

Metropolitan Redevelopment Authority Bill 2011

Explanatory Memorandum Revised version

Introduction

The purpose of this Bill is to establish a Metropolitan Redevelopment Authority (MRA) and, initially, to enable the MRA to assume the operations of the four existing redevelopment authorities: Armadale, East Perth, Midland and Subiaco, subject to regulations being made to transfer to the MRA the relevant areas of responsibility. The Bill will enable the MRA to exercise planning, development approval and works powers in redevelopment areas declared by regulation within the metropolitan region.

The Bill is organised into 11 Parts, namely:

Part 1 – Preliminary

Part 2 – Metropolitan Redevelopment Authority

Part 3 – Land Redevelopment Committees

Part 4 – Redevelopment areas

Part 5 – Redevelopment schemes

Part 6 – Development control in redevelopment area

Part 7 – General administration of Authority and LRCs

Part 8 – Accountability and financial provisions

Part 9 – Miscellaneous

Part 10 – Repeals, consequential amendments and validations

Part 11 – Transitional provisions

Clause notes

Part 1 – Preliminary

This Part formally titles the Act, provides a means for setting a commencement date or dates for the Act, and defines key terms used in the Act.

Long title The long title sets out the purpose of the Bill.

Clause 1 Short title
This clause formally names the Act.

Clause 2 Commencement
This clause provides for sections 1 and 2 (the short title and commencement) to come into effect when the Bill is passed by State Parliament and receives Royal Assent. The rest of the Act will commence on a day or days to be fixed by proclamation.

Clause 3 Terms used
This provision defines certain terms and expressions used in the Bill.

Part 2 – Metropolitan Redevelopment Authority

This Part establishes the MRA and sets out its functions and powers. These functions and powers include both general functions and powers and specific powers relating to land.

Part 2, Division 1 – Metropolitan Redevelopment Authority

Clause 4 Authority established

This clause establishes the MRA as a body corporate that may take legal proceedings or have legal proceedings taken against it.

Clause 5 Status

This clause provides that the MRA is an agent of the State and has the status, immunities and privileges of the State.

The Bill also contains a separate limit on the MRA's Crown immunity: **clause 17** provides that the Act does not confer on the MRA immunity from any written law.

Clause 6 Authority to be SES organisation

This clause provides that the MRA will be able to employ public service officers who are members of the Senior Executive Service.

Clause 109 of the Bill contains full details of the MRA's other employment powers.

Part 2, Division 2 – Functions of Authority **Subdivision 1 – General**

Clause 7 Functions in redevelopment areas

This clause sets out the functions that the MRA will be able to perform within redevelopment areas. Generally, these involve planning and development.

The specific functions are:

- to plan, undertake, promote and coordinate the development of land in redevelopment areas in the metropolitan region; and
- for that purpose:
 - to prepare and keep under review strategic and policy documents in relation to such development;
 - to prepare and keep under review a redevelopment scheme for each redevelopment area – these functions are detailed in Part 5 of the Bill;
 - to control development in each redevelopment area – these functions are detailed in Part 6 of the Bill.

When performing functions under the Act, the MRA will be required to have regard to the specific objectives of the relevant redevelopment area. These objectives are set out in regulations identifying each redevelopment area.

The regulations can also impose specific requirements and restrictions on the performance of the Authority's functions in a redevelopment area – an example may be requiring specific features in a redevelopment area to be retained.

Clause 8 Functions in areas contiguous to redevelopment areas

The MRA will be able to perform some functions in areas that are outside, but contiguous to, a declared redevelopment area. These functions are limited to providing services to a public authority in relation to the redevelopment of land in a contiguous area. This can only occur if:

- the Governor has declared, by an order published in the Government Gazette, that the MRA has these functions; and
- the particular services are the subject of a written agreement between the MRA and the relevant public authority, which is approved in writing by the Minister.

A Governor's order is required to be tabled in Parliament and is a disallowable instrument.

The Authority will not be able to acquire (compulsorily or otherwise), manage, hold or dispose of land in pursuance of an agreement under this provision.

See also **clause 19**, which enables the MRA to fund (not to perform) work on contiguous land, if the work is sufficiently closely related to the improvement of the area or the functions of the Authority.

Clause 9 Delegated functions

This clause makes it clear that the Authority can perform any functions delegated to it by the Western Australian Planning Commission (WAPC), and that those functions can be performed outside a redevelopment area.

Clause 140(3) inserts new section 16(7A)-(7D) into the *Planning and Development Act 2005*. This will overcome the general prohibition contained in that Act on subdelegation of delegated WAPC functions, with the effect that the MRA will be able to subdelegate to a Land Redevelopment Committee any functions of the WAPC that have been delegated to it.

Clause 10 Business and operational plans to be followed

This clause requires the MRA to perform its functions in accordance with its business and operational plans.

Part 8 deals with business and operational plans in detail.

Clause 11 General powers

This clause generally empowers the Authority to do the all things it needs to do to perform its functions.

Specifically, the clause provides that the MRA can

- acquire, develop, dispose of, and undertake other dealings in property. Such dealings in land are subject to the specific provisions of **clauses 18-25**;
- participate in business arrangements such as companies, partnerships, trusts and joint ventures. Such participation will require the Minister's agreement with the Treasurer's prior approval – see **clause 12**;
- sell advertising opportunities and enter into arrangements for sponsorship;
- develop, and profit from, intellectual property such as technology, software and other resources, and apply for and deal in intellectual property as required for that purpose;
- profit from consultancy and similar arrangements in relation to its expertise and resources.

The clause also makes it clear that the Authority can perform its functions itself, or in conjunction with another person or State or Commonwealth public authority.

Clause 12 Minister and Treasurer to consider proposals under section 11(3)(b)

Under this clause, the Authority cannot enter into a business arrangement – which includes a corporation, partnership, trust, joint venture or profit-sharing arrangement – or undertake any transactions in shares or units relating to a business arrangement, without the written agreement of the Minister. The Minister's agreement can only be given with the Treasurer's prior approval.

The Treasurer may exempt a specific transaction or class of transaction from the Treasurer's approval requirement by notice published in the Government Gazette.

Clause 13 Delegation except of powers and duties under Parts 5 and 6

This clause enables the Authority to delegate its powers other than planning and development control powers. These powers include the general powers listed in **clause 11** and the powers in **clause 18** to do with transactions in, and works on, land.

There is no limit on the persons to whom powers can be delegated under this clause, except that if the delegate is not a Land Redevelopment Committee, a committee of the Board, or a staff member or Board member of the Authority, the Minister must have

previously approved the delegate (or class of delegates).

Delegates cannot subdelegate their delegated powers.

The delegation of planning and development control powers is dealt with in **clause 14**.

Clause 16 imposes formal and procedural requirements on the making of delegations.

Clause 14 Delegation of powers and duties under Parts 5 and 6

This clause enables the Authority to delegate its planning and development control powers – that is, powers to make planning schemes and to determine development applications – in relation to a redevelopment area.

Planning and development control powers can only be delegated to:

- a Land Redevelopment Committee established for the relevant area;
- another committee of the Board, or
- a public sector employee or office holder specified as a potential delegate in the regulations establishing the relevant area.

Delegates cannot subdelegate their delegated powers.

The delegation of the Authority's powers other than planning and development control powers is dealt with in **clause 13**.

Clause 16 imposes formal and procedural requirements on the making of delegations.

Clause 15 Subdelegation of delegated WAPC powers

This clause makes it clear that the Authority can subdelegate any powers delegated to it by the WAPC to a Land Redevelopment Committee.

The power to subdelegate is given legal effect by new section 16(7A)-(7D) of the *Planning and Development Act 2005*, to be inserted by **clause 140(3)** of the Bill.

