve notice of its decision on the applicant and, where representations have been made in relation to the application under section 57(5), on all persons who made representations.

(9 - 10)

60.

60A. Permit for certain works not required

- (1) If a permit for dam works, within the meaning of the *Water Management Act 1999*, is in force under that Act, a permit or special permit for those works is not required under this Act.
- (2) A water entity administering a water management plan or a water district is not required to hold a permit or special permit under this Act for any activities which are –
- (a) necessary for the operation, maintenance, repair, minor modification, upgrading or replacement of existing works managed or owned by that water entity and will not cause environmental nuisance, material environmental harm or serious environmental harm; or
 - (b) required urgently to protect persons from injury or those works from damage so

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long as the activities will not cause serious environmental harm.

(3) In this section –

environmental nuisance has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

material environmental harm has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

serious environmental harm has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

water district has the same meaning as in the *Water Management Act 1999*;

water entity has the same meaning as in the *Water Management Act 1999*;

water management plan has the same meaning as in the *Water Management Act 1999*.

Division 2A – Special permits for projects of regional significance

60B. Interpretation: Division 2A

In this Division, unless the contrary intention appears –

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application for an ordinary permit means an application made under Division 2 of this Part, or Division 2A of Part 3, for the issue of a permit;

EMPC Act means the *Environmental Management and Pollution Control Act 1994*;

EPA Board means the Board of the Environment Protection Authority established under section 13 of the EMPC Act;

EPA Director means the Director of the Environment Protection Authority appointed under section 18 of the EMPC Act;

Panel, in relation to a project, means the Development Assessment Panel established under section 60M in relation to the project;

project of regional significance means a project that is declared under section 60G to be a project of regional significance;

proponent, in relation to a project –

- (a) means the person from time to time proposing a project consisting of one or more uses or developments; and
- (b) if a project consists of 2 or more uses or developments that are

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proposed to be undertaken by different persons, means the person proposing the project as a whole;

statement of intent means a statement of intent that, under section 60F, accompanies a proposal from a proponent of a project.

60C. Projects eligible to be declared projects of regional significance

- (1) A project is eligible to be declared to be a project of regional significance if –
 - (a) the project is of regional planning significance; or
 - (b) the project requires high-level assessment; or
 - (c) the project would have a significant environmental impact.
- (2) A project is only of regional planning significance if, in the opinion of the Minister –
 - (a) the project would make a significant economic or social contribution to a region; or
 - (b) the project is of a scale that would be likely to significantly affect the provision of infrastructure, including social infrastructure, in the region.

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- (3) A project only requires high-level assessment if, in the opinion of the Minister, the project –
- (a) is of such a scale or complexity; or
 - (b) has such characteristics –
- that the planning authority that would be required under this Act to assess an application for an ordinary permit in relation to the project is unlikely to have the capability or the resources to adequately perform the assessment.
- (4) A project that is to be situated on an area of land may not be declared to be a project of regional significance except with the consent of the relevant persons.
- (5) For the purposes of subsection (4), the relevant persons are –
- (a) if all or part of the land is Crown land, the Minister responsible for Crown land; and
 - (b) if all or part of the land is owned by a council, the general manager, within the meaning of the *Local Government Act 1993*, of the council; and
 - (c) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.
- (6) A project that is to be situated on an area of land may not be declared to be a project of regional

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significance unless the relevant persons have been notified.

- (7) For the purposes of subsection (6), the relevant persons are –
- (a) if all or part of the land is land of which the proponent is not the owner, the owner, or owners, of the land; and
 - (b) if all or part of the land is land that is not owned by a council but is occupied or administered by a council, the council.
- (8) A project that is to be situated on an area of land may be declared to be a project of regional significance even though a use or development that is proposed to form part of the project is prohibited under –
- (a) an interim planning scheme; or
 - (b) a planning scheme made under section 30N –

that applies in relation to the land, but only if the use or development would be consistent with a regional land use strategy that applies in relation to the land.

- (9) A project that is to be situated on an area of land may be declared to be a project of regional significance even though a use or development proposed to form part of the project is prohibited under a planning scheme (other than an interim planning scheme or a planning scheme declared

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under section 30N) that applies in relation to the land.

60D. Proposals that projects be declared projects of regional significance

- (1) A proponent for a project may, by notice in writing to the Minister, propose that the Minister declare the project to be a project of regional significance.
- (2) A planning authority, by notice in writing to the Minister, may propose that the Minister declare a project to be a project of regional significance.
- (3) A planning authority may only propose a project under subsection (2) if the project consists in whole or in part of a use or development that is wholly or partly within the municipal area of the planning authority.
- (4) A planning authority that makes a proposal under subsection (2) in relation to an area of land must give notice in writing of the making of the proposal to –
 - (a) the proponent; and
 - (b) the owner, or owners, of the land; and
 - (c) if part of the land is situated within the municipality of another planning authority, that other planning authority.
- (5) If a proposal is made under subsection (1), the Minister must notify each planning authority for the land to which the proposal relates.

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60E. Effect of proposal on applications for ordinary permits

(1) In this section –

relevant time, in relation to an application for an ordinary permit that is made in respect of –

(a) all or part of the land to which a proposal under section 60D(1) relates, means the date on which the relevant planning authority is notified of the proposal under section 60D(5); or

(b) all or part of the land to which a proposal under section 60D(2) relates, means –

(i) the date on which the proposal is made; or

(ii) if the application is made to a planning authority other than the authority that made the proposal, the date on which the planning authority is notified of the proposal under section 60D(4)(c).

(2) This section applies to an application for an ordinary permit in respect of all or part of the land to which a proposal under section 60D relates, if the application has been made to, but

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not determined by, a planning authority, before the relevant time.

- (3) If this section applies to an application for an ordinary permit, the planning authority must not determine the application unless and until a decision is made under section 60G(1)(b) to refuse to declare the project to be a project of regional significance.
- (4) A determination of an application for an ordinary permit to which this section applies that is made in contravention of subsection (3) is void.
- (5) If this section applies to an application for an ordinary permit, the period between –
 - (a) the relevant time; and
 - (b) the day on which the Minister makes a decision under section 60G in relation to the project –

is not, in relation to the application, to be taken into account in any calculation for the purposes of this Act of a period of time beginning on the day on which the application was lodged with the planning authority.

60F. Statement of intent and other information

- (1) A proposal from a proponent of a project under section 60D(1) is to be accompanied by a statement of intent for the project.

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- (2) A statement of intent for a project is to contain the following information:
- (a) the name and contact details of the proponent;
 - (b) the name of the project;
 - (c) a description of the project, including its key physical components;
 - (d) an outline of the proposed location of the project and a general site location plan;
 - (e) the anticipated impact, if any, of the project, or infrastructure associated with the project, on other areas;
 - (f) a general description of the physical environment that may be affected by the project;
 - (g) the key environmental, health, economic, social and heritage issues that the proponent has identified in respect of the project;
 - (h) the surveys and studies proposed or being undertaken in relation to the key issues in respect of the project;
 - (i) the proposed timetable for the project;
 - (j) how, if at all, the project may make a significant contribution to the economic or social development of the region in which it is proposed to be situated.

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- (3) The reference in subsection (2)(e) to the anticipated impact of the project or infrastructure on other areas includes –
 - (a) both areas that are in, and areas that are outside, the regional area in which the project is to be situated; and
 - (b) the anticipated impact on the provision of social infrastructure, and other infrastructure, in those areas.
- (4) A proposal under section 60D(2) from a planning authority is to be accompanied by so much of the information that is in the possession of the planning authority as would be required to be provided by the proponent in a statement of intent under subsection (1), if the proposal were made by the proponent under section 60D(1).
- (5) The Minister may accept a proposal under section 60D even though it is not accompanied by all the information required to be specified in the statement of intent required under this section to accompany the application.
- (6) The Minister may request a proponent or a planning authority to provide to the Minister, within the period specified in the request, information of the kind specified in the request that is in the possession of the proponent or authority, respectively.
- (7) Information may only be requested under subsection (6) if it is reasonably necessary to enable the Minister to determine whether or not

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to declare a project to be a project of regional significance.

- (8) A proponent or planning authority to which a request is made under subsection (6) is to take all reasonable steps to provide the Minister, as soon as practicable but in any case within the period specified in the request, with the information specified in the request.

60G. Declaration of project of regional significance

- (1) The Minister may, by notice in the *Gazette*, after receiving under section 60D(1) or (2) a proposal from a person in relation to a project, declare the project –
- (a) to be a project of regional significance; or
 - (b) to not be a project of regional significance.
- (2) The Minister is to make a declaration under subsection (1) in relation to a proposal within 14 days –
- (a) from the day on which he or she receives notice of the proposal under section 60D; or
 - (b) from the day on which he or she receives further information in accordance with a request made under section 60F(6) in relation to the proposal –

whichever is the later.

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- (3) The Minister, of his or her own motion, may, by notice in the *Gazette*, declare a project to be a project of regional significance.
- (4) The Minister may only declare a project to be a project of regional significance if the Minister considers the project to be eligible to be declared such a project.
- (5) The Commission must issue guidelines, not inconsistent with this Act, as to the matters to which the Minister is to have regard in determining whether to declare a project to be a project of regional significance.
- (6) In determining whether to declare a project to be a project of regional significance, the Minister is to have regard to the guidelines issued by the Commission under subsection (5).
- (7) A declaration under this section that a project is to be a project of regional significance must specify –
 - (a) the land on which the project is to be situated; and
 - (b) the uses or developments that the project proposes for the land; and
 - (c) the proponent of the project; and
 - (d) the grounds on which the Minister declared the project to be a project of regional significance.

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- (8) A declaration of a project of regional significance may include any use or development that is necessary for the implementation of the project, whether or not the use or development is to be undertaken by or on behalf of the proponent named in the declaration.
- (9) The Minister may, in a declaration under this section of a project of regional significance that is to take place on an area of land that is not within any municipality, specify that a planning authority nominated in the notice is to be the planning authority in relation to the project.
- (10) The Minister may only nominate, in a notice referred to in subsection (9) in relation to an area of land, a planning authority for a municipality that is within a regional area adjacent to the area of land.
- (11) The Minister is to give notice in writing of the making of a declaration of a project under subsection (1) or (3) to –
- (a) the proponent; and
 - (b) all planning authorities in the regional area, or regional areas in which the project to which the declaration relates is to be situated; and
 - (c) if the project is to take place on an area of land that is not within any municipality, all planning authorities in the regional area that is adjacent to the area of land; and

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- (d) the Commission; and
 - (e) if the land on which the project is or was to be situated is situated in Wellington Park, the Wellington Park Management Trust.
- (12) The Minister must ensure that a notice of a declaration under subsection (1) or (3) in relation to a project is placed in a newspaper generally circulating in the area in which the project is or was to be situated.

60H. Effect of declaration of project of regional significance

- (1) Division 2 of this Part and Division 2A of Part 3 do not apply in relation to a use or development that forms part of a project of regional significance.
- (2) A person must not undertake on land a use or development that forms part of a project of regional significance on the land, except under and in accordance with a special permit granted under section 60T in relation to the project.
- (3) Subsection (2) does not apply in relation to a use or development for the purposes of conducting an assessment under this Division.
- (4) If a project is declared to be a project of regional significance –
 - (a) an application for an ordinary permit, in relation to a use or development forming

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all or part of the project, that has been made to, but not determined by, the planning authority, is taken to have been withdrawn on the day of the declaration; and

- (b) the planning authority to which the application was made must, as soon as practicable, refund to the applicant half of any fees that the applicant has paid in respect of the application.

60I. Fees

- (1) The relevant fee, as specified or calculated in accordance with regulations for the purposes of this section, is due and payable to the Commission by the proponent within 30 days after the project is declared under section 60G to be a project of regional significance.
- (2) The proponent of a project may, within 30 days after the Panel makes a decision under section 60T in relation to the project, apply to the Commission for a review of the amount of the relevant fee paid by the proponent under subsection (1) in relation to the project.
- (3) The Commission must, as soon as practicable after receiving an application under subsection (2) from a proponent, appoint a State Service employee to conduct a review of the amount of the relevant fee paid by the proponent under subsection (1) in relation to the project.

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- (4) A person appointed under subsection (3) to conduct a review in relation to a project must assess the costs incurred by the Panel in carrying out the Panel's function under this Part of determining whether to grant a special permit in relation to the project.
- (5) If the person is satisfied that the costs referred to in subsection (4) in relation to a project are less than the amount the proponent of the project was required to pay as a relevant fee under subsection (1), the person may authorise the refund to the proponent of the difference between the amounts.
- (6) A refund to the proponent is to be made in accordance with an authorisation under subsection (5).
- (7) A person appointed under subsection (3) to conduct a review in relation to a project must determine the review within 30 days after he or she is so appointed.
- (8) Regulations for the purposes of this section may prescribe –
 - (a) a maximum and a minimum amount of a relevant fee; or
 - (b) that a relevant fee is to be calculated in accordance with a method specified in the regulations –

or both, in respect of a project or of a project of a type specified in the regulations.

60J. Revocation of declaration

- (1) A proponent of a project may at any time, by notice in writing to the Minister, request the Minister to revoke the declaration of a project of regional significance in respect of all or part of the area of land to which the declaration relates.
- (2) The Minister, by notice in the *Gazette*, may revoke a declaration of a project of regional significance in respect of all or part of an area of land –
 - (a) in accordance with a request under subsection (1); or
 - (b) if the Minister is satisfied that the proponent does not intend the project to proceed in relation to the land or the part of the area of land.
- (3) The Minister is to give notice of a revocation of a declaration of a project of regional significance to the persons notified of the declaration of the project under section 60G(11).
- (4) The Minister is to ensure that a notice of the revocation of a declaration of a project of regional significance is placed in a newspaper generally circulating in the area in which the project was, or was to be, situated.
- (5) If a declaration of a project of regional significance is revoked under subsection (2) in relation to all or part of an area of land –

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- (a) this Division ceases to apply to the land to which the revocation relates; but
- (b) a person is not to be taken to have committed an offence under this Act by reason of any action taken, or not taken, before this Division ceased to apply, if the action or failure was lawful under this Division before this Division ceased to apply.

60K. Project to be referred to Director of Environment Protection Authority

- (1) If a project is declared to be a project of regional significance, the Minister must, within 7 days, refer the project to the EPA Director.
- (2) If the Minister refers a project to the EPA Director, the Minister is to forward to the Director –
 - (a) the statement of intent, if any, in relation to the project; and
 - (b) any other information that is provided to the Minister under section 60F in relation to the project.
- (3) If a project is referred to the EPA Director under subsection (1), he or she is to determine, within 14 days, whether the EPA Board is to undertake an environmental impact assessment of the project.

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- (4) The EPA Director is to notify the Minister of the Director's determination under subsection (3).
- (5) The EPA Director is to be taken to have determined under subsection (3) that the EPA Board is to undertake an environmental impact assessment of a project referred to the EPA Director under subsection (1), if the EPA Director has not notified the Minister to the contrary within 14 days after the project is referred to the Director.
- (6) The Minister is to notify the Panel in relation to a project about the determination of the EPA Director under this section in relation to the project.

60L. Environmental impact assessment by EPA Board

- (1) If the EPA Director determines under section 60K that the EPA Board is to undertake an environmental impact assessment of a project, the EPA Board, as soon as practicable, must carry out an environmental impact assessment of the project.
- (2) The environmental impact assessment of a project is to be carried out –
 - (a) in accordance with the Environmental Impact Assessment Principles specified in the EMPC Act; and
 - (b) under Division 1A of Part 3 of the EMPC Act, as modified under subsection (3), and Part 5 of that Act.

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- (3) For the purposes of an environmental impact assessment of a project in accordance with this section, the EMPC Act is modified as follows:
- (a) a reference, in Division 1A of Part 3 of the EMPC Act, to the planning authority is to be taken to be a reference to the Panel for the project;
 - (b) a reference, in Division 1A of Part 3 of, or Part 5 of, the EMPC Act, to an applicant or a proponent is to be taken to be a reference to the proponent of the project;
 - (c) a reference, in Division 1A of Part 3 of, or Part 5 of, the EMPC Act, to an activity is to be taken to be a reference to the project;
 - (d) a reference, in Division 1A of Part 3 of the EMPC Act, to a referral of an application under section 25(1) of that Act is to be taken to be a reference to a referral under section 60K of this Act;
 - (e) a reference, in section 27B of the EMPC Act, to –
 - (i) a person who lodged an application for a permit is to be taken to be a reference to the proponent of the project; and
 - (ii) a notice of intent is to be taken to be a reference to the information

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provided to the EPA Director
under section 60K(2);

- (f) section 27C of the EMPC Act does not apply;
 - (g) a reference, in section 27D of the EMPC Act, to advice under section 27C is to be taken to be a reference to advice under subsection (4);
 - (h) section 27G(4) of the EMPC Act does not apply;
 - (i) a reference, in section 44 of the EMPC Act, to a permit is to be taken to include a reference to a special permit;
 - (j) the reference, in section 74(4) of the EMPC Act, to providing the proponent with guidance is to be taken to be satisfied if the guidance is provided to the Panel under subsection (5).
- (4) If the EPA Director determines under section 60K(3) that the EPA Board is to undertake an environmental impact assessment of a project, then, within 21 days of the day on which the project is referred to the EPA Director under section 60K(1), the EPA Board is to advise the proponent, and the Minister, of the class of assessment that is proposed to be undertaken under section 27A of the EMPC Act.
- (5) The EPA Board is to provide to the Panel the guidance that the EPA Board is required under

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section 74(4) of the EMPC Act to provide to the proponent.

- (6) The Panel must forward to the Director any representations received by the Panel under section 60Q in relation to the project, as soon as practicable after receiving them.
- (7) The Panel must comply with a direction of the Director under section 27G of the EMPC Act.
- (8) On completion of an environmental impact assessment of a project of regional significance, the EPA Board must notify the Panel for the project as to whether the EPA Board –
 - (a) requires any conditions or restrictions to be contained in any special permit that may be granted in relation to the project; or
 - (b) directs the Panel to refuse to grant a special permit in relation to the project.
- (9) The EPA Board must specify in the notice under subsection (8) –
 - (a) any condition or restriction, of a kind specified in section 25(6) of the EMPC Act, that the EPA Board requires to be imposed on a special permit granted in relation to the project; and
 - (b) the reasons for requiring the condition or restriction or for directing the Panel to refuse to grant a special permit in relation to the project.

