STATE DEVELOPMENT AND OTHER LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

The *State Development and Public Works Organisation 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 when specific powers relating to supervision of the environment were introduced to the Act (which were subsequently amended in 1978).

The Act was further amended in 1999, clarifying the Coordinator-General's role in coordinating impact assessment for significant projects; enabling the Coordinator-General to acquire and access land for persons other than the State, and updating enforcement provisions for land use established within a state development area.

Objectives of The Legislation

The proposed amendments seek to make a number of modifications to the *State Development and Public Works Organisation Act 1971* (SDPWO Act), the *Environmental Protection Act 1994*, the *Integrated Planning Act 1997* (IPA), the *Electricity Act 1994*, the *Mineral Resources Act 1989* (MR Act) and the *Central Queensland Coal Associates Agreement Act 1968* (CQCAA Act).

The amendments to the SDPWO Act are principally needed to reflect recent changes to other legislation dealing with environmental impact assessment, together with further recognition of the changing role in government in the provision of infrastructure.

The amendment to the IPA provides for the Minister to proceed straight to designation for community infrastructure projects after the Coordinator-General has coordinated assessment of the environmental effects under section 29A of the SDPWO Act.

The amendments to the EP Act and the MR Act indicate that the provisions of the Act relating to the assessment of environmental impacts for mining projects do not apply to projects declared significant projects under the SDPWO Act.

The amendments to the *Electricity Act 1994* are needed to facilitate the development of the Australian Magnesium Corporation Plant to be located adjacent to the Stanwell Power Station by ensuring that the Plant is not required to comply with emergency rationing orders or restriction regulations for its minimum electricity demand.

The Bill also amends the CQCAA Act to reflect BHP and Mitsubishi's amendment of their respective CQCA interests from 52.1%/47.9% to 50%/50%. This follows BHP/Mitsubishi's 50/50 acquisition of QCT Resources in late 2000/early 2001.

The Bill amends the SDPWOA to:

- reflect the changes to the assessment of mining which have occurred with the transfer to the Environmental Protection Agency of the environmental regulation of the mining industry from the former Department of Mines and Energy. The amendments will maintain the Coordinator-General's ability to coordinate impact assessment for significant projects which require an Environmental Authority (Mining Lease);
- provide clarification of administration and enforcement provisions for conditions attached to development approvals issued following the completion of an EIS for a significant project pursuant to section 29B of the Act;
- provide linkages between the assessment of environmental effects under section 29 and the designation of community infrastructure pursuant to the IPA;
- provide for the Coordinator-General to delegate and transfer authorised works under sections 68 and 84;
- provide for the Coordinator-General to take an interest in land less than fee simple, including an easement and a lease, including for persons other than the State, for the purposes of section 78;

- update the finance provisions contained in Part 9 to reflect changes to the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act). The amendments will enable the Coordinator-General to borrow moneys from the Queensland Treasury Corporation without the need to obtain the prior approval of the Governor-in Council, as a Statutory Body under the SBFA Act;
- provide for the Coordinator-General to prepare regulations for the requirements for environmental impact statements or processes, such as those proposed to be accredited under a bilateral agreement made pursuant to the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act);
- include in the transitional provisions the ability for the Coordinator-General to declare as a significant project, a project which include land intended to be designated for community infrastructure pursuant to IPA for which a study about the environmental effects of the proposal was being undertaken;

Reasons For The Bill

The attached Bill amends the SDPWOA to provide clarification as to the administration and enforcement provisions for conditions attached to a development approval granted following the completion of an EIS for a significant project pursuant to s. 29B of the Act. The amendments clarify that from the time that a development approval takes effect, the Coordinator-General's (COG) involvement ceases. The amendments provide for the COG's report to identify the agency to administer any conditions required to be attached to a development approval. Resolution of this issue originally raised by the government departments will clarify agency responsibilities in relation to the administration of development approvals. In the case of the administration of the EP Act, the amendment will provide for the enforcement of conditions within the jurisdiction of the EPA by the use of Environmental Protection Orders if needed.

The Bill amends the SDPWO Act, EP Act 1994 and the *Mineral Resources Act 1989* to enable the Coordinator-General to maintain an ability to coordinate the assessment of environmental impacts through the preparation of an Environmental Impact Statement (EIS) for significant projects which involve an environmental authority (mining lease) pursuant to the new arrangements within the EP Act. The amendments respond to the recent transfer of responsibility for the environmental assessment of

mining from the former Department of Mines and Energy to the Environmental Protection Agency.

