STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

The *State Development and Public Works Organization Act 1971* is 'An Act which provides for State planning and development through a coordinated system of public works organisation, for environmental coordination, and for related purposes'.

The original Act was first passed in 1938 as a post-depression measure to create employment and to develop the State, through a system of coordinated public works.

The Act was substantially revised and updated in 1971 (the current Act) with the central role of the Coordinator-General in planned development preserved. In 1971, specific powers relating to supervision of the environment were introduced to the Act, (which were subsequently amended in 1978).

Objectives of The Legislation

The proposed amendments seek to make a number of amendments to the *State Development and Public Works Organization Act 1971* (SDPWOA). These amendments are principally in recognition of the changing role of Government in the construction and operation of infrastructure and increased community expectations for environmental coordination of 'significant projects'. They also modernise rules governing disclosure of interest for Project Boards and the provisions for updating enforcement and compensation provisions for a development scheme within State development areas.

The Bill amends the SDPWOA to:

- Clarify the head of power for the Coordinator-General to supervise impact assessments of major ('significant') projects;

- Provide a framework for the Coordinator-General's environmental impact statement which recognises contemporary standards;
- Provide appropriate linkages with other legislation, particularly the *Integrated Planning Act 1997* and the *Mineral Resources Act 1989* to recognise the Coordinator-General's environmental impact statement for the approval systems within that legislation;
- Amend the code for conflict of interest for members of Project Boards, to make such provisions consistent with other Queensland legislation;
- Update enforcement provisions for land use established within an approved development scheme approved by the Governor in Council and to provide for compensation for loss of value in land as a result of an approved development scheme.
- Enable the Coordinator-General to acquire land for the development of infrastructure by persons other than the State;
- Provide access provisions for persons other than the State contemplating development of infrastructure; and
- Provide a specific definition of the type of infrastructure for which land may be acquired for the private sector.

Reasons For The Bill

The amendments to the *State Development and Public Works Organization Act 1971* in the attached Bill may be grouped into four major categories:

(i) Additional acquisition and access powers of the Coordinator-General;

(ii) Enhanced impact assessment procedures for projects supervised by the Coordinator-General;

(iii) Revised conflict of interest code for members of Project Boards; and

(iv) Revised enforcement and compensation provisions within approved development schemes.

The role of Government in the provision of public infrastructure is changing. The Bill recognises the future contribution of the private sector in development of public infrastructure.

The Bill allows for the acquisition of land by the Coordinator-General for the purposes of an infrastructure facility, including a facility that is to be built, owned, operated and maintained by persons other than the State. The Bill also allows an amendment to make it beyond doubt that the purposes for an acquisition by the Coordinator-General are those listed in section 78 (1) of the SDPWOA; and the process for acquisition is the *Acquisition of Land Act 1967*. Thus whilst the Bill provides a specific head of power for such acquisitions, the acquisition code remains that specified in the *Acquisition of Land Act 1967*. Where an acquisition is for the granting of an interest in land to persons other than the State, the Bill also specifically provides for prior commercial negotiations between landowners and private parties.

The Bill also provides extensive procedures for the granting of an authority to access land for the purposes of investigating the feasibility of an infrastructure facility, if voluntary access cannot be obtained. These procedures are intended to safeguard the rights of the landholder concerned, and to ensure that any loss or damage caused is promptly and effectively rectified or compensation paid.

The Bill provides a framework for an environmental impact statement (EIS) facilitated by the Coordinator-General. This is an elaboration of the Coordinator-General's existing whole-of-government coordination powers in section 29(1) of the SDPWOA for impact assessment. This process ensures that proper account is taken of environmental effects associated with 'significant projects' declared by the Coordinator-General. Only those significant projects declared by the Coordinator-General will undergo the EIS process as mentioned in the amendments to section 29.

The general environmental duty on Departments and other local bodies, etc., is retained within the new section 29A(2), at least until the State's exemption from the *Integrated Planning Act 1997* is removed.

In effect, the amendments to section 29 formalise in legislation an administrative process for impact assessment that has been used by the Coordinator-General for more than 20 years. The amendments also allow for the section 29 EIS to be taken to meet environmental impact assessment required under other legislation, particularly the *Integrated Planning Act*

1997 and the *Mineral Resources Act 1989*. The links between the SDPWOA and other legislation avoid duplication in processes, while providing a comprehensive whole-of-government response that includes public consultation on the EIS.

The Bill modifies the conflict of interest code for members of Project Boards formed under section 70 of the Act. The conflict of interest code has been amended to correct an apparent anomaly, which effectively limited the ability of partners in small professional firms from becoming members of Project Boards.

Finally, the Bill provides for more effective enforcement provisions of development schemes within a State development area; and provides for compensation for loss of value in land as a result of an approved development scheme, where the land concerned has not been purchased by the State.

The amendments maintain the objectives of the Act.

ESTIMATED COSTS FOR GOVERNMENTAL IMPLEMENTATION

Any costs incurred as a result of the amendments to the Act in respect to drafting and preparation of the Bill represent a minimal cost to Government. Additional costs arise in the land acquisition process but it is anticipated that most of these will be recovered from proponents. The existing provisions of section 80, together with the new section 79A, provide the mechanisms under which the responsibility for payment for acquisition costs will be addressed.

It is possible that there may be additional administrative costs associated with appeals under native title legislation (section 78B) associated with the taking of land.

There may also be additional costs associated in the payment of any compensation related to loss of value in land as a result of an approved development scheme in a State development area (through the amendments to section 55). However, any compensation payable would be more than offset against the option of acquiring all affected land.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The *Legislative Standards Act 1992* defines fundamental legislative principles (FLPs) as 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

While the Bill proposes for the Coordinator-General, with the approval of the Governor in Council, to acquire land in which interest may be vested in a third party, these powers are only available for infrastructure facilities that are of national, state or regional significance. Compensation and objection provisions for affected landowners will be as prescribed within the *Acquisition of Land Act 1967*. The acquisition process will be subject to normal review provisions. Therefore, landowners will be accorded procedural rights and fair compensation will be paid.