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- (10) The proponent of a project in relation to which an environmental impact assessment is carried out in accordance with this section is liable to pay to the EPA Board, by the date specified in a notice by the Board to the proponent, the relevant fees for the assessment of the project.
- (11) The relevant fees for the assessment by the EPA Board of a project are the fees that the proponent would have been liable to pay for the assessment of the project if –
 - (a) the proponent had made an application for an ordinary permit in relation to the project; and
 - (b) the environmental impact assessment had been carried out under and in accordance with the EMPC Act as if this section did not apply.

60M. Development Assessment Panel to be established for assessment of project

- (1) The Commission must establish a Development Assessment Panel in relation to a project that is declared to be a project of regional significance.
- (2) A Development Assessment Panel must be established under subsection (1) in relation to a project as soon as practicable after the Commission is given notice under section 60G(11) of the declaration of the project to be a project of regional significance.

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- (3) The Commission is to establish a Panel in relation to a project by appointing to be members of the Panel –
- (a) a member of the Commission, or any other person nominated by the Commission, who is to be the chairperson of the Panel; and
 - (b) a person with the appropriate qualifications and experience who is nominated by the councils for the municipalities that are within any regional areas in which part or all of the project is to take place; and
 - (c) a person who, in the opinion of the Commission, has qualifications or experience that are relevant to the assessment of the project.
- (4) The person appointed under subsection (3)(a) must not be a person who is appointed to the Commission under section 5(1)(g) or (h) of the *Tasmanian Planning Commission Act 1997*.
- (5) A person has appropriate qualifications and experience for the purposes of subsection (3)(b) if the person has –
- (a) qualifications or experience in land use planning, urban and regional development, commerce or industry; or
 - (b) practical knowledge of, and experience in, the provision of buildings or other infrastructure.

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- (6) The Commission is to request the councils within all regional areas in which all or part of a project is to take place to together nominate, within 21 days after receiving the request, a person for the purposes of subsection (3)(b).
- (7) If the councils have not nominated a person within 21 days after receiving a request to do so, the Commission may appoint a person for the purposes of subsection (3)(b), even though the person has not been nominated by the councils, if the person satisfies the requirements of subsection (5).
- (8) If the Commission is of the opinion that the scale, specialist nature or complexity of a project of regional significance makes it desirable to do so, the Commission may appoint to be members of the Panel, in addition to the persons appointed under subsection (3), not more than 2 other persons.
- (9) A person appointed under subsection (8) in relation to a project is to be a person who has the qualifications and experience that the Commission thinks appropriate to assist in the assessment of the project.
- (10) The quorum for a Panel is 3.
- (11) Subject to this Division, a Panel is to determine its own proceedings.

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60N. Panel to determine guidelines for how assessment is to be made

- (1) The Panel in relation to a project must determine the assessment guidelines in respect of the project.
- (2) The Panel must make a determination under subsection (1) in relation to the project before –
 - (a) 35 days after the declaration of the project under section 60G; or
 - (b) 5 clear days after the EPA Board provides to the proponent, in accordance with section 27D of the EMPC Act as applied by section 60L, guidance in relation to the project; or
 - (c) the end of a period approved by the Minister –whichever period expires later.
- (3) The assessment guidelines in respect of a project are the matters –
 - (a) to be addressed in the project impact statement in relation to the project; and
 - (b) to which the Panel must have regard in assessing whether to grant a special permit in relation to the project.
- (4) The assessment guidelines in respect of a project are only to include matters to be addressed that are reasonably required to enable the proper assessment of –

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- (a) whether a special permit in relation to the project ought to be granted; and
 - (b) if a special permit were to be granted in relation to the project, the conditions or restrictions, if any, to which the permit ought to be subject.
- (5) Before determining the assessment guidelines in respect of a project, the Panel must consult –
- (a) the Commission; and
 - (b) the planning authorities for any regional area in which part or all of the project is to take place; and
 - (c) the State Service Agencies that the Panel believes to have an interest in the project; and
 - (d) if all or part of the land to which the project relates is in Wellington Park, the Wellington Park Management Trust.
- (6) In determining the assessment guidelines in respect of a project that is to be situated on an area of land, the Panel is to have regard to –
- (a) any planning scheme (whether the scheme is an interim planning scheme, a planning scheme declared under section 30N or a planning scheme approved under section 29) that applies to the land; and

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- (b) any special planning order that applies to the land; and
 - (c) any regional land use strategy, if any, for the regional area in which the land is situated; and
 - (d) any applicable State policy.
- (7) If the Panel has been notified under section 60K(6) that the EPA Board is to carry out an environmental impact assessment of the project, the Panel may not determine the assessment guidelines in respect of the project until the Panel –
- (a) has received guidance in relation to the project from the EPA Board under section 60L(5); or
 - (b) has been notified by the Board that the Board does not intend to issue such guidance in relation to the project.
- (8) If the EPA Board has, under section 60L(5), provided to the Panel guidance in relation to a use or development forming part of a project –
- (a) the assessment guidelines are to include the guidance provided to the Panel by the EPA Board; and
 - (b) the Panel is to provide to the EPA Board a copy of the assessment guidelines in respect of the project.

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- (9) As soon as practicable after determining the assessment guidelines in respect of a project, the Panel must give notice of the guidelines in the prescribed manner.

60O. Project impact statements to be provided to Panel

- (1) As soon as practicable, and in any case within 7 days, after determining under section 60N the assessment guidelines in respect of a project, the Panel must give to the proponent –
- (a) a copy of the assessment guidelines; and
 - (b) a notice specifying that the proponent is required, within a period specified in the notice, to provide to the Panel a project impact statement in relation to the project.
- (2) A project impact statement is a statement that addresses the matters set out in the assessment guidelines in respect of the project.
- (3) A proponent of a project must provide to the Panel a project impact statement in relation to the project within the period specified in the notice under subsection (1)(b).
- (4) The Panel may, by notice to a proponent, extend the period in which the proponent is to provide a project impact statement to the Panel.
- (5) If the Panel has been notified under section 60K(6) that the EPA Board is to carry out an environmental impact assessment of a

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project, the Panel, as soon as practicable, must provide to the EPA Director a copy of a project impact statement provided to the Panel under subsection (3) in relation to the project.

60P. Panel may request information to be provided

- (1) The Panel may request any of the following persons to provide to the Panel, within the period specified in the request, further information of the kind specified in the request:
 - (a) the proponent for a project;
 - (b) a planning authority;
 - (c) the Commission;
 - (d) a State Service Agency;
 - (e) a State authority within the meaning of the *State Service Act 2000*;
 - (f) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*;
 - (g) the Wellington Park Management Trust.
- (2) The Panel may only request the proponent to provide further information under subsection (1) before 28 days after the Panel has received from the proponent under section 60O(3) a project impact statement in relation to the project.

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- (3) The Panel may only request a person to provide further information under subsection (1) if the information may assist the Panel to determine –
 - (a) whether to grant a special permit in relation to a project; or
 - (b) if the Panel were to grant a special permit in relation to a project, the conditions or restrictions, if any, to which the permit ought to be subject.
- (4) A person to whom a request is made under subsection (1) is to take all reasonable steps to provide to the Panel, as soon as practicable but in any case within the period specified in the request, the information specified in the request.
- (5) If the Panel has been notified under section 60K(6) that the EPA Board is to carry out an environmental impact assessment of a project, the Panel, as soon as practicable after information in relation to the project is provided to the Panel under subsection (4), must provide a copy of the information to the EPA Director.

60Q. Notification and exhibition of project

- (1) The Panel must give notice, in the prescribed manner, of the public exhibition of a project of regional significance.
- (2) The Commission must place on the Commission's principal website, for the period of the public exhibition, a notice of the public exhibition of a project of regional significance.

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- (3) The Panel must give notice under subsection (1) as soon as practicable after receiving under section 60O(3) a project impact statement in relation to a project, but in any case within 14 days after receiving the statement.
- (4) A notice referred to in subsection (1), in addition to any other matters required by the regulations to be contained in it –
 - (a) is to name a place where a copy of –
 - (i) the assessment guidelines in respect of the project; and
 - (ii) the project impact statement in relation to the project –

will be available for inspection by the public at all reasonable hours during the period for which representations may be made in relation to the project; and
 - (b) is to specify that representations in relation to the project may be made to the Panel during the period that applies to the project under subsection (7); and
 - (c) is to specify the address to which a representation may be made.
- (5) After the Panel gives notice in accordance with subsection (1), the Panel, and the planning authority for any land on which part or all of the project is to take place, must arrange, in the prescribed manner, the public exhibition of –

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-
- (a) the assessment guidelines in respect of the project; and
- (b) the project impact statement in relation to the project –
- at the place, and during the period, specified in the notice.
- (6) A person may make a representation to the Panel in relation to the project.
- (7) A representation may only be made under subsection (6) during –
- (a) the period of 28 days beginning on the date on which notice in relation to the project is given under subsection (1); or
- (b) despite paragraph (a), if the EPA Director, before the notice in relation to the project is given under subsection (1), issues in relation to the project a direction under section 27G of the EPA Act that specifies a period, that period; or
- (c) despite paragraphs (a) and (b), if the Panel determines, before the notice in relation to the project is given under subsection (1), a period, of not more than 42 days, in which representations may be made, that period.
- (8) A person must not, within the period specified in the notice under subsection (1), obscure or remove a notice given under subsection (1) that

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is displayed on the land to which the notice relates.

Penalty: Fine not exceeding 10 penalty units.

- (9) If a period referred to in this section includes any days on which the offices of the Commission are closed during normal business hours, that period is to be extended by the number of those days.

60R. Notification and hearings in relation to project

- (1) As soon as practicable after the public exhibition, referred to in section 60Q(1), of the documents in relation to a project begins, the Panel must give notice in the prescribed manner.
- (2) The notice under subsection (1) in relation to a project is to be given to –
- (a) all planning authorities in the regional area in which the land is situated; and
 - (b) all State Service Agencies that have been consulted in respect of the project under section 60N(5)(c); and
 - (c) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*; and
 - (d) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.
- (3) The notice under subsection (1) is to advise each person to whom it is given about the exhibition

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of the documents in relation to a project and invite the persons to make representations in relation to the project, including representations as to –

- (a) whether a special permit ought to be granted in relation to the project; and
 - (b) if a special permit were to be granted in relation to the project, the conditions or restrictions, if any, that ought to be imposed on the permit.
- (4) The Panel must hold hearings in respect of a project, as soon as practicable after the public exhibition of the project under section 60Q(5) ends.
- (5) Despite subsection (4), the Panel may dispense with the holding of a hearing in relation to a representation in relation to a project if, after examining the representations received –
- (a) the Panel is satisfied that all the representations are in support of the project; or
 - (b) the Panel has consulted with a person who made the representation and that person has advised the Panel in writing that he or she does not wish to attend a hearing.

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60S. When decision about grant of special permit is to be made

- (1) The Panel is to decide whether to grant a special permit in relation to a project under section 60T as soon as practicable after the end of the consultation and hearings, if any, conducted under section 60R in respect of the project.
- (2) In any case, if the Panel has been notified under section 60K(6) that the EPA Board is not to undertake an environmental impact assessment of the project, the Panel is to decide whether to grant under section 60T a special permit in relation to the project –
 - (a) within the 4 month period after the Panel receives the project impact statement in relation to the project under section 60O(3); or
 - (b) within a period specified by the Minister –

whichever is the later.

- (3) If the Panel has requested the proponent under section 60P to provide the Panel with further information in relation to a project, the period between the day on which that request is made and the day on which the proponent provides the information to the satisfaction of the Panel is not to be counted in the calculation of the period referred to in subsection (2) in relation to the project.

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- (4) In any case, if the Panel has been notified under section 60K(6) that the EPA Board is to undertake an environmental impact assessment of the project, the Panel is to decide whether to grant under section 60T a special permit in relation to the project within –
- (a) one month after the Panel receives from the EPA Board a notice in relation to the project under section 60L(8); or
 - (b) a longer period specified by the Minister.

60T. Grant of special permit

- (1) The Panel may, in accordance with this section –
- (a) grant a special permit in relation to a project of regional significance; or
 - (b) refuse to grant a special permit in relation to a project of regional significance.
- (2) A special permit may be granted unconditionally or on the conditions or restrictions, specified on the permit, that are imposed on the permit under section 60U.
- (3) In deciding under subsection (1) whether to grant a permit in relation to a project, the Panel must consider any representations made under section 60Q in relation to the project.
- (4) The Panel may only grant a special permit in relation to a project if it is satisfied that –

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- (a) the grant of the permit will further the objectives specified in Schedule 1; and
 - (b) the grant of the permit will not contravene any State Policy, planning directive, interim planning scheme or any planning scheme that is made under section 30N; and
 - (c) the assessment guidelines in respect of the project have been satisfied; and
 - (d) the relevant fee required under section 60I(1), and any other fee required under any other Act to be paid for the assessment of the project, have been paid; and
 - (e) the Panel has received under section 60L(8) a notice in relation to the project from the EPA Board and the EPA Board has not directed the Panel to refuse to grant a special permit in relation to the project.
- (5) The Panel may grant a special permit in relation to a project, even though the use or development permitted by the permit would not be permitted under a planning scheme (other than an interim planning scheme or a planning scheme that is made under section 30N) that applies to the land to which the permit relates.
- (6) The Panel must give to the proponent, and provide on request to a person, a statement of the reasons for granting, or refusing to grant, a special permit under subsection (1).

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- (7) If a special permit is granted to the proponent of a project –
- (a) the proponent is liable to pay to the EPA Board the fees that the proponent would have been liable to pay under that Act if the special permit had been a permit within the meaning of this Act; and
 - (b) the EMPC Act applies in relation to such fees accordingly.
- (8) If a special permit is granted –
- (a) the Panel must give in the prescribed manner notice of the grant of the permit; and
 - (b) the Commission must place on the Commission's principal website a copy of the permit granted.

60U. Special permit may be granted subject to conditions or restrictions

- (1) Subject to section 60V, the Panel may impose on a special permit granted under section 60T(1)(a) conditions or restrictions on the use or development of the land to which the permit relates.
- (2) The Panel must impose on a special permit granted under section 60T(1)(a) any conditions or restrictions required under section 60L(9) to be imposed on the permit.

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- (3) The Panel must not impose on a special permit a condition or restriction that is inconsistent with a condition or restriction required under section 60L(9) to be imposed on the permit.
- (4) The Panel must notify, of the conditions or restrictions, if any, imposed on a permit, the persons notified under section 60V(2) in respect of the project to which the permit relates.
- (5) The conditions that may be imposed on a special permit include, but are not limited to including, a condition that all reasonable steps must be taken to enter into an agreement in respect of a use or development forming all or part of the project to which the permit relates.
- (6) If a condition referred to in subsection (5) is included, the Panel must specify on the special permit the matters, and the requirements in respect of those matters, to be included in the agreement.
- (7) If –
 - (a) a person is granted a special permit on which is imposed a condition, referred to in subsection (5), that all reasonable steps must be taken to enter into an agreement; and
 - (b) that person is not the owner of the land in respect of which the agreement must be entered into –

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the Panel must, within 7 days of granting the permit, serve on the owner of the land notice of the Panel's decision to impose the condition.

60V. Process for determining conditions or restrictions to be imposed on special permits

- (1) In deciding under section 60U whether to impose conditions or restrictions on a special permit to be granted in relation to the project, the Panel must consider any representations made under section 60Q or this section in relation to such conditions or restrictions.
- (2) At least 14 days before granting under section 60T(1)(a) a special permit on which a condition or restriction is imposed under section 60U, the Panel must provide to the following persons a copy of the conditions or restrictions that it proposes to impose:
 - (a) the proponent;
 - (b) the planning authority for the land to which the permit is to relate;
 - (c) the EPA Board;
 - (d) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*;
 - (e) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.

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- (3) At least 14 days before granting under section 60T(1)(a) a special permit on which a condition or restriction is imposed under section 60U, the Panel must provide, to those persons who made representations under section 60Q in relation to the project, a copy of the condition or restriction that it proposes to impose.
- (4) A person notified under subsection (2) or (3) may, within 14 days of receiving a copy of a proposed condition or restriction in respect of a proposed special permit, set out, by notice to the Panel –
 - (a) any objections the person may have to the proposed condition or restriction; and
 - (b) any other conditions or restrictions that the person thinks ought to be specified on the proposed special permit.
- (5) If a person, in a notice under subsection (4), objects to a proposed condition or restriction that the EPA Board requires, in a notice to the Panel under section 60L(8), to be specified in the permit –
 - (a) the Panel must forward a copy of the objection to the EPA Board; and
 - (b) the EPA Board may, if it thinks fit, within 14 days, by notice to the Panel, amend the notice under section 60L(8).
- (6) If a period referred to in this section includes any days on which the offices of the Commission are

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closed during normal business hours, that period is to be extended by the number of those days.

60W. When special permit takes effect

- (1) A special permit takes effect on the day on which it is granted or another later day specified in the permit.
- (2) If any other approvals under this Act or another Act are required for the proposed use or development to which a special permit relates, the special permit does not take effect until all those approvals have been granted.
- (3) If it is a condition of a special permit that all reasonable steps be taken to enter into an agreement, the permit does not take effect until –
 - (a) the day the agreement is executed; or
 - (b) the day the Commission notifies the proponent in writing under subsection (4) that the Commission is satisfied that the proponent has taken all reasonable steps to enter into such an agreement.
- (4) The Commission may, on the application of a proponent of a project, issue a notice in writing to the proponent stating that the Commission is satisfied that the proponent has taken all reasonable steps to enter into an agreement.
- (5) The Commission must give notice of the issue of a notice under subsection (4) in relation to a

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project to the council for the land to which the notice under subsection (4) relates.

(6) If –

- (a) after a period of 4 years from the date on which a special permit was granted; or
- (b) where the Commission has granted an extension under subsection (7), after a further period of 2 years –

the principal use or development in respect of which a special permit was granted is not substantially commenced, the permit lapses.

(7) If the principal use or development in respect of which a special permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under subsection (6)(a), the Commission may grant (once only) a 2-year extension of the period during which that use or development must be substantially commenced.

60X. Amendment, revocation and correction of special permits

- (1) The Commission may, on the application of the proponent of a project, by notice in writing to the proponent, amend a condition or restriction imposed on a special permit granted in relation to the project.
- (2) The Commission may, on the application of –
 - (a) the EPA Director; or

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- (b) the planning authority for the area of land to which the project relates –

by notice in writing to the proponent, amend a condition or restriction imposed on a special permit granted in relation to the project.

