# *Approval and Related Reforms (No.4) (Planning) Bill 2009*
# Explanatory Memorandum

The purpose of this Bill is to amend the *Planning and Development Act 2005* to streamline and improve the approvals process.

The Bill includes minor and clarifying amendments to the *Planning and Development Act 2005* as well as provisions to:

- enable more effective and efficient decision-making in development applications at local, regional and State levels through the establishment of development assessment panels;
- extend the use of existing strategic instruments such as improvement plans to strengthen State and regional planning throughout the State;
- provide exemptions from planning approval for projects funded through the Nation Building and Jobs Plan stimulus package to facilitate meeting the Commonwealth's funding requirements;
- enable the State to collect data on local development decisions to monitor the effectiveness of reforms to the approvals process; and
- allow the Minister for Planning to direct a local government to amend its local planning scheme to be consistent with an applicable State Planning Policy.

## Clause notes

### PART 1 - PRELIMINARY MATTERS

This part contains the short title and relevant commencement provisions.

**Clause 1 Short Title:** The short title derives from the objective of the Bill to streamline and improve provisions on the approvals process and related reforms.

**Clause 2 Commencement:** Part 1 will come into effect on the date that the Bill receives the Royal Assent. The rest of the Bill will come into effect upon a date fixed by proclamation. This will allow the enactment of the provisions relating to Development Assessment Panels (Part 3) to be delayed pending finalisation of regulations necessary to support their effective introduction. Parts 2, 4 and 5 may be proclaimed shortly after Royal Assent or delayed until Part 3 is ready for enactment.

### PART 2 - IMPROVEMENT PLANS AND SCHEMES

This part sets out an amendment to enable the Western Australian Planning Commission to declare Improvement Plans in any area of the State. This will be achieved by removing the restriction in the current section 119 of the *Planning and Development Act 2005* which limits the use of such instruments to areas in respect of which a region planning scheme applies.

This part of the Bill also includes provisions to enable an "improvement scheme" to be prepared to the extent necessary to implement the objectives of an improvement plan. An improvement scheme will have statutory effect and override the provisions of any local planning scheme or regional planning scheme that might otherwise have applied to the area.

## Division 1 - *Planning and Development Act 2005* amended

**Clause 3 Act amended:** This clause clarifies that Division 1 of Part 2 amends the *Planning and Development Act 2005.*

**Clause 4 Section 4 amended:** This clause amends Section 4 of the *Planning and Development Act 2005* to include definitions for "improvement scheme" and "improvement scheme area". It also expands the definitions of (i) "planning scheme" to include not only region and local planning schemes but also improvement schemes, and (ii) "responsible authority" to include reference to the Western Australian Planning Commission being the responsible authority with respect to an improvement scheme.

**Clause 5 Section 5 amended:** This clause provides through a new subsection 5(3) that the Crown will be bound by an improvement scheme in the same manner as it is bound by a region planning scheme.

**Clause 6 Section 6 amended:** This clause adds a reference to the new subsection 5(3) in noting that the exemption in section 6 is subject to the qualification that the Crown is bound by an improvement scheme.

**Clause 7 Section 14 amended:** This clause amends section 14 to add as a function of the Western Australian Planning Commission the preparation and amendment of improvement plans and schemes.

**Clause 8 Section 26 amended:** This clause deletes the reference to "local" to clarify that a State Planning Policy may apply throughout the State including in areas for which any kind of planning scheme (ie. region planning scheme, improvement scheme, and local planning scheme) have been prepared.

**Clause 9 Part 8 heading replaced:** This clause updates the heading of Part 8 to include a reference to improvement schemes.

**Clause 10 Section 119 amended:** This clause contains the amendment to allow Improvement Plans to be declared in any area in the State (not just in areas in respect of which the Western Australian Planning Commission has resolved to prepare a regional planning scheme) except for areas to which a redevelopment scheme or a development control area already applies under applicable legislation.

**Clause 11 Part 8 Division 2 inserted:** This clause inserts Division 2 into Part 8 of the *Planning and Development Act 2005* which sets out the provisions relating to the content and preparation of improvement schemes.