This acquisition provision does breach a fundamental legislative principle. However, the breach is justified on the same basis as any other compulsory acquisition by the Coordinator-General or under the *Acquisition of Land Act 1967.*

Additional safeguards against misuse of this power are provided in the Bill. The acquisition process cannot be commenced unless the Governor in Council approves the facility as having national, state or regional significance and the Coordinator-General is satisfied that the proponent has already taken reasonable steps to otherwise acquire the land.

Also, the Minister must table the Coordinator-General's statement of reasons for the taking in the Legislative Assembly. The statement would provide the (non-commercial in confidence) reasons for the taking, addressing the criteria contained within the legislation.

In addressing the issue of FLPs, the amendments depart from those principles as follows:

1. Applications for an investigator's authority (re: new sections 91A-91M: 'Investigating potential infrastructure facility');
2. Powers of investigator's authority (re: new sections 91A-91M: 'Investigating potential infrastructure facility');

(1) Applications for an investigator's authority

The *State Development and Public Works Organization Act 1971* is to be amended to allow a person to apply to the Coordinator-General for an authority to enter an area of land for the purposes of an investigation. If the access application were successful, the person would be authorised to enter land to investigate the land's potential and suitability for the development of an infrastructure facility.

The Fundamental Legislative Principle

Section 4(3)(a) of the *Legislative Standards Act 1992* provides that legislation should not be inconsistent with the principle of making rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The Departure

The decision of the Coordinator-General to grant or refuse to grant an applicant with an investigator's authority is not subject to review on the basis of the merits of the decision.

However, this is consistent with the form of similar provisions found in other laws (including the *Transport Infrastructure Act 1994*) in relation to infrastructure development. However, this Bill provides additional safeguards for the landholder in that there is a requirement to notify the landholder that access has been sought and to consult with the landholder on conditions of entry. The decision is, however, subject to review by application of the *Judicial Review Act 1991*. Importantly, the decision to permit entry is taken by the Coordinator-General, and not by the person benefiting from the decision.

The Reason for the Departure

The amendment allows procedural review under the *Judicial Review Act 1991*.

(2) Powers of investigator's authority

The *State Development and Public Works Organization Act 1971* is to be amended by the insertion of a new Division 6, in Part 6. This will allow an

authorised investigator to enter any land within the stated area for the purpose of investigating the land's potential and suitability for an infrastructure facility. For the extent necessary or convenient for that purpose, the person can be authorised to do anything on the land, bring anything onto the land or temporarily leave machinery, equipment or other items on the land.

The Fundamental Legislative Principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights of individuals.

The Departure

The amendment to include Division 6, Part 6, authorises the disruption of land owners' rights to enjoy the use of land they occupy in order to progress the development of an infrastructure facility which has economic or social significance to Australia, Queensland or the region in which the facility is to be constructed.

The Reason for the Departure

It may be necessary to enter land temporarily in order to conduct investigations, surveys, or take samples, etc., for a proposed infrastructure facility. This investigation is necessary before acquisition of land (by negotiation, agreement or acquisition) to make sure that the land is suitable for the proposed infrastructure facility. Such rights of entry are already available to public sector agencies under this and other legislation (such as the *Acquisition of Land Act 1967 or Transport Infrastructure Act 1994*), and to the private sector under the *Transport Infrastructure Act 1994.*

The granting of an investigator's authority is only contemplated in the event that the proponent is unable to obtain agreement with a landowner for voluntary access [section 91C(1)].

In considering an application for an authority, the rights of the landowner are to be recognised. Early notification of the landowner is required that an application has been made to access land [section 91C (5)]; and the Coordinator-General is obligated to negotiate and consult with the landowner while considering that application [section 91D(1)(a)].

The Coordinator-General may, as part of a condition of an authority granted to access land, impose a bond or security deposit on the investigator [section 91E(3)]. This bond or security must only be repaid if the investigator has rectified any damage or loss. The landowner has 12 months from the date of expiry of the investigator's authority to notify of any loss or damage associated with the entry. Only after such time and only if there has been no damage or loss that has not been rectified will the Coordinator-General release the bond or security deposit to the investigator (section 91M).

Further, under section 91K, the landowner may require the investigator to rectify any loss or damage and claim compensation for any loss or damage not rectified resulting from the access. If parties cannot agree on compensation, the matter may be referred to the Land Court for the determination of compensation.

Section 91L provides for payment of compensation to land owners if they suffer loss or damage arising out of the entry on the land, anything done on the land or any use of the land in connection with the investigator's authority.

CONSULTATION

The following relevant organisations have been consulted:

Department of the Premier and Cabinet

Department of Communication and Information, Local Government and Planning

Department of Natural Resources

Department of Main Roads

Department of Transport

Department of Families, Youth and Community Care

Department of Mines and Energy

Department of Employment, Training and Industrial Relations

Department of Justice and Attorney-General

Department of Public Works and Housing

Department of Environmental Protection Agency

Queensland Treasury

Crown Law

NOTES ON CLAUSES

Preliminary and Definitions

Clause 1 sets out the proposed Short title of the Act, to be cited as the *State Development and Public Works Organisation Amendment Act 1999.*

Clause 2 states that this Act amends the *State Development and Public Works Organization Act 1971.*

Clause 3(1) omits the heading 'Meaning of Terms' and replaces it with 'Definitions' in line with modern drafting practice.

Clause 3(2) omits the definition of environmental effects, as that definition is dated and is to be replaced.

Clause 3(3) introduces a new definition for 'environment', which is also the definition used within the *Environmental Protection Act 1994.* The aim is to introduce modern interpretation for the term, and to provide consistency across Government. The term 'environment' specifically includes the economic and social impacts, as well as the impacts on the ecosystem. 'Environmental effects' is inserted, with the definition expressly related to the introduced term 'environment'. It also should be noted that 'environmental effects' includes the beneficial as well as adverse effects on the environment.

Supervision of the Environment

The purpose of the amendment to section 29 is to enable the Coordinator-General to declare certain developments ("significant projects") for which the Coordinator-General will ensure that proper account is taken of environment effects associated with that development, through the preparation of an environmental impact statement (EIS).