- (3) The Commission may only amend under subsection (2) a condition or restriction imposed on a permit if it has invited the proponent of the project to which the permit relates to show cause why the condition or restriction should not be amended as proposed.
- (4) The Commission may only amend under subsections (1) or (2) a condition or restriction imposed on a special permit if, at least 14 days before amending the condition or restriction –
- (a) the Commission has invited the EPA Director to advise the Commission within 14 days, or a longer period allowed by the Commission, as to whether the EPA Director objects to the condition or restriction being amended as proposed; and
- (b) the EPA Director has not, within the time required under paragraph (a), advised that the Director objects to the condition or restriction being amended as proposed.
- (5) Subsection (4) does not apply in relation to an amendment of a condition or restriction imposed on a special permit that has been requested by the EPA Director under subsection (2).

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- (6) The Commission may only amend under subsections (1) or (2) a condition or restriction imposed on a special permit in relation to an area of land if –
- (a) at least 14 days before amending the condition or restriction the Panel has provided a copy of the proposed conditions or restrictions to –
 - (i) the planning authority for the area of land; and
 - (ii) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*; and
 - (iii) if all or part of the land is in Wellington Park, the Wellington Park Management Trust; and
 - (b) the Commission has considered any objections in relation to the condition or restriction that it has received under subsection (7).
- (7) A person notified under subsection (6) may, within 14 days of receiving the notice, by notice to the Panel, set out the person's objections to the amendment of the condition or restriction.
- (8) The Commission may only amend under subsections (1) or (2) a condition or restriction imposed on a special permit if the amendment –

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- (a) will not cause an increase in detriment to any person other than the proponent; and
 - (b) does not change the use or development for which the permit was issued, other than by changing in a minor way the description of the use or development.
- (9) The Commission may only amend a condition or restriction imposed on a special permit in relation to an area of land if it is satisfied that the condition or restriction of the permit, as so amended, would not be inconsistent with –
 - (a) the objectives set out in Schedule 1; and
 - (b) any interim planning scheme, or planning scheme made under section 30N, that applies to the land; and
 - (c) a planning directive or State policy.
- (10) If the Commission amends a condition or restriction imposed on a special permit in relation to a project, the Commission is to give notice in writing to –
 - (a) each person notified under subsection (4) or (6) of the proposal to amend the condition or restriction; and
 - (b) each person who has made a representation under section 60Q(6) in relation to the conditions or restrictions to be imposed on the special permit.

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- (11) The Commission may, on the application of a proponent of a project or the owner of the land to which a special permit relates, by notice in writing to the proponent or owner, as the case may be, revoke a special permit granted in relation to a project.
- (12) The Commission may, by notice in writing to the proponent, correct a special permit if the permit contains –
- (a) a clerical mistake or an error arising from any accidental slip or omission; or
 - (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.
- (13) If the Commission revokes or corrects a special permit in relation to a project carried out or to be carried out on an area of land, the Commission must give notice in writing of the revocation or correction to –
- (a) the proponent; and
 - (b) the owner of the land; and
 - (c) the planning authority for the land.
- (14) In this section –
- amend*, in relation to a condition of a special permit, means to amend, vary or revoke a condition of the permit or to add a condition to the permit.

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60Y. Amendment of planning schemes, &c.

(1) As soon as practicable after a special permit is granted in relation to a project, the Commission must, in consultation with the relevant planning authority, by notice in the *Gazette*, amend –

(a) any planning scheme; or

(b) any special planning order –

that applies to the land on which the project is to be situated, so as to remove any inconsistency between the permit and the planning scheme or special planning order.

(2) Division 2 of Part 3 does not apply to an amendment made under subsection (1).

(3) If the Commission amends under subsection (1) a planning scheme that applies to land on which a project of regional significance is to be situated –

(a) the amendment is to be taken to have come into operation on the date on which the project was declared to be a project of regional significance; and

(b) the Commission must give notice, as prescribed in the regulations, of the amendment.

60Z. Review of Division

(1) An independent review of this Division must be commissioned by the Minister as soon as

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possible after 1 January 2013 to enable consideration of –

- (a) the effectiveness of this Division in approving special permits for projects of regional significance; and
 - (b) the operation of the powers under this Division permitting the Minister to declare a project to be a project of regional significance; and
 - (c) the effectiveness of guidelines issued by the Commission under this Division as to the matters to which the Minister is to have regard as to determining whether a project is to be declared a project of regional significance; and
 - (d) any other matters relevant to the effect of this Division on providing an efficient and effective planning approval process in Tasmania.
- (2) A person or group who undertakes such a review must invite submissions relevant to the review from the public and give due consideration to the content of any such submissions.
 - (3) A person or group who undertakes such a review must give the Minister a written report of the review.
 - (4) The Minister must cause a copy of the report of the review to be laid before each House of Parliament within 14 days of the Minister receiving the report.

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(5) In this section –

independent review means a review undertaken by persons who –

- (a) in the opinion of the Minister possess appropriate qualifications to undertake the review; and
- (b) includes one or more persons that are not employed by the State of Tasmania, a State Service Agency, the Commonwealth, a Commonwealth authority or any entity created under this Act.

Division 3 – Planning appeals

61. Appeals against planning decisions

(1 - 2)

(3) An applicant for a permit may appeal to the Appeal Tribunal against a requirement by a planning authority for additional information under section 54 within 14 days after the day on which notice was served under section 54(1) or (3).

(3A) If a planning authority has amended a permit under section 43K or 56, any person referred to in section 43K(3), (4) or (5) or 56(3) or (4) may appeal to the Appeal Tribunal against the decision of the planning authority within 14 days after the day on which the notice was served under section 43K(3), (4) or (5) or 56(3) or (4).

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- (3B)
- (4) If a planning authority refuses to grant a permit or grants a permit subject to conditions or restrictions, the applicant for the permit may appeal to the Appeal Tribunal against the decision of the planning authority within 14 days after, as the case may be—
- (a) the day on which notice was served under section 57(2); or
 - (b) the day on which notice was served on the applicant under section 57(7); or
 - (c) the day on which notice was served under section 58(3); or
 - (d) the day on which notice was served on the applicant under section 59(8).
- (5) If a planning authority grants a permit, any person who or relevant agency which, in respect of the application for that permit, has made a representation under section 57(5) may appeal to the Appeal Tribunal against the grant of the permit within 14 days after, as the case may be —
- (a) the day on which notice was served on that person under section 57(7); or
 - (b) the day on which notice was served on that person under section 59(8).
- (6) An owner notified of the decision of a planning authority under subsection (3) of section 58A may appeal to the Appeal Tribunal against that

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decision within 14 days after the day on which notice was served under that subsection.

- (7) If an authorised officer issues and serves on a person an enforcement notice under section 65C, the person may, within 14 days after the day on which the notice is served, appeal to the Appeal Tribunal against the decision of the authorised officer to issue and serve the notice.
- (8) If a planning authority cancels under section 65G a permit in relation to land –
 - (a) an owner or occupier of the land may, within 14 days after the day on which the notice cancelling the permit is served under section 65G(1) on the owner or occupier, respectively; and
 - (b) an owner of land may, within 14 days after the day on which the owner is notified under section 65G(7) of the cancellation of the permit –

appeal to the Appeal Tribunal against the decision of the planning authority to cancel the permit.

62. Determination of appeals

- (1) After hearing an appeal, the Appeal Tribunal may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* –
 - (a)

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- (b) direct that additional information be supplied or that the authority proceed on the basis that the information was supplied; or
- (c) in the case of an appeal against a grant of a permit, a refusal to grant a permit or a grant of a permit subject to conditions or restrictions –
 - (i) direct the planning authority to grant the permit; or
 - (ii) direct the planning authority to grant the permit and direct the planning authority that the permit must or must not contain any specified conditions; or
 - (iii) direct the planning authority not to grant a permit; or
- (d) in the case of an appeal against the amendment of a permit –
 - (i) direct the planning authority not to amend the permit; or
 - (ii) having regard to the matters specified in section 43K(2) or section 56(2), as the case may be, direct the planning authority to amend the permit in the manner specified by the Appeal Tribunal; or

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-
- (e) in the case of an appeal against the cancellation of a permit –
 - (i) direct the planning authority not to cancel the permit; or
 - (ii) direct the planning authority not to cancel the permit and to impose or vary specified conditions on the permit.
 - (2) Where the Appeal Tribunal has determined an appeal, an application for a permit in respect of a use or development which is substantially the same as the use or development to which the appeal related may not, without the leave of the Appeal Tribunal, be made within a period of 2 years from the date on which the Appeal Tribunal made its decision.
 - (3) The Appeal Tribunal must determine an appeal in accordance with the planning scheme that was in place at the time the planning authority determined the application for a permit.
 - (4) In determining an appeal in accordance with subsection (3), the Appeal Tribunal has the same obligations as a planning authority at the time the planning authority determined the application for the permit.

Division 4 – Offences, remedies, &c.

63. Obstruction of sealed schemes

- (1)

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- (2) A person must not use land in a way, or undertake development or do any other act, that –
- (a) is contrary to a State Policy, a planning scheme or special planning order; or
 - (b) impedes or obstructs the execution of any such scheme or order; or
 - (c) constitutes a breach of a condition or restriction of a permit imposed by a planning authority pursuant to any such scheme or order or a determination of the Appeal Tribunal; or
 - (d) constitutes a breach of section 60H(2) or of a condition or restriction imposed under section 60U, as amended, if at all, under section 60X, on a special permit granted in relation to the land.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable, on summary conviction, in accordance with subsection (4).
- (4) A person convicted of an offence against subsection (3) is liable to a fine not exceeding 500 penalty units, and a person who is so convicted in respect of a continuing contravention of subsection (2) –
- (a) is liable, in addition to the penalty otherwise applicable to that offence, to a fine for each day during which the contravention continued of not more than 50 penalty units; and

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- (b) if the contravention continues after the person is convicted, is guilty of a further offence against subsection (3) and is liable, in addition to the penalty otherwise applicable to that further offence, to a fine for each day during which the contravention continued after that conviction of not more than 50 penalty units.
- (5) If a person is convicted of an offence against subsection (3), the court may order the person to pay to the planning authority the reasonable costs incurred by the authority in investigating the offence or prosecuting the offence, or both.
- (5A) If a person is convicted of an offence against subsection (3), the court may order that –
 - (a) the person is required to carry out, within the period specified in the order, work specified in the order; and
 - (b) if the person does not carry out the work within that period and the relevant planning authority carries out the work under subsection (5C), the person is liable to the planning authority for the reasonable costs incurred by the authority in carrying out the work.
- (5B) The work that may be specified in an order under subsection (5A) in relation to a person is work that will ensure that a use or development carried out by the person is in accordance with

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the relevant planning scheme, special planning order, permit, special permit or determination.

- (5C) If a court makes an order of a kind referred to in subsection (5A) in relation to a person and the person does not, within the period specified in the order, carry out the work specified in the order, the relevant planning authority may carry out the work.
- (6) The application of subsection (2) extends in relation to a permit or a condition or restriction attaching to a permit under a planning scheme or special planning order where the scheme or order was in force immediately before the commencement of this Act and notwithstanding that the permit or the condition or restriction, if any, was imposed before that commencement.
- (7) Nothing in subsection (6) is to be construed as rendering unlawful any use or development that was completed pursuant to a permit in force before the commencement of this Act.

63A. Enforcing compliance with planning schemes and special planning orders

- (1) A planning authority that does not take all reasonable steps to ensure that a planning scheme or special planning order that has effect in respect of an area within its municipal district is complied with is guilty of an offence punishable on summary conviction.
- (2) A planning authority convicted of an offence against subsection (1) is liable to a fine not

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exceeding 500 penalty units, and a planning authority who is so convicted in respect of a continuing contravention of this section –

- (a) is liable, in addition to the penalty otherwise applicable to that offence, to a fine for each day during which the contravention continued of not more than 500 penalty units; and
- (b) if the contravention continues after the planning authority is convicted, is guilty of a further offence and is liable, in addition to the penalty otherwise applicable to that further offence, to a fine for each day during which the contravention continued after that conviction of not more than 50 penalty units.

63B. Notice of suspected contravention, &c., may be given

- (1) A person who suspects that another person (other than a planning authority) has contravened or failed, or is likely to contravene or fail, to comply with section 60ZB(1) or section 63(2) may give notice in writing of the contravention or failure, or likely contravention or failure, to the planning authority in whose municipal area the land to which the contravention or failure relates is situated.
- (2) A notice under subsection (1) given by a person in relation to a contravention or failure, or likely contravention or failure, is to –

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- (a) specify the contravention or failure and the land to which the contravention or failure relates; and
 - (b) request the planning authority to advise the person whether it is intended that –
 - (i) charges are to be laid in relation to the contravention or failure; or
 - (ii) an infringement notice under section 65A, or an enforcement notice under section 65C, is to be issued and served on a person in relation to the contravention or failure; and
 - (c) request the planning authority to advise the person if, within 120 days after the notice is given to the planning authority –
 - (i) charges are laid against a person in relation to the contravention or failure; or
 - (ii) an infringement notice under section 65A, or an enforcement notice under section 65C, is issued and served on a person in relation to the contravention or failure.
- (3) If a notice in relation to a contravention or failure, or likely contravention or failure, is given by a person to a planning authority under subsection (1), the planning authority must issue

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a notice in writing to the person as soon as practicable after –

- (a) it is, within 120 days after the notice is received, determined that –
 - (i) charges are, or are not, to be laid in relation to the contravention or failure; or
 - (ii) an infringement notice under section 65A, or an enforcement notice under section 65C, is, or is not, to be issued and served on a person in relation to the contravention or failure; or
 - (b) the planning authority, within 120 days after the notice is received, lays charges against a person in relation to the contravention or failure; or
 - (c) an infringement notice under section 65A, or an enforcement notice under section 65C, is issued and served on a person, within 120 days after the notice is received, in relation to the contravention or failure.
- (4) A notice under subsection (3) in relation to a contravention or failure, or likely contravention or failure, is to advise the person to whom it is issued of the determination, the laying of charges or the issue and service of an infringement notice under section 65A or an enforcement notice under section 65C, as the case may be.

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64. Civil enforcement proceedings

- (1) Where a person contravenes or fails or is likely to contravene or fail to comply with a provision of this Part, other than section 48AA or 48A or section 63A, a person, other than the Commission or a planning authority, who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter may apply to the Appeal Tribunal for an order under this section.
- (1A) An applicant may only make an application under subsection (1) in relation to a contravention of or failure to comply with section 60ZB(1) or section 63(2), or a likely contravention of or likely failure to comply with section 60ZB(1) or section 63(2), by a person other than a planning authority if –
 - (a) the applicant has given, to the planning authority in whose municipal area is situated the land to which the contravention or failure relates, a notice in writing under section 63B(1) in relation to the contravention or failure; and
 - (b) subsection (1B) applies in relation to the contravention or failure.
- (1B) This subsection applies in relation to a contravention or failure –
 - (a) if –
 - (i) the planning authority has notified the applicant under

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section 63B(3) of a determination that charges are not to be laid, or an infringement notice under section 65A, or an enforcement notice under section 65C, is not to be issued and served on a person, in relation to the contravention or failure; and

- (ii) before the application is made, charges are not laid, and an infringement notice under section 65A, or an enforcement notice under section 65C, is not issued and served on a person, in relation to the contravention or failure; or
- (b) where paragraph (a) does not apply, if within 120 days of the planning authority being given the notice under section 63B(1) in relation to the contravention or failure –
- (i) charges in relation to the contravention or failure have not been laid; and
 - (ii) an infringement notice under section 65A, or an enforcement notice under section 65C, has not been issued and served on a person, in relation to the contravention or failure.

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- (2) The application may be made *ex parte* and, if the Appeal Tribunal is satisfied that there are sufficient grounds, it must issue a summons requiring the respondent to appear before the Appeal Tribunal to show cause why an order should not be made under this section.
- (2A) If an application under this section is made by a person in relation to land –
- (a) the owner and the occupier of the land are taken to be parties to the application, if –
 - (i) the respondent to the application is the planning authority, other than by virtue of a contravention, or likely contravention, of section 63(2) by the planning authority or a failure, or likely failure, by the planning authority to comply with section 63(2); and
 - (ii) the owner or occupier is not the planning authority; and
 - (b) the planning authority in whose municipal area the land is situated is taken to be a party to the application, if –
 - (i) the planning authority is not the respondent to the application; or
 - (ii) a direction is made under subsection (2B) in relation to the planning authority.

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(2B) Despite subsection (1), at any time after receiving an application made under this section, the Appeal Tribunal may direct that the planning authority, in whose municipal area the land to which the application relates is situated, be made an applicant in the application.

(2C)

(3) If –

(a) after hearing–

(i) the applicant and the respondent;
and

(ii) any other person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings–

the Appeal Tribunal is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed or is likely to contravene or fail to comply with a provision of this Part; or

(b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard –

the Appeal Tribunal may, by order –

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- (c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Part; and
 - (d) preclude, for a period specified by the Appeal Tribunal, the respondent from carrying out any use or development in relation to the land in respect of which the failure to comply or contravention relates; and
 - (e) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Appeal Tribunal.
- (4) Any person with a legal or equitable interest in land to which an application under this section relates is entitled to appear and be heard in proceedings based on the application before a final order is made.
- (5) If, in proceedings under this section, the Appeal Tribunal is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make a temporary order under this section, the Appeal Tribunal may at any time during those proceedings make such an order.
- (6) A temporary order –
- (a) may be made on an *ex parte* application before a summons has been issued under subsection (2); and

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- (b) may be made subject to such conditions as the Appeal Tribunal thinks fit, including a condition that requires an undertaking by the applicant, not being a planning authority or the Crown, at whose instance the temporary order is granted to pay to the respondent any damages that the respondent may sustain because of the order; and
 - (c) is not to operate after the proceedings in which it is made are finally determined.
- (6A) An application for an order for payment of damages is to be made to the Appeal Tribunal.
- (6B) The Appeal Tribunal may order the applicant at whose instance the temporary order is granted to pay all or part of the damages, as determined by the Appeal Tribunal, that the respondent may sustain because of the order.
- (7) A person who contravenes, or fails to comply with, an order or a temporary order under this section is guilty of an offence.

Penalty: Fine not exceeding 500 penalty units.