*Section 122A Content of improvement schemes*:
-This new draft section provides that an Improvement Plan may authorise the making of an improvement scheme and that the matters to be covered in an improvement scheme may include any of the matters that may be covered by an Improvement Plan and/or a local planning scheme.

*Section 122B Preparing, approving and reviewing improvement schemes*
- This new draft section provides that an improvement scheme will be prepared, advertised and referred to the Environmental Protection Authority (EPA) in the same manner as a local planning scheme with such modifications as are necessary.
An improvement scheme may be repealed by an instrument of repeal prepared by the Western Australian Planning Commission and approved by the Minister.

*Section 122C Effect of improvement scheme on development control*
**-** This new draft section clarifies that where development approval has been granted under a region planning scheme and/or a local planning scheme prior to an improvement scheme coming into effect, an improvement scheme will not impact upon the carrying out of such development.

*Section 122D Effect of improvement scheme on other planning schemes*
- This new draft section provides that upon an improvement scheme coming into operation, any local planning scheme or regional planning scheme that would otherwise have applied to the improvement scheme area ceases to apply.

*Section 122E Effect of removal of land from improvement scheme area or repeal of improvement scheme*
- This new draft section provides that upon an improvement scheme ceasing to apply to land, any planning scheme that but for the operation of the improvement scheme would have applied to such land, recommences to apply to such land as amended.

*Section 122F Amended improvement scheme area: transitional provisions*
-This new draft section enables regulations to be made to the extent necessary to transition land in or out of improvement scheme areas.

*Section 122G Applications for development not finalised when land removed or improvement scheme repealed*
- This new draft section provides that if a development application has been lodged with the Western Australian Planning Commission under an improvement scheme, and such scheme terminates prior to the determination of such application, the Western Australian Planning Commission must determine the application irrespective of whether or not another planning scheme has recommenced application to the subject land.

*Section 122H Permanent closure of streets*
- This draft section confirms that the provisions of the *Land Administration Act 1997* and related regulations regarding permanent closure of streets apply to improvement schemes as if a reference to the local government was a reference to the Commission for such purpose.

*Section 122I Certain planning schemes affecting improvement scheme area not to operate until repeal day*
- This draft section confirms that a local or region planning scheme that otherwise would have applied to an improvement scheme area (or any amendments); will not apply until the improvement scheme ceases to have effect.

*Section 122J Minister may amend local planning scheme to conform with improvement scheme*
- This draft section provides that the Minister for Planning may, while an improvement scheme is in effect, amend a local planning scheme so that it is consistent with an improvement scheme. As an improvement scheme has gone through the process of advertising and other processes as if it was a local planning scheme, the Minister will have the power to directly amend the relevant local planning scheme. Upon the expiration of the improvement scheme, the normalisation of the area will be smoothly transitioned as the local planning scheme (as amended by the Minister) will be able spring immediately back into effect.

*Section 122K Region planning scheme may be amended to conform with improvement scheme*
- This new draft section allows a region planning scheme to be amended using the same process as a minor amendment under Division 4 of the *Planning and Development Act 2005*. This will allow it to conform with an improvement scheme so that upon the expiration of the improvement scheme the normalisation of the area will be smoothly transitioned with the region planning scheme (as amended) being able to spring back into effect along with any applicable local planning scheme.

*Section 122L Other Ministerial Powers*
- This new draft section enables the Minister to direct the Western Australian Planning Commission to implement an improvement scheme in the same manner that the Minister has the power to direct a local government to implement a local planning scheme under section 211.

*Section 122M Fees*
- This new section enables the Western Australian Planning Commission to charge development application fees for development within an improvement scheme area in the same manner that a local government may charge development application fees for development within a local planning scheme area.

**Clause 12 Part 8 Division 3 heading inserted:** This clause inserts a heading for the new Division 3 - General which sets out general matters with respect to improvement plans and schemes.

**Clause 13 Section 122 amended:** This clause amends section 122 to acknowledge that the new Division 2 regarding improvement schemes - by suspending the operation of region and local planning schemes - does have the effect of derogating from the powers of local governments and the Western Australian Planning Commission with respect to development control decisions in improvement scheme areas for the duration of an improvement scheme.

**Clause 14 Part 9 heading replaced:** This clause replaces the existing heading to use the term 'planning schemes' so that improvement schemes will be included in the reference.