This clause also makes it clear that a LRC can exercise any subdelegated WAPC powers over land outside a redevelopment area.

Clause 16 General provisions about delegations

This clause imposes formal and procedural requirements on delegations under **clauses 13 and 14**.

Among other things, it requires delegation instruments to be in writing executed by the MRA (but there is no requirement for the instruments to be published in the Government Gazette).

It also confirms that a power or duty properly exercised or performed by a delegate under clause 13 or 14 is taken to have been exercised or performed by the Authority.

Clause 17 Authority to comply with written laws

This provision confirms that the Authority's immunity as an agent of the State does not extend to making it immune from the operation of written laws.

Part 2, Division 2, Subdivision 2 – Powers in relation to land

Clause 18 General powers as to land

This clause specifies the Authority's powers in relation to land.

These include powers to:

- acquire, hold, manage and dispose of land;
- alter, develop and improve land; and
- amalgamate and subdivide land.

Acquisitions and disposals of land valued above a limit to be prescribed in regulations under the Act will only be allowed with the Minister's prior approval.

The limit has not yet been decided and will be determined in consultation with stakeholders. The intention is that only infrequent high-value transactions will be subject to the approval requirements.

Clause 19 imposes a Ministerial approval requirement on the Authority's ability to subdivide and amalgamate land.

Clause 19 Work on land contiguous to redevelopment area

This clause allows the Authority to:

1. exercise its **clause 18** powers over land on any part of a single lot that is outside a redevelopment area, provided that part of the lot is also inside the area. This provision is required to overcome any issue if a redevelopment area boundary happens to intersect a lot; and
2. pay for work on land that is contiguous with the redevelopment area, provided that the work is directly associated with the improvement of the redevelopment area or the functions of the Authority.

Clause 20 Subdivision and amalgamation, modification of PAD Act

This clause has the effect of requiring the MRA to seek the Minister's approval before the Authority can subdivide or amalgamate land.

For these purposes, the Minister is given the same powers as the WAPC has under the PAD Act in relation to an ordinary subdivision or amalgamation application. The Minister's approval of an application under this clause is taken to be WAPC approval.

The procedural requirements that would ordinarily apply to subdivision applications under the PAD Act do not apply in relation to applications under this clause.

The Minister will be required to request the WAPC's advice, and have regard to any advice provided by the WAPC within 30 days of such a request, before determining an application under this clause.

Clause 21 Application of *Public Works Act 1902* to Authority

This clause describes how the *Public Works Act 1902* (PWA) s to apply to the MRA. Specifically, the PWA is to apply to the MRA as if the MRA were a local authority and:

- the preparation of, and incidental work to preparing, a redevelopment scheme; and
- development of land under the Act, and the carrying out of the Act, and incidental work;

were public works.

The principal effect of this is to confer on the MRA power to enter onto land for specific purposes in accordance with the PWA.

Clause 22 Compulsorily acquiring land under *Land Administration Act 1997*

This clause applies certain procedures under Parts 9 and 10 of the *Land Administration Act 1997* (LAA) to the operations of the MRA.

The effect is to enable the MRA to compulsorily acquire land for the purposes of development of land under the Act, the carrying out of the Act, and incidental work.

When acquiring land:

- The Minister administering the LAA is not required to issue a notice of intention to take the land (as would otherwise be required under Subdivision 2 of Division 3 of Part 9 LAA). This mirrors the situation in place under existing redevelopment authority Acts;
- The Minister administering the LAA can only issue a taking order (which effects the taking of land) under section 177 LAA, if it is consistent with a Gazetted notice of the Minister administering the MRA Act authorising the taking of specified

interests in specified land;

- Land that has already been acquired for a public work **before** the land came within a redevelopment scheme can be held or used for a purpose authorised by the MRA Act. In this instance, provisions of the LAA that would ordinarily require the original holder of the interest in land to be given an option to purchase it back because it is no longer required for the purpose for which it was acquired, do not apply. Those provisions will continue to apply where a decision is made to dispose of the land.

The other provisions of Parts 9 and 10 LAA apply to compulsory acquisitions of land, with the effect of enabling the MRA to enter into an agreement to purchase, or to compulsorily acquire, land for a public work. Where land is compulsorily acquired, compensation may be payable in accordance with Part 10 LAA.

Clause 23 Public authority can be directed to transfer land to Authority

Under this clause, the Governor may direct another public authority to transfer land to the MRA. The Governor can only do so if the Governor is satisfied that the land is needed by the MRA for the purposes of the Act. The direction can specify the terms – including terms as to compensation – on which the transfer is to be made.

This provision is consistent with provisions of the existing redevelopment authority Acts.

Clause 24 Closing thoroughfares, temporarily or permanently

This clause gives the MRA the authority to close streets in a redevelopment area if it is required for the performance of its functions.

A temporary street closure will be possible if the MRA considers that it is necessary for the performance of its functions.

A permanent street closure will only be able to be effected by an order of the Minister, following the procedure set out under the *Land Administration Act 1997*.

Clause 25 Conditional disposal of land

This clause allows the MRA, when transferring land, to impose conditions on the transfer that the transferee will have to comply with.

Conditions may require the transferee to make specified improvements on the land, restrict the transferee's ability to dispose of or deal with the land, or impose any other sort of restriction.

Conditions may be registered as a memorial on the land by the Registrar of Titles or the Registrar of Deeds and Transfers.

Part 3 – Land Redevelopment Committees

This Part provides for the establishment of committees of the Authority known as Land Redevelopment Committees (LRCs).

LRCs will be established to perform most of the day-to-day planning and development functions of the MRA in specific redevelopment areas. An LRC may be responsible for one, or more than one, redevelopment area.

The extent of the functions of each LRC will be determined by the MRA on a case by case basis when it makes a decision as to the functions it will delegate.

Clause 26 LRC to be established for each redevelopment area

This clause requires the Authority, after a new redevelopment area is established, to either establish an LRC to have responsibility for the area or to determine that an existing LRC is to have responsibility for it.

The Authority must do so within 28 days of the establishment of a redevelopment area.

When a LRC is established, the Authority is to publish notice of the establishment, the name of the LRC, and the area for which it is established, in the Government Gazette. If the Authority determines that an existing LRC is to have responsibility for a new redevelopment area, notice is also to be published in the Gazette.

Clause 27 Function of LRC

This clause provides that each LRC's function is to exercise or perform the powers or duties delegated to it by the MRA.

Depending on the individual delegation, this may include:

- any of the Authority's powers under the Act, including planning and development control powers; or
- any of the powers of the Western Australian Planning Commission under the *Planning and Development Act 2005* that the Commission has delegated to the Authority.

Clause 28 Dissolution of LRC

This clause deals with the winding up of a LRC. It provides that the Authority:

- must dissolve a LRC if directed by the Minister to do so, and
- may dissolve a LRC in any other circumstances with the approval of the Minister.

The clause also enables regulations of a transitional nature to be made if required to deal with the particular consequences of dissolution of an LRC.

Part 4 – Redevelopment areas

This Part enables regulations to be made establishing a new redevelopment area or amending an existing redevelopment area by adding land to or removing land from it. The Part deals with the effect on land and development on land when land is added to, and removed from, a redevelopment area.

Clause 29 Recommendation of Minister to declare a redevelopment area

This clause deals with the prerequisites for making regulations declaring land to be a redevelopment area under **clause 30** or adding land to a redevelopment area under **clause 31**.

The Governor cannot make such regulations otherwise than on the recommendation of the Minister. The Minister cannot make such a recommendation until:

- the Minister has considered whether including land in a redevelopment area will facilitate the area's regeneration, the provision of land suitable for residential or commercial purposes close to public transport, or the establishment of new industries;
- the Minister has considered the likely effect on the planning system generally;
- the Minister has advised the WAPC and each relevant local government of the proposal, and each has had 30 days to comment.