The provisions will enable the assessment of those mining projects declared by the Coordinator-General to be significant projects pursuant to section 29C to be coordinated through the provisions of the SDPWO Act rather than the provisions of the EP Act.

The Bill amends section 78 to provide that the Coordinator-General may acquire land less than an estate in fee simple (freehold) as is currently provided in the Act. Specifically, it provides for the acquisition of an easement. This amendment relates to the acquisition of land by the Coordinator-General, including that for an infrastructure facility, which may be built, owned, operated and maintained by persons other than the State. This amendment will provide for situations where the limitation on taking land in fee simple would result in unnecessary hardship for landowners where an easement or lesser title may be more appropriate. This amendment would also have application to enable an interest in land such as a lease to be acquired.

The Bill amends Part 7 of the SDPWO Act in the interests of legislative consistency and currency, to replace the COG's current express financial powers with a cross-reference to the relevant provisions of the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act). The amendments provide that the COG is a statutory body for under the SBFA Act.

Part 7 of the SDPWO Act empowers the COG to borrow, raise money or make financial arrangements, including the power to issue debentures, bonds and stock. Part 7 of the Act also contains a range of provisions relating to the exercise of these powers. A number of these provisions contained cumbersome approval requirements and many were outdated in their references to other Acts.

The Bill amends the CQCAA Act to amend to Schedule 2 to reflect changes resulting from the decision of BHP and Mitsubishi to move to equal ownership of their interests in the Central Queensland Coal Associates Joint Venture.

The amendments maintain the objectives of the Acts.

ESTIMATED COSTS FOR GOVERNMENTAL IMPLEMENTATION

Any costs incurred are a result of the amendments to the Act in respect to drafting and preparation of the Bill represent a minimal cost to

Government. In other words, the impact of the changes should be 'Budget neutral'.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill raises two Fundamental Legislative Principles issues with respect to:

- commencement provisions; and
- retrospective commencement for subsection 1 and the partial exclusion of the *Acts Interpretation Act 1954*, s15DA for subsections (3) and (4).

The commencement provisions provide for the provisions relating to the assessment of mining projects to commence by Proclamation up to two years after the date of assent. Because of the potential implications of the Alternative State Provisions on this part of the Act, the timing for their commencement has been made to enable consultation with the Commonwealth Government should any issues arise which could otherwise have the provisions set aside.

Retrospective commencement in the provisions relate only to the administration and enforcement of conditions attached to a development approval granted following the completion of an EIS for a significant project. This retrospective commencement will not affect any interests but will provide clarification as to the ability of State agencies such as the EPA, to fully administer and enforce conditions attached to a development approval.

CONSULTATION

The following relevant organisations have been consulted:

Department of the Premier and Cabinet

Department of Local Government and Planning

Environmental Protection Agency

Queensland Treasury

Crown Law

NOTES ON CLAUSES

The section numbers in the *State Development and Other Legislation Amendment Act 2001* are referred to as clauses in these explanatory notes.

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is the *State Development and Other Legislation Amendment Act 2001*.

Clause 2 provides that sections 29PA, 29PB and 29O of the SDPWO Act are taken to have to commenced on 16 June 1999 and that the remaining provisions of the Act commence on a day to be fixed by proclamation but not more than 2 years from the date of assent.

PART 2—AMENDMENT OF CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1968

Clause 3 defines the Act amended in Part 2 as being the *Central Queensland Coal Associates Agreement Act 1968*.

Clause 4 amends section 4 of the *Central Queensland Coal Associates Agreement Act 1968* to remove the mechanism whereby Governor in Council could make further amendments to the Act by order in council. The Scrutiny of Legislation Committee has expressed a strong preference that agreements not be amended by order in council or regulation.

Schedule 1 introduces amendments to Schedule 2 to reflect changes resulting from the decision of BHP and Mitsubishi to move to equal ownership of their interests in the Central Queensland Coal Associates Joint Venture.

The Central Queensland Coal Associates is a joint venture of companies that are involved in the development, ownership and operation of coal mines in the Central Queensland region and also the Hay Point Coal Terminal that is adjacent to the Government's Dalrymple Bay Coal

Terminal. As one of the "pioneering" arrangements that opened up the Central Queensland coalfields, the arrangement between the Joint Venture and the State is set out in an Agreement that is enacted as legislation, in keeping with the accepted practice at the time the Agreement was developed.