**Clause 15 Section 170 amended:** This clause amends section 170 which deals with the requirements imposed upon a person who is subdividing land to provide to local government specifications for roads and waterways to be constructed in connection with the proposed subdivisions. This amendment replaces the term 'local government' with 'responsible authority' to acknowledge that in the case of an improvement scheme, the obligation to provide such specifications will be to the Western Australian Planning Commission.

**Clause 16 Section 195 amended:** This clause amends section 195 - which deals with the Western Australian Planning Commission acquiring land in improvement areas while the relevant region planning scheme is in force - to ensure this ability to acquire land continues even where an improvement scheme is in place which has the effect of suspending the region planning scheme.

**Clause 17 Section 196 amended:** This clause amends section 196 to ensure that the Western Australian Planning Commission's powers to dispose of land for the purposes of a region planning scheme extends to the purposes of an improvement plan to account for circumstances in which a region planning scheme may have been suspended by an improvement scheme.

**Clause 18 Section 197 amended:** This clause amends section 197 to extend the powers of the Governor to declare land to be held and used not only for a region planning scheme but also for an improvement plan.

**Clause 19 Section 198 amended:** This clause amends section 198(1) to ensure that where the Metropolitan Region Scheme ceases to apply to an area by virtue of an improvement scheme coming into effect, the purposes of the Metropolitan Region Improvement Fund extend to the purposes of such metropolitan improvement scheme.

**Clause 20 Section 199 amended:** This clause amends section 199 to ensure that the Metropolitan Region Improvement Fund can be used for metropolitan improvement schemes even when the Metropolitan Region Scheme is suspended with respect to such area.

**Clause 21 Section 218 amended:** This clause amends section 218 which deals with offences under planning schemes to include a reference to improvement schemes.

**Clause 22 Section 252 amended:** This clause amends section 252 to extend the right to apply for a review of a discretionary decision to decisions made under improvement schemes.

**Clause 23 Section 256 amended:** This clause amends section 256 to ensure that the ability of the Minister to make regulations for schemes extends to improvement schemes.

**Clause 24 Section 257 amended:** This clause amends section 257 (1) to include a reference to offences under an improvement scheme as a matter for which the Court may order compensation.

**Clause 25 Section 262 amended:** This clause amends section 262 to include clarification that improvement schemes will have the same priority as local planning schemes to the extent of any inconsistency with local laws.

## Division 2 - Consequential Amendments

*Subdivision 1 - Environmental Protection Act 1986 amended*

**Clause 26 Act Amended:** This clause explains that this subdivision makes amendments to the *Environmental Protection Act 1986* which are necessary or desirable to give effect to the amendments regarding improvement plans and schemes.

**Clause 27 Section 3 amended:** This clause amends section 3(1) to (i) provide a definition for 'improvement scheme' as provided for under the Planning and Development Act and (ii) include a reference to 'improvement scheme' in the existing definitions of 'assessed scheme', 'final approval', 'period of public review', responsible authority', and 'scheme'.

**Clause 28 Section 48C amended:** This clause amends section 48C (7) to include a reference to 'improvement scheme' in the definition of 'public review'.

*Subdivision 2 Other Acts amended*

**Clause 29 *Agricultural Practices (Disputes) Act 1995* amended:** This clause amends section 3 of the Act to include a reference to 'improvement scheme' in the definition of 'rural land'.

**Clause 30 *Armadale Redevelopment Act 2001* amended:** This clause (i) amends section 5(4) of the Act to include improvement schemes amongst the schemes that may be amended by the Minister for Planning for the purpose of transitioning the relevant area upon termination of the redevelopment scheme and (ii) amends the definition of planning scheme under the Act to include a reference to an improvement scheme.

**Clause 31 *Control of Vehicles (Off-road Areas) Act 1978* amended:** This clause amends section 16(5) (d) of the Act to include a reference to improvement scheme to allow the Minister to prohibit off road access in an area if the provisions of an improvement scheme would make such declaration to be in the public interest.

**Clause 32 East *Perth Redevelopment Act 1991* amended:** This clause amends section 5(4) of the Act to include improvement schemes amongst the schemes that may be amended by the Minister for Planning for the purpose of transitioning the relevant area upon termination of the redevelopment scheme and (ii) amends the

definition of planning scheme under the Act to include a reference to an improvement scheme.