In the case of regulations adding land to a redevelopment area, where the added land is not contiguous with the existing area, the Minister must also have regard to whether the addition would be consistent with the objectives of the existing area, which are prescribed in the regulations identifying the area.

If the WAPC makes a recommendation as to the proposed regulations, and the Minister proceeds in a way that is significantly different to the recommendation, the Minister is required to table notice of the difference, and contextual material, in Parliament.

It is proposed that, on commencement of this Bill, regulations will be made that identify the existing Armadale, East Perth, Midland and Subiaco redevelopment areas as redevelopment areas for the purposes of the new Act. **Clause 152(2)** has the effect that clause 29 does not apply to that first set of regulations, so long as they do no more than directly transfer the existing areas.

Clause 30 Regulations may declare redevelopment areas and provide for related matters

This clause enables regulations to be made declaring land in the metropolitan region to be a redevelopment area. **Clause 29** deals with the preliminary steps to making regulations under this clause.

It will not be possible to make regulations identifying a redevelopment area in respect of land that is the subject of an

improvement scheme made under Part 8 of the *Planning and Development Act 2005*.

Regulations are disallowable instruments required to be tabled in Parliament under section 42 of the *Interpretation Act 1984*. The Bill further provides that when regulations under this clause are tabled, they are to be accompanied by a plan of the redevelopment area and an explanatory statement setting out the reasons for declaring it.

The regulations can declare one or more separate redevelopment areas. One redevelopment area may comprise of more than one parcel of land. Unlike the position applying under existing redevelopment authority Acts, those parcels need not be contiguous.

Regulations identifying a new redevelopment area are required to prescribe the objectives of the redevelopment area. When non-contiguous parcels of land are added to the area, the Minister must consider whether the addition is in keeping with the prescribed objectives. In this way, a redevelopment area is kept as a coherent whole, even if it includes non-contiguous areas. The objectives of a redevelopment area must also be taken into account when preparing a redevelopment scheme for the area and when approving development in the area.

Clause 31 Regulations may amend redevelopment area

This clause enables regulations to be made that add land to, or remove land from, a redevelopment area.

Regulations are disallowable instruments required to be tabled in Parliament under section 42 of the *Interpretation Act 1984*. This clause further provides that when regulations under this clause are tabled, they are to be accompanied by a plan of the redevelopment area and an explanatory statement setting out the reasons for declaring it.

Clause 32 Land added to redevelopment area, transitional matters

Under this clause, when land is added to a redevelopment area, the added land is not automatically subject to a redevelopment scheme. A redevelopment scheme must be amended, following the procedures contained in **clause 49**, to apply to the area before new planning controls apply.

Before the redevelopment scheme is amended to cover added land:

- the existing planning controls (contained in the applicable regional and local planning scheme) will continue to apply in the added area, and
- decisions on development applications will continue to be made under those existing planning instruments by the council or WAPC, as the case may be.

Clause 51 deals with the effect of extending a redevelopment scheme over a redevelopment area.

Clause 33 Land removed from redevelopment area, transitional matters

This clause provides that, when land is removed from a redevelopment area, the redevelopment scheme immediately ceases to apply to the land and the planning scheme that would otherwise have applied to the land applies again. As a result, planning control over the area will revert to the local government.

This position can be changed in relation to particular developments or classes of development by way of regulations made under **clause 35**.

Clause 34 Applications for development approval not finalised when land removed

This clause has the effect that, where land is removed from a redevelopment area, any application for development approval on the land that has not been finally determined (either by the MRA or on review by the SAT) are to continue to be determined in accordance with the Act and the redevelopment scheme.

(The reverse arrangement applies, under **clause 55**, to applications not finalised under the local planning scheme when land becomes subject to a redevelopment scheme).

Clause 35 Transitional regulations

This clause allows special transitional regulations to be made to deal with land or development on land that is removed from the redevelopment area. Ordinarily, **clause 33** would apply so that the redevelopment scheme stops applying to removed land. This provision allows regulations to provide otherwise if it is necessary to save existing rights in a particular situation.

Clause 36 Evidentiary matters

This is a standard provision allowing copies of plans to be used in evidence in court proceedings.

Part 5 – Redevelopment schemes

This Part enables the making, amendment and repeal of redevelopment schemes, which are planning instruments containing development controls applying in redevelopment areas.

Part 5, Division 1 – Preparation and approval of redevelopment schemes

Clause 37 Draft redevelopment scheme: work prior to declaration of redevelopment area

This provision empowers the Authority to do preparatory work to

establish a draft redevelopment scheme for a proposed redevelopment area, before the area is officially declared.

Before redevelopment area regulations under **clause 30** come into effect, the Authority will be able to prepare a draft scheme applying to land the subject of the proposed regulations. It will be able to consult affected local governments and the WAPC, and do other preliminary work, but will not be able to undertake the formal consultation procedures dealt with elsewhere in the Division until the redevelopment area regulations have commenced.

Clause 38 Draft redevelopment scheme

A draft redevelopment scheme can apply to all or part of a redevelopment area, and more than one scheme may apply in an area.

A draft redevelopment scheme can contain provisions that the Authority considers will promote the orderly and proper planning, development and management of a redevelopment area, including provisions that can be included in a local planning scheme (that is, in relation to the matters specified in Schedule 7 to the *Planning and Development Act 2005*). The clause makes it clear that a redevelopment scheme can include provisions that support the payment of costs contributions in a redevelopment area, which will enable developer contribution plans to be made. A redevelopment scheme will be able to establish offences under the scheme carrying a penalty of not more than \$50,000, and a daily penalty of not more than \$5,000.

The Authority is to take the objectives of the area into consideration when preparing a draft scheme. Also, the Authority must make reasonable endeavours to consult, and take into account the views of, affected local governments, public authorities and persons (unless a particular person or authority has already been consulted under **clause 37**).

This pre-consultation requirement operates in addition to the requirements to consult local governments and the Western Australian Planning Commission under **clause 39**.

Clause 39 Draft redevelopment scheme to be submitted to relevant local government and WAPC

This clause requires the Authority to submit a draft redevelopment scheme to each local government of a district in which there is land to which the draft relates, and to the Western Australian Planning Commission. The local government or governments and the WAPC have 42 days to give written submissions on the draft to the Authority, and the Authority may, but need not, amend the draft in accordance with any submissions received.

Clause 40 Draft redevelopment scheme to be submitted to EPA

This provision requires the Authority to refer a draft redevelopment

scheme to the Environment Protection Authority (EPA) for a decision under the *Environmental Protection Act 1986* (EP Act).

Under section 48A of the EP Act, the EPA will decide whether or not a draft scheme is required to be assessed under the EP Act. If a draft scheme does require assessment, the Authority is required to provide the EPA with copies of relevant public submissions. The Authority is also required to undertake an environmental review of the draft scheme if the EPA requires it under the EP Act and the Authority wishes to proceed with the scheme.

Clause 41(3) has the effect that a draft scheme that is subject to a requirement for environmental review cannot be submitted to the Minister and the review requirement is met or otherwise resolved.

Clause 41 Draft redevelopment scheme to be submitted to Minister for publication approval

After a draft redevelopment scheme has been prepared, and the requirements to consult local governments, the Western Australian Planning Commission and the Environmental Protection Authority have been met, the Authority submits the scheme to the Minister, along with any submissions on the draft made by the WAPC or a local government.

Clause 42 Minister's functions as to draft redevelopment scheme

After considering a draft redevelopment scheme submitted under **clause 41**, the Minister may either consent or refuse to consent to its public notification. If the Minister refuses to consent, the Minister is to instruct the Authority to prepare another or an amended draft.