The *Central Queensland Coal Associates Agreement Act 1968* details the parties to the Central Queensland Coal Associates Joint Venture and the relative ownership levels of each party. When changes to ownership levels of the participant companies in the Joint Venture occur (including the addition and removal of participant companies), it is necessary for these changes to be reflected in amendments to the Act. Numerous amendments have been made to the CQCA Joint Venture parties and their level of interest in the Joint Venture since Utah Development Company and Mitsubishi signed the original Agreement with the State on 28 January 1969.

Most recently, the CQCA Joint Venturers were essentially BHP, Mitsubishi and QCT Resources Ltd (held through their subsidiary companies). However, in August 2000 BHP and Mitsubishi together made a stock market takeover offer for QCT Resources Ltd, a bid that was ultimately successful. Note that QCT's interest in the CQCA Joint Venture was not affected by the successful bid, and as a result no change to the Act was required (all that happened was that ownership of QCT transferred to BHP and Mitsubishi).

On 28 March 2001 BHP and Mitsubishi publicly announced an agreement to move to equal ownership of their interests in the CQCA Joint Venture, thus necessitating this latest amendment to the Act. Specifically, the Amendment recognises the transfer of a 2.10% interest in the CQCA Joint Venture from BHP Coal Pty Ltd to QCT Management Limited. This latest transfer is an adjustment that results in BHP and Mitsubishi, through their direct and their indirect interests in the CQCA Joint Venture, each having a 50% equal interest in the CQCA Joint Venture.

PART 3—AMENDMENT OF THE ELECTRICITY ACT 1994

Clause 5 defines the Act amended in Part 3 as being the *Electricity Act 1994*.

Clause 6 inserts a new division in chapter 5, part 2 of the *Electricity Act 1994*.

Section 129A applies to the Stanwell Magnesium Plant, and stipulates that regulations or rationing orders under sections 122 and 124 of the *Electricity Act 1994,* can only apply to the electricity demand at the Plant that is greater than an amount prescribed by regulation. This prescribed amount must be at least 50 MW but no more than 100 MW.

The Australian Magnesium Operations magnesium metal project will be located at Stanwell inland from Rockhampton and as such, a large proportion of the benefits from the development and operation of this plant will accrue to the Fitzroy region and also possibly Gladstone/Calliope. The project will provide significant economic benefits to the region and create skilled and unskilled jobs during construction and operation.

Smelters of various kinds are concerned about security of electricity supply. If electricity supply is interrupted for sufficiently long periods, molten metal can solidify in "baths" or "pots". The cost required to clear the equipment of solid metal is substantial, and significant losses in production time would also result.

Therefore, given the significant economic benefits of this project, legislative protection of the minimum electricity supply to the smelter has been created to cover these potential commercial and sovereign risks, to ensure the future development of this project.

This protection is given by restricting the operation of sections 122 and 124 of the *Electricity Act 1994*, so that any emergency rationing orders or restriction regulations only apply to the plant's demand in excess of their minimum demand level (initially 50 MW). This minimum demand level is expected to change in future with the anticipated expansion of the plant, hence the proposed amendments provide for the minimum demand level to be prescribed by regulation.

The division expires on 31 December 2033.

PART 4—AMENDMENT OF THE ENVIRONMENTAL PROTECTION ACT 1994

Clause 7 defines the Act amended in Part 4 as being the *Environmental Protection Act 1994*.

Clause 8 amends section 37 of the *Environmental Protection Act 1994* (EP Act) to clarify that the Environmental Impact Statement (EIS) process under the EP Act does not apply to a significant project as declared under section 29B of the SDPWO Act on the basis that Part 4 of that legislation provides for an EIS process for significant projects.

Clause 9 amends section 60 of the EP Act by declaring that for the purposes of an application for an environmental authority under the EP Act where an EIS process must be completed, that process will be taken to have been completed where the application relates to a significant project and where the COG has issued a report on the EIS for the project under Part 4 of the SDPWO Act and that report has been given to the proponent. This will mean that wherever there is an EIS requirement for an environmental authority for mining activities under the EP Act, that requirement will be taken to have been met in the case of a significant project where the EIS process under the SDPWO Act has been completed.