- (8) Where the Appeal Tribunal makes an order under subsection (3)(e) and the respondent fails to comply with the order within the period specified by the Appeal Tribunal, the Commission or a planning authority may, by leave of the Appeal Tribunal, cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.

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- (9) The Appeal Tribunal may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a permit that should have been but was not made, or to remedy any other default.
- (10) The Appeal Tribunal may, on an application under this section, exercise the powers conferred on it by section 62(1) in relation to any use or development of land as if the application were a hearing of an appeal.
- (11) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.
- (12) The Appeal Tribunal must make such orders in relation to the costs of proceedings under this section as it thinks fit and in making such orders must take into account –
 - (a) the result of the proceedings; and
 - (b) whether a party has raised frivolous or vexatious issues at the hearing; and
 - (c) whether any party has unnecessarily or unreasonably prolonged the hearing or increased the costs of it; and
 - (d) the capacity of the parties to meet an order for costs.
- (13) If the Appeal Tribunal is of the opinion that an application under this section is frivolous or vexatious, the Appeal Tribunal must dismiss the

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application and order the applicant to pay an amount determined by the Appeal Tribunal as being the costs of the proceedings in relation to the application and the costs of any person referred to in subsection (3)(a)(ii).

- (14) An order under subsection (12) or (13) may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the order.
- (15) Proceedings for the enforcement of an order under subsection (13) may be taken as if the order were a judgment of the court in which the order is registered.
- (16) Proceedings under this section may be commenced at any time within 24 months after the date of the alleged contravention of, or failure to comply with, a provision of this Part.

65. Appeal in respect of decision of Appeal Tribunal under section 64

- (1) Subject to the Rules of the Supreme Court, an appeal lies to the Supreme Court against –
 - (a) an order of the Appeal Tribunal made in the exercise of the jurisdiction conferred by section 64; or
 - (b) a decision by the Appeal Tribunal not to make an order under that section.
- (2) An appeal under this section must be instituted within 30 days of the date of the decision or

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order subject to appeal or such longer period as may be allowed by the Supreme Court.

Division 4A – Enforcement by planning authorities

65A. Infringement notices

- (1) An authorised officer may issue an infringement notice and serve it on a person if the officer reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (3) An infringement notice –
 - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 4 offences.
- (4) The regulations –
 - (a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (5) The penalty prescribed for any infringement offence is not to exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.

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(6) In this section –

infringement offence means an offence against this Act, or the regulations, that is prescribed by the regulations to be an infringement offence.

65B. Notice of intention to issue enforcement notice

- (1) An authorised officer who reasonably believes a person has committed, is committing, or is about to commit, an offence against section 57(4A), section 60ZB(1), section 63(3) or section 64(7) may issue a notice (a *notice of intention to issue an enforcement notice*) in relation to the offence and serve it on the person.
- (2) A notice of intention to issue an enforcement notice in relation to an offence must –
 - (a) be in writing; and
 - (b) specify the provision to which the offence relates; and
 - (c) contain particulars of the offence that give adequate information as to the nature of the offence; and
 - (d) specify that it is proposed that an enforcement notice be issued in relation to the offence; and
 - (e) specify that representations may be made in relation to the offence to an authorised officer specified in the notice; and

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- (f) specify that the representations may only be made in writing, delivered to an address specified in the notice, within the period specified in the notice.
- (3) The last day of a period specified under subsection (2)(f) in a notice of intention to issue an enforcement notice must not be sooner than 14 business days after the notice is served.
- (4) A person on whom a notice of intention to issue an enforcement notice is served may, within the period specified under subsection (2)(f) in the notice, make representations in writing to an address specified in the notice.
- (5) The planning authority must notify in writing an owner of land, in relation to which a notice of intention to issue an enforcement notice is served under subsection (1), if the person on whom the notice is served is not the owner of the land.
- (6) A notice of intention to issue an enforcement notice in relation to a use or development of land may, as an alternative to being served in accordance with section 84, be served by affixing the notice to a building or structure on the land in a place where a person entering the land would be likely to see the notice.

65C. Enforcement notices

- (1) An authorised officer who reasonably believes a person has committed, is committing, or is about to commit, an offence against section 57(4A),

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section 60ZB(1), section 63(3) or section 64(7) may issue a notice (an *enforcement notice*) in relation to the offence and serve it on the person.

- (2) Subject to subsection (3), an enforcement notice in relation to an offence may only be issued and served on a person if –
- (a) a notice of intention to issue an enforcement notice in relation to the same offence has been issued and served on the person under section 65B; and
 - (b) the enforcement notice is issued and served after the end of the last day of the period specified under section 65B(2)(f) in the notice of intention to issue an enforcement notice; and
 - (c) the authorised officer has considered any representations made under section 65B(4) by the person on whom the notice of intention to issue an enforcement notice was served.
- (3) Subsection (2) does not apply in relation to an enforcement notice if the authorised officer issuing the notice reasonably believes that it is necessary that the notice be issued and served without delay –
- (a) so as to prevent the imminent commission of, or the continuation of, the offence to which the notice relates; and

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- (b) because, were the offence to be committed or to continue to be committed –
 - (i) damage might be caused to the property of another person; or
 - (ii) actions could not be taken easily or without significant expense to restore land or a building or other structure on land to the condition it was in before the offence was committed.
- (4) An enforcement notice issued and served on a person in respect of an offence must –
 - (a) be in writing; and
 - (b) specify the provision to which the offence relates; and
 - (c) contain particulars of the offence that give adequate information as to the nature of the offence; and
 - (d) inform the person of the person's rights under this Act to appeal against the notice; and
 - (e) specify the requirements, referred to in section 65D, that are imposed on the person.
- (5) The planning authority must notify in writing an owner of land, in relation to which an enforcement notice is served under

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subsection (1), if the person on whom the enforcement notice is served is not the owner of the land.

- (6) An enforcement notice that imposes on a person a requirement, referred to in section 65D, that the person stop carrying out a use or development on land may, as an alternative to being served in accordance with section 84, be served by affixing the notice to a building or structure on the land in a place where a person entering the land would be likely to see the notice.
- (7) An authorised officer may, by notice served on a person on whom an enforcement notice has been served under subsection (1), withdraw the enforcement notice.
- (8) If an authorised officer withdraws under subsection (7) an enforcement notice in relation to land –
 - (a) a person may not be prosecuted for having failed to comply with the enforcement notice; and
 - (b) the authorised officer is to give notice in writing of the withdrawal of the enforcement notice to any owner of the land who was notified under subsection (5) in relation to the enforcement notice.

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65D. Requirements of enforcement notices

- (1) An enforcement notice that is served on a person under section 65C may require the person to do any one or more of the following:
 - (a) not to commit, or to cease to commit, the offence to which the notice relates;
 - (b) to take the action, specified in the notice, to remedy the consequences of the commission of the offence;
 - (c) to take all reasonable steps to ensure that a permit, or a planning compliance certificate, in relation to the land to which the notice relates is granted under this Act.
- (2) Without limiting the generality of the requirements that, under subsection (1), may be imposed on a person by an enforcement notice, an enforcement notice may contain one or more of the following requirements:
 - (a) that the person stop carrying out development of the kind specified in the notice;
 - (b) that the person stop carrying out a use of land that is specified in the notice;
 - (c) that the person demolish or remove a building or other structure, or any works carried out, on land owned or occupied by the person;

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- (d) that the person restore, so far as reasonably practicable, land, or a building or structure on land, to the condition it was in before development was carried out by the person;
 - (e) that the person do, or not do, an act, so as to ensure that development carried out by the person on land is in accordance a State Policy, permit, special permit, planning scheme, or special planning order, that applies to the land.
- (3) If an enforcement notice served on a person under section 65C requires the person to ensure that work is carried out, the notice must specify the details of the work.
- (4) If an enforcement notice served on a person under section 65C requires the person –
 - (a) to refrain from doing an act, the notice must also specify –
 - (i) the period for which the requirement applies; or
 - (ii) that the requirement applies until the person is otherwise notified by an authorised officer; or
 - (b) to do an act, the notice must specify the period within which the act is required to be done.
- (5) An enforcement notice issued under section 65C may not contain a requirement in respect of a

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matter in relation to which, in accordance with section 44(1)(a), (b) or (e) or 44(2)(a), (b) or (e) of the *Environmental Management and Pollution Control Act 1994*, an environment protection notice may be issued.

- (6) An enforcement notice may not be issued under section 65C in relation to land if the notice contains a requirement that is inconsistent with a requirement of an environment protection notice, issued under section 44 of the *Environmental Management and Pollution Control Act 1994*, that applies in relation to the land.
- (7) An authorised officer who issues an enforcement notice under section 65C in relation to land, to which an environment protection notice issued under section 44 of the *Environmental Management and Pollution Control Act 1994* applies, must notify the Director, within the meaning of that Act, that the enforcement notice has been issued.

65E. Offences and penalties in relation to enforcement notices

- (1) A person must not, without reasonable excuse, contravene or fail to comply with a requirement imposed on the person by an enforcement notice, served on the person under section 65C, that is in force.

Penalty: Fine not exceeding 500 penalty units.

- (2) If a person is convicted of an offence against subsection (1) that relates to an enforcement

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notice, the court may order that the person pay to the planning authority the reasonable cost incurred by the authority in investigating or prosecuting (or both) either or both of the following offences:

- (a) the offence against subsection (1);
 - (b) the suspected offence in relation to which the enforcement notice was served.
- (3) If a person is convicted of an offence against subsection (1), the court may order that –
- (a) the person is required to carry out, within the period specified in the order, work specified in the order; and
 - (b) if the person does not carry out the work within that period and the relevant planning authority carries out the work under subsection (5), the person is liable to the planning authority for the reasonable costs incurred by the authority in carrying out the work.
- (4) The work that may be specified in an order under subsection (3) in relation to an offence against subsection (1), committed in respect of a requirement imposed on a person by an enforcement notice served on the person under section 65C, is –
- (a) work that the enforcement notice required to be carried out; or

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- (b) work that is required to be carried out, because a requirement specified in the enforcement notice was not complied with –

so as to ensure that a use or development is in accordance with a State Policy, the relevant planning scheme, special planning order, permit, special permit or determination.

- (5) If a court makes an order of a kind referred to in subsection (3) in relation to a person and the person does not, within the period specified in the order, carry out the work specified in the order, the relevant planning authority may carry out the work.
- (6) A person, other than –
 - (a) an authorised officer; or
 - (b) the person on whom the enforcement notice has been served by affixing the notice to land –

must not, without lawful authority, damage, deface or remove an enforcement notice that has been affixed to land.

Penalty: Fine not exceeding 500 penalty units.

65F. Notice of intention to cancel a permit to be issued before permit cancelled

- (1) If an authorised officer considers that there are grounds on which a permit in force in relation to land may be cancelled under section 65G, the

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authorised officer may issue a notice (a *notice of intention to cancel a permit*) and serve it –

- (a) on an owner of the land; or
 - (b) on an occupier of the land and the owner of the land, if the grounds relate to the use or development of the land by the occupier.
- (2) A notice of intention to cancel a permit must –
- (a) be in writing; and
 - (b) specify that the planning authority is proposing to cancel the permit to which the notice relates; and
 - (c) specify on which of the grounds, referred to in section 65G, it is proposed to cancel the permit; and
 - (d) contain particulars of the grounds on which it is proposed to cancel the permit, which particulars give adequate information as to why it is proposed to cancel the permit; and
 - (e) specify that representations may be made, to an authorised officer specified in the notice, in relation to the proposal to cancel the permit; and
 - (f) specify that the representations may only be made in writing, delivered to an address specified in the notice, within the period specified in the notice.

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- (3) The last day of a period specified under subsection (2)(f) in a notice of intention to cancel a permit must not be sooner than 14 business days after the notice is served.
- (4) A person on whom a notice of intention to cancel a permit has been served may, within the period specified under subsection (2)(f) in the notice, make representations in writing to an address specified in the notice.
- (5) A notice of intention to cancel a permit in relation to a use or development of land may, as an alternative to being served in accordance with section 84, be served by affixing the notice to a building or structure on the land in a place where a person entering the land would be likely to see the notice.

65G. Cancellation of permits

- (1) A planning authority may cancel a permit in relation to land in the municipal area of the authority by issuing and serving a notice (a *notice of cancellation of permit*) –
 - (a) on the owner of the land; or
 - (b) on the occupier of the land, if the grounds on which the permit is cancelled relate to the use or development of the land by the occupier.
- (2) A permit in relation to land may only be cancelled under subsection (1) on any one of the grounds referred to in this section.

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- (3) A planning authority has grounds for cancelling a permit in relation to land if the authority is reasonably of the opinion that the owner, or occupier, on whom an enforcement notice that is in force and relates to the land has been served under section 65C, has failed to comply with, or has contravened, a requirement specified in the enforcement notice.
- (4) A planning authority has grounds for cancelling a permit if the authority is reasonably of the opinion that –
- (a) the permit would not have been granted; or
 - (b) different conditions to the conditions, if any, it imposed on the permit would have been imposed –
- if the applicant had not made a material misstatement of fact, or concealed material facts, in relation to the application for the permit.
- (5) A planning authority may only cancel a permit in relation to land if –
- (a) a notice of intention to cancel a permit has, under section 65F, been served on –
 - (i) the owner of the land; or
 - (ii) both the occupier and the owner of the land, if the occupier using or developing the land is not the owner of the land; and

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- (b) the permit is cancelled after the end of the last day of the period specified under section 65F(2)(f) in the notice of intention to cancel a permit; and
 - (c) the authorised officer has considered any representations made under section 65F(4) by the person or persons on whom the notice of intention to cancel a permit was served; and
 - (d) the permit is to be cancelled on the same grounds as the grounds specified under section 65F(2)(c) in the notice of intention to cancel a permit.
- (6) A notice of cancellation of permit issued and served on a person must –
- (a) be in writing; and
 - (b) specify the permit to which the notice relates; and
 - (c) specify that the permit is cancelled by virtue of the service of the notice; and
 - (d) specify the grounds, referred to in this section, on which the permit is cancelled; and
 - (e) contain particulars of the grounds on which the permit is cancelled, which particulars give adequate information as to why the permit is cancelled; and

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- (f) inform the person of the person's rights under this Act to appeal against the decision to cancel the permit.
- (7) If a notice is served under subsection (1) on a person other than an owner of the land to which the notice relates, the planning authority must notify the owner in writing of the cancellation of the permit to which the notice relates.

65H. Issue of notices where applications made to Tribunal

- (1) If an application is made under section 64 in relation to a contravention of, or failure to comply with, a provision of this Part, or a likely contravention of, or likely failure to comply with, a provision of this Part, a notice under this Division may not be issued and served on a person in relation to the contravention or failure until the application is determined by the Appeal Tribunal.
- (2) If –
 - (a) an application is made under section 64 in relation to a contravention of, or failure to comply with, a provision of this Part, or a likely contravention of, or likely failure to comply with, a provision of this Part; and
 - (b) the Appeal Tribunal makes an order in relation to the contravention or failure –

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a notice under this Division may not be issued and served on a person in relation to the contravention or failure unless a person contravenes, or fails to comply with, the order.

- (3) If the Appeal Tribunal has determined, on an application under section 64, that a contravention of, or failure to comply with, a provision of this Part, or a likely contravention of, or likely failure to comply with, a provision of this Part, has not occurred, a notice under this Division may not be issued and served on a person in relation to the contravention or failure.
- (4) If an appeal is made to the Appeal Tribunal under section 61 in relation to a decision to issue to a person an enforcement notice under section 65C in relation to a contravention of, or failure to comply with, a provision of this Part, a notice under this Division may not be issued and served on the person in relation to the contravention or failure until the appeal is determined.

Division 4B – Authorised officers

65I. Authorised officers

- (1) In this section –

general manager of a council means a person who is appointed under section 61 of the *Local Government Act 1993* to be the general manager of a council.

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- (2) A general manager of a council may authorise a person to be, for the purposes of this Act, an authorised officer in respect of the municipal area of the council.
- (3) A general manager of a council is, for the purposes of this Act, an authorised officer in respect of the municipal area of the council.
- (4) An authorised officer in respect of the municipal area of a council may only exercise a power of an authorised officer under this Act for the purposes of the administration or enforcement of this Act in relation to land within the municipal area.
- (5) A police officer is an authorised officer for the purposes of this Act.

65J. Powers of authorised officers

- (1) An authorised officer may, if reasonably required for a purpose connected with the administration or enforcement of this Act, enter and inspect any place if –
 - (a) the occupier of the place consents to the officer's entry; or
 - (b) the entry is made under a warrant issued under section 65K; or
 - (c) the place is a public place and the entry occurs when the place is open to the public.

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- (2) An authorised officer may, if reasonably required for a purpose connected with the administration or enforcement of this Act –
 - (a) take photographs, films or audio, video or other recordings; or
 - (b) examine or test any air or thing from a place or require the thing to be examined or tested or provided to the officer for examination or testing.
- (3) An authorised officer may require a person to provide to the officer a document, or a copy of a document, in the possession of the person, if the document is reasonably required for a purpose connected with the administration or enforcement of this Act.
- (4) The documents that a person may be required under subsection (3) to provide include, but are not limited to including, a document in writing that reproduces in a comprehensible form information in the possession of the person that is stored by an electronic device, object or process.
- (5) An authorised officer may examine, copy or take extracts from a document provided in accordance with a requirement imposed under subsection (3) or found in the conduct of a search under this Act.
- (6) An authorised officer may require a person to provide information to the officer that is reasonably required for a purpose connected

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with the administration or enforcement of this Act.

- (7) An authorised officer may require a person to answer questions in relation to a matter.
- (8) An authorised officer may only require a person to answer questions in relation to a matter if –
 - (a) the questions relate to a matter in respect of which information is reasonably required for a purpose connected with the administration or enforcement of this Act; and
 - (b) the officer reasonably suspects the person may have the information.
- (9) An authorised officer may require a person who the officer reasonably suspects has committed, is committing, or is about to commit, an offence against this Act, to –
 - (a) state the person's full name, date of birth and usual place of residence; and
 - (b) produce evidence of the person's identity.

65K. Entry and search warrants

- (1) A magistrate may issue a warrant authorising an authorised officer to enter land, and any premises on land, that is land specified in the warrant.

