

State Development and Other Legislation Amendment Bill 2006

Explanatory Notes

Title of the Bill

State Development and Other Legislation Amendment Bill 2006.

Objectives of the Bill

The *State Development and Public Works Organisation Act 1971* (“the SDPWO Act”) provides for ‘State planning and development through a coordinated system of public works organisation, for environmental coordination, and for related purposes.’

To support this purpose, the Bill seeks to:

- provide a scheme for certain projects of significance, declared by the Minister as prescribed projects, that will prevent unreasonable delays in the assessment and decision stage for necessary approvals, licenses, permits or other authorities. The declaration of ‘prescribed project’ by the Minister will allow the Coordinator-General to:
 - require the decision maker to make a decision or undertake the process related to the prescribed decision or process within a prescribed time period; and/or
 - assume the role of decision maker in relation to a prescribed decision or process and assess and make the decision.
- allow the Coordinator-General to impose conditions on, or seek a voluntary environmental agreement from the applicant of a prescribed project as a means of preventing, controlling or mitigating environmental impacts directly related to the prescribed project;
- provide for more than one Deputy Coordinator-General, as a means to ensure that the Coordinator-General has appropriate administrative and operational assistance and resources to meet the increased workload related to the State’s immediate and long term growth requirements;

- clarify that the process for acquisition of land in a State development area is consistent with the acquisition process in s125 of the SDPWO Act;
- amend s77 to clarify the purposes and other matters considered relevant by the Governor In Council for the declaration of a State development area;
- provision of an additional subsection within s82 of the Act, to take beyond doubt that the process for compulsory acquisition by the Coordinator-General for a State development area mirrors that for compulsory acquisitions under s125;
- update and clarify drafting in relation to works approved under of the SDPWO Act;

Other objectives of the Bill are to:

- amend related legislation to facilitate compatibility with the SDPWO Act and its objectives.

Reasons for the Bill

The SDPWO Act facilitates the development of vital infrastructure and other development, both public and private; and provides measures to ensure that proper account is taken of the environment in development of these projects. In response to Queensland's strong ongoing economic growth, this Bill seeks to amend the SDPWO Act and related legislation to enable the SDPWO Act to enhance its objectives and the functions of the Coordinator-General.

More specifically, this Bill also seeks to meet a key election commitment of the Government to increase confidence and to minimise unreasonable delays in the progress of or decision making for certain 'prescribed projects' considered to be of strategic and/or economic significance to the State. The Government committed during the recent election to amend the SDPWO Act and related legislation to provide the Coordinator-General with powers in relation to approval processes.

Achievement of the Objectives

The Bill will achieve its objectives primarily by the insertion of a new Part 5A of the SDPWO Act, which will facilitate the undertaking of projects, declared by the Minister as 'prescribed projects'.

The following scheme applies to prescribed projects, with the aim of minimising unreasonable delays in the progress of assessment and decisions required for prescribed projects:

- In circumstances where a decision maker has not progressed the application in a timely manner the Coordinator-General may issue a progression notice. This will provide a mechanism to progress the assessment of applications, including development applications.
- In circumstances where a decision maker has failed to make a decision in relation to a prescribed project either within a statutory time period or, if there is no statutory time period, within what the Coordinator-General considers to be a reasonable period, the Coordinator-General may issue a “notice to decide” to that decision maker, requiring it to make the decision specified in the notice within the time prescribed in the legislation under which the project is being assessed.
- In circumstances, either where the “notice to decide” request has not been complied with by a decision maker, or where the Coordinator-General considers that it would be beneficial to manage a decision from a whole of government basis, the Coordinator-General may under certain conditions issue a “step in notice” and assume the role of decision maker for the decision.

To assist the Coordinator-General in assessing the prescribed decision, the Coordinator-General:

- may seek further information from the original decision maker, the applicant or any other relevant entity; and
- is vested with all the legislative powers and functions of the original decision maker.

The Coordinator-General may:

- if the decision had not been made by the original decision maker - either make the decision, send back the decision, with or without conditions or decide aspects of the decision and remit those undecided aspects back to the original decision maker with or without conditions;
- otherwise – either confirm or amend the original decision, or cancel and substitute a new decision for the original decision.