Clause 10 amends section 162 of the EP Act. Part 2C of the EP Act (in which section 162 is located) relates to environmental authorities required for mining activities. Essentially, there are two types of application for such environmental authorities – standard or non-standard. A standard application is intended to cover a project of low labour and operational requirements. The amendments to section 162(3)(a) and (b) in effect provide that where an application is for an environmental authority (mining lease) as part of a significant project then the application will be treated as a non-standard application.

Clause 11 amends section 164 of the EP Act. That section currently provides that where an application is a non-standard application the administering authority must specify that an EIS is required. The amendment makes clear that no EIS will be required where the application for the environmental authority (mining lease) is part of a significant project. This is because the issue of an EIS for such a matter would have been addressed under the SDPWO Act Part 4.

Clause 12 amends section 165 in a similar manner to the amendment to section 162 Section 165 allows the Minister administering the EPA (EPA Minister) to make a decision about the assessment level of an application, ie whether it is non-standard or standard. Consistent with the amendment to section 162, the EPA Minister cannot make an assessment level decision on an application for an environmental authority relating to a significant project which application must be treated as a non-standard application.

Clause 13 amends section 203 of the EP Act which relates to the content requirements of an EMOS which must be submitted as part of an

application for an environmental authority (mining lease) where it is a non-standard application. The amendment requires the EMOS to state whether an EIS under the SDPWO Act has been prepared for the project.

Clause 14 amends section 205 which sets out the entitlement of the administering authority for an environmental authority (mining lease) to give an applicant an assessment report about a submitted EMOS relating to that application. The ability of the administering authority to give such an assessment report does not apply if the application relates to a significant project, an EMOS is included as part of the EIS process under the SDPWO Act for that project and the COG in giving his report on the project states that the EMOS complies with or substantially complies with the content requirements for an EMOS under section 203 of the EP Act.

Clause 15 amends section 206 subclause (b) by limiting the ability of the EP Act administering authority upon an application for an environmental authority (mining lease) to make an EMOS assessment report. In making its assessment report, the administering authority must, where the application relates to a significant project, consider the EIS prepared under the SDPWO Act and the COG's report thereon.

Clause 16 amends section 209(2)(a) and (b) of the EP Act, which deals with the conditions which an administering authority, may apply in the case of a standard application for an environmental authority (mining activities). The introduction of new subclause (2)(b) requires the administering authority to include in the draft environmental authority relating to a mining lease which is part of a significant project any conditions to the environmental authority which are stated in the COG's report for the project made under the SDPWO Act.

The ability of the administering authority under the EP Act to include additional conditions in such an authority is limited by the amendment to section 209(6) to the extent that any additional conditions cannot be inconsistent with the conditions stated in the COG's report with respect to the environmental authority for a significant project.

Clause 17 amends section 210 relating to the conditions for a non-standard application for an environmental authority (mining lease) in the same manner as the amendments to section 209 relating to a standard application. It seeks to preserve the applicability of any conditions to the draft environmental authority stated in the COG's report so that those conditions are included in the draft authority and there can be no additional inconsistent conditions imposed under the EP Act.

Clause 18 amends section 216 of the EP Act which gives a legal right to any party to object to an application for an environmental authority, or the draft environmental authority or a condition included in the draft. The introduction of new subsection 1 is to the effect that no person can object to a condition included in the draft environmental authority relating to a significant project where that condition was included in the COG's report on the significant project.

The introduction of new subsection (4) of section 216 is to make clear that an objection to an application for an environmental authority is an objection relating to the application and not to any of the application documents which would include an EIS. That is, ancillary documents such as the EIS will not be open to objection.

Clause 19 amends section 222 of the EP Act which sets out the type of decision which the Land and Resources Tribunal (Tribunal) can make when an objection is made to an application for an environmental authority (mining activities). The Tribunal has the power to recommend to the Minister administering the MR Act (MRA Minister) that the application be granted upon stated conditions that are different to the conditions in the draft environmental authority. The introduction of subsection (1A) makes clear that no such recommendation can be made which would either exclude conditions recommended by the COG under a report on a significant project under the SDPWO Act or which would include conditions which are inconsistent with any such conditions included in the COG's report.

Clause 20 amends the EP Act by replacing subsections 1 to 4 of section 224. The amendments provide that the EPA Minister, after the recommendations of the Tribunal on an objection to an environmental authority (mining lease) have been made, not only seek advice from the MRA Minister on the decision but also, where the application relates to a significant project, seek the advice of the Minister administering the SDPWO Act (State Development Minister).

