The Law Society
OF WESTERN AUSTRALIA
The voice of the legal profession in Western Australia

19 November 2025

The Hon. Roger Cook MLA
Premier and Minister for State Development
Dumas House
2 Havelock Street
WEST PERTH WA 6005

By email: wa-government@dpc.wa.gov.au

Dear Premier

STATE DEVELOPMENT BILL 2025

I write to provide feedback on the *State Development Bill 2025* (the Bill) introduced into State Parliament on 10 September 2025.

The Law Society is the peak professional association for lawyers in Western Australia. Established in 1927, the Society is a not-for-profit association dedicated to the representation of its members and the enhancement of the legal profession through leadership and advocacy on law reform, access to justice and the rule of law.

The Society acknowledges the importance of our State's economic sustainability and the facilitative role the State Government seeks to undertake in supporting energy and defence developments in Western Australia. The Society is concerned that the practical implications of this legislation go beyond the stated objects in clause 3 of the Bill being 'the coordination, facilitation and promotion of State-significant development, while taking into account social and environmental considerations'.

The Bill contains some of the most significant changes to the approval of major projects and the application of development proposal assessment and approvals law seen in Western Australia. The Bill provides extraordinary powers to the executive arm of government, allowing Ministers to override conventional environmental protection safeguards and the related statutory approval processes. The Society notes that the Bill was introduced without an opportunity for stakeholder consultation.

The Society generally supports the introduction of State development areas as defined in Part 4 of the Bill as well as the creation of the office of Coordinator-General. The transparent planning and coordination processes are positive elements of the proposed legislation. These provisions stand in stark contrast to the ad hoc, special rules for priority projects and highly discretionary regime proposed by Part 3 of the Bill.

The Society's concerns with the Bill include:

1. The broad discretion provided to the newly created office of Coordinator-General and to the Minister for State Development to depart from the current regulatory framework for assessment and approval. Western Australia's existing legislative and regulatory framework for environmental protection prescribes the processes and criteria by which

statutory decisions are to be made. To allow the Premier or a Minister to override or amend those processes by way of executive order undermines the checks and balances between the respective arms of government.

2. The Bill places a significant decision-making discretion with respect to both the designation of priority projects and the application of the mechanism in the Bill to those projects, in the hands of the State Development Minister and the Premier, which is currently one and the same person.

   Without some objective criteria for how this discretion is to be exercised, it is likely to lead to a long line of proponent requests for special treatment with no consistent way to assess merit or priority. The impact could, in effect, be a new, unneeded approval step, a new bottleneck, and a new source of potential legal challenge.

3. The criteria in the Bill for the designation of a 'priority project' or 'State development area' is extremely broad. At the very least, a minimum monetary amount (or other parameters) to limit or at least classify the projects to which the legislation will apply is required.

   The effect of the Bill's proposed amendments will be to change the law applicable to priority projects without recourse to Parliament, with no established processes to administer and implement the changed laws and absent objective criteria for this decision-making, which would allow the usual oversight and review through the Court.

4. The direct conflict between the Bill and section 5 of the *Environmental Protection Act 1996* (the EP Act). Section 5 of the EP Act provides that where there is an inconsistency with another Act, the EP Act will prevail. Clause 6 of the Bill expressly provides that the *State Development Act* will prevail against any designated Act, to the extent of any inconsistency 'despite' the operation of section 5 of the EP Act. This would be a highly significant reversal of the dominant power of the EP Act. Currently, only the Minister for Environment or the Environmental Protection Authority can initiate an order to exempt an area of the State or specified premises from provisions of the EP Act where they deem appropriate. The Bill seeks to vest the ability to override the EP Act in the Minister for State Development.

5. The overarching nature of section 5 of the EP Act currently applies to State Agreements. Older State Agreements that pre-existed the EP Act were amended so that they were aligned with the powers of the EP Act. This framework could conceivably be negated by the Bill, which is a highly significant change. The Bill in effect proposes State Agreement 'lite' processes, without going through Parliament, and without implementing any of the lessons of past reviews of State Agreements. The 2002 Keating Review of the Project Development Approvals System demonstrated that special laws for special projects lead to significant issues. Further, the Bill does not incorporate the recommendations of the 2024 Auditor General Review of State Agreements, which noted that special laws lack transparency, particularly with respect to actual social and community benefits.