**Clause 33 *Electricity Corporations Act 2005* amended:** This clause amends 60(3) of the Act to correct the reference to a sequence of sections in the *Planning and Development Act 2005* and to add a reference to improvement schemes.

**Clause 34 *Hope Valley-Wattleup Redevelopment Act 2000* amended:** This clause amends the Act to include a reference to improvement scheme in the definition of planning scheme.

**Clause 35 *Land Tax Assessment Act 2002 amended*:** This clause amends the Act to include a definition of improvement scheme and to include a reference to improvement scheme in the definition of 'residential equivalent value.

**Clause 36 *Local Government Act 1995* amended:** This clause amends the Act to extend powers of local government to determine differential general rates having regard to the provisions of an improvement scheme.

**Clause 37 *Midland Redevelopment Act 1999* amended:** This clause amends section 5(4) of the Act to include improvement schemes amongst the schemes that may be amended by the Minister for Planning for the purpose of transitioning the relevant area upon termination of the redevelopment scheme and (ii) amends the definition of planning scheme under the Act to include a reference to an improvement scheme.

**Clause 38 *Sale of Land Act 1970* amended:** This clause amends section 16 of the Act to add a reference to improvement schemes so that in relation to a sale of land a person cannot advertise that the land may be used for a purpose that is contrary to the provisions of a local planning scheme or an improvement scheme.

**Clause 39 *Strata Titles Act 1985* amended:** This clause amends sections 21U and 23 of the Act to include a reference to improvement schemes so that surveyor's and local government certificates for strata applications must take into account the provisions of improvement schemes as well as local planning schemes.

**Clause 40 *Subiaco Redevelopment Act 1994* amended:** This clause amends section 5(4) of the Act to include improvement schemes amongst the schemes that may be amended by the Minister for Planning for the purpose of transitioning the relevant area upon termination of the redevelopment scheme and (ii) amends the definition of planning scheme under the Act to include a reference to an improvement scheme.

**Clause 41 *Water Conservation Act 1976* amended:** This clause amends section 36 of the Act to provide that the Minister may request that details of a proposed improvement scheme in a management area under the Act be submitted to the Minister.

**PART 3 - DEVELOPMENT ASSESSMENT PANELS: *PLANNING AND DEVELOPMENT ACT 2005***

This Part of the Bill provides for the establishment of two types of Development Assessment Panels (DAPs):

- Local Development Assessment Panels (LDAPs): A LDAP may be created to determine development applications for a local government area.
- Joint Development Assessment Panels (JDAPs): A JDAP may be created to determine application for 2 or more local government districts.

The Minister for Planning will create a panel for each local government area, under section 171I. The two different types of panels are proposed to best cater for the varying degrees of development within local governments in Western Australia. Local governments with high growth will be supported by LDAPs. Small metropolitan councils with minimal growth and regional local governments will be supported by JDAPs.

As DAPs will be determining applications in place of the current decision maker (either the local government or the Western Australian Planning Commission), they will be required to make decisions in accordance with the existing planning framework. Therefore, the DAP will determine the application in accordance with the requirements in the relevant region or local planning scheme, as the responsible authority. Any local or State planning policy that a local government or the Western Australian Planning Commission (Western Australian Planning Commission) would ordinarily be required to take into account when determining the application will be taken into account by the DAP.

In addition, it is proposed that the Minister for Planning will have the power to call in any application that is of a class prescribed in the regulations as being a "significant development". Any applications that are called in by the Minister will be assessed by the relevant DAP, but determined by the Minister. The DAP will prepare a report containing its advice and recommendations which the Minister will take into consideration when determining the application.

The provisions in this Part provide the heads of power for the establishment of DAPs, and for the preparation of regulations regarding the operation of DAPs. The detail of how the panels will function, how fees will be paid, what the qualifications of DAP members will be, etc will all be provided for in the new regulations.

**Clause 42 Act amended:** This clause explains that this Part 3 amends the *Planning and Development Act 2005*.

**Clause 43 Section 4 amended:** This clause inserts the definitions of Development Assessment Panel or DAP, JDAP and LDAP into the Act and modifies the definition of responsible authority to include DAPs pursuant to regulations made under draft section 171A(2)(a).