Clause 43 Public notification of draft redevelopment scheme

If the Minister consents under **clause 42**, a draft redevelopment scheme can be publicly notified.

To effect public notification, the Authority is to publish a notice of the availability of the draft in the Government Gazette and in two issues of a newspaper circulating throughout the State.

The public notification period cannot be shorter than 60 days.

Clause 44 Public submissions on draft redevelopment scheme

This clause makes it clear that any person can make a submission on a draft scheme within the notification period. Under **clause 43**, the notification period cannot be shorter than 60 days.

Clause 45 Draft redevelopment scheme to be submitted to Minister for final approval

After the end of the public submission period, the Authority can (but is not required to) make changes to the draft scheme in accordance with any submissions received.

The Authority must then submit the draft to the Minister for final approval, along with a summary of all public submissions received and a report as to their merits. The Authority must also provide a copy to the WAPC for its recommendation under **clause 46**.

Clause 46 Recommendation of WAPC

This clause requires the Authority to give a copy of a draft redevelopment scheme to the WAPC following the public notification period. The WAPC then has 30 days to make a written recommendation to the Minister to approve or refuse to approve the draft scheme, or to require the Authority to prepare another or an amended draft.

Clause 47 Minister's functions in deciding final approval

Under this clause, the Minister can approve or refuse to approve a draft redevelopment scheme. If the Minister refuses approval, the Minister can also give directions as to the preparation of a further draft.

The Minister cannot decide whether or not to finally approve a scheme until there are no outstanding requirements for assessment of the scheme applying under the *Environmental Protection Act 1986* and the Minister is satisfied that the scheme meets any conditions to which it is subject under that Act.

When approving a draft scheme, the Minister must have regard to the objectives of the relevant redevelopment area.

If the Minister approves a scheme contrary to a recommendation of the Western Australian Planning Commission given under **clause 46**, the Minister is required to table notice of the disagreement, and contextual material, in Parliament. The text of such a notice is also to be published in the Authority's next forthcoming annual report.

Clause 48 Gazettal and operation of approved redevelopment scheme

This provision states that an approved redevelopment scheme comes into operation on the day after the day on which notice of the scheme is published in the Gazette, or on a later day specified in the scheme.

The provision also requires the Authority to make available a copy of the scheme for public inspection, and enables the regulations to prescribe a fee for obtaining a copy of a scheme.

Part 5, Division 2 – Amendment and repeal of approved redevelopment scheme

Clause 49 Amendment of approved redevelopment scheme

This clause enables the Authority to amend an approved redevelopment scheme, and applies the procedural requirements contained in **clauses 40 to 48** to scheme amendments, with some necessary changes.

That is, a scheme amendment:

- will have to be submitted to the EPA and may be subject to environmental assessment or review under the EP Act;
- requires the Minister's approval before it can be publicly notified for comment, and is to be publicly notified for at least 42 days (rather than 60 days as is the case for draft principal schemes);
- if not approved by the Minister for public notification, the Minister can require the Authority to prepare another draft, or can simply let the amendment lapse (which is not a possibility in relation to principal schemes);
- is to be submitted to the Western Australian Planning Commission and the WAPC may make a recommendation to the Minister;
- requires the final approval of the Minister, which cannot be granted until the WAPC has made a written recommendation to the Minister, or until 30 days has passed since the scheme was submitted to the WAPC;
- becomes operational on its publication in the Gazette.

Clause 50 Repeal of approved redevelopment scheme

This provision states that an approved redevelopment scheme in force in a redevelopment area:

- is taken to have been repealed when the relevant redevelopment area ceases to exist; and
- can be repealed by a subsequent redevelopment scheme.

Part 5, Division 3 – Effect of redevelopment scheme

Clause 51 Effect of approved redevelopment scheme on planning schemes

This clause makes it clear that, once a redevelopment scheme comes into effect, any other planning scheme that applied to the land immediately beforehand ceases to apply to the land and development on the land.

In effect, the underlying planning scheme or schemes are “suspended” for the duration of the redevelopment scheme.

Any development that was being carried out, or that was approved, under a previous planning scheme before the day the redevelopment scheme comes into effect, can continue subject to the PD Act and the previous scheme, despite the provisions of the redevelopment scheme.

Clause 52 Inconsistency with regulations

This clause makes it clear that the regulations prevail to the extent of any inconsistency with a provision of a redevelopment scheme.

Clause 53 Approved redevelopment scheme has legislative effect

This clause makes it clear that a redevelopment scheme has legislative effect, and specifies that it is subsidiary legislation within the meaning of the *Interpretation Act 1984*. This provision is included to overcome any doubt about the legal status of schemes and instruments made under schemes.

The provisions of the Bill that deal with the making and publication of redevelopment schemes prevail over section 41 of the *Interpretation Act 1984*, which deals with Gazettal of subsidiary legislation, so that redevelopment schemes are not required to be published in the Gazette even though they are subsidiary legislation.

Clause 52 deals with the hierarchy of subsidiary legislation under the Act by providing that the regulations will prevail if there is any inconsistency between provision of the regulations and a redevelopment scheme.

Clause 54 Authority to comply with redevelopment schemes

This provision makes it clear that the Authority must exercise its functions in accordance with any applicable redevelopment scheme, although this requirement does not fetter the Authority's discretion to make a decision on an application for development approval according to the application's particular merits.

Clause 55 Applications for approval not finalised on scheme start day

This clause has the effect that, on the day on which a redevelopment scheme comes into effect, any application for development approval on the land that has not been finally determined (either by a local government, the Western Australian Planning Commission, or on review by the State Administrative Tribunal) is to continue to be determined in accordance with the *Planning and Development Act 2005* and the relevant planning scheme.

(The reverse arrangement applies, under **clause 34**, to applications not finalised under a redevelopment scheme when the scheme ceases to apply to land).

Clause 56 Transitional regulations

This clause allows special transitional regulations to be made to deal with land or development on land that becomes subject to a redevelopment scheme. Ordinarily, **clause 51** would apply so that relevant planning schemes no longer apply to such land. This

provision allows regulations to provide otherwise if it is necessary to save existing rights.

Clause 57 Minister may amend local planning scheme to conform with redevelopment scheme

This clause, and **clause 58**, facilitates the normalisation process taking place when redevelopment projects wind up.

Under this clause, the Minister may amend a local planning scheme that applied in a redevelopment area immediately before the redevelopment scheme took effect. Such an amendment is made by way of publishing a notice in the Gazette, and is limited to changing the underlying scheme to make it consistent with the redevelopment scheme. Amendments under this provision take effect on the day on which the redevelopment scheme ceases to apply to the land, which – because of **clause 51** – is the day that the underlying scheme comes back into effect.

Clause 58 Certain planning schemes affecting redevelopment area not to operate until redevelopment scheme ceases to apply

Along with **clause 57**, this clause facilitates the normalisation process when redevelopment projects wind up. This clause ensures that a planning scheme or an amendment to a planning scheme can be made while a redevelopment scheme is in effect, despite the fact that such a scheme will have no effect because of **clause 51**. Schemes and amendments to which this clause applies have no effect until the redevelopment scheme no longer has effect.

Part 6 – Development control in redevelopment area

This Part deals with the approval of development in a redevelopment area. It deals with the position of the Crown, makes arrangements for approval of development applications made by the Authority or in which the Authority has an interest, provides for the approval of development applications by the Authority, provides for enforcement in relation to unauthorised developments and deals with other miscellaneous matters.

Part 6, Division 1 – State bound

Clause 59 State bound

This clause makes it clear that the State is bound by the Part, with the effect that government agencies are subject to the requirement to have approval for development on land in a redevelopment area, and government agencies' development applications are subject to the provisions of Part 6.