Clause 21 amends section 225. Currently the section requires the EPA Minister when considering granting an environmental authority (mining activities) to consider any conditions for the environmental authority recommended by the COG under the SDPWO Act. Presently, section 224(4) does not require the EPA Minister to impose such a recommended condition. To reflect the amendment to the SDPWO Act by the introduction of section 29W thereto which allows the COG's report on the EIS for a significant project to state conditions for the proposed draft environmental authority (mining lease) relating thereto, which conditions

will be taken to be imposed on any environmental authority to be issued. The introduction of new section 225(3)(b) is to the effect that the EPA Minister must consider the conditions included in the draft environmental authority for standard or non-standard applications.

Clause 22 amends section 305(1)(f) to reflect the amendments to section 29W of the SDPWO Act which allows the COG's report on the EIS process for a significant project to state conditions for a draft environmental authority (mining lease) relating thereto.

Clause 23 introduces a new section 306A which provides that if in an environmental authority (mining lease) relating to a significant project which includes conditions stated in the COG's report for the project, there is any inconsistency between any condition placed on the environmental authority or a draft environmental authority for an environmental authority (mining activities) and a native title issues condition, the native title issues condition will prevail to the extent of any inconsistency.

Clause 24 amends the dictionary in Schedule 3 by amending the definition of "development condition" to include a reference to a condition referred to in the new section 29O(5) of the SDPWO Act to ensure that the EPA's ability to administer the condition under the EP Act is retained. Schedule 3 is also amended to include the definitions of "significant project" and "Coordinator-General's report" consistent with those definitions in the SDPWO Act.

PART 5—AMENDMENT OF THE INTEGRATED PLANNING ACT 1997

Clause 25 defines the Act amended in Part 5 as being the *Integrated Planning Act 1997.*

Clause 26 amends section 2.6.8 of the *Integrated Planning Act 1997* (IPA) which deals with community infrastructure designation. The amendment provides that where the Minister may proceed straight to designation (using the process set out in Schedule 7 of IPA), if the Minister is satisfied that the Coordinator-General (COG) has coordinated the assessment of environmental effects of the community infrastructure in accordance with section 29A of the SDPWO Act.

This amendment clarifies that the Minister may proceed to designation after assessment has been completed for both a significant project (for which a report is prepared pursuant to section 29K of the SDPWO Act) or, for which the environmental effects have been assessed pursuant to section 29A which provides that the COG coordinate departments of the Government and local bodies throughout the State to ensure that in any development proper account is taken of the environmental effects. The "*Policies and Administrative Arrangements - Impact Assessment in Queensland"* document, commonly referred to as "the Green Book", applies to the assessment of environmental effects undertaken pursuant to section 29A.

Clause 27 amends section 6.1.44(2) of IPA which deals with conditions that may be changed or cancelled by the assessment manager or concurrence agency in certain circumstances. The amendment provides for an additional circumstance whereby a condition may have been imposed as the result of a report by the COG about an environmental impact statement (EIS) prepared for significant project under the SDPWO Act. In this limited circumstance, there are no concurrence agencies, and to the extent it was able to before the commencement of IPA, it is intended that entities, which have jurisdiction for a condition, be able to rely on those powers to change or cancel such a condition.

PART 6—AMENDMENT OF THE MINERAL RESOURCES ACT 1989

Clause 28 defines the Act amended in Part 6 as being the *Mineral Resources Act 1989.*

Clause 29 deletes section 276(6) to reflect the changes in the SDPWO Act which confirms that the conditions in the COG's report are included in the Mining Lease for a significant project.

PART 7—AMENDMENT OF THE STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION ACT 1971

Clause 30 defines the Act amended in Part 7 as being the *State Development and Public Works Organisation Act 1971.*

Clause 31 omits the definitions in section 5 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) which are replaced with a dictionary in the schedule. This amendment updates the Act in line with current drafting practice.

The "local bodies" definition is amended to remove an outdated reference to the *Local Bodies Loan Guarantee Act 1923* which has been repealed. The amended definition provides that a 'local body' is a government owned corporation; or a statutory body as defined in the *Statutory Bodies Financial Arrangements Act 1982*; or another body established under an Act.

Clause 31 also inserts defines "Integrated Planning Act" to mean the *Integrated Planning Act 1997.*

Clause 32 inserts the following definitions for Part 4—Environmental Coordination:

"approval" includes authority, lease, licence, permit or other approval.

"concurrence agency" means a concurrence agency under IPA.