**Clause 44 Section 16 amended:** This clause amends section 16(9) - which provides that delegations under this section do not apply to the execution of documents – to

ensure that it does not restrict the proposed delegation of functions to a DAP under draft section 171B.

**Clause 45 Section 77B inserted:** This clause inserts draft section 77B to provide that the Minister may direct a local government to amend a local planning scheme to conform with a DAP recommendation. In the course of determining development applications under a local planning scheme, the DAP may become aware of issues with provisions of that scheme, such as zoning restrictions or development control requirements. If the DAP believes that the provisions of a local planning scheme should be amended, the panel will be able to provide the Minister and the relevant local government with written advice regarding a recommended scheme amendment. If the Minister agrees with the recommendation of the DAP, the Minister may give the local government an order under this section. The local government would be required to prepare the amendment and submit it to the Minister for approval.

**Clause 46 Part 11A inserted:** this clause inserts the new Part 11A which sets out the provisions on DAPs as follows:

**Division 1 - Functions of DAPs**

Section 171A - Prescribed development applications to be determined by DAP

This section allows for regulations to be made by the Governor prescribing the classes of development applications which are to be determined by a DAP as if the DAP was that responsible authority under the relevant local or region planning scheme, or interim development order. Applications of a prescribed class cannot be determined by the local government or the Western Australian Planning Commission.

Regulations made under this section will also set out the duties and responsibilities that local governments and the Western Australian Planning Commission will continue to have in relation to prescribed applications, and the procedures to be followed in dealing with prescribed applications. The regulations will state how the provisions of the *Planning and Development Act 2005* and the relevant local or region planning scheme or interim development order will apply to prescribed development applications. They will also state how the DAP is to determine a prescribed application, the procedures to follow, what effect the DAPs decision will have and how notice of the decision is to be provided to the applicant.

Subsection (4) states that a determination of (or failure to determine) a prescribed development application by a DAP is to be regarded, and have effect, as if was made by the relevant local government or the Western Australian Planning Commission. Accordingly, any application for review that is made against that decision will be treated as if it is an application for review against the decision of the relevant local government or the Western Australian Planning Commission.

Section 171B - DAP to carry out delegated functions

This section allows for additional functions to be delegated to the relevant DAP by the responsible authority. Regulations are to be prepared prescribing the functions that may be delegated to a DAP. It is intended that small local governments (and the

Western Australian Planning Commission if relevant) will use this section to delegate to the relevant DAP the power to determine development applications that are not of a class prescribed under section 171A.

**Division 2 - Ministerial call-ins and DAPs**

Section 171D - Minister may call in application

This section gives the Minister for Planning the power to call-in an application, by directing the relevant DAP to refer the application to the Minister. The Minister can use this power where he or she considers that the development application is for a significant development which will have significant impacts beyond a single local government area. The criteria to be used to determine this will be prescribed in regulations under section 171H(1)(a).

The Minister is required to cause the direction to the DAP to be published in the *Gazette*, and to be laid before each House of Parliament. This provides some transparency to the exercise of this power.

Section 171E - Referral of called-in application to DAP

This section provides that where a DAP is given a direction under section 171D by the Minister, the DAP must refer the development application to the Minister and provide a written report on the application setting out the DAP's recommendations. As such, the DAP will still assess the application using the relevant region and local planning schemes and planning policies, and then prepare a report containing its advice and recommendations. The DAP must also give the applicant a copy of the written report.

The Minister will take the panel's advice into consideration when determining the application. Subsection (2) states that the DAP and the responsible authority (whether the local government and/or the Western Australian Planning Commission) must comply with any direction of the Minister regarding the provision of additional materials relating to the application, or with additional assistance in relation to determining the application. As such, the Minister may also ask the local government/Western Australian Planning Commission for its recommendations to assist with determining the application.

Section 171F - Determination of called-in application by Minister

This section is based on the existing powers under section 247 of the Act (regarding determination of an application for review that the Minister has called in under section 246). The Minister is permitted to determine the development application called in under section 171D by considering the report of the DAP provided under section 171E and any other relevant matter affecting the public interest. As such, the Minister is not limited to planning considerations when determining the application.