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- (2) A magistrate may issue a warrant under subsection (1) in relation to land, and any premises on land, if the magistrate is satisfied, on the application of an authorised officer, that there are reasonable grounds to believe –
- (a) that a contravention of, or failure to comply with, this Act has been, is being, or is about to be, committed on the land or the premises; or
 - (b) that an object may be found, in or on the land or the premises, that constitutes evidence of a contravention of, or failure to comply with, this Act.
- (3) The grounds for an application for a warrant must be verified by affidavit.
- (4) A warrant issued under subsection (1) must specify –
- (a) the offence to which the warrant relates; and
 - (b) a description of the land to which the warrant relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer or officers who is or are to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which is not to be more than 28

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days from the date on which the warrant is issued; and

- (f) whether the warrant may be executed at any time or during particular hours; and
- (g) that the warrant authorises the seizure of a thing that is referred to in paragraph (c) or any other thing, that is found on the land, or premises on the land, in the course of the search and that the person executing the warrant believes on reasonable grounds to be –
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to another offence –

if the officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

- (5) An application for the issue of a warrant may be made either personally or by telephone.
- (6) If an application for a warrant is made by telephone –
 - (a) the applicant must inform the magistrate of the applicant's name and that the applicant is an authorised officer; and

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- (b) the applicant must inform the magistrate of the grounds on which the applicant seeks the warrant; and
- (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds for the issue of a warrant, the magistrate –
 - (i) must inform the applicant of the facts on which the magistrate relies for the issue of a warrant; and
 - (ii) must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
- (d) if the applicant gives the undertaking referred to in paragraph (c), the magistrate may then make out and sign a warrant, noting on the warrant the facts on which the magistrate relies as grounds for issue of the warrant; and
- (e) the warrant will be taken to have been issued, and will come into force, when signed by the magistrate; and
- (f) the magistrate must inform the applicant of the terms of the warrant; and
- (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

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- (7) In executing a warrant –
- (a) an authorised officer specified in the warrant may obtain the assistance that is necessary and reasonable in the circumstances; and
 - (b) an authorised officer specified in the warrant may, if the officer is a police officer, use the force against persons and things that is necessary and reasonable in the circumstances.
- (8) An authorised officer must, as soon as practicable after executing a warrant –
- (a) prepare a notice in the prescribed form containing –
 - (i) the officer's name and a statement that he or she is an authorised officer; and
 - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
 - (iii) a description of the place to which the warrant relates and of the authority conferred by the warrant; and
 - (b) give the notice to the occupier or person apparently in charge of the land to which the warrant relates or leave it, on a prominent place on the land, for the occupier or person.

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- (9) A warrant expires if it has not been executed by the end of 28 days after the day on which it was issued.

65L. Additional requirements where persons not fluent, &c., in English

- (1) A person is entitled to be assisted by an interpreter or other representative during any questioning conducted by an authorised officer in the course of investigating an offence against this Act, if the person is not reasonably fluent in English or able to comprehend spoken English.
- (2) As soon as the authorised officer becomes aware, or ought to have become aware, that subsection (1) applies in relation to a person, the officer may not question or further question the person until the person has been informed, in a manner that the person is likely to comprehend, that the person has the right to an interpreter, or another representative, chosen by the person, who is willing and able to assist the person.
- (3) If the person requests the assistance of an interpreter or other representative, the officer must not continue with the questioning, or further questioning, until an interpreter or other representative, chosen by the person and willing and able to assist the person, is present.

65M. Obstruction, &c., of authorised officers and others

- (1) A person must not –

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- (a) assault, resist, impede or obstruct an authorised officer, or a person assisting an authorised officer under section 65K, in the exercise of the officer's powers, or in the performance of the officer's functions, under this Act; or
- (b) use threatening, abusive or insulting language to an authorised officer, or a person assisting an authorised officer under section 65K, in the exercise of the officer's powers, or in the performance of the officer's functions, under this Act; or
- (c) fail to comply with a requirement imposed on the person under section 65J; or
- (d) provide false or misleading information when required to provide information under section 65J; or
- (e) impersonate an authorised officer.

Penalty: Fine not exceeding 40 penalty units.

- (2) If a person is convicted by a court of an offence against subsection (1)(c) of failing to comply with a requirement, the court may order the person to comply with the requirement.

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Division 5 – Compensation and protection from liability

66. Right to compensation

- (1) The owner or occupier of any land may claim compensation in accordance with Part 5 of the *Land Acquisition Act 1993* from a planning authority for financial loss suffered as the natural, direct and reasonable consequence of –
 - (a) the land being set aside for a public purpose under a planning scheme or special planning order; or
 - (b) the land being shown as set aside for a public purpose in a proposed amendment to a planning scheme which has been publicly exhibited under section 38; or
 - (c) access to land being restricted by the closure of a road by a planning scheme or special planning order.
- (2) The owner or occupier of any land may claim compensation from a planning authority for financial loss suffered as the natural, direct and reasonable consequence of a failure by the authority to grant a permit for the land on the ground that the land is or will be needed for a public purpose.
- (3) A person cannot claim compensation under subsection (1) if the planning authority has purchased or compulsorily acquired the land or part of the land.

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- (4) Where a person would be entitled to claim compensation in respect of any matter or thing under this Division and also under any other enactment, the person is not entitled to receive compensation both under this Division and under the other enactment, nor to receive any greater compensation under this Division than the person would be entitled to receive under the other enactment.

67. Power to withdraw or modify planning scheme or interim order after compensation determined

- (1) At any time within one month after the determination of the compensation payable under section 66, the planning authority may give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the planning scheme or special planning order which gave rise to the claim for compensation.
- (2) Not later than 3 months after giving notice, the planning authority must –
- (a) where the notice relates to a planning scheme, submit for the approval of the Commission an amendment of the planning scheme, prepared in accordance with Division 2 of Part 3, carrying into effect the withdrawal or modification; and
 - (b) where the notice relates to a special planning order, make another special planning order in accordance with the

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notice and in substitution for the first-mentioned special planning order.

- (3) On the coming into operation of the amendment of the planning scheme or the substitute special planning order, as the case requires, and on payment by the planning authority of the claimant's costs of and in connection with the making of the claim or the award of compensation, as the case may be, the judgment, order or award for payment of compensation is to be discharged, as prescribed, without prejudice to the right of the claimant to make a further claim for compensation under this Division in respect of the planning scheme as amended or the substitute special planning order, as the case may be.

68. Enforcement of judgments, &c., for compensation

Compensation under this Division is not to be enforced before the expiration of one month from the date of the determination under section 66 or, if a notice has been given by the planning authority under section 67(1), until after the expiration of 3 months from the date of the notice or, if within that period a variation of the scheme is submitted to the Commission, until that variation has either come into operation or been disapproved by the Commission.

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69. Indemnification of planning authorities for liability to pay compensation

- (1) Where an entitlement to compensation under this Division arises out of the inclusion in a planning scheme or special planning order, at the written request, or with the written consent, of a relevant agency, of a provision reserving land for a public purpose, the planning authority is entitled to be indemnified by the State or the relevant agency, as the case requires, for the payment of that compensation.
- (2) Any sum to which an authority is entitled under subsection (1) may be recovered as a debt due to the planning authority in any court of competent jurisdiction.

69A. Protection from liability in respect of bushfire hazard management plans, &c.

A planning authority does not incur any liability for, or in respect of, anything done, or omitted to be done, in accordance with –

- (a) a bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been approved by an accredited person; or
- (b) a certificate issued by an accredited person or a State Service Agency stating that there is insufficient increase in risk from the environmental hazard or natural

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hazard to warrant any specific protection
measures.

PART 5 – AGREEMENTS

70. Interpretation: Part 5

In this Part –

infrastructure includes services, facilities, works and other uses and developments which provide the basis for meeting economic, social and environmental needs;

Recorder means the Recorder of Titles.

71. Planning authority may enter into agreements

- (1) A planning authority may enter into an agreement with an owner of land in the area covered by a planning scheme or a special planning order.
- (2) A planning authority may enter into the agreement on its own behalf or jointly with any other person.
- (3) A planning authority may enter into an agreement under subsection (1) with a person in anticipation of that person becoming the owner of the land.
- (4) The planning authority is not entitled to apply to have the agreement referred to in subsection (3) registered under section 78 until the person becomes the owner of the land but the agreement is binding on the parties.

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- (5) An agreement is binding on the parties to the agreement on the day on which it is executed.

72. Form and contents of agreement

- (1) An agreement must be under seal and binds the owner to the covenants specified in the agreement.
- (2) An agreement may provide for any one or more of the following matters:
- (a) the prohibition, restriction or regulation of use or development;
 - (b) the conditions subject to which a use or development may be undertaken;
 - (c) any matter intended to achieve or advance –
 - (i) the objectives listed in Schedule 1; or
 - (ii) any State Policy or draft State Policy upon which a report has been submitted to the Minister in accordance with section 11 (1) of the *State Policies and Projects Act 1993*; or
 - (iii) the objectives of the planning scheme or special planning order, a draft planning scheme which has been publicly exhibited under section 25 or any amendment to the planning scheme which has

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been publicly exhibited under section 38;

- (d) any matter incidental to any one or more of the matters referred to in paragraphs (a) to (c).

73. Bonds and guarantees

- (1) An agreement may include a condition that the owner is to deposit with the planning authority –
- (a) a sum of money fixed by or determined in accordance with the agreement; or
 - (b) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement.
- (2) The agreement may provide that the sum or part of the sum is forfeited if there is any failure by the owner to carry out the agreement to the satisfaction of the planning authority.
- (3) Any money paid must be returned to the owner on a date or dates specified in the agreement to the extent that it has not been forfeited.
- (4) Any money payable under this section is a charge on any land which is the subject of the agreement.

73A. Payments and contributions for infrastructure

- (1) An agreement may include a provision for a payment or other contribution for infrastructure to be made by any party to the agreement.
- (2) Without limiting subsection (1), an agreement may make provision –
 - (a) for a payment or other contribution for infrastructure to be made in stages; or
 - (b) for works or other development to be undertaken by the owner on behalf of the planning authority or any other party to the agreement.
- (3) The matters provided for under section 86 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* may be dealt with in whole or in part under an agreement required –
 - (a) as a condition of a permit; or
 - (b) under the provisions of a planning scheme or special planning order.

74. Duration of agreement

- (1) An agreement may provide that the agreement or any specified provision of the agreement comes into operation on or after –
 - (a) the coming into operation of a specified amendment to a planning scheme; or

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- (b) the granting of a permit permitting use or development for a specified purpose; or
 - (c) the happening of a specified event; or
 - (d) a specified time; or
 - (e) the start or completion of a use or development or a specified part of a use or development.
- (2) An agreement may provide that the agreement ends on or after –
- (a) the happening of any specified event; or
 - (b) a specified time; or
 - (c) the cessation of a use or development for a specified purpose.
- (3) An agreement may be ended by the planning authority with the approval of the Commission or by agreement between the authority and all persons who are bound by any covenant in the agreement.

75. Amendment of agreements

An agreement may be amended by agreement between the planning authority and all persons who are bound by any covenant in the agreement.

76. Agreement to be lodged with Commission

- (1) The planning authority must lodge a copy of an agreement at the office of the Commission without delay after the agreement is made.
- (2) The planning authority must keep a copy of each agreement, indicating any amendment made to it, available at its office for any person to inspect during office hours free of charge.

77. Agreement may not breach planning scheme

An agreement must not require or allow anything to be done which would contravene or not comply with a planning scheme, a special planning order, a permit or a special permit.

78. Registration of agreements, &c.

- (1) A planning authority may lodge with the Recorder an executed copy of an agreement, together with particulars of title to the land to which the agreement relates and must do so if it has made the agreement with an owner of land in respect of which a determination under section 4(1)(c) of the *Crown Lands (Shack Sites) Act 1997* has been made.
- (2) Where an agreement is registered, the planning authority must, as soon as practicable, lodge with the Recorder notification, in a form approved by the Recorder, of the amendment or ending of the agreement, together with

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particulars of title to any land to which the agreement relates.

- (3) Subject to the provisions of the *Land Titles Act 1980*, the Recorder must register –
- (a) each agreement; and
 - (b) each notification of the amendment or ending of the agreement –

lodged pursuant to subsection (1) or (2) on the folio of the Register, within the meaning of that Act, constituting the title to any land to which the agreement relates.

- (4) If the whole or any part of the land referred to in subsection (3) is not under the *Land Titles Act 1980*, the relevant agreement may be dealt with by the Recorder in the same manner as if it were a conveyance on sale within the meaning of section 28 (1) (a) of that Act.
- (5) The Recorder may require the planning authority to deposit with the Recorder –
- (a) a plan of any land; or
 - (b) a plan of a part of any land –

to which an agreement relates.

- (6) For the purpose of subsection (5), the Recorder may require a plan to be made from actual survey and certified correct by a surveyor who is registered under the *Land Surveyors Act 1909*.

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79. Effect of registration of agreements, &c.

After the registration of an agreement under section 78 –

- (a) the burden of any covenant in the agreement runs with the land to which the agreement relates as if it were a covenant to which section 102 (2) of the *Land Titles Act 1980* applies; and
- (b) the agreement is enforceable between the parties to it, and any person deriving title under any such party, as if the agreement were entered into by a fee simple owner of land for the benefit of adjacent land held by the Crown in fee simple that was capable of being benefited by the agreement and as if that adjacent land continued to be so held by the Crown.

80. Application to Appeal Tribunal

- (1) An owner of land may apply to the Appeal Tribunal for an amendment to a proposed agreement if –
 - (a) under a planning scheme or special planning order, use or development for specified purposes is conditional upon an agreement being entered into under this Part; and
 - (b) the owner objects to any provision of the agreement.

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- (2) The Appeal Tribunal may approve the proposed agreement with or without amendments.
- (3) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.

80A. Validation of agreements

An agreement in existence immediately before the commencement of the *Land Use Planning and Approvals Amendment Act (No. 2) 1995* is valid and effectual and is always taken to be valid and effectual.

PART 6 – MISCELLANEOUS

Division 1 – Electronic database and documents

80J. Interpretation of Division 1

In this Division –

authorised version, in relation to –

- (a) an electronic planning instrument, means a version of the instrument that is an authorised version under section 80M(1); and
- (b) an electronic policy instrument, means a version of the instrument that is an authorised version under section 80M(3);

database means the database established under section 80K;

electronic planning instrument has the meaning it has in section 80K(2);

electronic planning map, in relation to an authorised version of an electronic planning instrument, or electronic policy instrument, at a particular date, means an electronic map in relation to the version, consisting of the following electronic layers as at the particular date:

- (a) the electronic zoning map;

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- (b) a layer of cadastral data, on the LIST database, that relates to the area to which the electronic zoning map relates;
- (c) a layer of topographic data, on the LIST database, that relates to the area to which the electronic zoning map relates;

electronic policy instrument means any of the following documents that are included on the database under section 80K(4):

- (a) a State Policy;
- (b) a planning directive;
- (c) a regional land use strategy;
- (d) any prescribed planning policy document;

electronic zoning map means an electronic version, of a zoning map, that is kept on the database;

LIST database means a database maintained by the Land Information System Tasmania;

planning markings, in relation to a map, means the markings on the map that indicate different zones or other planning requirements and includes any key, attribute table, or metadata, that is

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associated with the map and is necessary to interpret the map;

prescribed planning policy document means a document of a class of documents that is prescribed for the purposes of section 80K(4)(d);

zoning map means the planning markings contained on a map.

80K. Database

- (1) The Commission must establish and maintain a database containing the legislative history of the electronic planning instruments.
- (2) For the purposes of this Division, the electronic planning instruments are –
 - (a) each interim planning scheme, declared under section 30F and prescribed for the purposes of this section, as in force from time to time; and
 - (b) each planning scheme, made under section 30N and prescribed for the purposes of this section, as in force from time to time; and
 - (c) each planning scheme, approved under section 29 after the day on which this section commences and prescribed for the purposes of this section, as in force from time to time; and

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- (d) each special planning order, made under section 47 after the day on which this section commences and prescribed for the purposes of this section, as in force from time to time; and
 - (e) each dispensation, as in force from time to time, from a provision of an interim planning scheme, declared under section 30F, that is a scheme prescribed for the purposes of this section.
- (3) For the purposes of subsection (1), the legislative history of an electronic planning instrument is –
- (a) a version of the instrument showing the instrument as it was at the date when it came into force; and
 - (b) a subsequent version of the electronic planning instrument, for each period when the electronic planning instrument differs from a previous version of the instrument because the subsequent version incorporates –
 - (i) an amendment, if any, as in force during the period, made under Part 3 to the instrument; or
 - (ii) an alteration, if any, as in force during the period, made under section 80O to the instrument –
- that was an amendment or alteration that was not in force in the period in which the previous version was in force.

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- (4) The Commission may include on the database the legislative history of the following documents, as in force from time to time:
- (a) State Policies;
 - (b) planning directives;
 - (c) regional land use strategies;
 - (d) any other document of a legislative or policy character that is a member of a class of documents that is prescribed for the purposes of this paragraph.
- (5) For the purposes of subsection (1), the legislative history of an electronic policy instrument is –
- (a) a version of the electronic policy instrument showing the instrument as it was at the date when it came into force; and
 - (b) a subsequent version of the electronic policy instrument, for each period when the electronic policy instrument differs from a previous version of the instrument because the subsequent instrument incorporates –
 - (i) in the case of a planning directive or regional land use strategy – an amendment, as in force during the period, made under this Act; or

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- (ii) in the case of a State Policy or any prescribed planning policy document – an amendment, as in force during the period, made by the person or body that made the State Policy or document –

that was an amendment that was not in force in the period in which the previous version was in force.

- (6) The Commission is to be taken to comply with subsection (1) in relation to a map (*the original map*) forming part of a planning scheme, special planning order or dispensation, as in force at any time, if the Commission establishes and maintains, as part of the database, an electronic zoning map that replicates the planning markings on the original map, as in force at that time, whether or not the Commission also establishes and maintains, as part of the database, a map that exactly replicates the original map in other respects apart from the planning markings on the original map.
- (7) The Minister, by notice, may prescribe for the purposes of this section –
 - (a) an interim planning scheme declared under section 30F; and
 - (b) a planning scheme made under section 30N; and
 - (c) a planning scheme approved under section 29 after the day on which this section commences; and

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- (d) a special planning order made under section 47 after the day on which this section commences.

80L. Back-up database to be kept

- (1) The Commission must produce, or cause to be produced, copies of the database in electronic form and cause those copies to be held securely in a place separate from the place at which the database is held.
- (2) Copies of the database produced under subsection (1) are to be treated for all purposes as if they were the database.