6. The making of special laws for special projects has not been proven to provide quicker approval pathways, which is an expressed aim of the Bill. It is likely that the amendments will, in fact, have the opposite effect. Any 'special' law carries the following risks:
   (a) a special process must be designed and agreed each time;
   (b) the special process must be implemented, and unforeseen issues are likely as with all new and bespoke processes;
   (c) the special process must be serviced by the correct skill sets, with no certainty these are available in the servicing departments;

(d) the special process needs to be maintained – a significant issue with State Agreement implementation as these agreements age.

7. The Bill provides significant discretion as to the content of any notice or order issued in relation to a priority project, or improvement plan prepared for a State Development Area. The list of designated Acts in Schedule 1 of the Bill, in relation to which a notice or order can be issued directing how or when a specific statutory function should be exercised, is extensive and the scope of each individual power has broad potential application.

8. Clause 6 of the Bill provides that Part 3 Division 2 Subdivision 2 of the *State Development Act* overrides the provisions of the *Aboriginal Heritage Act 1972* relating to timeframe notices. Clause 37 empowers the Minister to issue a timeframe notice which allows for a timeframe to be set (if there is not one) or to vary a timeframe for a function to be performed. The *Aboriginal Heritage Act* does not contain many timeframes as most are found in the Regulations. The Society is concerned that the provisions of the Bill can be applied to truncate timeframes or to set unrealistic time limits under the *Aboriginal Heritage Act.* The explanatory memorandum does not explain why the Bill seeks to override the *Aboriginal Heritage Act.* The Society submits if government wishes to impose timeframes in the *Aboriginal Heritage Act,* it is that Act which should be amended.

9. The Bill grants broad discretion to the Minister, with the approval of the Premier, for the purpose of issuing joint decision notices and modification orders, which could be used to override provisions of other legislation.

    (a) Clause 42 of the Bill provides that decision-makers will be required to have regard to the objects of the *State Development Act*, even if they are usually limited in doing so. This is bound to lead to competing and inconsistent objectives for decision-making, which results in legal risk but also delay as decision-makers try to deal with matters outside those they were appointed for, have experience in, or are serviced to implement.

    (b) Under clause 49 of the Bill, decision-makers will need to adopt new processes. This is likely to cause delay and uncertainty because of the issues with special laws and processes described above. It will be difficult for consultants including lawyers to advise on practicable approval strategies and pathways because there is no known or standard approach.

    (c) The Society notes the Bill does not propose to make the State Development Minister (or Premier) the decision-maker, ensuring that office itself is not subject to legal risk or criticisms of delayed decision-making. The Minister has all the rights to declare particular projects as priorities yet is not given corresponding responsibilities for such decisions.

The overall decision-making discretion in the Bill is subjective and lacks objective criteria and transparency. The separation of powers and rule of law are critical to ensure decision makers consider and balance rights of opposing parties and the interests of those impacted by those decisions. It is imperative that criteria for assessment and approval of the significant types of development contemplated by this Bill are clear, objective and transparent, and that pressure from external industry organisations does not unduly influence decision-making.

For the Society's members and other legal practitioners practising in this area, the wide discretionary nature of the powers conferred on Ministers and the Coordinator-General by the

Bill, means it will be difficult to give accurate advice on the practical application of the legislation to clients on any side of proposed developments.

The Society submits better resourcing and coordination of existing laws and the relevant Departments would likely achieve clearer outcomes, greater transparency in the criteria applied to decisions and less fundamental risks. The Society urges the government to give further consideration to the empirical analysis of risks and perceived benefits of the new laws before they are passed.

The Society requests that the Bill be referred to the Standing Committee on Legislation for further review and to enable stakeholders directly affected by the changes to provide submissions on the impact of this proposed legislation.

If you have any queries or would like to further discuss the Society's submission, please contact Susie Moir, Director Advocacy and Professional Development on 9324 8646 or smoir@lawsocietywa.asn.au.

Yours sincerely

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