The Coordinator-General will have the responsibility of providing the 'whole-of-government' evaluation report (with conditions, if necessary) on the 'significant project' to the person who would make the decision on the development (which in most cases would be the IDAS assessment manager within the *Integrated Planning Act 1997* (IPA)). Provision is also made for the section 29 EIS to meet requirements for environmental review of a mining lease application under the *Mineral Resources Act 1989*, if that application has been declared a 'significant project' by the Coordinator-General.

It is intended that this provision will apply to only the most important or complex projects, where there is a requirement for the Government to maintain a strong interest in managing the assessment process. This is a well-established concept, which has been dealt within under administrative arrangements by the Coordinator-General for over 20 years under section 29(1) of the SDPWOA.

The head of power and environmental onus for Government Departments and local bodies, etc, under the current section 29(2) remains in place at least until the State's exemption from the IPA is lifted. <u>These Government entities will not use the new Section 29 process for their projects unless that project is declared by the Coordinator-General</u>.

In Clause 4, the current section 29 is to be renumbered as section 29A.

In Clause 5, a new Division 1 is inserted (titled Preliminary), which includes definitions for Part 4 of the Act. The definitions include the terms 'assessment manager', 'development approval', 'EIS', 'IDAS', 'properly made submission', 'proponent', 'significant project', and 'submission period'.

This Division also preserves the existing subsection 29(1) and subsection 29(2). These sections have been re-labelled subsection 29A(1) and subsection 29A(2) respectively. As discussed above, the retention of the former section 29(2) maintains the obligation on Departments and local bodies to take into account environmental effects associated with development being undertaken or approved by those agencies. These agencies must continue to pay 'due regard to policies and administrative arrangements as approved from time to time by the Minister' (ie. the "Green Book").

In *Clause 6*, it is made clear that subsection 29A(2) does not apply to a 'significant project'. It is also noted that subsection 29A(2) will expire when the exemption on Government Departments and other local bodies for development approval is removed from the IPA (as per section 6.1.40 of the IPA).

In *Clause 7* the new Divisions 2 to 6 are inserted. Divisions 2 and 3 provide the procedures under which an EIS for a declared 'significant project' is conducted. The new Division 4 provides for the integration of the EIS with the IPA. Division 5 provides for the integration of the EIS with the MRA. Division 6 provides for the integration of the EIS with other legislation. These provisions ensure that advertising and consultation requirements are not duplicated, and that the person authorised under the relevant statute to make the decision to approve or reject the particular project takes the results of the assessment into account.

Each of these Divisions is examined in more detail:

The new Division 2 allows the Coordinator-General to declare a project to be a significant project for which an EIS will be required (section 29B(1)); and provides that the Coordinator-General must also notify this declaration by gazette notice. The gazette notice provides the first formal notice of the declaration of the project.

Under the new section 29B(3), if the development requires a decision under IDAS, the Coordinator-General must notify the person who is or would be the assessment manager of the declaration of the development as a significant project. The gazette notice acts as the 'trigger' which removes the development from IDAS to the EIS under section 29 of the SDPWOA.

If the project involves mining, the Coordinator-General must advise the Minister administering the *Mineral Resources Act 1989* of the declaration.

Also included within the new Division 2 are criteria by which a particular project may be declared by the Coordinator-General (section 29C). Any one or more of the sub-points in section 29C are to be considered by the Coordinator-General in deciding whether a development should be declared as a significant project. The criteria essentially recognise that a project can be declared by the Coordinator-General due to its economic, social and/or environmental significance. A project may also be declared if there are complexities involved in requirements of government at the local, State or Commonwealth levels.

The new Division 3 provides the EIS process for a significant project. This Division provides for the procedures to be followed by the proponent and the Coordinator-General in the preparation of the EIS.

The new section 29E requires the Coordinator-General to advise the proponent and the public that an EIS will be required for the significant project. The Coordinator-General will also publicly advise the availability of the terms of reference for the EIS, and that comment is invited. The notification would state where copies of the terms of reference might be obtained. Section 29F requires the Coordinator-General to have regard to comments received in finalising the terms of reference.

In the new section 29G, the Coordinator-General may refer details of the project, including the initial advice statement and the terms of reference, to any entity the Coordinator-General considers may be able to give comment and information that will assist in preparing the EIS. This would include input into the terms of reference. Input will be sought from those Government agencies that might otherwise be IDAS referral agencies in the assessment of such projects. The Coordinator-General may also refer project details to Commonwealth agencies, or non-government entities.

Information within an initial advice statement provided by the proponent will vary on a project by project basis. Information in the statement could include, for example, a basic description of the proposed project, including the type of development, details on the location of the development, the characteristics of the site, infrastructure requirements, economic/employment impacts, etc.

The new section 29G(2) provides that information from entities to assist in the preparation of the EIS must be sent to the Coordinator-General, who will forward this information to the proponent. In order to facilitate the information gathering process, the Coordinator-General will establish response times for information from these entities. If no response is received by the due date, the proponent may prepare the EIS as if the entity has no comment on the project. The Coordinator-General will establish time frames on a project by project basis.

Where timeframes are set by the Coordinator-General for information in preparation of the EIS for the significant project, all entities will be obligated to respond within that time if their information is to be considered. This is consistent with similar provisions within the information gathering stage of the IPA.

In the new section 29H, the proponent must address the terms of reference in preparation of the EIS. Guidelines to this new section will be developed to assist the proponent in the preparation of the EIS.

Once the EIS report has been prepared to the satisfaction of the Coordinator-General, in the new section 29I the proponent must publicly notify where the report is available for inspection, where a copy may be obtained, and the date by which submissions may be made to the Coordinator-General. The cost must not exceed the cost of producing the copy.

Public notification should be through a major newspaper that circulates throughout the State and a newspaper circulating within the locality of the project. For native title interests, notification is to be consistent with procedures within the Native Title (Notices) Determination 1998, made under the *Native Title Act 1993 (Cth)*. The EIS may also be made available electronically such as compact disc or floppy disc at a reasonable cost; or on the Department of State Development's 'web-site'.