80M. Authorised versions

- (1) If a version of an electronic planning instrument that is on the database specifies that it is the authorised version of a planning scheme, special planning order or dispensation at a particular date, the version on the database (together with any electronic planning map in relation to the version) is to be taken to be, for the purposes of this Act, the authorised version of that planning scheme, special planning order, or dispensation, as in force at that date.
- (2) The authorised version of a planning scheme, special planning order or dispensation at a particular date is to be taken to be, in all circumstances and for all purposes, the planning scheme, special planning order, or dispensation, as in force at that date.

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- (3) If a version of an electronic policy instrument that is on the database specifies that it is the authorised version of a State Policy, planning directive, regional land use strategy, or prescribed planning policy document, at a particular date, the version on the database (together with any electronic planning map in relation to the version) is to be taken to be, for the purposes of this Act, the authorised version of that Policy, directive, strategy or document at that date.
- (4) The authorised version of a State Policy, planning directive, regional land use strategy, or prescribed planning policy document, at a particular date is to be taken to be, in all circumstances and for all purposes, the Policy, directive, strategy or document as in force at that particular date.

80N. Certified copies of authorised versions

- (1) The Commission may approve the production of copies, in electronic or printed form, of –
 - (a) an authorised version of an electronic planning instrument, or of an electronic policy instrument, at a particular date; or
 - (b) selected provisions of an authorised version of an electronic planning instrument, or selected provisions of a version of an electronic policy instrument, at a particular date.

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- (2) A copy of an authorised version of an electronic planning instrument that is produced in accordance with an approval under subsection (1) is to include a certificate, displaying the signature of the Executive Commissioner, indicating that –
- (a) the copy is a copy of the authorised version of the electronic planning instrument at the particular date specified in the certificate; and
 - (b) the electronic planning instrument incorporates –
 - (i) all amendments, if any, as in force at the particular date specified in the certificate, made under Part 3 to the instrument; and
 - (ii) all alterations, if any, as at the particular date specified in the certificate, made under section 80O to the instrument.
- (3) A copy of selected provisions of an authorised version of an electronic planning instrument that is produced in accordance with an approval under subsection (1) is to include a certificate, displaying the signature of the Executive Commissioner, indicating that –
- (a) the copy is a copy of the selected provisions of the authorised version at the particular date specified in the certificate; and

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- (b) the copy of the selected provisions incorporates –
 - (i) all amendments, if any, as in force at the particular date specified in the certificate, made under Part 3 to the instrument; and
 - (ii) all alterations, if any, as at the particular date specified in the certificate, made under section 80O to the instrument.
- (4) A copy of an authorised version of an electronic policy instrument that is produced in accordance with an approval under subsection (1) is to include a certificate, displaying the signature of the Executive Commissioner, indicating that –
 - (a) the copy is a copy of the authorised version of the electronic policy instrument at the particular date specified in the certificate; and
 - (b) the electronic policy instrument incorporates all amendments, if any, as in force at the particular date specified in the certificate, made to the selected provisions –
 - (i) in the case of a planning directive or regional land use strategy – under this Act; or
 - (ii) in the case of a State Policy or a prescribed planning policy

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document – by the person or body that made the State Policy or document.

- (5) A copy of selected provisions of an authorised version of an electronic policy instrument that is produced in accordance with an approval under subsection (1) is to include a certificate, displaying the signature of the Executive Commissioner, indicating that –
- (a) the copy is a copy of the selected provisions of the authorised version of the selected provisions at the particular date specified in the certificate; and
 - (b) the copy of the selected provisions incorporates all amendments, if any, as in force at the particular date specified in the certificate, made to the selected provisions of the authorised version –
 - (i) in the case of a planning directive or regional land use strategy – under this Act; or
 - (ii) in the case of a State Policy or a prescribed planning policy document – by the person or body that made the State Policy or the document.
- (6) The Executive Commissioner may charge a person a fee for the provision to the person of a copy under this section.

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- (7) A copy (*the first copy*) of an authorised version of an electronic planning instrument or an electronic policy instrument, at a particular date, that is provided under this section is not to be taken to be materially different from another copy (*the second copy*) of the authorised version, as at the same date, provided under this section, by reason only that the first copy contains a copy, of an electronic planning map, that displays different information from that displayed in the second copy, because of the scale at which the map is reproduced.

800. Commission may alter authorised versions of electronic planning instruments

- (1) The Commission may alter an authorised version of an electronic planning instrument –
- (a) so as to correct an error in the version as to spelling, punctuation, order of provisions, cross-referencing, numbering, format or printing; or
 - (b) so as to make references to one gender include references to the other gender; or
 - (c) so as to replace a reference in the scheme to a body, office, person, place or thing with a reference to another body, office, person, place or thing that has replaced the body, office, person, place or thing; or
 - (d) so as to leave out from the version any provision that is spent, has expired or has

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otherwise ceased to have effect or that is a provision of a saving, transitional or validating nature that only applies to a time or event that has passed.

- (2) The Commission may authorise the alteration of an electronic zoning map forming part of an authorised version of an electronic planning instrument or an authorised version of an electronic policy instrument, so as to –
- (a) maintain alignment between that map and a layer of cadastral data on the LIST database, a layer of topographic data on the LIST database or another layer of data on the LIST database; or
 - (b) modify the technical characteristics of the map, such as attribute tables and metadata, providing that the planning markings are not altered (except in so far as paragraph (a) applies); or
 - (c) correct errors arising from the electronic characteristics of the electronic planning map, including gaps in data or overlaps in data; or
 - (d) improve the clarity of the electronic planning map, including by altering any colours or symbols used on the map.
- (3) Unless the planning scheme or special planning order indicates a contrary intention, an alteration under this section to planning markings consisting of –

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- (a) a zone boundary set out in an electronic zoning map; or
- (b) any other line, that –
 - (i) is set out in an electronic zoning map; and
 - (ii) separates an area, to which provisions of the planning scheme or special planning order are to have a particular effect, from another area in relation to which provisions of the scheme or order are to have a different effect –

is to be such that the zone boundary or other line follows the boundaries of parcels of land as shown on a layer of cadastral data on the LIST database.

80P. Offences

- (1) A person must not falsely include in a document, that purports to be a copy of –
 - (a) an authorised version of an electronic planning instrument or of an electronic policy instrument; or
 - (b) selected provisions of such an authorised version –

a certificate that purports to be a certificate under section 80N.

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Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not falsely represent that a document is a copy of –
- (a) an authorised version of an electronic planning instrument; or
 - (b) an authorised version of an electronic policy instrument –

that has been produced by the Commission under section 80N.

Penalty: Fine not exceeding 100 penalty units.

- (3) A person must not falsely represent that a document is a copy of –
- (a) an authorised version of an electronic planning instrument; or
 - (b) an authorised version of an electronic policy instrument.

Penalty: Fine not exceeding 100 penalty units.

80Q. Documents, submissions, &c., may be issued or made electronically

- (1) A relevant person (*the receiver*), by notice to another relevant person (*the sender*), may advise the sender of an electronic method by which a relevant document, required or permitted to be given under this Act to the receiver by the sender, may be given to the receiver by the sender.

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- (2) If under this Act a relevant document is required or permitted to be given to a relevant person (*the receiver*) by another relevant person (*the sender*), the document may be given by the sender by an electronic method that is specified by the receiver in a notice to the sender under subsection (1).
- (3) A relevant person may specify on a website of the relevant person an electronic method by which a submission in relation to a matter may be made to the relevant person by another person.
- (4) If under this Act a submission in relation to a matter may be given to a relevant person by another person, the submission may be made to the relevant person by the other person by transmitting the submission by an electronic method specified in relation to the matter under subsection (3) by the relevant person.
- (5) A reference in this section to the giving of a relevant document includes a reference to the issuing, provision or service, or other means of delivery, of the document.
- (6) If a relevant document, referred to in a provision of this Act, may be given by a person in accordance with this section, a reference in a provision of this Act to a signature of a person on the document is to be taken to include a reference to an electronic signature, of the person, on the document.
- (7) In this section –

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relevant document means –

- (a) a notice (including a notice in writing and a planning purposes notice), direction (including a direction in writing), declaration and invitation; and
- (b) a draft planning scheme, draft interim planning scheme, planning scheme, interim planning scheme, draft amendment to a planning scheme and a draft amendment to an interim planning scheme; and
- (c) a permit, a special planning permit and a dispensation; and
- (d) a statement, submission, recommendation, modification, requirement, application, approval, report and any other document (including a document specified in a provision of this Act to be a document in writing);

relevant person means –

- (a) the Minister; and
- (b) the Commission; and
- (c) a planning authority.

Division 2 – Other matters

81. Reasons for extending period to be given

Where the Minister or the Commission extends the period for the doing of any act or thing under this Act, the Minister or the Commission, as the case may be, must, when required to do so by any person, give to that person, in writing, the reasons for extending the period.

81A. Planning schemes, &c., to be registered in Central Plan Register

Within 14 days of approving or amending a planning scheme or making a special planning order (other than a planning scheme, or special planning order, prescribed for the purpose of section 80K), the Commission must cause a copy of the planning scheme, amendment or special planning order to be registered in the Central Plan Register.

82. Evidentiary provision

- (1) Evidence of –
 - (a) a planning scheme (other than a planning scheme prescribed for the purpose of section 80K); or
 - (b) a special planning order (other than a special planning order prescribed for the purpose of section 80K); or

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- (c) a permit or a special permit; or
- (d) a dispensation from a provision of an interim planning scheme (other than a scheme that is prescribed for the purpose of section 80K) –

may be given in any court or tribunal, or before any person acting judicially, by the production of a document purporting to be a copy of the planning scheme, special planning order, permit or special permit and purporting to be certified as a true copy by a person authorised, in writing, by the Commission or planning authority, as the case may require.

(2) Evidence of the provisions of –

- (a) a planning scheme, or special planning order, prescribed for the purpose of section 80K; or
- (b) a dispensation from a provision of an interim planning scheme that is prescribed for the purpose of section 80K; or
- (c) an electronic planning policy instrument within the meaning of section 80J –

may be given in any court or tribunal, or before any person acting judicially, by the production of a copy, of the provisions of the scheme, order, dispensation, or electronic policy instrument, produced under section 80N.

82A. Validation

(1) In this section –

extension means the extension purportedly granted under section 53(5A) by the Dorset council on 16 August 2006, in respect of the permit;

permit means the permit granted on 21 December 2004 by the Dorset council for the development of a wind farm at Musselroe.

- (2) The extension is taken to be valid and effectual and to have always been valid and effectual.
- (3) The permit is taken to be valid and effectual and to have always been valid and effectual.

83. Planning schemes, &c., to be judicially noticed

A planning scheme, a special planning order, a permit or a special permit is a public document of which a court or tribunal or person acting judicially must take judicial notice, without formal proof of its contents.

84. Service of notices or other documents

A notice or other document is effectively served under this Act if –

- (a) in the case of a natural person, it is –
- (i) given to the person; or

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- (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is –
- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.

85. Recovery of fees by municipalities

The power of a municipality to make by-laws under the *Local Government Act 1993* includes the power to make by-laws for or with respect to the recovery of fees paid by the municipality in relation to requests for the amendment of a planning scheme made to it under this Act.

86. Requirement to pay fees

The Commission, the Appeal Tribunal or a planning authority is not required to take any action under this Act, and any application, appeal, submission, representation or document which is lodged under this Act is not valid,

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unless any requirements imposed by regulations made under section 87, or by-laws referred to in section 85 or any imposition under section 205 of the *Local Government Act 1993*, as to the payment of fees in respect of the taking of that action or the lodging of that application, appeal, submission, representation or document have been complied with.

87. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations under this section may –
 - (a) make provision for or with respect to the procedures to be adopted by the Commission and planning authorities; and
 - (b) make provision for or with respect to –
 - (i) the payment and collection of fees by any person (including a planning authority) in relation to any act, matter or thing done or arising under this Act; and
 - (ii) the remission of, or exemption from liability for, any such fees; and
 - (c) be of general or specially limited application; and

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- (d) authorize any act, matter or thing in relation to which the regulations may be made to be from time to time determined, applied or regulated by such person as is specified in the regulations, being the Minister, the Commission or another person performing duties under this Act.
- (3) Without limiting the generality of subsection (1), regulations under this section may make provision for or with respect to the institution, hearing and determination of civil enforcement proceedings under section 64.
- (4) Regulations under this section may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.
- (5) Regulations under this section may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

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- (6) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (7) A provision referred to in subsection (6) may, if the regulations so provide, take effect from the commencement of this Act or a later date.

87A. Savings and transitional

The savings and transitional provisions specified in Schedule 4 have effect.

87B. Savings and transitional – *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*

The savings and transitional provisions specified in Schedule 5 have effect.

88. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the

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Department of Environment and Land
Management.

SCHEDULE 1 – OBJECTIVES

Sections 5, 8, 20, 32, 44, 51, and 72

**PART 1 – OBJECTIVES OF THE RESOURCE
MANAGEMENT AND PLANNING SYSTEM OF
TASMANIA**

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In clause 1(a), *sustainable development* means managing the use, development and protection

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of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

**PART 2 – OBJECTIVES OF THE PLANNING PROCESS
ESTABLISHED BY THIS ACT**

The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule –

- (a) to require sound strategic planning and co-ordinated action by State and local government; and
- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- (c) to ensure that the effects on the environment are considered and provide

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- for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- (d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and
 - (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and
 - (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and
 - (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
 - (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
 - (i) to provide a planning framework which fully considers land capability.

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SCHEDULE 2 –

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SCHEDULE 3 –

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 87A

1. Interpretation

(1) In this Schedule –

prior scheme means a planning scheme made or deemed to have been made under Part XVIII of the *Local Government Act 1962*.

(2) Unless the contrary intention appears, words and expressions used in this Act have the same respective meanings in this Schedule.

2. Operation date of certain draft planning schemes and amendments

(1) A draft planning scheme which, before the commencement of the *Land Use Planning and Approvals Amendment Act 1995*, was given final approval by the Panel under section 29 without a specified date of operation is taken to have come into operation on the date of that final approval.

(2) A draft amendment which, before the commencement of the *Land Use Planning and Approvals Amendment Act 1995*, was given final approval by the Panel under section 42 without a specified date of operation is taken to have come into operation on the date of that final approval.

3. Removal of doubts in relation to prior schemes, &c.

- (1) Any planning scheme or interim order finally approved under Part XVIII of the *Local Government Act 1962* and in force at the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* is valid and effective, from the day on which it was finally approved, in relation to land that is, or has been, Crown land or vested in a State authority.
- (2) For the purposes of subsection (1), ***State authority*** means a body or authority, whether incorporated or not, that is established or constituted under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority.

4. Transitional provisions

- (1) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, a reference to an interim order in any law is, unless the context or subject matter otherwise indicates or requires, taken to be a reference to a special planning order within the meaning of this Act.
- (2) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, the title of an interim order, which is taken to be a planning scheme under section 46, is to

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be read as if the words “Section 46 Planning Scheme” were substituted for the words “Interim Order”.

- (3) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, a dispensation –
- (a) made under Part XVIII of the *Local Government Act 1962* and continued in force as if it had been made under this Act; or
 - (b) granted under section 47 before the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*; or
 - (c) granted after that commencement under subclause (4) of this clause –

is taken to be a provision of the relevant interim order which, at that commencement, is taken to be a planning scheme under section 46.

- (4) If before the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995* a planning authority applied to the Panel for approval under section 47(2) to grant a dispensation and the planning authority did not grant or refuse to grant the dispensation before that commencement, the dispensation is to continue to be dealt with in accordance with the provisions of section 47 as in force immediately before that commencement.

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- (5) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, any condition on the granting of a dispensation granted before that commencement which restricts the period for which a dispensation is in force is of no effect.
- (6) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, if any doubt is raised as to the validity of a dispensation granted before that commencement, the person granted the dispensation or the planning authority may refer the matter to the Tribunal.
- (7) The Tribunal is to determine the validity of the dispensation or its terms or conditions as if it were the subject of an appeal under section 64.

5. Provisions in relation to schemes

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a prior scheme continues in force as if it were a planning scheme made under this Act; and
- (b) a scheme provisionally approved under section 727 (1) of the *Local Government Act 1962* is taken to be a draft planning scheme certified under section 24 of this Act; and

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- (c) a scheme publicly notified under section 727 (3) of the *Local Government Act 1962* is taken to be a draft planning scheme publicly exhibited under section 25 of this Act; and
- (d) an objection to a scheme, notice of which has been given under section 727 (4) of the *Local Government Act 1962*, is taken to be a representation submitted under section 26(1) of this Act; and
- (e) the objections to a scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728 (1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under section 26(2) of this Act; and
- (f) a report forwarded to the Commissioner under section 728(2) of the *Local Government Act 1962* in relation to a scheme is taken to be a report forwarded to the Panel under section 26(2) of this Act; and
- (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a scheme is taken to be a hearing which has been held and determined by the Panel under section 27(2) of this Act in relation to a representation; and

- (h) a decision in relation to a scheme made by the Commissioner under section 729A of the *Local Government Act 1962* is taken to be a decision of the Panel under section 28(1)(b)(ii) of this Act; and
- (i) a scheme finally approved by the Commissioner under section 730 of the *Local Government Act 1962* is taken to be a planning scheme finally approved by the Panel under section 29 of this Act.

6. Provisions relating to prior modifications to prior schemes

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a modification made under Part XVIII of the *Local Government Act 1962* of a scheme made or deemed to have been made under that Part continues in force as if it were an amendment made under this Act to a planning scheme; and
- (b) a modification provisionally approved under section 727(1) of the *Local Government Act 1962* of a prior scheme is taken to be a draft amendment certified under section 35 of this Act; and
- (c) a modification publicly notified under section 727(3) of the *Local Government Act 1962* of a prior scheme is taken to be

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- a draft amendment publicly exhibited under section 38 of this Act; and
- (d) an objection to a modification, notice of which is given under section 727 (4) of the *Local Government Act 1962*, of a prior scheme is taken to be a representation submitted under section 39(1) of this Act; and
 - (e) the objections to a modification of a prior scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728(1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under section 39(2) of this Act; and
 - (f) a report forwarded to the Commissioner under section 728(2) of the *Local Government Act 1962* in respect of a modification of a prior scheme is taken to be a report forwarded to the Panel under section 39(2) of this Act; and
 - (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a modification of a prior scheme is taken to be a hearing which has been held and determined by the Panel under section 40(2) of this Act in relation to a representation; and

- (h) a modification finally approved by the Commissioner under section 732 of the *Local Government Act 1962* of a prior scheme is taken to be an amendment finally approved by the Panel under section 42 of this Act to a planning scheme.