"Coordinator-General's report", for an EIS, means the report the Coordinator-General must prepare under section 29K(3).

"environmental authority (mining lease)" means an environmental authority (mining lease) under the *Environmental Protection Act 1994.*

"Environmental Protection Act" means the *Environmental Protection Act 1994*.

"EPA Minister" means the Minister for the time being administering the *Environmental Protection Act 1994.*

"Mineral Resources Act" means the *Mineral Resources Act 1989.*

"MRA Minister" means the Minister for the time being administering the *Mineral Resources Act 1989.*

The inclusion of the 'approval' definition provides for the range of approvals that may require an EIS or similar assessment under other legislation. The remainder of the definitions reflect changes in other legislation related to Environmental Coordination, which are addressed in subsequent amendments to the SDPWO Act.

Clause 33 inserts a new section 29B(4) which provides that if the project involves a proposed environmental authority (mining lease), the Coordinator-General (COG) must give a copy of the gazette notice to the EPA and MRA Ministers. Previously this subsection required the COG when declaring a project to be a significant project, for which an EIS was required, to give a copy of the gazette notice of the declaration to the MRA Minister. This notice will now be given not only to the MRA Minister but also to the EPA Minister.

Clause 34 amends section 29H by inserting a new section which provides for an EIS to be prepared for a stage of the development. The introduction of the concept of a staged EIS responds to situations where a project may be better suited to assessment in stages rather than as a total development. For instance, it may be appropriate for the proponent to prepare an EIS for the major components of a development initially and have that aspect of the development assessed through the EIS process and evaluated in a report by the COG before embarking on more detailed components of the design of a development which also require assessment. Section 29H(2) provides that the proponent may subsequently prepare a further EIS for another stage or stages of the project. A further EIS would then be provided to the COG under the provisions in s.29H and the provisions of sections 29I to 29K would apply. The preparation of subsequent EISs for the project would not require a new significant project declaration or the public notification of the draft terms or reference as the EIS would be for the same project for which the declaration was made and for which the terms of reference prepared: in effect the assessment and evaluation of an aspect of the project would have been deferred.

Section 29H(3) provides that for the COG to state, in his or her report, the timing for the proponent to give the COG the further EIS. In this way the COG can set up a timeframe for the proponent to complete further studies on the project already declared to be a significant project.

Clause 35 amends section 29I to address the possibility that there may be more than one EIS that needs to be publicly notified if an EIS is completed for a stage of the development pursuant to s. 29H(1)(b)

Clause 36 amends section 29K by replacing subsection 4 to clarify that in preparing his or her report evaluating the EIS, the COG may: evaluate

the environmental effects of the project and any other related matters; state conditions to be attached to approvals and; make recommendations about other approvals or for the designation of community infrastructure under IPA.

Further, new subsection 5 provides for the public notification of the COG's report. This provision provides for the outcome of the EIS process to be made publicly available by the placement on a website of the COG's report. This process is consistent with that in other legislation, in particular Commonwealth environment legislation. The COG's report will be placed on the website of the Department administering the Act, currently the Department of State Development.

Clauses 37 and 38 insert a new subdivision dealing with the relationship with IPA and the application of the COG's report and development approvals. The provision makes it clear that the COG's report will state the project or the stage of the project involving development for which the report applies and for which the provisions in section 29M apply.

Clause 39 amends section 29M to provide that the COG's conditions are treated as concurrence agency conditions until a development approval pursuant to IPA takes effect. This provision provides the COG with the same powers as a concurrence agency including the ability to amend conditions in the same way concurrence agencies may in the IDAS process pursuant to IPA before a decision is made by the assessment manager and up until the approval takes effect under s.3.5.19 of IPA.

Clause 40 amends section 29O to clarify that the COG's conditions apply only to the development approval which has been the addressed in the EIS and not for each development approval required for the project. These changes to section 29O clarify that the conditions stated in the COG's report are only to be attached to those development approvals for the project which have been assessed during the EIS process. While it is intended that proponents are able to benefit from the assessment of all development approval requirements for a project through the conduct of a coordinated assessment process, it is sometimes the case that there is insufficient detail available about future development approvals required at the time of the preparation of the EIS, and that further development assessment processes will be required. This situation occurs in the case of operational approvals in the form of “environmentally relevant activities” which require an application for a material change of use pursuant to IPA. The proper assessment of other development approvals which might be required for a project but which have not been considered during the EIS, or for which there has been insufficient material provided during the EIS

are not precluded because of the assessment process coordinated by the COG.