Having regard to a number of factors, such as the nature of the prescribed project and its possible environmental effects, the Coordinator-General

may impose certain conditions on, and/or enter into a voluntary environmental agreement with the applicant.

The Bill also amends the Planned Development provisions in Part 6 of the SDPWO Act by:

- amending s77 to clarify the purposes for the declaration of a SDA;
- amending s82 to state the process for taking land in a State development area under s82 is the same as that mentioned in s125; and
- updating and clarifying drafting in relation to works approved under the Act.

Other minor amendments to the SDPWO Act include:

- provisions relating to the office of Deputy Coordinator-General in Part 2 amended to provide that the Governor In Council may appoint more than one person as Deputy Coordinator-General.
- amendment of the definition of ‘proponent’ to include a person who, under an agreement with the existing proponent, later proposes the project.

The Bill also amends the following Acts:

- *Integrated Planning Act 1997* – to allow proponents to make a development application under that Act without the landowner’s consent if the Coordinator-General has, pursuant to provisions of the SDPWO Act, issued notices of intention to resume the subject properties.
- *Judicial Review Act 1991* – to clarify that decisions relating to critical infrastructure under Part 5A SDPWO Act are non-reviewable. Other prescribed projects are subject to judicial review.
- *Land Act 1994* – to provide that an infrastructure corridor may be registered as a public utility easement and allowing a public utility easement to be registered for a right of way for use by cyclists.
- *Land Title Act 1994* – to provide that an infrastructure corridor may be registered as a public utility easement and allowing a public utility easement to be registered for a right of way for use by cyclists.
- *Water Act 2000* – to clarify emergency provisions related to the undertaking of works pursuant to Part 6, Division 3 of the SDPWO Act.

Estimated Cost for Government Implementation

Any costs incurred as a result of these amendments, in respect to drafting and preparation of the Bill, represent a minimal cost to Government. The impact of the changes should be ‘Budget neutral’.

While the amendments will require some additional reporting and assessment procedures, the amendments are not expected to require significant financial resources and will be managed within existing operational, administrative and departmental processes and resources for the coordination and facilitation of prescribed and other projects.

The substantive amendments, relating to the insertion of Part 5A of the SDPWO Act, seek to enhance the Coordinator-General’s existing role in development and project coordination. In this regard the amendments complement existing administrative arrangements provided by the Coordinator-General and can be managed within existing resources.

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.’

The proposed amendments depart from those principles in relation to those projects classed as prescribed projects as follows:

- i The inclusion of a provision that effectively removes the right to review or appeal of a decision made under this part (s76P(1)),
- ii The inclusion of a provision that removes the right to judicial review under the *Judicial Review Act 1991* for critical infrastructure projects only, (s76W); and
- iii The inclusion of a provision that potentially could affect a proponent who may have commenced activities or expended monies and may be unable to proceed due to a decision made by the Coordinator-General (s76O(1)(b)).

The fundamental legislative principle

Section 4(3)(b) of the *Legislative Standards Act 1992* provides that legislation should be consistent with principles of natural justice. Natural justice principles are derived from the common law and includes the right to be heard, an absence of bias and procedural fairness.

The departure

The inclusion of a provision that effectively removes the right to review or appeal of a decision made under this part and removes the right to judicial review under the *Judicial Review Act 1991* for those prescribed projects which are classed as critical infrastructure.

The reason for departure

The new s76P(1) provides that the Coordinator-General's decision is conclusive and not subject to any objection or appeal under the SDPWO Act; or the relevant law.

The new s76W removes the right to review under the *Judicial Review Act 1991* for only those projects declared as critical infrastructure projects.

The reasoning behind removing this right to appeal is to ensure that the purposes of the inclusion of this Part in the SDPWO Act are fulfilled. Part 5A is proposed as a means of ensuring the approval process for prescribed projects proceed in accordance with statutory timeframes. If the Coordinator-General's decisions with respect to a prescribed project were subject to review and appeal it would potentially delay the development for some period of time. This is contrary to the purpose of this Part's inclusion in the SDPWO Act.