In the new section 29J, the form in which submissions on the EIS are to be made to the Coordinator-General is prescribed. The submissions must be properly made submissions, as defined in Division 1. The Coordinator-General must accept a properly made submission; but the Coordinator-General may still accept a written submission that is not a properly made submission. Also, a person who has made a submission may, during the submission period or before a decision on the EIS is made, withdraw that submission.

The Coordinator-General will not consider or pass on to the proponent any submissions that have been withdrawn or amended before the end of the submission period.

The new section 29K provides that, at the end of the submission period, the Coordinator-General must evaluate the EIS prepared by the proponent. This evaluation must take into account all properly made submissions and other submissions accepted about the EIS, and any other material the Coordinator-General considers is relevant to the project. The Coordinator-General's report is the whole-of-Government response to the EIS prepared by the proponent of the significant project.

The Coordinator-General may ask the proponent for further information or comment on the EIS or the project before providing a final report on the EIS. This information could be related to information received during the submission period on the EIS. The EIS could include any number of drafts or supplements before finally being evaluated by the Coordinator-General.

After considering all such information, in section 29K(3) the Coordinator-General will prepare an evaluation report, which in effect addresses the adequacy of the EIS against the terms of reference. On completion of the evaluation report, the Coordinator-General must give a copy of that report to the proponent. (This report is also provided to the person who would make the decision of the project.) Details on the form of the evaluation report are covered within Divisions 4, 5 and 6.

The new Division 4 outlines how the section 29 EIS applies if the project involves development requiring an application for a development approval under IDAS.

The new section 29M recognises the Coordinator-General's evaluation report (ie. whole-of-government response) in relation to the assessment procedures for material change of use or impact assessment under IPA for that development. The section 29 EIS is taken as fulfilling requirements under the information and referral stage and notification stage of IDAS. The Coordinator-General's whole-of-government response is deemed to be an IDAS concurrence agency's response

Also, section 29M specifically states there are no other referral agencies for the significant project that has been declared by the Coordinator-General. However, relevant Government agencies will be consulted, particularly those that would normally be IDAS referral agencies for the particular significant project.

In order to maintain consistency with appeal provisions within the *Integrated Planning Act 1997*, the appeal conditions for a 'properly made submission' do not apply in this Part if the application involves only a material change of use requiring code assessment. (There are no appeals for code assessment within the *Integrated Planning Act 1997*.)

The IDAS decision stage for a project declared by the Coordinator-General commences when the Coordinator-General gives the assessment manager a copy of the report (in section 29N). If the Coordinator-General is the assessment manager, the decision stage starts

when the Coordinator-General gives the proponent a copy of the report. Provision has been allowed within this section for those instances where the Coordinator-General may become the assessment manager (such as, potentially, within State development areas declared under the SDPWOA).

The new section 29O allows for the application of the Coordinator-General's report to IDAS. The report may state for the IDAS assessment manager the specific conditions that must be attached to any development approval. Alternatively, if the Coordinator-General's report does not state that conditions must be attached to the development approval, the report must then state that there are either no conditions or requirements for the project; or that the application must be refused.

The conditions imposed by the Coordinator-General may include, for example, the requirement to include an environmental management plan.

The report may only state that the application must be refused if the Coordinator-General is satisfied that environmental effects in relation to the development cannot be adequately addressed.

The new Division 5 applies to a project that involves an application made for a mining lease under the *Mineral Resources Act 1989* (MRA) and which has been declared a significant project by the Coordinator-General. Section 29Q calls up the definitions of "application", "certificate of application", "environmental management overview strategy (EMOS)", "Minister", and "statement of proposals" from the MRA.

The purpose of this Division is to avoid duplication of process and delay. The Coordinator-General's report on the EIS is to provide the whole-of-government response to a mining lease application. The EIS would normally include a well advanced draft Environmental Management Overview Strategy (EMOS). The comprehensive EIS will be subject to public consultation as would be required under the MRA.

It is intended that the Coordinator General be able to ensure that public comment and objection procedures under the SDPWOA and MRA are synchronised. The new section 29R and section 29S provide for the Coordinator General to notify the mining registrar that the EMOS is satisfactory for the purposes of the mining lease application and to set timeframes for the lodgement of objections under the MRA. For major projects it has been the practice for the EMOS to be prepared in conjunction with the EIS. Because the EIS may also deal with off-lease matters, such

as transport infrastructure, it is common that the EMOS will be completed before the rest of the EIS. Thus, there is no reason to delay the advertising of the mining lease application until the EIS is complete. Indeed there are advantages for both the applicant, in avoiding delays, and persons who wish to lodge objections to the mining lease application or make submissions on the draft EIS, if the submission and objection period have a common closing date.

The issuing of the certificate of application (COA) under section 252 of the MRA initiates the objection period for the mining lease application. The application must include, among other things, the EMOS. If the registrar was to issue the COA for a declared significant project, it is possible that the COA objection period may close before the Coordinator-General is satisfied that there has been sufficient opportunity for comment on the EIS.

If the COA has not been issued by the mining registrar, the new section 29R(2) provides for the Coordinator-General to determine that an EMOS or statement of proposals prepared as part of an EIS for a significant project is sufficient for the purposes of the mining lease application under section 245 of the MRA. The Coordinator-General is required to provide the mining registrar with written notice of the adequacy of the EMOS or statement of proposals.

The new section 29R(3) specifically provides for the Coordinator-General to set the closing date for the COA objection period. The Coordinator-General must publicly notify the closing date. Consistent with the provisions of the MRA, the date set by the Coordinator-General must be at least 28 days after the issue of the COA. This will enable the timing for the public objection period for the application (under the MRA) to be synchronised with the public notification period for the EIS.

The dates of issuing the COA and closure of the objection period would, in most cases, be set by the Coordinator-General to coincide with the timing of the public notification stage of the section 29 EIS (see new section 29I of the SDPWOA).

The purpose of the new section 29S is that if the COA had already been issued (eg. before the commencement of these amendments to the SDPWOA) the Coordinator-General can, on commencement of this part, publicly notify a change in the final day for objections as previously set by the registrar. As in section 29R, the last objection day set by the

Coordinator-General would be publicly notified and must be at least 28 days from the date the COA was issued.