The new section 29O(2A), provides clarification that following the completion of the COG's report the assessment manager's powers to assess the development application and impose conditions are not altered. Any additional conditions imposed by the assessment manager must not be inconsistent with conditions stated in the COG's report.

This section clarifies that the assessment manager can impose its own conditions on an approval in accordance with its powers contained in IPA.

The new section 29O(5) clarifies that where the COG's report provides for conditions that must be attached to a development approval, the report may state the entity that is to have jurisdiction for the condition. The section also provides that the condition is taken to be a concurrence agency condition under IPA and should be treated as a concurrence agency condition from the time the approval takes effect under s. 3.5.19 of IPA.

Clause 41 inserts a new section 29PA about concurrence agencies for development approvals. Section 29PA(1) provides for the COG to identify and include as part of his or her report prepared pursuant to section 29K, the agency which has jurisdiction for the conditions stated in the report.

This provides for the administration and enforcement of conditions attached to development approvals granted following completion of an EIS for a significant project. This section provides that the COG's report nominates the entities as concurrence agencies to administer the development approval and conditions of the development approval when a development approval takes effect. This provision will enable an entity to administer the approval or the condition of an approval as if the project had not been declared a significant project.

The new section 29PB provides that the COG's report nominate the entity that, for the purposes of s. 3.5.33 of IPA, is the entity with responsibility for changing or cancelling a development approval condition. This entity nominated by the COG will be in addition to the assessment manager or entity that decided the condition.

These provisions provide agencies, proponents and the assessment manager with certainty as to the ability to fully administer development approval conditions. The commencement of these provisions is retrospective to clarify the responsibility for the administration of conditions attached to development approvals already granted where following the completion of an EIS for a significant project since the June 1999 amendments to the Act.

A new section 29Q provides for linkages to the community infrastructure designation process provisions of IPA. Section 29Q recognises that pursuant to section 2.6.8 of IPA, provides a process by which a Minister may proceed straight to designation after assessment has been completed for a significant project and for which a report has been prepared pursuant to section 29K of the SDPWO Act.

Section 29Q(2) provides that the COG's report evaluating the EIS may recommend requirements for inclusion in the community infrastructure designation. Further, the entity making the community infrastructure designation pursuant to s.2.6.8 of IPA may have regard to the COG's recommendation to ensure that the designation includes any appropriate requirements to address the environmental effects of the proposed use as assessed during the EIS process.

Clause 42 replaces existing Division 5 of Part 4 with a new Division 5 which still relates to the interrelationship between the declaration of a significant project relating to mining and the MR Act. Previously section 29R made reference to the COG giving notice in respect of a statement of proposals or environmental management overview strategy which was relevant in applying for mining leases. The recent amendments to the EP Act have removed these matters from the jurisdiction of the Mining Registrar under the MR Act. They are now relevant in relation to the application for an environmental authority (mining lease).

The new section 29S provides on a general basis that the COG, in reporting on a significant project, may state conditions for the proposed mining lease and that if a mining lease is granted under the MR Act the COG's conditions are taken to be included as conditions of the mining lease.

The new section 29T makes clear that subject to s.29U, if there is any inconsistency between the conditions of a mining lease as determined under the MR Act and the conditions imposed from a COG's report, then the COG's conditions will prevail to the extent of the inconsistency.

The new section 29U provides that a native title issues condition (imposed or made under or as part of the native title issues decision under the MR Act) prevails over the COG's conditions to the extent of any inconsistency.

The new division 5A creates the relationship between the declaration of a significant project under the SDPWO Act and the need for that project where it relates to mining to obtain environmental authorities (mining activities) under the EP Act.

The new section 29W provides that the COG's report for a significant project may state conditions for any draft proposed environmental authority (mining lease) relating thereto, to be issued under the EP Act. The section provides for the COG to give a copy of the report to the EPA Minister.

Clause 43 amends section 29W which deals with the relationship of the COG's report with other legislation. The amendment clarifies that the COG's report has a relationship with other approval processes in the EP Act outside of that for environmental authorities for mining activities in chapter 2 of the EP Act.