7. Provisions relating to interim orders

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an order made or deemed to have been made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under this Act for a period of 2 years or such longer period as the Panel may allow from the day on which it came into operation under the *Local Government Act 1962*; and
- (b) an order made by a municipality under section 734(2)(a) of the *Local Government Act 1962* is taken to be a draft interim order prepared by the municipality under section 45(1) of this Act; and
- (c) an order approved by the Commissioner under section 734(2A)(a) of the *Local Government Act 1962* is taken to be an interim order approved under section 45(8)(a) of this Act; and

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- (d) an order publicly notified under section 734(2A)(b) of the *Local Government Act 1962* is taken to be an interim order notified under section 45(9) of this Act.

8. Provisions relating to dispensations

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a dispensation made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under this Act; and
- (b) an application to the Commissioner for approval under section 734 (2) (b) of the *Local Government Act 1962* is taken to be an application under section 47(2) of this Act; and
- (c) the approval of the Commissioner under section 734(2)(b) of the *Local Government Act 1962* is taken to be the approval of the Panel under section 47(3) of this Act and is subject to the terms and conditions approved by the Commissioner; and
- (d) a dispensation granted by a municipality under section 734(2)(b) of the *Local Government Act 1962* is taken to be a dispensation granted by the municipality under section 47(8) of this Act.

9. Provisions relating to applications for discretionary planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an application for a planning approval under section 733B(1) of the *Local Government Act 1962* lodged before a specification under this section takes effect is to be dealt with as if this Act had not been enacted; and
- (b) a planning authority must, not later than 3 months after the commencement of section 49 of this Act, specify in respect of each scheme or order made under Part XVIII of the *Local Government Act 1962* those applications for planning approvals which are to be treated as applications for permits for the purposes of section 57(1) of this Act; and
- (c) a planning authority must give notice of the specification to the Panel which may approve or reject it; and
- (d) if it approves the specification, the Panel must publish the specification in the *Gazette* and in such other manner as it considers necessary; and
- (e) on publication the specification takes effect as if it were an amendment of the scheme or order; and

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- (f) a specification is to be laid before each House of Parliament within the first 10 sitting days of the House after it has been published; and
- (g) if either House of Parliament passes a resolution, of which notice has been given within the first 15 sitting days of such House after a specification is laid before it, that the specification be disallowed –
 - (i) the specification is of no effect except in relation to any right of appeal accrued by virtue of the operation of the specification; and
 - (ii) an application for a planning approval under section 733B(1) of the *Local Government Act 1962* is to be dealt with as if this Act had not been enacted.

10. Provisions relating to applications for planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an application for a planning approval under a scheme or order made under Part XVIII of the *Local Government Act 1962* is to be treated as an application for a permit under this Act; and

- (b) where a scheme or an order under Part XVIII of the *Local Government Act 1962* requires a planning approval in respect of use or development, that requirement is to be treated as a requirement for a permit in respect of that use or development.

11. Provisions relating to planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993*, where an appeal has been lodged under Part XVIII of the *Local Government Act 1962* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of that Part continue to apply to the appeal as if the relevant provisions of that Part had not been repealed.

12. Provisions relating to environment protection appeals

Where an appeal has been lodged under the *Environment Protection Act 1973* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of the *Environment Protection Act 1973* continue to apply to the appeal as if the relevant provisions of that Act had not been repealed.

**SCHEDULE 5 – SAVINGS AND TRANSITIONAL
PROVISIONS – LAND USE PLANNING AND
APPROVALS AMENDMENT (STREAMLINING OF
PROCESS) ACT 2014**

Section 87B

1. Interpretation

In this Schedule –

amending Act means the *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*;

dispensation means –

- (a) a dispensation granted under section 30W of this Act as in force before the day on which that section is repealed by the amending Act; or
- (b) a dispensation that was in force immediately before the previous amending Act came into force;

previous amending Act means the *Land Use Planning and Approvals Amendment Act 2013*;

section 30Q means section 30Q as in force immediately before the day on which that section is repealed by the amending Act;

section 30R means section 30R as in force immediately before the day on which that section is repealed by the amending Act.

2. Validation and savings of certain applications and dispensations

- (1) A dispensation remains in force despite the repeal of section 30W of this Act.
- (2) Any permit that is granted or confirmed and that relates to a dispensation, including a dispensation to which subclause (4) applies, is to be taken to be a permit granted or confirmed, as the case may be, under section 43H.
- (3) Subclause (4) applies in relation to a dispensation, or a purported dispensation, if –
 - (a) an application under this Act for the dispensation was made before the day on which section 19 of the previous amending Act came into force; and
 - (b) the application was not determined, or was purportedly determined, under this Act before that day; and
 - (c) the dispensation has been granted, or purportedly granted, under this Act as in force after that day.
- (4) If this subclause applies in relation to a dispensation –
 - (a) the Commission, if it thinks fit, must, as soon as practicable after the day on which this Schedule commences, direct the planning authority to prepare a draft amendment, of the interim planning scheme to which the dispensation relates,

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that will, in the opinion of the Commission, best reflect the intended effect of the dispensation; and

- (b) the planning authority must prepare the draft amendment, to the satisfaction of the Commission, as soon as practicable after receiving the direction under paragraph (a); and
- (c) if the Commission is satisfied with the draft amendment, the Commission must –
 - (i) approve the amendment of the interim planning scheme; and
 - (ii) direct the planning authority to give notice of the amendment, and the day on which the amendment comes into effect, in accordance with the directions of the Commission; and
- (d) a planning authority that receives a direction under paragraph (c)(ii) must give notice of the amendment in accordance with the direction; and
- (e) the amendment of the interim planning scheme comes into effect on the day specified, in the notice in accordance with a direction under paragraph (c)(ii), as the day on which the amendment comes into effect.

(5) If –

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- (a) an application for a permit that accompanied a request for a dispensation under this Act, as in force before the day on which section 19 of the previous amending Act came into force, was not determined before that day; and
- (b) a permit, in relation to that application, was granted or confirmed, or purportedly granted or confirmed, under this Act after that day –

the permit is to be taken to be a permit granted or confirmed, as the case may be, under section 43H.

- (6) An amendment to an interim planning scheme that is made under this clause –
 - (a) in accordance with a direction given in accordance with this clause; or
 - (b) in relation to an application to which this clause relates –

may not alter the zoning of an area of land without the approval of the owner of the area of land.

3. Dispensations and applications for dispensations

- (1) Subclause (2) applies in relation to an application for a dispensation, under this Act at any time before the day on which section 30Q is repealed, that relates to an interim planning scheme if –

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- (a) hearings under section 30K of the Act in relation to the scheme have been completed before the repeal of section 30K(1) by the amending Act; and
 - (b) the application –
 - (i) has been determined under this Act, before the day on which section 30Q is repealed by the amending Act, by granting the dispensation; or
 - (ii) has not been determined under this Act before the day on which section 30Q is repealed by the amending Act.
- (2) If this subclause applies in relation to an application for a dispensation that relates to an interim planning scheme –
- (a) the modifications that may be made to the interim planning scheme under section 30M include, but are not limited to including, the modifications, if any, that the Commission thinks fit that will, in the opinion of the Commission, best reflect the intended effect of any dispensation that is granted before the modifications are made; and
 - (b) where the application has not been determined before the hearings under section 30K of the Act in relation to the scheme have been completed – the application is to be taken to be an

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- application to which section 43A applies;
and
- (c) where an application that is made under section 30R accompanies the application for a dispensation – subclause (6) applies in relation to the application under section 30R.
- (3) Subclause (4) applies in relation to a dispensation if –
- (a) an application under this Act, at any time before the day on which section 30Q is repealed by the amending Act, has been determined by granting the dispensation;
and
- (b) subclause (2) does not apply in relation to the dispensation.
- (4) If this subclause applies in relation to a dispensation –
- (a) the Commission, if it thinks fit, as soon as practicable after the day on which this Schedule commences, must direct the planning authority to prepare a draft amendment, of the interim planning scheme to which the dispensation relates, that will, in the opinion of the Commission, best reflect the intended effect of the dispensation; and
- (b) the planning authority must prepare the draft amendment, to the satisfaction of the Commission, as soon as practicable

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- after receiving the direction under paragraph (a); and
- (c) if the Commission is satisfied with the draft amendment, the Commission must –
- (i) approve the amendment of the interim planning scheme; and
 - (ii) direct the planning authority to give notice of the amendment, and the day on which the amendment comes into effect, in accordance with the directions of the Commission; and
- (d) a planning authority that receives a direction under paragraph (c)(ii) must give notice of the amendment in accordance with the direction; and
- (e) the amendment of the interim planning scheme comes into effect on the day specified, in the notice in accordance with a direction under paragraph (c)(ii), as the day on which the amendment comes into effect.
- (5) Subclause (6) applies to an application that is made under section 30R if –
- (a) the application under section 30Q that accompanies the application under section 30R has been determined under this Act, before the day on which section

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- 30R is repealed by the amending Act, by granting a dispensation; and
- (b) the application under section 30R has been determined before that day.
- (6) If this subclause applies to an application that is made under section 30R –
- (a) any permit, to which the application relates, that is granted or confirmed under section 30Y, as in force immediately before the day on which that section is repealed by the amending Act, is to be taken to be a permit granted or confirmed, as the case may be, under section 43H; and
- (b) if any period in which the person could have, under section 61(3B) as in force immediately before the amending day, appealed against an amendment of the permit under section 30ZA, as in force immediately before the amending day, has not expired – the person may appeal to the Appeal Tribunal against the decision in relation to the application as if the amending Act had not come into force.
- (7) If –
- (a) an application under section 30Q for a dispensation in relation to an interim planning scheme has not, immediately before the day on which that section is

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repealed by the amending Act, been determined under this Act; and

- (b) an application under 30R does not accompany the application under section 30Q –

the application under section 30Q is to be taken to be an application under section 33(1).

- (8) If –

- (a) an application under section 30Q for a dispensation in relation to an interim planning scheme has not, immediately before the day on which that section is repealed by the amending Act, been determined under this Act; and

- (b) an application under 30R accompanies the application under section 30Q –

the application under section 30Q is to be taken to be an application under section 33(1) and the application under section 30R is to be taken to be a request under section 43A.

- (9) An amendment to an interim planning scheme that is made under this clause –

- (a) in accordance with a direction given in accordance with this clause; or

- (b) in relation to an application to which this clause relates –

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may not alter the zoning of an area of land without the approval of the owner of the area of land.

4. Application of provisions relating to applications and periods in which actions must be taken

- (1) If a period in which an action is required to be taken by a person under this Act as amended by the amending Act has expired before the day on which this Schedule comes into effect, the reference to the period is to be taken to be a reference to a period ending as soon as practicable after that day.
- (2) If an application under this Act made before the day on which this Schedule comes into effect was a valid application, it is not to be taken, after that day, to be invalid by reason only that it is not in the form required under this Act after that day.

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NOTES

The foregoing text of the *Land Use Planning and Approvals Act 1993* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 April 2015 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Land Use Planning and Approvals Act 1993</i>	No. 70 of 1993	1.1.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Land Use Planning and Approvals Amendment Act 1995</i>	No. 6 of 1995	23.5.1995
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>Land Use Planning and Approvals Amendment Act (No. 2) 1995</i>	No. 104 of 1995	1.1.1996
<i>Local Government Amendment Act 1995</i>	No. 88 of 1995	1.1.1996
<i>Marine Resources (Consequential Amendments) Act 1995</i>	No. 18 of 1995	31.5.1996
<i>Land Use Planning and Approvals Amendment Act 1996</i>	No. 60 of 1996	17.12.1996
<i>Marine (Consequential Amendments) Act 1997</i>	No. 16 of 1997	30.7.1997
<i>State Policies and Projects Amendment Act 1997</i>	No. 21 of 1997	1.8.1997
<i>Resource Planning and Development Commission Act 1997</i>	No. 85 of 1997	1.1.1998
<i>Land Use Planning and Approvals Amendment Act 1997</i>	No. 84 of 1997	1.1.1998
<i>Crown Lands (Shack Sites) Act 1997</i>	No. 87 of 1997	15.1.1998
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	19.5.1998
<i>Land Use Planning and Approvals Amendment (Private Timber Reserves) Act 1998</i>	No. 49 of 1998	18.12.1998
<i>Land Use Planning and Approvals Amendment Act 1999</i>	No. 88 of 1999	15.12.1999
<i>Water Management Act 1999</i>	No. 45 of 1999	1.1.2000
<i>Land Use Planning and Approvals</i>	No. 49 of 2001	16.7.2001

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Act	Number and year	Date of commencement
<i>Amendment Act 2001</i>		
<i>Major Infrastructure Development Approvals Amendment Act (No. 2) 2001</i>	No. 64 of 2001	10.10.2001
<i>Land Use Planning and Approvals Amendment Act (No. 2) 2001</i>	No. 100 of 2001	17.12.2001
<i>Gas Pipelines Planning and Safety (Miscellaneous Amendments) Act 2002</i>	No. 57 of 2002	The Act, except s. 4 5.12.2002
<i>Wellington Park Amendment Act 2003</i>	No. 4 of 2003	16.4.2003
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Land Use Planning and Approvals Amendment Act 2003</i>	No. 80 of 2003	15.12.2003
<i>Land Use Planning and Approvals Amendment Act 2005</i>	No. 64 of 2005	15.12.2005
<i>Land Use Planning and Approvals Amendment Act 2007</i>	No. 26 of 2007	1.8.2007
<i>Environmental Management and Pollution Control (Environment Protection Authority) (Consequential Amendments) Act 2007</i>	No. 76 of 2007	1.7.2008
<i>Land Use Planning and Approvals Amendment (Validation) Act 2009</i>	No. 3 of 2009	27.4.2009
<i>Land Use Planning and Approvals Amendment (State and Regional Strategies) Act 2009</i>	No. 43 of 2009	1.1.2010
<i>Fire Service Amendment (Bushfire-Prone Areas) Act 2011</i>	No. 32 of 2011	25.10.2011
<i>Land Use Planning and Approvals Amendment Act 2012</i>	No. 19 of 2012	3.7.2012
<i>Land Use Planning and Approvals Amendment Act (No. 2) 2012</i>	No. 49 of 2012	6.12.2012
<i>Water and Sewerage Corporation Act 2012</i>	No. 51 of 2012	1.7.2013
<i>Land Use Planning and Approvals (Developments on Mount Wellington) Amendment Act 2013</i>	No. 62 of 2013	13.12.2013
<i>Land Use Planning and Approvals Amendment Act 2013</i>	No. 59 of 2013	1.1.2014 ss. 11, 12, 13, 25 and 26
<i>Land Use Planning and Approvals Amendment (Historic Cultural Heritage) Act 2013</i>	No. 51 of 2013	1.3.2014
<i>Land Use Planning and Approvals Amendment Act 2013</i>	No. 59 of 2013	3.7.2014 ss. 14-19, 24, 28(a), (b) and 29(a)

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Act	Number and year	Date of commencement
<i>Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014</i>	No. 24 of 2014	1.1.2015
<i>Land Use Planning and Approvals Amendment Act 2013</i>	No. 59 of 2013	1.2.2015 ss. 10, 22, 28(d), 29(b), (c) and 30-33 1.4.2015 ss. 36, 37, 38 and 39
<i>Land Use Planning and Approvals Amendment Act (No. 2) 2001</i>	No. 100 of 2001	not commenced s. 4
<i>Land Use Planning and Approvals Amendment Act 2013</i>	No. 59 of 2013	not commenced ss. 20, 21, 23, 27, 28(c), 34, 35, 40

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 30 of 1995, s. 3 and Sched. 1, No. 104 of 1995, s. 4 and s. 35 and Sched. 1, No. 16 of 1997, Sched. 1, No. 21 of 1997, s. 17, No. 84 of 1997, s. 4, No. 85 of 1997, No. 49 of 2001, s. 4, No. 64 of 2001, s. 11, No. 43 of 2009, s. 4, No. 32 of 2011, s. 6, No. 51 of 2012, Sched. 2, No. 59 of 2013, s. 11 and No. 24 of 2014, s. 4
Section 4	Amended by No. 49 of 2001, s. 5 and No. 4 of 2003, s. 9
Section 6	Amended by No. 85 of 1997, Sched. 4
Section 7	Amended by No. 30 of 1995, s. 3 and Sched. 1, No. 16 of 1997, Sched. 1 and No. 88 of 1999, s. 4
Part 2	Substituted by No. 85 of 1997, Sched. 4
Division 1 of Part 2	Repealed by No. 85 of 1997, Sched. 4
Section 8	Substituted by No. 85 of 1997, Sched. 4
Part 2A	Inserted by No. 49 of 2001, s. 6
Section 9	Amended by No. 88 of 1995, s. 41 and Sched. 1, No. 104 of 1995, s. 5 Subsection (2A) inserted by No. 104 of 1995, s. 5 Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6 Amended by No. 26 of 2007, s. 4
Section 10	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6
Section 11	Repealed by No. 85 of 1997, Sched. 4
Division 2 of Part 2	Repealed by No. 85 of 1997, Sched. 4