Removing the right to appeal also prevents vexatious litigants from starting actions.

While the proposed provisions will remove the right to appeal under the SDPWO Act and to judicial review for prescribed projects as assessed by the Minister for critical infrastructure under s76E(4), the Supreme Court retains its inherent jurisdiction. As such, the proposed provisions do not exhaust the right to appeal and review of a decision. If a person or persons so wished, they could still bring action before the Supreme Court of Queensland.

The fundamental legislative principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The departure

The inclusion of a provision that potentially could affect a proponent who may have commenced activities or expended monies and may be unable to proceed due to a decision made by the Coordinator-General.

The reason for departure

The new s76O provides that the Coordinator-General may, if a decision has been made by the original decision maker, cancel the decision and substitute a new decision. Section 76P provides that the Coordinator-General's decision is taken to be a decision by the original decision maker and takes effect at the time the prescribed decision notice is given. This departure is similar to the call-in powers currently exercised by the Minister under the *Integrated Planning Act 1997*.

There is potential that the proponent may have acted upon the decision by the original decision maker and commenced activities or expended monies based on the original decision. The prescribed decision may contradict this original decision.

Step in notices are only able to be issued after procession notice under s76I or a notice to decide under s76J has been issued. The time for intervention by the Coordinator-General is constrained under s76L(3) to 10 business days hence any impact is therefore limited. The provision is similar to the Ministerial call-in power under the *Integrated Planning Act 1997*.

Consultation

The following relevant organisations have been consulted:

Industry/Community

- Nil

Interdepartmental

- Department of the Premier and Cabinet
- Office of Queensland Parliamentary Counsel
- Crown Law
- Justice and Attorney-General
- Department of Natural Resources and Water

- Department of Local Government, Planning, Sport and Recreation
- Environmental Protection Agency
- Department of State Development and Trade
- Queensland Treasury
- Department of Primary Industries and Fisheries
- Office of Urban Management
- Office of the Public Service Commissioner
- Queensland Transport
- Department of Main Roads
- Department of Mines and Energy

The proposed amendments have been supported.

Notes on Clauses

The section numbers in the *State Development and Other Legislation Amendment Act 2006* are referred to as clauses in these explanatory notes. Section numbers refer to sections of the relevant Act that is amended.

Part 1 Preliminary

Clause 1 states that the short title of the Act is the *State Development and Other Legislation Amendment Act 2006* (“SD&OLA Act”).

Part 2 Amendment of *State Development and Public Works Organisation Act 1971*

Clause 2 provides that this part and the schedule amend the *State Development and Public Works Organisation Act 1971* (“SDPWO Act”).

Clause 3 amends s5 (Appointment of Deputy Coordinator-General) of the SDPWO Act to provide that the Governor In Council may appoint a person or persons to hold the office of Deputy Coordinator General. The amendment ensures that the Coordinator-General has appropriate administrative flexibility to meet the increased workload related to the State’s growth.

Clause 4 amends s6 (Tenure of appointment under ss4 and 5) of the SDPWO Act recognises the appointment of multiple Deputy Coordinators-General.

Clause 5 amends s8 (Incorporation of Coordinator-General) of the SDPWO Act to provide that the corporation sole constituted under s8A of the *State Development and Public Works Organisation Act 1938* is the Coordinator-General, and deletes mention that, in the Coordinator-General’s absence, the Deputy Coordinator-General would assume the office of Coordinator-General. Absences or temporary vacancies by the Coordinator-General will be dealt with administratively by the Minister (ie. through delegations or temporary appointments as Coordinator-General).

Clause 6 omits definitions for concurrence agency and development approval (which are now to be included in the SDPWO Act Schedule Dictionary) and inserts a definition for ‘proponent’.

This clause also provides that a proponent for a significant project may change by agreement or arrangement with the person who made the original proposal for a significant project to the Coordinator-General.