Part 6, Division 2 – Developments by Authority

Clause 60 Authority must get Minister's approval for development

This clause has the effect that the Minister's approval is required for development on land in the redevelopment area:

- in relation to which the Authority is the development proponent; or
- in which the Authority has a financial interest.

The Minister is required decide an application for development approval by the Authority within 120 days of receiving the application.

Part 6, Division 3 – Development control by Authority

Clause 61 Application of this Division

This clause makes it clear that the Division (which requires approval for development) applies to all development in the redevelopment area, even if it takes place because of the exercise of a statutory function.

Clause 62 Undertaking unauthorised development an offence

This clause makes it an offence:

- to undertake development in an area in which a redevelopment scheme is in force unless the development is authorised by a development approval, or
- to undertake development that is in contravention of a development approval or a condition attached to an approval.

The maximum penalty for each offence is \$200,000, plus \$25,000 for each day that the offence continues.

Clause 63 Initial assessment of development application

This clause requires the Authority, when it receives a development application, to decide whether it is a standard or a major application and to notify the applicant of that decision.

The decision is made according to criteria the Authority prepares from time to time and, because of **clause 65**, determines the time within which the application must be decided.

Clause 64 Notice of development application

This clause requires the Authority to give notice of a development application and its decision under **clause 63** to:

- the local government for the district in which the development is proposed, and
- any other authority that is prescribed by the regulations for the purposes of the clause, and

- any other public authority that the Authority thinks may be affected by the proposed development.

A person notified under this clause has 42 days to make submissions to the Authority about the proposed development. Under **clause 66**, the Authority must have regard to any submission received when deciding a development application.

Clause 65 When development application must be decided

This clause has the effect that:

- no development application can be decided until 42 days after the Authority has complied with **clause 64**, or until the Authority has received final submissions from each person notified under that clause, whichever is the earlier; and
- a standard application must be decided within 90 days of its receipt; and
- a major application must be decided within 120 days of its receipt.

The 90 and 120 day periods may be extended by agreement between the Authority and the applicant. If the Authority does not decide an application within the relevant period, it is a deemed refusal. A deemed refusal entitles the applicant to a review by the State Administrative Tribunal (see **clause 69**).

If the Authority does make a decision after the expiry of the relevant period, the decision is valid.

Clause 66 Deciding development application

This clause provides that the Authority is to have regard to the following matters when deciding a development application:

- the relevant redevelopment scheme;
- the objectives for the redevelopment area;
- any submissions received in relation to the application;
- the requirements of orderly and proper planning;
- the desired amenity of the redevelopment area.

The Authority may decide to issue, or to refuse to issue, a development approval for the proposed development. Approvals are to be valid for the time decided by the Authority. Approvals may be issued subject to any condition decided by the Authority, including a condition that the development is approved temporarily, or that the development cannot commence until a specified act or event has occurred.

The Authority is to notify the applicant, and each person notified under **clause 64**, of its decision.

Clause 67 Duration of development approval

This clause makes it clear that a development approval lapses if it is not substantially commenced within the period decided by the Authority under **clause 66**.

Clause 68 Development may be approved after it is undertaken

This clause allows the Authority to retrospectively approve development. The offences set out in **clause 62** may still apply in relation to development undertaken before the approval is granted, but a retrospective approval renders lawful development carried out subsequent to the issue of the approval.

Clause 69 Review of Authority's decision by SAT

This provision gives an applicant the right to apply to the State Administrative Tribunal for a review of the following decisions:

- a deemed refusal under **clause 65**;
- a decision to refuse to issue a development approval, or to issue a conditional approval, under **clause 66**.

Part 6, Division 4 – Unauthorised developments

Clause 70 Terms used

This clause defines “development approval” and “unauthorised development” for the purposes of the Division.

An “unauthorised development” is one that is not the subject of a development approval, or that contravenes a development approval or a condition of a development approval.

Clause 71 Unauthorised developments: Authority's powers

Under this clause, the Authority can serve written notice on a person undertaking unauthorised development to stop undertaking the development, to remove or take down the development, or to restore land.

Failure to comply with a notice under the clause is an offence, carrying a maximum penalty of \$200,000 and \$25,000 for each day the offence continues.

Clause 72 Review of directions given under section 71

This clause gives a person who is given a notice under **clause 71** a right to apply to the State Administrative Tribunal for a review of the direction contained in the notice.

The clause has the effect that an application to the SAT does not suspend the operation of a notice to stop carrying out development, but does suspend the operation of a notice to

remove or take down the development or to restore land.

Clause 73 Authority may give effect to directions under section 71

Under this clause, if a person does not comply with a notice under **clause 71** or issued by the State Administrative Tribunal under **clause 72**, the Authority may itself do what the notice directed the person to do, and may recover its costs as a debt.

Part 6, Division 5 – Miscellaneous matters

Clause 74 Minister's powers to ensure environmental conditions are met

This clause applies if, after the Environmental Protection Authority has assessed a draft scheme, the scheme is subject to an environmental condition under the *Environmental Protection Act 1986* section 48F or 48J. 48H of the EP Act has the effect that in such a situation, the Authority is responsible for monitoring compliance with the condition and is to report non-compliance to the Minister.

Clause 74 empowers the Minister, on receiving advice of non-compliance in relation to development, to do one or both of the following:

- direct the person undertaking the development to stop doing so for no more than 24 hours;
- cause the Authority to serve notice on the person directing the person to do, or not to do, specified things to prevent non-compliance.

Failure to comply with a notice under the clause is an offence, carrying a maximum penalty of \$200,000 and \$25,000 for each day the offence continues.

Clause 75 Injurious affection: compensation

This clause applies the provisions of the *Planning and Development Act 2005* dealing with compensation for injurious affection to the MRA Act.

In short, the effect is that a person may be entitled to compensation where the person suffers a loss because of the effect on their land of a reservation for a public purpose (for instance, for public open space or public infrastructure). The entitlement to compensation arises when the landowner suffers actual loss because of the reservation. Payment of such compensation is recognised by a caveat on title. At a future time when the land is actually purchased or compulsorily taken, the purchase price or compensation paid reflects the past payment of compensation. Any liability to pay compensation attaches to the Authority, not to the State.

Part 7 – General administration of Authority and LRCs

This Part deals with the Board of the Authority and the governance of Land Redevelopment Committees, including appointments and other matters relating to office on the Board and on LRCs. It requires the declaration of financial and other interests by certain persons and prescribes procedural matters for meetings of the Board of the Authority and LRCs.

The Part also deals with staff and contractors of the Authority. It enables the Board to form committees other than LRCs.

Part 7, Division 1 – Board of management of Authority

Clause 76 Board is governing body

This clause provides that the governing body of the Authority is the board of management.

Clause 77 How board is constituted

This clause provides for the constitution of the board of management of the Authority.

The Board is to have seven members appointed by the Minister. One is to be an ex officio member of the Western Australian Planning Commission nominated by the Commission. Another is to be a person who, in the opinion of the Minister, has knowledge of or experience in local government. Each of the five other members is to have a “relevant qualification”, which is knowledge of and experience in one or more of the following fields:

- urban planning;
- business management;
- property development;
- financial management;
- engineering;
- transport;
- housing;
- community affairs.

Staff members of the Authority (including the CEO) cannot be Board members.

Clause 78 Remuneration and allowances

This clause provides that Board members are entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

Clause 79 Term of office

This clause provides that a Board appointment is to be no longer than three years, although a person can be appointed for more than one term.

Part 7, Division 2 – Land Redevelopment Committees

Clause 80 How LRC is constituted

This clause provides that a Land Redevelopment Committee is to have five members appointed by the Minister.

One member is to be an ex officio Board member, nominated by the Authority. Another is to be a person who, in the Minister's opinion, has knowledge of or experience in local government.