The new section 29T states how the Coordinator-General's report is to be applied to the issue of a mining lease. The Coordinator-General may recommend conditions to the Minister administering the MRA that must be attached to the mining lease; alternatively, the Coordinator-General may recommend to that Minister that no conditions (arising from the environmental impact statement) must be attached. In both instances, the Coordinator-General must provide reasons for the recommendations made.

In the new section 29U, the Coordinator-General must give the evaluation report to the Minister administering the MRA. In the new section 29V, for the purposes of the MRA, section 268(9), the Coordinator-General's report is taken to be the result of a study requested by that Minister into the environmental impact of granting the application.

The new Division 6 applies to a project, which has been declared a significant project by the Coordinator-General, that requires a decision under legislation other than the IPA or the MRA This is outlined in the new section 29W. In the new section 29X, the EIS completed under this part is taken to be a completed statement that satisfies the requirement of the other Act.

The new section 29Y states how the Coordinator-General's report is to be applied to other approval processes. The Coordinator-General may set conditions that must be attached to any approval under the other Act; alternatively, the Coordinator-General may recommend that no conditions be attached. In both instances, the Coordinator-General must provide reasons for the recommendations made.

In the new section 29Z, the Coordinator-General must give the evaluation report to the person required under the other Act to give approval to the project. In the new section 29ZA, that person must take the Coordinator-General's report into consideration.

Clause 16 inserts the new Part 9 (Transitional Provisions) to provide for those projects where an EIS has commenced under the current section 29 arrangements before the commencement of these amendments. The effect of these provisions is discussed later in the Notes.

Development Schemes

Clause 8 provides an amendment to the existing section 55, within which the word 'use' has been incorrectly spelled as 'user' within the heading and text of section 55. In *Clauses 8(1) and 8(2)*, the typographical error 'user' is omitted and replaced with the correct word 'use' in section 55.

The additional subsections to section 55 provide means for more effective enforcement mechanisms to implement a development scheme. There is also provision for compensation for loss of value in land as a result of an approved development scheme.

The SDPWOA currently implements a development scheme by disposing of land subject to conditions (eg. through covenants, as in section 54(3) of the SDPWOA). This approach has limitations in effectively enforcing uses on land not owned by the State; enforcing conditions on subsequent owners of land; and controlling activity not envisaged by the development scheme.

This amendment provides for an enforcement scheme that is similar to that found in local government planning schemes. It provides an option for the landowners to remain in, for example, buffer areas to the State development area at Aldoga near Gladstone, if they do not undertake land uses that compromise the purposes of the State development area.

In *Clause 8(3)*, new subsection 55(2) to 55(7) provide for the implementation of a development scheme by making it an offence to use land unless:

(a) a development scheme states a particular use may occur on a particular parcel of land [subsection 55(2)]; or

(b) a use is contemplated by a development scheme and the Coordinator-General gives written approval to the use [subsection 55(4)].

Breaches of these provisions may result in a maximum penalty of 1,665 penalty units.

Conditions may be imposed by a development scheme on a particular use on a particular parcel of land [subsection 55(3)] and by the Coordinator-General on a use approved by the Coordinator-General [subsection 55(5)].

The new subsection 55(6) requires that the conditions imposed on use of land mentioned within subsections 55(3) and 55(5), must be relevant to the use of land and be reasonably required in respect of the land.

Failure to comply with conditions mentioned in subsections 55(3) and 55(5), is an offence, with a maximum penalty of 1,665 units [subsection 55(7)].

In *Clause 9*, the sections 55A to 55J are inserted. These relate to continuing use rights and claims for compensation. The new section 55A provides that the new subsections 55(2) and 55(4) do not apply to a use of land that was a lawful use of the land immediately before the approved development scheme applied to the land. The section recognises that land can continue to be used for the existing lawful land use immediately before the development scheme was approved. This section also binds the person's successors in title.

The new section 55B defines 'owner' for this division of the SDPWOA as the owner of an interest in land at the time an approved development scheme applied to the land. (As per section 51(3) of the SDPWOA, an 'approved development scheme' means the development scheme and subsequent amended versions of the development scheme.)

Section 55C provides for compensation to be paid by the Coordinator-General in particular circumstances where there is an approved development scheme that reduces the value of an interest in land and, immediately before the introduction of a development scheme, there was applying to the land:

- a development approval to use land under the *Integrated Planning Act 1997* that would be in contravention of the new provisions of section 55; or
- a lawful as of right use that would be in contravention of the new provisions of section 55. This would include as of right uses under a planning scheme and a particular use of land on a particular parcel of land referred to in section 55(2); or
- a written approval given by the Coordinator-General for a use contemplated in a development scheme.

If the owner asks the Coordinator-General to approve any one of the above uses, and the Coordinator-General decides not to approve that use, the owner is entitled to compensation.

In other words, the Coordinator-General may choose to continue a use, continue a use with amended conditions, or not continue a use. If the Coordinator-General chooses not to continue the use, or continue the use with amended conditions, and there is a reduction in the value of the interest in land then the owner of the land is entitled to compensation for the reduced value of the land.

The new section 55D provides that compensation cannot be paid if it has been paid to a previous owner and for anything done in contravention of the Act.

In the new section 55E, a landowner affected under section 55C must provide a claim for compensation within 3 years after the day the approved development scheme came into effect.

In the new section 55F, the Coordinator-General, in deciding a claim for compensation, must grant the entire claim, or grant part and reject the rest of the claim, or refuse the claim. The Coordinator-General may also seek to decide the claim by acquiring the interest in land under section 53 of the SDPWOA.

In the new section 55G, time limits are imposed on the Coordinator-General for deciding each claim for compensation. The landowner may appeal the decision, including the amount of compensation payable. Appeals must be made to the Planning and Environment Court.

In the new section 55H, the method of calculating reasonable compensation is prescribed. Reasonable compensation is the difference between the market values of an interest in land before and after the coming into effect of the approved development scheme, adjusted with regard to:

- any limitations or conditions that may have applied to the use of land before the approved development scheme applied;
- the wider benefits accruing to the land from the approved development scheme coming into effect;
- whether any adjacent land in the same ownership would benefit from the approved development scheme or infrastructure constructed or improved on the adjacent land before the claim for compensation is made;

- the effect of any changes to the approved development scheme made since the development scheme first applied to the land; and
- the effect of any conditions of an approval granted by the Coordinator-General.