Clause 7 inserts a new Part 5A in the SDPWO Act which provides for the declaration and management of prescribed projects. The sections of this new Part are numbered s76A – 76W:

Division 1 Preliminary

Sections 76A, 76B and 76C and 76D – Purpose, Application and Definitions of Part 5A

76A provides that the purpose of Part 5A is to

- Identify projects of economic and social significance to the State or a region;
- Facilitate the undertaking of prescribed projects by providing a scheme to ensure timely decision making for prescribed decision and prescribed processes;
- Provide for conditions to be imposed with respect to undertaking a prescribed project having regard to the significance of the project; and the matters relevant to the undertaking of the prescribed project and prescribed under a regulation; and proper management of environmental effects as a result of the project;
- Promote the use of voluntary environmental agreements which are designed to encourage the conservation, maintenance, rehabilitation and enhancement of the environment.

76B provides how the purposes are to be achieved. The provision states that the purposes of this part of the Act are to be achieved by declaring projects as prescribed projects, the Coordinator-General giving notices to decide, progression notices and step in notices and imposing conditions that take account of a voluntary environmental agreement.

76C provides that this part applies despite any other law.

76D provides definitions and various terms used in this part of the Act.

In this clause it is also made clear that a prescribed decision does not include a decision by the Governor In Council or a Minister.

Division 2 Declaration of Prescribed Projects, duty to cooperate and requesting further information

Section 76E – Declaration of a Prescribed Project

76E As outlined above, to provide increased confidence in development of a particular project which may have strategic or economic significance to the state or region within which the development is to be located, the Minister may declare that project to be a “prescribed project”.

The Minister may declare a project to be a prescribed project if that project is:

- works a local body or other person is directed to be undertaken by a regulation made under ss100 or 109;
- a project in a State development area;
- an infrastructure facility;
- a project that has been declared to be a significant project under s26 of the SDPWO Act;
- considered by the Minister to be economically or socially significant to the State or the region in which the project is to be undertaken; or
- affects an environmental interest of a State or region.

The Minister, in making a declaration, may have regard to the public interest or general welfare of persons in the region where the project is to be located; whether a voluntary environmental agreement has been or is likely to be entered into with the project proponent; and other matters considered relevant by the Minister.

The declaration of a prescribed development must be by gazette notice.

If the Minister considers the undertaking of a project is critical or essential for the State for economic, environmental or social reasons, the Minister may declare the project to be a critical infrastructure project.

Section 76F – When declaration ends

76F provides when the declaration of a prescribed project ends. A prescribed project's declaration can end either 2 years after the day the declaration is made or the declaration can state a specific date or time at which it will end. The Minister, by Gazette notice, is also able to extend the time at which a declaration will end, so long as it is not longer than the original declaration period.

Section 76G – Particular entities to cooperate with the Coordinator-General

76G provides that particular entities, as mentioned in s13 of the Act, have a duty to cooperate with the Coordinator-General. This provision provides the Coordinator-General with the power to request a variety of information including an application for a prescribed decision or documents relating to a prescribed decision or a prescribed process for the application, a document relating to the application, general information about the prescribed project and any submission that may have been received during a public consultation process.

Section 76H – Coordinator-General may seek further information

76H provides that the Coordinator-General may require a relevant person, who is defined in the provision, to provide him or her with information required to decide whether to give a notice to decide, a progression notice or step in notice and to make an assessment and a decision, or undertake a prescribed process about the prescribed decision. A relevant person must comply with such a request. A relevant person includes the applicant.

Division 3 Notices about prescribed projects (ss76I-76R)

Subdivision 1 Progression Notice

76I provides that the Coordinator-General may, in writing, issue a progression notice to a decision maker which will require the decision maker to undertake the administrative processes required to complete the process, within the period stated in the notice.

The progression notice must include a copy of the declaration of the prescribed project to which the prescribed process relates; identify the process including, for example, a process under a stage of IDAS under IPA; and, state that the decision maker must undertake the process within the stated period and then inform the Coordinator-General of the completion of the process within 5 business days after it is completed.

When the decision maker receives a progression notice he or she must undertake the prescribed process within the period stated in the notice for that purpose and inform the Coordinator-General of the completion of that stage within 5 business days after it is completed.