Once the Minister has determined the application, notice of the determination is to be provided to both the applicant and the responsible authority, along with written reasons for the determination.

Under subsection (5), the decision of the Minister is final. The applicant does not have the right to make an application for review to the State Administrative Tribunal or any court.

Section 171G - Report to Parliament about determination

This section requires the Minister to prepare a report about the decision made under section 171F, and cause a copy of that report to be laid before each House of Parliament. The report will set out the reasons for the determination. This provides some transparency to the exercise of this power.

Section 171H - Regulations about Ministerial call-ins

This section provides a head of power for the Governor to make regulations prescribing the criteria which the Minister is to use when making a determination under section 171D that a development application is for a significant development. The regulations will also set out procedures regarding called-in applications, and how the Act and planning instruments will apply to such applications.

**Division 3 - Development Assessment Panels: establishment and administration**

Section 171I - Establishment of Development Assessment Panels

This section gives the Minister for Planning the power to establish a LDAP for one local government district, or a JDAP for 2 or more local government districts. A panel is created by the publication of an Order in the *Gazette*.

The Minister may revoke or amend an Order, by publishing a further order in the *Gazette*. Section 171I(7) allows regulations to be made prescribing transitional provisions regarding the revocation or amendment of an Order.

Section 171J - Constitution, procedure and conduct of DAPs

This section provides a head of power for the Governor to make regulations prescribing matters that are necessary to enable the establishment and functioning of DAPs.

Subsection (2) allows regulations to be made regarding the constitution, procedure and conduct of DAPs. The regulations will state that there are to be a total of 5 members on each DAP - 3 specialist members and 2 elected local government members.

The regulations will specify what qualifications are to be held be each person on a DAP, including the Chairperson. The Chairperson will always be an independent member with considerable knowledge of the Western Australian planning and development assessment framework. The range of expertise required of the specialist members appointed to the panel may include (but not be limited to) planning, architecture, urban design, engineering, landscape design, environment, law, property development or management. The specific types of qualifications and expertise required will be prescribed under subsection (3).

The regulations will set out the process to be followed to nominate and appoint all panel members. The 3 specialist members will be appointed from the register maintained by the Minister under subsection (2)(g). The two local government representatives will be nominated by the relevant local government, from the respective local government's pool of councillors. All panel members will be required to attend a mandatory training workshop on planning law and Codes of Conduct.

The regulations will also set out the process to be followed to remove a DAP member from the panel. It is intended that the Minister will have the power to remove a DAP member where the Code of Conduct has not been complied with, particularly where the member has failed to declare a conflict of interest.

Each member will be appointed by the Minister for a term of two years with an option to extend their appointment for an additional year (exercised by the Minister). The sitting fees and allowances payable to DAP members will be prescribed in the regulations.

Regulations will also be made to govern DAP meetings, and the conduct and behaviour of DAP members. Meetings of development assessment panels will be conducted in a place open to the public. Where a development application was advertised and submission received, those persons who made submissions will be permitted to make a presentation to the panel. In some circumstances, the public may be excluded from the meeting while a particular development application is being discussed – for example, where the application contains commercial information of a confidential nature. A Code of Conduct will be developed to govern the procedures of the panels, and all panel members will be obliged to disclose any personal or financial conflict of interest they may have regarding an application, as well as any contact they may have had with "lobbyists" regarding an application.

Section 171K - Administration and costs of DAPs

This section provides a head of power for the Governor to make regulations regarding the administration of DAPs and how the costs and expenses of DAPs are to be paid. Local governments will be required to provide administrative assistance to their DAP, as well as provide facilities such as a meeting room when the DAP is schedule to meet in their local government area. In addition, local governments will be required to pay the sitting fees of its DAP members, and any additional costs and expenses incurred by the DAP. Regulations will set out how these costs are to be paid.

**Clause 47 Section 212 amended:** This clause amends section 212 to provide that the Minister may assume powers of local government or enforce review decision to comply with an order under section 77B to amend a local planning scheme in accordance with a DAP recommendation.

**Clause 48 Section 246 amended:** This clause amends section 246 to refer to the new section 268A which sets out the procedure where the Minister is required to lay directions regarding call-ins for review applications and DAP applications before the Houses of Parliament and it is not sitting.