In the new section 55I, the Coordinator-General is obligated to pay any due compensation within 30 business days after the last appeal could be made against the decision on the payment of compensation. If an appeal is made, the compensation must be paid within 30 business after the day the appeal is decided.

In the new section 55J, the Coordinator-General must give the registrar of titles written notice of the payment of compensation under section 55I, in the form approved by the registrar. The notice is also to be kept by the registrar as information under section 34 of the *Land Title Act 1994*.

The new sections 55K, 55L, 55M and 55N provide the procedures for appeals instituted against decisions on compensation claims. A person dissatisfied with the decision on compensation may start an appeal within 20 business days after receiving notice of the decision. Appeals may be made to the Planning and Environment Court. The Court's decision on the appeal is taken to be the decision of the Coordinator-General.

Project Boards

A Project Board may be established in respect to any works, in relation to planned and coordinated development within the SDPWOA. The status and powers of Project Boards are provided for within section 77 of the SDPWOA.

Clause 10 omits section 70(3B), which provided a conflict of interest 'code' for membership of Project Boards.

Clause 11 provides for a new section, section 74A, which replaces and updates the repealed section 70(3B).

The repealed section 70(3B) stated that:

> *'A person is not qualified to be appointed as a member of a project board if, otherwise than as a member of a body corporate that consists of at least 20 members, the person has a pecuniary interest in the undertaking of the works in respect of which the*

board is or is to be established, or is likely to benefit financially from any contract that is likely to be made for the purposes of such work or any part thereof.'

At the time of the introduction of this provision, in 1971, there was concern that members of the proposed Project Boards could unfairly use their position on these Boards for personal gain. The current section 70(3B) was introduced to the 1971 Bill to specifically exclude those persons with 'pecuniary interests' in works for which the Board was created from membership of Project Boards established for those works.

The conflict of interest code in the SDPWOA is being amended to correct an apparent anomaly in the repealed section 70(3B) which effectively limited the ability of partners in small professional firms from becoming members of Project Boards.

A 'conflict of interest' code is to be maintained in the new section 74A, which is more consistent with the conflict of interest code found in the Commonwealth *Corporations Law* and other State legislation governing the conduct of statutory boards.

Whilst the *Corporations Law* recognises that there is a clear duty for persons serving on Boards to disclose a conflict of interest, it does not automatically disqualify that person as a member of a Board. The Queensland Government's: *'Guide for Government Board Members - 1998'* parallels the general conflict of interest duties to which Board members are bound within the *Corporations Law*.

The new section 74A provides an onus on members to disclose to a meeting of the Project Board a conflict of interest on matters to be considered or about to be considered by the Board. This disclosure is to be recorded within the Minutes of the Board meeting.

In the event that a conflict of interest has been declared, the person would be unable to vote on the particular issue. This section does not apply to an interest that the member may have in common with the public.

Subsection 74A(4) specifies those areas in which a member is taken to have an indirect financial interest in a matter. Members of Project Boards must register any interest in a matter outlined in sub-points (a) to (e) in section 74A(4).

Acquisition and Access

Clause 12 provides for a series of amendments to section 78. These amendments principally relate to the acquisition of land for the development, by persons other than the State, of an infrastructure facility.

In *Clause 12(1)*, the first paragraph in section 78(1) is omitted and replaced. The purpose of the amendment is to clarify drafting to make beyond doubt that the Coordinator-General can take land under this Act, for the purposes prescribed in section 53 and section 78.

In *Clause 12(2)*, a new section 78(1)(f) is introduced, which provides a specific purpose of taking land for an infrastructure facility approved by the Governor in Council. In this sub-section, [Section 78(1)(f)(i)], the Coordinator-General would provide a recommendation to the Governor in Council to approve that an infrastructure facility is of economic or social significance to Australia, Queensland or the region in which the facility is to be constructed. Section 78(1)(f)(ii) provides for this approval to be notified by gazette notice. It is this decision which creates the head of power for compulsory acquisition to occur for a particular infrastructure project.

In *Clause 12(3)*, the new subsection 78(1A) is included, which provides criteria for assessing the 'economic or social' significance for the purposes of section 78(1)(f). The Governor in Council must consider the potential stimulation that the infrastructure facility will have on: economic growth; technological development; agricultural development; industrial development; resource development; employment opportunities; or community well being.

This requirement recognises that infrastructure, however financed, will provide benefits to parties other than the proponent, and provide stimulation for development and job creation.

Also in *Clause 12(3)*, the new subsection 78(1B) specifically allows that section 78(1)(f) still applies even if land is taken under this subsection to confer rights or interests on a person other than the State. The conferring of property rights onto such persons is consistent with Government policy that seeks to encourage private investment in infrastructure facilities. This is also consistent with the approach taken by the Commonwealth in the *Native Title Act 1993* (Cth), in recognising the future contribution of the private sector in infrastructure development.

In the event that the taking is for a person other than the State, subsection 78(1C) requires the preparation by the Coordinator-General of a statement which would specifically address the reasons for the taking of that land, and detail the negotiations between the private person and the affected owner.

The purpose of subsection 78(1D) is to provide for the Minister to table a copy of the statement mentioned in subsection 78(1C) in the Legislative Assembly, within three sitting days of the taking of the land.

Subsection 78(1E) makes it beyond doubt that if the taking of land is for the purposes identified within section 78(1), the process for the taking of land and the granting of compensation is the *Acquisition of Land Act 1967* (ALA) as if the taking were a taking under that Act. To provide the ability to acquire land for the benefit of persons other than the State, it is necessary to make it clear that the Coordinator-General is not operating as a constructing authority under the ALA. Nevertheless, the procedures to be followed are those prescribed for constructing authorities under that Act.

Clauses 12(4) and 12(5) amend section 78(2) to make it beyond doubt that the Coordinator-General may take land that is less than fee simple for the purposes set out in section 78(1).