Each of the three other members is to have a "relevant qualification", which is knowledge of and experience in one or more of the following fields:

- urban planning;
- business management;
- property development;
- financial management;
- engineering;
- transport;
- housing;
- community affairs.

If the Minister does not designate a member as chairperson, the member who is a Board member is to be the chairperson. If the Minister does not designate a member as deputy chairperson, the members are to appoint one of their number to be the deputy chairperson.

The Minister must have regard to any recommendation as to LRC membership made by the Authority but is not required to follow it.

A staff member of the Authority (which includes the CEO) cannot be a LRC member.

Clause 81 Appointment of initial LRC members

This clause requires the Minister to appoint all members of a LRC within 60 days of the establishment of the LRC. If the Minister does not do so, the Minister must table in Parliament a statement setting out the reason.

Clause 82 Remuneration and allowances

This clause provides that LRC members are entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

Clause 83 Term of office

This clause provides that a LRC member's appointment is to be no longer than two years, although a person can be appointed for more than one term.

Part 7, Division 3 – Provisions that apply to Authority’s board of management and to LRCs

Subdivision 1 – General provisions

Clause 84 Term used: member

This provision defines “member”, for the purposes of the Subdivision, as a member of the Authority’s board of management or of a Land Redevelopment Committee.

Clause 85 Casual vacancies

Under this clause, the office of a member of the Authority’s board of management or of a Land Redevelopment Committee becomes vacant if the member:

- dies, resigns or is removed from office;
- is bankrupt or subject to insolvency laws;
- is convicted of an offence punishable by imprisonment for more than 12 months;
- is convicted of an offence under **section 96** relating to non-disclosure of interests;
- in the case of an ex officio Board or WAPC member, ceases to be a Board or WAPC member.

Members can resign by writing at any time.

The Minister can remove a member from office on the grounds of the member’s neglect of duty, misconduct or incompetence, mental or physical incapacity to satisfactorily carry out the member’s duties, or absence without leave for more than 3 meetings.

Clause 86 Extension of term of office during vacancy in membership

Under this clause, if the term of office of a member of the Authority’s board of management or of a Land Redevelopment Committee expires, the sitting member is taken to continue to be a member for no longer than a further 3 months.

Clause 87 Leave of absence

This clause provides for the Authority’s board of management and a Land Redevelopment Committee to grant their members leave of absence.

Clause 88 Deputy chairperson acting as chairperson

Under this clause, the deputy chairperson of the Authority’s board of management or a Land Redevelopment Committee is empowered to act as chairperson if the chairperson is unable to act.

Clause 89 Alternate members

This clause provides that:

- if a member of the Authority’s board of management or a

Land Redevelopment Committee is unable to act, the Minister can appoint an alternate member to act temporarily in the member's place; and

- If the deputy chairperson of the Authority's board of management or a Land Redevelopment Committee is unable to act in place of the chairperson, the members present can elect one of their number to act as chairperson.

Part 7, Division 3, Subdivision 2 – Disclosure of material personal interests

Clause 90 Terms used

This clause defines the terms "committee" and "member" for the purposes of the Subdivision.

Clause 91 When a member has a material personal interest

Under this clause, a member, or a close associate of a member (which is defined in **clause 94**) has a material personal interest in a matter if the person has a direct or indirect financial interest, or a proximity interest, in the matter.

Direct and indirect financial interests are dealt with in **clause 92**, proximity interests in **clause 93**, and closely associated persons in **clause 94**.

Clause 92 Financial interest

This clause provides that:

- a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the Authority, a Land Redevelopment Committee or another committee of the Board, result in a financial gain, loss, benefit or detriment for the person;
- a reference to an indirect financial interest of a person in a matter includes a reference to a financial relationship between the person and another person who requires a decision by the Authority, a Land Redevelopment Committee or another committee of the Board in relation to the matter.

Clause 93 Proximity interest

This clause provides that a person has a proximity interest in a matter if the matter concerns a proposed change to a redevelopment scheme, a proposed rezoning, or a proposed development, affecting land that adjoins the person's land.

Clause 94 Closely associated persons

This clause sets out the categories of persons who are closely associated with a member for the purposes of **clause 91**. The

categories include certain business and family relationships as well as any other category of relationship that is prescribed by the regulations for the purposes of the clause.

Clause 95 Some interests need not be disclosed

Clause 96 requires a member of the Authority's board of management, a Land Redevelopment Committee or another committee of the Board to disclose a material personal interest in a matter being considered.

Clause 95 provides that disclosure under **clause 96** is not required if a member has a financial interest because the valuation of land in which the member has an interest may be affected by a proposed change to a redevelopment scheme, change to the zoning or use of land, or development of land in the redevelopment area, unless:

- the proposed change affects land adjacent to the land in which the member has an interest; or
- the member's financial interest relates to something other than the valuation of land or land adjacent to that land.

That is, disclosure will not always be required just because a member happens to own land in the relevant redevelopment area. There needs to be a sufficiently close connection between the particular land and a particular proposed decision before the disclosure requirements apply.

Clause 96 Disclosure of material personal interest

Under this clause, a member of the Authority's board of management, a Land Redevelopment Committee or another committee of the Board who has a material personal interest in a matter being considered, or about to be considered, by the relevant entity, is required to disclose the nature and extent of the interest at a meeting of the entity.

There is a fine of \$10,000 for any member who does not comply with the disclosure requirement. Where a Board member is also a LRC member, or a committee member is also a Board or LRC member, the member is required to make the disclosure at a meeting of each entity of which the member is a member.

Disclosures of interest are to be recorded in the minutes of a meeting.

Clause 97 Voting by interested member

Under this clause, a member of the Authority's board of management, a Land Redevelopment Committee or another committee of the Board who has a material personal interest (as defined in **clause 91**) in relation to a matter must not vote on the matter or be present while the matter is being considered.

A member breaching the clause will be liable to the Authority for

any profit made by the member, or damage suffered by the Authority, as a result of the breach.

The clause may not apply, and interested members may still be able to participate and vote, in the circumstances set out in **clause 98** and **clause 100**. Under those provisions:

- the relevant body may make a resolution enabling an interested person to consider and vote on a particular matter;
- the Minister may declare that the clause does not apply, either generally or in relation to a particular proposal.

Clause 98 Section 97 may be declared inapplicable

Under this clause, the Board, LRC or a committee may resolve that a specific member's interest in a specified matter is so trivial or insignificant that it is unlikely to influence the member's conduct. If such a resolution has been made, the member to whom it applies is not prevented from considering or voting on the specified matter.

Clause 99 Quorum where section 97 applies

This clause has the effect that, in the event that a member is disqualified from voting under **clause 97**:

- the quorum for a meeting of the Authority's board of management is 3, rather than 4 as would ordinarily be the case; and
- the quorum for a meeting of a Land Redevelopment Committee is 2, rather than 3 as would ordinarily be the case; and
- the quorum for a meeting of another committee of the Board is 2.

If the Board still cannot form a quorum in relation to a matter, the Minister may deal with it. If a LRC or another committee still cannot form a quorum in relation to a matter, the Authority (that is, the Board) may deal with it.

This clause does not apply in the circumstances set out in **clause 100**.

Clause 100 Minister may declare sections 97 and 99 inapplicable

This clause enables the Minister to declare, in writing, that **clause 97** or **clause 99** does not apply in relation to a specified matter, either generally or in relation to a specific proposed resolution.

Such a declaration is required to be tabled in Parliament within 14 days.

Part 7, Division 3, Subdivision 3 – Meetings

Clause 101 Holding meetings

Under this clause:

- the first meeting of the Authority's board of management or a Land Redevelopment Committee is to be convened by its chairperson; and
- subsequent meetings, other than special meetings, are to be held as determined by the Board or LRC; and
- special meetings of a Board or LRC may be convened at any time by its chairperson.