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Provision affected	How affected
Section 11	Inserted by No. 49 of 2001, s. 6
Section 12	Amended by No. 6 of 1995, s. 4 Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6 Amended by No. 24 of 2014, s. 5
Section 12A	Inserted by No. 59 of 2013, s. 12 Substituted by No. 24 of 2014, s. 6
Section 12B	Inserted by No. 24 of 2014, s. 6
Section 13	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6 Amended by No. 24 of 2014, s. 7
Section 14	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6 Amended by No. 19 of 2012, s. 4 and No. 24 of 2014, s. 8
Section 15	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 49 of 2001, s. 6 Amended by No. 59 of 2013, s. 13 Substituted by No. 24 of 2014, s. 9
Section 16	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 26 of 2007, s. 5 Amended by No. 19 of 2012, s. 5 and No. 24 of 2014, s. 10
Section 17	Repealed by No. 85 of 1997, Sched. 4 Inserted by No. 24 of 2014, s. 11
Section 18	Repealed by No. 85 of 1997, Sched. 4
Section 19	Repealed by No. 85 of 1997, Sched. 4
Section 19A	Inserted by No. 84 of 1997, s. 5 Repealed by No. 49 of 2001, s. 7
Section 20	Amended by No. 18 of 1995, s. 3 and Sched. 1, No. 104 of 1995, s. 35 and Sched. 1, No. 16 of 1997, Sched. 1, No. 21 of 1997, s. 17, No. 85 of 1997, Sched. 4, No. 49 of 1998, s. 4, No. 88 of 1999, s. 5, No. 49 of 2001, s. 8, No. 57 of 2002, s. 10, No. 9 of 2003, Sched. 1, No. 64 of 2005, s. 4, No. 26 of 2007, s. 6, No. 43 of 2009, s. 5 and No. 24 of 2014, s. 12
Section 21	Amended by No. 16 of 1997, Sched. 1 and No. 24 of 2014, s. 13
Section 22	Amended by No. 104 of 1995, s. 35 and Sched. 1, No. 16 of 1997, Sched. 1, No. 84 of 1997, s. 6 and No. 85 of 1997, Sched. 4
Section 23	Amended by No. 85 of 1997, Sched. 4
Section 24	Amended by No. 84 of 1997, s. 7, No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 9
Section 25	Amended by No. 85 of 1997, Sched. 4, No. 49 of 2001, s. 10 Substituted by No. 26 of 2007, s. 7
Section 26	Amended by No. 85 of 1997, Sched. 4, No. 49 of 2001, s. 11 and No. 19 of 2012, s. 6
Section 27	Amended by No. 85 of 1997, Sched. 4

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Provision affected	How affected
Section 28	Amended by No. 104 of 1995, s. 7, No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 12
Section 28AA	Inserted by No. 104 of 1995, s. 8 Amended by No. 85 of 1997, Sched. 4
Section 28A	Inserted by No. 6 of 1995, s. 5 Amended by No. 85 of 1997, Sched. 4
Section 28B	Inserted by No. 6 of 1995, s. 5
Section 28C	Inserted by No. 6 of 1995, s. 5 Amended by No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 13
Section 28D	Inserted by No. 6 of 1995, s. 5 Amended by No. 85 of 1997, Sched. 4
Section 28E	Inserted by No. 6 of 1995, s. 5 Amended by No. 85 of 1997, Sched. 4
Section 28F	Inserted by No. 6 of 1995, s. 5 Amended by No. 104 of 1995, s. 35 and Sched. 1 and No. 85 of 1997, Sched. 4
Section 29	Amended by No. 6 of 1995, s. 6, No. 84 of 1997, s. 8, No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 14
Section 30	Amended by No. 84 of 1997, s. 9 and No. 85 of 1997, Sched. 4
Subdivision 1 of Division 1A of Part 3	Heading inserted by No. 59 of 2013, s. 14
Section 30A of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30B of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30B	Amended by No. 19 of 2012, s. 7 and No. 59 of 2013, s. 15
Subdivision 2 of Division 1A of Part 3	Heading inserted by No. 59 of 2013, s. 16
Section 30C of Part 3	Inserted by No. 43 of 2009, s. 6
Subdivision 3 of Division 1A of Part 3	Heading inserted by No. 59 of 2013, s. 17
Section 30D of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30D	Amended by No. 19 of 2012, s. 8
Section 30E of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30E	Amended by No. 19 of 2012, s. 9 and No. 24 of 2014, s. 14
Section 30EA	Inserted by No. 19 of 2012, s. 10 Amended by No. 24 of 2014, s. 15
Section 30F of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30F	Amended by No. 19 of 2012, s. 11, No. 49 of 2012, s. 4

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Provision affected	How affected
	and No. 24 of 2014, s. 16
Section 30FA	Inserted by No. 49 of 2012, s. 5 Amended by No. 24 of 2014, s. 17
Section 30G of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30H of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30H	Amended by No. 24 of 2014, s. 18
Section 30I of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30I	Amended by No. 24 of 2014, s. 19
Section 30IA	Inserted by No. 19 of 2012, s. 12 Amended by No. 59 of 2013, s. 18 and No. 24 of 2014, s. 20
Section 30J of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30J	Amended by No. 24 of 2014, s. 21
Section 30K of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30K	Amended by No. 24 of 2014, s. 22
Section 30L of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30L	Substituted by No. 24 of 2014, s. 23
Section 30M of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30M	Amended by No. 19 of 2012, s. 13 Substituted by No. 24 of 2014, s. 23
Section 30N of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30N	Amended by No. 19 of 2012, s. 14 Repealed by No. 24 of 2014, s. 23
Section 30O of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30O	Amended by No. 19 of 2012, s. 15 and No. 24 of 2014, s. 24
Subdivision 4 of Division 1A of Part 3	Amended by No. 59 of 2013, s. 19 and No. 24 of 2014, s. 25
Section 30P of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30P	Substituted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30Q of Part 3	Inserted by No. 43 of 2009, s. 6
Section 30Q	Substituted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30R of Part 3	Inserted by No. 43 of 2009, s. 6

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Provision affected	How affected
Section 30R	Substituted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30S	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30T	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30U	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30V	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30W	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30X	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30Y	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30Z	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30ZA	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 30ZB	Inserted by No. 59 of 2013, s. 19 Repealed by No. 24 of 2014, s. 25
Section 32	Amended by No. 21 of 1997, s. 17, No. 57 of 2002, s. 11, No. 26 of 2007, s. 8 and No. 24 of 2014, s. 26
Section 33	Amended by No. 104 of 1995, s. 9, No. 84 of 1997 and No. 24 of 2014, s. 27
Section 33A	Inserted by No. 24 of 2014, s. 28
Section 33B	Inserted by No. 24 of 2014, s. 28
Section 34	Amended by No. 85 of 1997, Sched. 4, No. 49 of 2001, s. 15 and No. 24 of 2014, s. 29
Section 35	Amended by No. 85 of 1997, Sched. 4 Substituted by No. 49 of 2001, s. 16 Amended by No. 100 of 2001, s. 5
Section 36	Amended by No. 104 of 1995, s. 10 Subsection (5) substituted by No. 84 of 1997, s. 11 Subsection (5A) inserted by No. 84 of 1997, s. 11 Subsection (5B) inserted by No. 84 of 1997, s. 11 Amended by No. 85 of 1997, Sched. 4 Repealed by No. 49 of 2001, s. 16
Section 37	Substituted by No. 84 of 1997, s. 12, No. 26 of 2007, s. 9 Amended by No. 24 of 2014, s. 30
Section 38	Amended by No. 104 of 1995, s. 11, No. 85 of 1997, Sched. 4 Substituted by No. 49 of 2001, s. 17, No. 26 of 2007, s. 10 Amended by No. 24 of 2014, s. 31
Section 39	Amended by No. 85 of 1997, Sched. 4 and No. 19 of 2012, s. 16
Section 40	Amended by No. 104 of 1995, s. 12, No. 85 of 1997,

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Provision affected	How affected
	Sched. 4, No. 26 of 2007, s. 11 and No. 24 of 2014, s. 32
Section 41	Amended by No. 104 of 1995, s. 13, No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 18
Section 41A	Inserted by No. 104 of 1995, s. 14
Section 41AB	Amended by No. 85 of 1997, Sched. 4
Section 41B	Inserted by No. 49 of 2001, s. 19
Section 42	Inserted by No. 104 of 1995, s. 14
	Amended by No. 85 of 1997, Sched. 4
Section 43	Amended by No. 6 of 1995, s. 7, No. 17 of 1996, No. 84 of 1997, s. 13, No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 20
Section 43A of Part 3	Amended by No. 84 of 1997, s. 14, No. 85 of 1997, Sched. 4 and No. 24 of 2014, s. 33
Section 43B	Inserted by No. 84 of 1997, s. 15
Section 43B of Part 3	Amended by No. 24 of 2014, s. 34
Section 43C	Amended by No. 100 of 2001, s. 6
Section 43C of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43C	Amended by No. 26 of 2007, s. 12
Section 43D of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43E of Part 3	Amended by No. 49 of 2001, s. 21 and No. 24 of 2014, s. 35
Section 43E	Inserted by No. 84 of 1997, s. 15
Section 43EA	Amended by No. 24 of 2014, s. 36
Section 43F of Part 3	Inserted by No. 24 of 2014, s. 37
Section 43F	Inserted by No. 84 of 1997, s. 15
Section 43G of Part 3	Amended by No. 17 of 1996, No. 49 of 2001, s. 22, No. 76 of 2007, Sched. 1 and No. 19 of 2012, s. 17
Section 43H of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43H	Inserted by No. 84 of 1997, s. 15
Section 43I of Part 3	Amended by No. 76 of 2007, Sched. 1
Section 43I	Inserted by No. 84 of 1997, s. 15
Section 43J of Part 3	Amended by No. 80 of 2003, s. 4 and No. 24 of 2014, s. 38
Section 43K of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43K	Inserted by No. 84 of 1997, s. 15
Section 43K	Amended by No. 26 of 2007, s. 13, No. 76 of 2007, Sched.

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Provision affected	How affected
	1 and No. 24 of 2014, s. 39
Section 43L of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43M of Part 3	Inserted by No. 84 of 1997, s. 15
Division 2B of Part 3	Repealed by No. 49 of 2001, s. 23
Section 43N of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43N	Repealed by No. 49 of 2001, s. 23
Section 43O of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43O	Repealed by No. 49 of 2001, s. 23
Section 43P of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43P	Repealed by No. 49 of 2001, s. 23
Section 43Q of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43Q	Repealed by No. 49 of 2001, s. 23
Section 43R of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43R	Repealed by No. 49 of 2001, s. 23
Section 43S of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43S	Repealed by No. 49 of 2001, s. 23
Section 43T of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43T	Repealed by No. 49 of 2001, s. 23
Section 43U of Part 3	Inserted by No. 84 of 1997, s. 15
Section 43U	Repealed by No. 49 of 2001, s. 23
Section 44	Substituted by No. 26 of 2007, s. 14
Section 44A of Part 3	Inserted by No. 84 of 1997, s. 16
Part 3, Div. 4	Substituted by No. 104 of 1995, s. 15
Section 45	Substituted by No. 104 of 1995, s. 15
Section 45A	Inserted by No. 104 of 1995, s. 15
Section 46	Substituted by No. 104 of 1995, s. 15 and No. 84 of 1997, s. 17
Part 3, Div. 5	Inserted by No. 104 of 1995, s. 15
Section 47	Inserted by No. 104 of 1995, s. 15 Amended by No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 24
Section 47A	Inserted by No. 104 of 1995, s. 15 Amended by No. 85 of 1997, Sched. 4
Section 47B	Inserted by No. 104 of 1995, s. 15 Amended by No. 85 of 1997, Sched. 4
Section 48	Amended by No. 104 of 1995, s. 35 and Sched. 1

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Provision affected	How affected
Section 48AA	Inserted by No. 43 of 2009, s. 7
Section 48A	Inserted by No. 26 of 2007, s. 15
Section 49	Amended by No. 104 of 1995, s. 35 and Sched. 1
Section 51	Amended by No. 104 of 1995, s. 16 and s. 35 and Sched. 1, No. 49 of 2001, s. 25, No. 26 of 2007, s. 16, No. 32 of 2011, s. 7 and No. 24 of 2014, s. 40
Section 52	Amended by No. 104 of 1995, s. 17, No. 84 of 1997, s. 18, No. 49 of 2001, s. 26, No. 100 of 2001, s. 7 and No. 26 of 2007, s. 17
Section 52A	Inserted by No. 4 of 2003, s. 9 Amended by No. 62 of 2013, s. 4
Section 53	Amended by No. 104 of 1995, s. 18, No. 49 of 2001, s. 27, No. 26 of 2007, s. 18, No. 3 of 2009, s. 4, No. 59 of 2013, s. 22 and No. 24 of 2014, s. 41
Section 54	Amended by No. 49 of 2001, s. 28, No. 26 of 2007, s. 19, No. 43 of 2009, s. 8, No. 51 of 2013, s. 4 and No. 24 of 2014, s. 42
Section 56	Amended by No. 84 of 1997, s. 19, No. 76 of 2007, Sched. 1 and No. 24 of 2014, s. 43
Section 56A	Inserted by No. 84 of 1997, s. 20
Section 57	Amended by No. 104 of 1995, s. 19, No. 60 of 1996, s. 4, No. 49 of 2001, s. 29, No. 100 of 2001, s. 8, No. 26 of 2007, s. 20 and No. 51 of 2013, s. 5
Section 57A	Inserted by No. 84 of 1997, s. 21
Section 58	Amended by No. 104 of 1995, s. 20, No. 84 of 1997, s. 22, No. 49 of 2001, s. 30, No. 51 of 2013, s. 6 and No. 24 of 2014, s. 44
Section 58A	Inserted by No. 104 of 1995, s. 21 Amended by No. 59 of 2013, s. 24
Section 59	Amended by No. 104 of 1995, s. 22, No. 49 of 2001, s. 31, No. 26 of 2007, s. 21, No. 43 of 2009, s. 9 and No. 51 of 2013, s. 7
Section 60	Amended by No. 104 of 1995, s. 23 and s. 35 and Sched. 1 Subsection (2) substituted by No. 104 of 1995, s. 23 Subsection (2A) inserted by No. 104 of 1995, s. 23 Subsection (3) substituted by No. 104 of 1995, s. 23 Amended by No. 85 of 1997, Sched. 4 Repealed by No. 49 of 2001, s. 32
Section 60A	Inserted by No. 45 of 1999, Sched. 6 Amended by No. 43 of 2009, s. 10
Section 60B of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60C of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60C	Amended by No. 59 of 2013, s. 25
Section 60D of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60E of	Inserted by No. 43 of 2009, s. 11

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Provision affected	How affected
Part 4	
Section 60F of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60G of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60H of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60I of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60J of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60K of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60L of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60M of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60N of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60O of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60P of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60P	Amended by No. 51 of 2012, Sched. 2
Section 60Q of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60R of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60R	Amended by No. 51 of 2012, Sched. 2
Section 60S of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60T of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60U of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60V of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60V	Amended by No. 51 of 2012, Sched. 2
Section 60W of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60X of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60X	Amended by No. 51 of 2012, Sched. 2
Section 60Y of Part 4	Inserted by No. 43 of 2009, s. 11
Section 60Y	Amended by No. 59 of 2013, s. 26
Section 60Z of Part 4	Inserted by No. 43 of 2009, s. 11

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Provision affected	How affected
Section 61	Amended by No. 104 of 1995, s. 24, No. 84 of 1997, s. 23, No. 49 of 2001, s. 33, No. 26 of 2007, s. 22, No. 59 of 2013, s. 28 and No. 24 of 2014, s. 45
Section 62	Amended by No. 104 of 1995, s. 25, No. 84 of 1997, s. 24, No. 26 of 2007, s. 23, No. 59 of 2013, s. 29 and No. 24 of 2014, s. 46
Section 63	Amended by No. 104 of 1995, s. 26, No. 26 of 2007, s. 24, No. 43 of 2009, s. 12 and No. 59 of 2013, s. 30
Section 63A	Inserted by No. 49 of 2001, s. 34
Section 63B	Inserted by No. 59 of 2013, s. 31
Section 64	Amended by No. 104 of 1995, s. 27, No. 85 of 1997, Sched. 4, No. 49 of 2001, s. 35, No. 26 of 2007, s. 25 and No. 59 of 2013, s. 32
Section 65A of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65B of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65C of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65D of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65E of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65F of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65G of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65H of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65I of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65J of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65K of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65L of Part 4	Inserted by No. 59 of 2013, s. 33
Section 65M of Part 4	Inserted by No. 59 of 2013, s. 33
Division 5 of Part 4	Amended by No. 32 of 2011, s. 8
Section 66	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 104 of 1995, s. 35 and Sched. 1
Section 67	Amended by No. 104 of 1995, s. 35 and Sched. 1 and No. 85 of 1997, Sched. 4
Section 68	Amended by No. 85 of 1997, Sched. 4
Section 69	Amended by No. 104 of 1995, s. 35 and Sched. 1
Section 69A	Inserted by No. 32 of 2011, s. 9

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Provision affected	How affected
Section 70	Amended by No. 104 of 1995, s. 28
Section 71	Amended by No. 104 of 1995, s. 35 and Sched. 1
Section 72	Amended by No. 104 of 1995, s. 29 and s. 35 and Sched. 1
Section 73A	Inserted by No. 104 of 1995, s. 30
Section 74	Amended by No. 85 of 1997, Sched. 4
Section 76	Amended by No. 85 of 1997, Sched. 4
Section 77	Amended by No. 104 of 1995, s. 35 and Sched. 1 and No. 43 of 2009, s. 13
Section 78	Amended by No. 87 of 1997, Sched. 3
Section 80	Amended by No. 104 of 1995, s. 31
Section 80A	Inserted by No. 104 of 1995, s. 32
Section 80J of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80K of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80L of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80M of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80N of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80O of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80P of Part 6	Inserted by No. 59 of 2013, s. 36
Section 80Q of Part 6	Inserted by No. 59 of 2013, s. 36
Division 2 of Part 6	Heading inserted by No. 59 of 2013, s. 37
Section 81	Amended by No. 85 of 1997, Sched. 4
Section 81A	Inserted by No. 84 of 1997, s. 25 Amended by No. 59 of 2013, s. 38
Section 82	Amended by No. 104 of 1995, s. 35 and Sched. 1, No. 85 of 1997, Sched. 4, No. 43 of 2009, s. 14 Substituted by No. 59 of 2013, s. 39
Section 82A	Inserted by No. 3 of 2009, s. 5
Section 83	Amended by No. 104 of 1995, s. 35 and Sched. 1 and No. 43 of 2009, s. 15
Section 85	Amended by No. 30 of 1995, s. 3 and Sched. 1 and No. 16 of 1997, Sched. 1
Section 86	Amended by No. 85 of 1997, Sched. 4 and No. 26 of 2007, s. 26
Section 87	Amended by No. 85 of 1997, Sched. 4 and No. 49 of 2001, s. 36
Section 87B	Inserted by No. 24 of 2014, s. 47
Schedule 2	Amended by No. 104 of 1995, s. 33 Repealed by No. 85 of 1997, Sched. 4
Schedule 3	Amended by No. 104 of 1995, s. 34

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Provision affected	How affected
Schedule 4	Repealed by No. 85 of 1997, Sched. 4
Schedule 4	Amended by No. 49 of 2001, s. 37
Schedule 5	Inserted by No. 24 of 2014, s. 48