In *Clause 12(6)*, opportunity has been taken to update the reference to *Land Act 1994* in section 78(2B), from the *Land Act 1962.*

Clause 12(7) clarifies that the payment of compensation for all land taken under section 78(2) is through the process in the *Acquisition of Land Act 1967*, as if the taking were a taking of land held in fee simple under that Act.

In *Clause 12(8)*, it is made clear that subsections 1E to 2C must be included in those matters to be considered within the current section 78(3). This amendment is specifically to include in the new subsections 78(1E) and 78(2C), which are added to the current subsections 78(2), 78(2A) and 78(B) as matters to be considered in section 78(3).

Clause 12(9) provides for a new subsection 4. This subsection is to clarify beyond doubt that the taking of all land taken under this section is not a taking of land under the *Acquisition of Land Act 1967*. Despite this, the process to be used for the taking and the payment of compensation for the land taken is the process specified within the *Acquisition of Land Act 1967*.

Also in *Clause 12(9)* a definition for infrastructure facility has been provided. This definition refers back to the infrastructure facility mentioned within section 78(1)(f). The Coordinator-General can only take land for a facility within this definition for the purposes of section 78(1)(f) and only with Governor in Council approval. [This definition is similar to but not identical to that provided in section 253 of the Commonwealth *Native Title Act 1993* (NTA)].

Clause 13 provides a new section 78A and section 78B. The new section 78A applies in the event that the acquisition of land under this section is to confer an interest on a person other than the State. In Section 78A(2), the Coordinator-General must not compulsory acquire the land unless the proponent has taken reasonable steps to otherwise acquire the land. It emphasises the strong preference that the land be acquired through commercial negotiations.

The purpose of section 78B is to make certain that for land taken under section 78(1) on which native title has not been extinguished, the acquisition will adhere to the process as prescribed within Commonwealth and State native title legislation. It also provides jurisdiction to the (Queensland) Land and Resources Tribunal to hear objections arising from the acquisition of native title under section 78; and provides for the constitution of the Tribunal in the event that an objection is raised.

The Commonwealth has recognised that infrastructure is increasingly being provided by non-Government parties; and that it is inappropriate for acquisitions for infrastructure to be subject to the right to negotiate provisions of the Commonwealth *Native Title Act 1993* (NTA). However, as these acquisitions may result in the extinguishment of native title, the native titleholders are given additional rights to ensure the special nature of their rights can be taken into account.

Under the NTA, there are different procedures for the acquisition of native title rights and interests depending on who will benefit from the acquisition and the purpose of the acquisition. If the acquisition is by a Government party for a non-Government party then the right to negotiate provisions of the NTA will apply unless the acquisition is to provide an infrastructure facility. If the purpose is to provide an 'infrastructure facility', the native title holders must be given the same procedural rights as the owners of freehold under the *Acquisition of Land Act 1967*, as well as additional procedures within s24MD(6B) of the NTA.

For the purposes of section 24MD(6B) of the NTA, an independent body must be nominated to hear objections, if any, from registered native title claimants or native title bodies corporate.

In the event that land is taken for an infrastructure facility, in which the interest in land is provided to a person other than the State, the new section 78B within the SDPWOA nominates the Land and Resources Tribunal (L&RT) as the independent body in Queensland to hear any objection by native title claimants, as required under section 24MD (6B) of the NTA. The new section 78B(1)(c) provides the L&RT with the jurisdiction to hear any objections from native title claimants under such circumstances. The new section 78B(2) provides for the constitution of the L&RT in the event that native title claimants raise an objection. The form of the L&RT will be as a 'standard panel' is defined within section 39(2)(a) of the *Land and Resources Tribunal Act 1999* (L&RT Act). A panel comprises of 1 or more presiding members (see section 7 of the L&RT Act) and 2 or more non-presiding members (see section 15 of the L&RT Act).

Notwithstanding the definition of an infrastructure facility provided in the new section 78 (5), only an infrastructure facility as defined within section 253 of the *Native Title Act 1993 (Cth)*, or an infrastructure facility approved by the Commonwealth Minister, may follow the section 24MD(6B) process. Acquisition of land for all other infrastructure must follow the right to negotiate process under the NTA, if native title claims exist over that land.

Legislation for the L&RT was introduced to the Queensland Parliament on 19 November 1998; and was passed on 10 March 1999.

Clause 14 provides for a new section (section 79A), which allows the Coordinator-General to enter into agreements to sell or lease land taken for the purposes of section 78(1). The new section 79A allows the Coordinator-General to enter into an agreement with a proponent seeking to build, own, operate and maintain works, to lease or sell land taken for the purposes of section 78(1). Such an agreement could provide details, for example, on the timing and payment of any costs and compensation associated with the resumption of any land. (Section 80 of the SDPWOA already provides that if land is taken for a person other than the State, the Proclamation whereby land is taken by the Coordinator-General shall specify the person responsible for compensation and costs payable on the resumption of land.)

Clause 15 inserts a new Division 6 into the SDPWOA (sections 91A-91M). This Division provides a process for the granting of, and conditions attached to, access to land for the purpose of conducting an investigation of land by persons who are considering construction of an infrastructure facility mentioned within section 78(1)(f). The access can only be authorised by the Coordinator-General.

The new Division 6 permits the grant of land entry powers to investigate the land's potential and suitability for an infrastructure facility while protecting the interests of owners of the land, but only after the Coordinator-General has fully addressed the adequacy of the proposal.

The new Division 6 provides extensive provisions, which, while permitting investigations of land under consideration for an infrastructure facility, safeguard the interests of landowners.

Before issuing any access authority, the Coordinator-General must be satisfied that:

(a) the person has made efforts to secure access by agreement with landowners; and

(b) the person is genuinely considering construction of an infrastructure facility, as described within section 78(1)(f).

The new section 91A specifies that the purpose for the Division is to allow persons authorised by the Coordinator-General to enter land to investigate the land's potential and suitability for the development of an infrastructure facility mentioned in section 78(1)(f) before the powers under that section are exercised. It is clearly intended that the investigation precedes any taking under section 78(1)(f).

The new section 91B inserts definitions for commonly used terms in this Division. These terms include 'associated person'; 'investigator'; 'investigator's authority'; and 'owner'. The owner is defined as including any person who, to the knowledge of the Coordinator-General, is an occupier of the land.