Clause 102 Quorum

This clause provides that, for a meeting of the Authority's board of management a quorum is 4, and for a meeting of a Land Redevelopment Committee a quorum is 3. Reduced quorums may apply in the circumstances set out in **clause 99**.

Clause 103 Procedure at meetings

This clause enables the Authority's board of management or a Land Redevelopment Committee to determine its own procedures to the extent they are not otherwise dealt with in the Act. In the case of a LRC, meeting procedures are required to be consistent with any directions of the Board and the terms of any delegation of authority under which the LRC is acting.

Clause 104 Voting

This clause provides that each member present at a meeting of the Authority's board of management or a Land Redevelopment Committee has a deliberative vote and, in the case of an equality of votes, the member presiding has a casting vote.

Clause 105 Holding meetings remotely

This clause enables meetings of the Authority's board of management or a Land Redevelopment Committee to be held remotely, by telecommunication.

Clause 106 Resolution without meeting

This clause enables the Authority's board of management or a Land Redevelopment Committee to make unanimous resolutions in writing without a meeting of the relevant body being held.

Clause 107 Minutes to be kept

This clause makes the Authority responsible for keeping accurate minutes of each meeting of its board of management, and the member presiding at a meeting of a Land Redevelopment

Committee responsible for keeping accurate minutes of each LRC meeting. LRC minutes are to be submitted to the next following meeting of the Board.

Part 7, Division 4 – Staff, contractors and committees

Clause 108 Chief executive officer

This clause provides that the chief executive officer of the Authority is to be appointed under the *Public Sector Management Act 1994* and is to administer the day-to-day functions of the Authority, subject to the control of the Board.

Clause 109 Other staff

This clause enables the Authority to:

- appoint public service officers under the *Public Sector Management Act 1994* Part 3; and
- employ, engage or manage staff otherwise than under that Part;
- engage a person under a contract for services or appoint a person on a casual basis;
- make use of the services of a person employed by another person.

Clause 150 contains transitional provisions dealing with the transfer of staff of the existing redevelopment authorities.

Clause 110 Use of government staff and facilities

This clause enables the Authority to make an arrangement with a department of the Public Service or another State agency for the use of staff and facilities of the department or agency.

Clause 111 Committees

This clause enables the Authority to appoint other committees as required to assist it in its functions. Committees may include persons who are not members of the Authority. Members are entitled to be paid at a rate determined by the Minister on the recommendation of the Public Sector Commissioner.

Part 8 – Accountability and financial provisions

This Part deals with business and operational plans of the Authority, and the Authority's financial arrangements.

Division 1 - Accountability

Clause 112 Business plans and operational plans

This provision requires the Authority to annually give the Minister a draft business plan and operational plan before a date specified by the Treasurer. The regulations will specify details of the manner and form in which the Authority is to prepare and submit business and operational plans and of their content.

The Minister, with the Treasurer's approval, can approve a draft business or operational plan.

Clause 10 requires the Authority to perform its functions in accordance with its business and operational plans.

Clause 113 Minister to be kept informed

This provision requires the Authority to keep the Minister reasonably informed of the operations, financial performance and financial position of the Authority. It also requires the Authority to inform the Minister and the Treasurer if any matter arises that is likely to significantly affect the achievement of the Authority's objectives and targets set out in its business plan or operational plan.

Clause 114 Minister may give directions

Under this clause, the Minister is able to give general or particular written directions to the Authority, and the Authority must give effect to any such direction. The text of any direction is to be tabled in Parliament and included in the next annual report of the Authority.

Clause 115 makes provision with respect to when directions come into effect.

Clause 115 When directions take effect

Under this clause, a direction under **clause 114** comes into effect 7 days after it is received by the Authority or a longer period agreed by the Minister.

Clause 116 Minister to have access to information

This clause entitles the Minister to any information – whether in written, electronic or other form – held by the Authority. The Minister is empowered to request the Authority to give the Minister the information or access to the information, and the Authority is obliged to give effect to any such request.

- Clause 117 Protection from disclosure or compliance with directions**
This clause provides that the Authority, or any other person performing a function under the Act, is not liable for a claim relating to disclosure of information under the Act, the *Financial Management Act 2006* or the *Auditor General Act 2006*, or doing or omitting to do any thing as a result of compliance with a direction given under the Act.
- Clause 127** contains a more general protection from liability in certain situations.

Division 2 – Financial provisions

- Clause 118 Application of *Financial Management Act 2006* and *Auditor General Act 2006***
This clause provides that the requirements of those Acts relating to the financial administration, audit and reporting of statutory authorities apply to the Authority.
- Clause 119 Metropolitan Redevelopment Authority Account**
This clause requires an agency special purpose account called the Metropolitan Redevelopment Authority Account to be established under the *Financial Management Act 2006*, and for it to be the operating transaction account of the Authority.
- Clause 120 Authority's funds**
This clause makes it clear that the Authority has available, for the purpose of performing its statutory functions, any money lawfully received by, or made available to, the Authority. If money is accepted by the Authority on trust or other condition, the trust or condition is binding on the Authority.
- Clause 121 Borrowing**
This clause enables the Authority to borrow money, obtain credit, or arrange financial accommodation, with the approval of the Treasurer.
- Clause 122 Notice of financial difficulty**
This clause requires the Authority's board of management to notify the Minister if, in its opinion, the Authority is unable, or is likely to be unable, to satisfy any of its financial obligations. On receipt of such a notice, the Minister is to confer with the Treasurer and the Authority to determine the appropriate course of action and is to initiate such action.

Part 9 – Miscellaneous

This Part contains miscellaneous provisions dealing with the application of other laws, execution of documents, contract formalities, an offence relating to dealing with confidential information, the liability of officers of bodies corporate for offences under the Act, approved forms and the procedure for tabling documents in Parliament. It also contains the general regulation-making power and a provision requiring the Act to be reviewed five years after its commencement.

Clause 123 Modification or suspension of other laws

This clause applies section 132 of the *Planning and Development Act 2005* to the carrying out of a redevelopment scheme. This means that, if the carrying out of any provision of a redevelopment scheme would conflict with a provision of an Act, the Authority will be able to apply to the Governor for an order modifying or suspending the Act provision, and the Governor may make such an order if the Governor sees fit.

Clause 124 Execution of documents by Authority

This clause provides that the Authority is to have a common seal and describes its use for the purpose of executing documents. A document may also be properly executed by the Authority if it is signed on behalf of the Authority by a person authorised to do so.

Clause 125 Contract formalities

This clause makes it clear that a person acting as authorised by the Authority can make, vary or discharge a contract in the name of the Authority, and such action is legally effective.

Clause 126 Confidential information officially obtained

This clause establishes an offence of recording, using or disclosing, without lawful authority, confidential information obtained in the performance of a function under the Act. The offence is punishable by a maximum penalty of \$12,000 or 12 months imprisonment.

Clause 127 Protection from liability for wrongdoing

This clause protects a person from tortious liability for anything the person has done, or not done, in good faith in performance or purported performance of a function under the Act. The clause does not:

- relieve the Authority or the State of vicarious liability for the acts of their employees or agents; or
- relieve directors of the Board of the Authority of liability under the *Statutory Corporations (Liability of Directors) Act 1996*.

Clause 128 Body corporate’s officers, liability of

This provision has the effect that, if a body corporate is convicted of an offence under the Act, and it is proven that the offence was committed with the consent or connivance of an officer of the body corporate, or that an officer of the body corporate failed to take appropriate steps to prevent the offence, then the officer is also guilty of the same offence.

Clause 129 Approved forms

This clause enables the CEO of the Authority to approve forms for use under the Act.