Clause 44 amends section 29Y to provide the COG with the ability to recommend that an application for an approval be refused; or that stated conditions contained in the COG's report be imposed on an approval. These provisions provide for the application of the COG's report in the consideration of approvals, licences and other permits other than those specifically contemplated in other parts of the Act

Clause 45 amends section 29ZA clarifies that the person considering an approval must take the COG's report into consideration required for a project. The existing provision was ambiguous in that it contemplated a person approving of a project. The amendment makes clear that consideration of the COG's report is linked to the consideration and decision about an approval required under legislation for a project.

Clause 46 amends section 68 to include a provision for the COG to delegate to the chief executive of a department the construction of approved works pursuant to section 66. The existing provisions enable the COG to delegate to a local body. The additional ability for the COG to delegate these works to the chief executive of a department recognises that once approved by Governor in Council, the COG is required to undertake the works as soon as is practicable. Before delegating a power, function, or duty conferred on him or her under section 66, the COG is required to obtain the approval of the Governor in Council.

Clause 47 inserts a new section 77B to provide that a project board established under the Act is statutory body for the *Statutory Bodies Financial Administration Act 1982*. The amendment replaces an outdated reference to the *Local Bodies Loan Guarantees Act 1923* which has been repealed.

Clause 48 amends the provisions in section 78(1) dealing with the power of the COG to take land. The existing provisions provide that the COG can only take land in "an estate in fee simple". The amendment provides for

the COG to take "land" as defined in the SDPWO Act. "Land" is defined as "*any estate or interest in land, and any easement, right, power or privilege in, over, or in connection with land, and any wharf.*" The amendment to section 78 will provide for the Coordinator-General to take an interest in land, including an easement or acquire an interest such as a lease.

This provision will allow for the taking of an easement to facilitate significant infrastructure facilities where taking land in fee simple would not be warranted to accommodate the project and where the taking of an easement would reduce the potential hardship of affected landowners.

Clause 49 amends section 84 to provide for the COG to negotiate the transfer of approved works to any entity established under an Act. The amendment recognises that upon the completion of authorised works or when works have attained such a stage as to be available to for use for the purpose for which they were undertaken, the COG having taken responsibility for undertaking the works is unlikely to retain ownership of them. However, in line with current trends regarding the ownership of infrastructure, the transfer of works is no longer reasonably constrained to agencies representing the Crown or local bodies as defined in the Act. Under this section, the Coordinator-General would still require the Governor in Council's approval of the terms of any proposed transfer.

Clause 50 removes outdated finance provisions by deleting sections 95 to 101A. This amendment is consistent with current legislative provisions regarding financial arrangements. The amendment provides for the substitution of the COG's existing express financial powers with a cross-reference to the relevant provisions of the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act).

The new section 95(1) provides that the COG is a statutory body for the SBFA Act and clarifies that the SBFA Act sets out the way in which the COG's powers are affected.

Clause 51 removes the provision requiring the publication of orders in council and replaces it with a new provision dealing with publication of information by the COG. New section 119(1) provides that where the COG is required to notify a document of information, notification must be made by placing the information on the department's website or such other website considered appropriate by the COG. No limitation is placed on the COG also publicly notifying documents and information in other ways such as newspaper advertisements.

Clause 52 amends the regulation making ability to clarify that the provisions relating to the use by the public and the safeguarding of securing against trespass, injury, misuse or relates to authorised works approved pursuant to section 66.

Section 121(1)(i) updates the penalty units from $50 to 20 penalty units, which addresses the outdated penalty provision and updates it with a more appropriate provision.

Section 121(1) is further amended to include a new subclause (fa) to provide for the making of regulations for with respect to environmental impact statements or processes, such as those proposed to be accredited under a bilateral agreement made pursuant to the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). Under the provisions of the EPBC Act, in order to be accredited by the Commonwealth, the State's assessment process must be in law. The amendments provide that additional benchmarks required by the Commonwealth can be included in the EIS process provided in Part 4 of the Act by way of Regulation. This allows Part 4 to remain intact while providing that additional requirements for EISs (where there is a matter of national environmental significance) set by the Commonwealth can be incorporated in the process without fettering the discretion of the COG.

Clause 53 inserts a new section 122A which provides for the renumbering of the Act in the next reprint.

Clause 54 inserts a new provision in the transitional provisions contained in section 123. The section is amended to include the ability for the COG to declare as a significant project, a project which includes land intended to be designated as community infrastructure pursuant to IPA for which a study about the environmental effects of the proposal was being undertaken. This amendments provides recognition that the transitional arrangements should apply for an EIS or similar study being prepared for a project on land that is proposed to be designated for community infrastructure rather than requiring a development approval.