**Clause 49 Section 248 deleted:** This section deletes section 248 which has been replaced by the new section 268 which incorporates the provisions of section 248 and adds in provisions to set out the procedure with respect to DAP applications.

**Clause 50 Section 266 amended:** This clause amends section 266 which sets out the duties and liabilities of persons performing functions under this Act to (i) include DAP members as persons who are accountable under this section and (ii) to broaden the scope of the offence under subsection (6) so that a member cannot use information acquired in the performance of their duty to cause detriment not only to the Western Australian Planning Commission but to any other person.

**Clause 51 Section 268A inserted:** This clause inserts the new section 268A which sets out the procedure where the Minister is required to lay directions regarding call-ins for review applications and DAP applications before the Houses of Parliament and it is not sitting.

## PART 4 - STATE PLANNING POLICY AMENDMENTS

This part sets out an amendment to be inserted into the *Planning and Development Act 2005* to enable the Minister to direct a local government to amend its local planning scheme to be consistent with an applicable State Planning Policy.

This amendment is to be distinguished from a prior proposal that was rejected for inclusion in the Planning and Development Bill 2004. The prior proposal was for State Planning Policies to have immediate statutory effect as soon as gazetted. In this proposal, they will not have direct effect. Rather the Minister may direct a local government to amend its planning scheme to reflect the provisions of the applicable State Planning Policy. Therefore, an SPP will not be statutory effect until and unless the relevant local planning scheme is amended and gazetted.

**Clause 52 Act amended:** This clause explains that this Part 4 amends the *Planning and Development Act 2005*.

**Clause 53 Section 77A inserted:** This clause inserts the new section 77A which enables the Minister to order a local government to amend a local planning scheme to be consistent with a State Planning Policy. This power may only be used in circumstances where the State Planning Policy applies to land within the relevant local government area and does not apply across the whole of the State.

**Clause 54 Section 212 amended:** This clause amends section 212 to provide that the Minister may assume powers of local government or enforce review division to comply with an order under section 77A to amend a local planning scheme to be consistent with State Planning Policy.

## PART 5 - OTHER AMENDMENTS RELATED TO THE *PLANNING AND DEVELOPMENT ACT 2005*

This part sets out all other miscellaneous amendments to the *Planning and Development Act 2005* related to approvals and other reforms.

### Division 1 - *Planning and Development Act 2005* amended

**Clause 55 Act amended:** This clause explains that Division 1 of this Part amends the *Planning and Development Act 2005.*

**Clause 56 Section 6A inserted:** This clause inserts new sections to exempt development undertaken through funding from the Nation Building and Jobs Plan stimulus package from the requirement to obtain planning approval. This will apply to development upon primary school sites in region planning scheme areas and to social housing projects. This amendment is in line with legislative action taken in other Australian jurisdictions to meet the deadlines imposed by the Commonwealth funding for projects to be eligible for funding.

**Clause 57. Section 87 amended:** This clause amends the existing section 87 of the *Planning and Development Act 2005* to transfer back to the Western Australian Planning Commission the responsibility for gazetting local planning schemes once they have been approved by the Minister for Planning.

Following the introduction of section 87(3) into the *Planning and Development Act 2005* which came into operation in 2006, local governments have been responsible for publishing local planning schemes and amendments in the Government Gazette upon receipt of final approval from the Minister for Planning. However, this has resulted in delays, on occasion exceeding 12 months, between receipt of final approval from the Minister and gazettal of the instruments. Local governments have cited various reasons for these delays, including the costs of publication.

As schemes and amendments do not have statutory effect until gazetted, these delays unnecessarily complicate the development approvals process. Approved scheme amendments may be given weight as 'seriously entertained planning instruments' under case law. To the extent of any inconsistency between an existing scheme and a proposed amendment, where the new scheme has not yet been gazetted, is not always clear which provisions should be given precedence. Presently, development approvals are sometimes put on hold pending gazettal of the new scheme or amendment.

**Clause 58 Section 112 amended:** This clause amends section 112 to provide that planning control areas may be declared in areas throughout the State whether or not a region planning scheme applies.