In the new section 91C, the person who has applied for the access authority (the applicant) must satisfy the Coordinator-General that efforts have been made to access the land through a voluntary agreement with the land owner. Details must be provided of the steps taken to gain voluntary access.

The applicant must also provide certain information from which the Coordinator-General can decide if an authority should be issued. The intent of the criteria in section 91C(3) is to establish whether the applicant has a genuine intent to construct the infrastructure facility.

In section 91C(4), the application must note what land is intended to be entered; the purpose of the entry; details of the nature of the investigative activities proposed to be conducted on the land; and the period for which the authority is sought.

In section 91C(5), the Coordinator-General must notify the landowner that an application has been made to access his/her land. In this notification, the Coordinator-General must also advise the powers that a person granted an authority might exercise under this Division. This provides an advance notice to the landowner of a possible grant of an investigator's authority by the Coordinator-General.

In the new section 91D(1)(a), before deciding the application the Coordinator-General must also consult with the owner about the proposed entry to the land.

In the new section 91D(1)(b), the Coordinator-General may also seek any additional information from the applicant before deciding whether to grant or reject the authority. If the applicant does not provide the information as requested, the Coordinator-General may reject the application.

The new section 91E allows for the grant or refusal by the Coordinator-General of an investigating application. If approving the application, the Coordinator-General may attach conditions to the granting of an authority to investigate, including the retention of a bond or security deposit from the applicant [section 91E(3)]. The magnitude of the bond will be determined on a case by case basis by the Coordinator-General, taking into account the extent of the proposed investigation and the potential for the investigator to cause damage.

The Coordinator-General must be satisfied that the land for which the access authority is sought is no more extensive than is reasonably necessary.

The new section 91F(1) states specific details that must be included in the written authority granted by the Coordinator-General. Typical information would include the land to which it applies; the purpose for which it was

granted (eg. to investigate the potential location of an infrastructure facility); the authority's expiry date; and any conditions imposed on the authority.

The authority allows the investigator and associated persons to enter land within the area, subject to the requirements of this part. This section also expresses that the granting of the authority is not to be taken to be a commitment by the State, the Coordinator-General or any other person to the proposal. This section also makes it clear that the investigator is not necessarily an employee or agent of the State. It is an offence for non-compliance by the investigator or an associated person with any condition of the authority, unless the person has a reasonable excuse.

The new section 91G requires that before land is entered under an investigator's authority, notice must be given to the landowner, together with a copy of that authority. The notice must advise that the Coordinator-General has granted an investigator's authority, the things the authority authorises, an outline of the things intended to be done and the approximate period during which the land is to be entered. The notice must also state that the granting of the authority does not commit the State to acquiring any land for construction of the infrastructure facility.

The notice in section 91G must also state the rights of the owner under section 91K or 91L for the rectification of, or compensation for, any loss or damage suffered during the investigation.

In section 91G(3), the investigator or associated person may enter onto land only after obtaining the consent of the landowner or at least 7 days notice has passed. This notice period is consistent with similar provisions in other State legislation. However, the Coordinator-General will, in following the requirements of this Division, provide early notification to the land owner that an application has been made to access his/her land [section 91C(5)]; and that the Coordinator-General will consult with the land owner while considering the access application [section 91D (1)(a)].

The new section 91H requires an investigator to give an associated person a document of identification. The document must name the investigator and associated person, state the capacity of the associated person, be signed by or on behalf of the investigator, contain the associated person's signature and have an expiry date. The associated person must return the document as soon as possible when the person ceases to be associated with the investigator.

The new section 91H also requires that, if the owner asks an investigator for identification, the person must state his or her name and a copy of the investigator's authority must be produced. Non-compliance with the procedures in this section is an offence.

The new section 91I establishes that it is an offence for pretending to be an investigator or associated person.

The new section 91J requires a person exercising a power under an authority to take as much care as is practicable to minimise damage to the land or inconvenience to the owner.

The new section 91K allows the land owner to claim compensation from, or require rectification by, the investigator for loss or damage arising out of an entry onto the land, any use of land, anything brought onto the land, or anything done or left on the land associated with the investigator's authority. If loss or damage is not or cannot be rectified the owner may claim compensation from the investigator. Notice of damage or loss must be received within 1 year after the loss or damage has occurred, or at a later time determined by the Land Court.

The new section 91L provides that the amount of compensation for any damage mentioned in the new section 91K is to be agreed between the parties. However, if they cannot agree within a reasonable time, the Land Court can determine the amount.

The new section 91M controls the release of any bond or security deposit held by the Coordinator-General [from section 91E(3)]. The bond must be retained by the Coordinator-General for 1 year after the expiry of the investigator's authority and then only released to the investigator if the owner of the land has not given a notice of damage or loss under section 91K.

If a notice has been given, but the damage or loss has been repaired, or compensation has been paid, the Coordinator-General will release the bond or security deposit no later than 1 year after the investigator's authority expired.

If the owner has given a notice of damage or loss under section 91K and the Coordinator-General is not satisfied that investigator has repaired, rectified or paid compensation for damage or loss to the owner, the Coordinator-General may use the bond to repair or rectify the damage or loss or pay compensation to the owner. The balance, if any, will be paid to the investigator.

Transitional Arrangements

In *Clause 16* a new Part 9 is inserted. The new section 123 provides transitional arrangements for those projects in which an EIS under the current section 29 (1) was being prepared at the commencement of this section.

If the development requires a development approval under the IPA, the MRA or other legislation, and if the Coordinator-General is satisfied that the EIS has been prepared in a manner consistent with the conditions within the amended Part 4 of the SDPWOA, the completed EIS may be taken to be an EIS prepared under this part.

This section also includes, in section 123(3), statements clarifying the form of any written submission about the EIS. For a development approval under IDAS, the submission is deemed to be a 'properly made submission'; for the application of a mining lease under the MRA the submission may be an objection the warden's court must consider; or for an application for approval under legislation other than the IPA or the MRA, a 'properly made submission'.

Schedule

The Schedule to the Bill corrects the spelling of Organisation in the Short Title of the Act, and omits the now redundant commencement provisions.