Clause 130 Regulations

This is a general regulation-making power. It enables regulations to be made for all matters that are necessary or convenient to be prescribed for the purposes of the Act, including:

- procedures for development applications;
- amendment and cancellation of development approvals;
- statutory declarations;
- applications to the State Administrative Tribunal for review of decisions under the regulations;
- fees and charges for development applications and other matters;
- offences with a penalty not exceeding \$5,000.

Various other clauses of the Bill contain specific powers to make regulations.

Clause 131 Laying documents before House of Parliament not sitting

This provision has the effect that, if the Minister is required under the Act to table a document in Parliament and at the time required either House of Parliament is not sitting, the Minister must instead transmit a copy of the document to the Clerk of the relevant House.

Clause 132 Review of Act

This clause requires the Minister to review the operation and effect of the Act as soon as practicable five years after it commences.

Part 10 – Repeals, consequential amendments and validations

This Part:

- repeals the Acts constituting the Armadale, East Perth, Midland and Subiaco redevelopment authorities;
- contains amendments to other Acts consequential on the repeal of those Acts and the enactment of the Act and in the nature of miscellaneous minor statute law revision; and

- provides that a redevelopment scheme approved under any of the repealed Acts is taken to have had legislative effect from the day it came into operation, and that anything done or omitted under such a scheme is accordingly taken to have been validly done or omitted.

Division 1 – Repeals

Clause 133 Acts repealed

This clause repeals the *Armadale Redevelopment Act 2001*, the *East Perth Redevelopment Act 1991*, the *Midland Redevelopment Act 2001* and the *Subiaco Redevelopment Act 1994*.

Division 2 – Consequential amendments

Clause 134 *Approvals and Related Reforms (No. 4) (Planning) Act 2010* amended

This clause amends the *Approvals and Related Reforms (No. 4) (Planning) Act 2010* to remove words that cannot be incorporated in the *Planning and Development Act 2005* as the result of a technical drafting error. This amendment is associated with the amendment to the *Planning and Development Act 2005* included in **clause 140(6)**.

Clause 135 *Constitution Acts Amendment Act 1899* amended

This clause amends the *Constitution Acts Amendment Act 1899* to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act.

Clause 136 *Environmental Protection Act 1986* amended

This clause amends the *Environmental Protection Act 1986*:

- to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act; and
- to make other minor amendments in the nature of statute law revision.

Clause 137 *Financial Management Act 2006* amended

This clause amends the *Financial Management Act 2006* to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act.

Clause 138 *Government Railways Act 1904* amended

This clause amends the *Government Railways Act 1904* to update the description of certain land as a consequence of the repeal of the *Subiaco Redevelopment Act 1994*.

Clause 139 *Land Tax Assessment Act 2002* amended

This clause amends the *Land Tax Assessment Act 2002* as a consequence of the repeal of the *East Perth Redevelopment Act 1991*.

Clause 140 *Planning and Development Act 2005* amended

This clause amends the *Planning and Development Act 2005* (PD Act):

- to overcome the prohibition on subdelegation in section 16 of the PD Act in limited circumstances so that, if the WAPC delegates a function to the Authority, the Authority will be able to further delegate it to a Land Redevelopment Committee;
- to insert new subsections 76(4) and (5), which were intended to be inserted by the *Approvals and Related Reforms (No. 4) (Planning) Act 2010* but that were unable to be inserted on the commencement of the relevant provision of that Act because of a technical drafting error rendering them unincorporable;
- to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act; and
- to make a minor amendment to section 268A in the nature of statute law revision.

Clause 141 *Public Sector Management Act 1994* amended

This clause amends the *Public Sector Management Act 1994* to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act.

Clause 142 *Statutory Corporations (Liability of Directors) Act 1996* amended

This clause amends the *Statutory Corporations (Liability of Directors) Act 1996* to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act.

Clause 143 *Swan and Canning Rivers Management Act 2006* amended

This clause amends the *Swan and Canning Rivers Management Act 2006*:

- to update certain references as a consequence of the repeal of the redevelopment authority Acts and the enactment of the MRA Act; and
- to make other minor amendments in the nature of statute law revision.

Division 3 – Validations

Clause 144 Effect of redevelopment schemes and validity of things done under them

This clause provides that a redevelopment scheme approved under any of the repealed Acts is taken to have had legislative effect from the day it came into operation, and that anything done or omitted under such a scheme is accordingly taken to have been validly done or omitted.

The clause is included to avoid any possible legal argument that may exist relating to the status of redevelopment schemes under the redevelopment authority Acts associated with the inclusion of **clause 53**, which provides that approved redevelopment schemes under the Act have legislative effect.

Part 11 – Transitional provisions

This Part makes transitional arrangements consequent on the repeal of the four existing redevelopment authority Acts and the enactment of the Act.

Clause 145 Terms used

This clause defines terms used in the Part.

Clause 146 *Interpretation Act 1984* not affected

This clause makes it clear that Part V of the *Interpretation Act 1984*, which deals with the consequences of the repeal of Acts, applies in relation to the repeal of the redevelopment authority Acts unless Part 11 specifically provides otherwise.

Clause 147 Assets, rights and liabilities

This clause provides for the transfer of all assets, rights and liabilities of each redevelopment authority to the Authority on the day on which the redevelopment authority Act is repealed. It requires the closure of bank accounts maintained by existing authorities and the transfer of funds they contained to the Metropolitan Redevelopment Authority Account. It also makes it clear that any legal proceedings that may have been brought or continued against or by an existing authority can be brought or continued against or by the Authority after the commencement of the Act.

Clause 148 Agreements and instruments generally

This provision has the effect that any reference in an agreement or other instrument to an existing redevelopment authority is taken to be a reference to the Authority after the commencement of the Act.

Clause 149 References in written laws to abolished authorities

This provision has the effect that any reference in a written law to

an existing authority can be taken to include a reference to the Authority if such a reference is appropriate.

Clause 150 Employed staff

This provision has the effect that, on the repeal of the existing redevelopment authority Acts:

- any contract of service of a person employed to provide services that expires between 31 December 2011 and 30 June 2012 (inclusive of those dates) is extended for a further six months after the repeal date;
- any person employed under a contract of service by a statutory authority to provide services to the Armadale Redevelopment Authority becomes a staff member of the Authority on the same terms and conditions (subject to any extension referred to above);
- any person appointed under the *East Perth Redevelopment Authority Act 1991* becomes a staff member of the Authority on the same terms and conditions;
- any person who was a public service officer seconded to the Midland Redevelopment Authority becomes a staff member of the Authority on the same terms and conditions.

Clause 151 Persons engaged under contracts for services

This provision has the effect that consultants and other persons providing services engaged by an existing authority under a contract for services are taken to have been engaged by the Authority under the contract.

Clause 152 Transfer of land in abolished redevelopment area to redevelopment area under this Act

This clause enables regulations to be made under **clause 30** to declare the redevelopment areas existing immediately before the repeal date to be redevelopment areas for the purposes of the Act. The preliminary requirements set out in **clause 29(2)** that would ordinarily apply to the making of redevelopment area regulations do not apply to regulations that simply transfer areas in this way.

Clause 153 Redevelopment scheme continues for land in abolished redevelopment area that is transferred to redevelopment area under this Act

This clause provides that, if regulations are made as described in **clause 152**, a redevelopment scheme that applied to land to which the regulations apply continues to apply to the land after the transfer.

Clause 154 Exemptions from State tax

This clause exempts any liability for duty and any other State

based tax or charge arising out of the transfer of assets, rights and liabilities from existing authorities to the Authority, and any other aspect of the transition.

Clause 155 Transitional regulations

This clause enables regulations of a transitional nature to be made if required as a consequence of the repeal of the existing redevelopment authority Acts and the commencement of the new Act.