**Clause 59 Section 116 amended:** This clause amends section 116 - which allows the Western Australian Planning Commission to approve or refuse a planning application in a planning control area – to replace the reference to region planning schemes with planning schemes so that the Commission may have regard to improvement schemes in its determinations.

**Clause 60 Section 126 amended:** This clause amends Section 126(3) which provides for concurrent amendments to region and local planning schemes. To the extent that a region planning scheme amendment will result in the local planning schemes in the relevant area being inconsistent with the region scheme, automatic amendment to the local planning scheme will occur.

**Clause 61 Section 133 amended:** This clause amends section 133 to clarify the application of the *Planning and Development Act 2005* to Crown land. Subsection 133(1) of the *Planning and Development Act 2005* provides that except as provided in relevant sections and subsections, Part 10 (Subdivision and Development Control) does not apply to Crown land.

The effect of section 133(1) is that section 162 (Development requires approval), 163 (Heritage places) and 164 (Development may be approved after commencement) appear capable of being construed as not applying to Crown land.

Part 10, Division 5 contains a provision declaring that development requires approval where a planning instrument so requires and provides that development may be approved after commencement. This amendment does not alter the approval requirements that apply to Crown land as these are provided for in planning instruments (schemes and interim development orders). The chief effect is to confirm that a responsible authority is empowered to approve development already commenced or carried out irrespective of the tenure of the land (that is, whether alienated or Crown land).

**Clause 62 Section 136 amended:** This clause amends section 136 to clarify that the sale of strata and survey-strata lots subsequent to the registration of the relevant strata plan or survey-strata plan is not regulated under section 136 of the *Planning and Development Act 2005*.

The sale of strata lots prior to the registration of the strata plan is not regulated by section 136 of the *Planning and Development Act 2005* because of the separate Western Australian Planning Commission approval regime for strata plans under section 25 of the *Strata Titles Act 1985*, subsection 25(5) of which also makes explicit the exemption from the operation of section 136 of the *Planning and Development Act 2005*.

This amendment is in response to a concern raised that section 136 of the *Planning and Development Act 2005* arguably has the effect of regulating the sale of the whole of a strata lot or survey-strata plan. This is not the intended result of section 136 of the *Planning and Development Act 2005* because there is no further alternation of boundaries or subdivision works relating to such a sale. Sales of strata title or survey-strata title lots are a part of, and not the whole of, a “lot” because “lot” is defined in section 4 of the *Planning and Development Act 2005* in relation to green title lots (effectively, parent parcels which may in turn be the subject of strata plans), and strata or survey-strata lots created under the *Strata Titles Act 1985* are expressly excluded from the operation of the *Planning and Development Act 2005*.

Accordingly, this clause amends the definition of “lot” under the *Planning and Development Act 2005* for the purpose of section 136 only, so that it expressly includes a strata lot or survey-strata lot after its creation under the STA.

**Clause 63 Section 263 amended:** This clause amends section 263 of the *Planning and Development Act 2005* to enable the enactment of regulations to require reporting by local governments to the State on planning matters.

The Development Assessment Forum (DAF) proposes a leading practice model "as a means of promoting efficient, effective and nationally harmonised development assessment systems across Australia". The DAF leading practice model identifies ten leading practices that a development assessment system should exhibit. Each State government is examining how its development assessment system measures up to the model proposed by DAF.

The third leading practice proposed by DAF is "Built-in improvement mechanisms". This requires each jurisdiction to review its policies and objective rules and tests, in order to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

Several Australian jurisdictions have sought to review the effectiveness of their planning systems by monitoring local government performance. Data is collected regarding the development applications lodged with each local government. The State department responsible for planning analyses this information and prepares a report on the performance of local governments across the States.

In Western Australia, there is no centralised collection of information on the administration of the planning system by local governments. Therefore the State is impeded in monitoring performance and identifying where inefficiencies need to be improved.

This amendment will enable to State to collect such data in a form to be prescribed by regulations.

***Division 2 – Local Government Act 1995 amended***

**Clause 64 Act amended:** This clause explains that this Division 2 amends the *Local Government Act 1995.*

**Clause 65 Section 5.42 amended:** This clause amends the delegation provisions of the *Local Government Act 1995* to allow the local government to delegate to the CEO powers under the *Planning and Development Act 2005* of a responsible authority to issue directions regarding unauthorised development.