The Coordinator-General may extend the period for progressing the prescribed process. If the Coordinator-General elects to do this he or she should have regard to the nature of the prescribed project to which the process relates. The Coordinator-General can do this without the decision maker's consent but must do so in writing. Once the Coordinator-General has extended the period for progressing the prescribed project the decision maker must progress the prescribed process within the extended period.

When deciding whether to give a progression notice the Coordinator-General is required to have regard to the requirements of the process, under the relevant law.

The relevant law for the prescribed process will continue to apply to the undertaking of the process.

Subdivision 2 Notice to Decide

76J provides that the Coordinator-General may, by written notice, issue a notice to decide for a prescribed decision, which will require a decision maker to make his or her decision within the period stated in the issued notice.

The stated period is required to be at least 20 days after the notice is given, or, a period which is prescribed under the relevant law. This later period will apply where it is less than 20 days.

The notice to decide is required to be accompanied by a copy of the declaration of the prescribed project, identify the decision and state that the decision maker must make the decision within the stated

period and inform the Coordinator-General of the decision within 5 business days after it is made.

When a decision maker receives a notice to decide it must make the prescribed decision within the period stated in the notice and inform the Coordinator-General of the decision within 5 business days.

The Coordinator-General may extend the decision maker's period for making the decision by having regard to the nature of the prescribed project and notifying the decision maker in writing that the period for making the decision has been extended. Where the period for making the decision is extended the decision maker must make the decision in that period.

Where the prescribed decision relates to an application for a development approval under the *Integrated Planning Act 1997* (IPA), the notice to decide cannot be given to the decision maker before the decision stage for the application starts.

Before the Coordinator-General gives a notice to decide he or she is required to have regard to any requirements with respect to public notification of information or other matters for making a decision under the relevant law

The relevant law for making the prescribed decision continues to apply.

Subdivision 3 Step In Notice

76K provides that the Coordinator-General, with the approval of the Minister, may issue a step in notice. This Notice effectively provides the Coordinator-General with power to make an assessment and a decision about a prescribed project or a prescribed process.

Where a step in notice is issued, the Coordinator-General assumes the role of the decision maker.

When issuing a step in notice, it must be accompanied by a copy of the declaration for the prescribed project to which the prescribed decision or process relates; it must identify the decision or process; and it must state that the Coordinator-General is the decision maker for the prescribed decision or process from the time the notice is given until the Coordinator-General makes a decision under s76(O).

76L provides that the Coordinator-General may give a step in notice for a prescribed decision or process only after a progression notice or notice to decide has been given for the process or decision.

If a progression notice or notice to decide has been given for a prescribed process or decision, the step in notice may be given either:

- at any time after the Coordinator-General is satisfied the decision maker has not complied with the progression notice or notice to decide, but before the decision maker has undertaken the process or made the decision; or
- if the decision maker has complied with the progression notice or notice to decide – only if the applicant, by written notice given to the Coordinator-General within 10 business days after the applicant is notified of the decision, asks the Coordinator-General to give a step in notice for the decision.

A step in notice may be given for a prescribed decision at any time after the decision is made until 10 business days after the start of an appeal, if an appeal against the decision has been started under the relevant law; or otherwise the expiry of the period for starting an appeal.

The step in notice must be given to the decision maker within a reasonable period after the Coordinator-General receives the request.

In this section, appeal also includes review.

76M provides that a decision maker for a prescribed decision or process must give the Coordinator-General all reasonable assistance that is required for that person to perform his or her functions and powers under this part. The information that may be requested can include all material about the prescribed decision or process that the decision maker had before the step in notice was issued and any material received after it is issued.

The Coordinator-General may request the decision maker to provide a written report containing an assessment of matters as stated in the notice relevant to the prescribed decision or process and recommendations about the assessment. The decision maker's report might include recommendations about proposed conditions for the prescribed decision or process.

76N details the effects of a step in notice. If the Coordinator-General has issued a step in notice for a prescribed decision or process, the

Coordinator-General has all the powers of the decision maker under the relevant law for the prescribed decision or process. The decision of the Coordinator-General will be taken to be the decision of the original decision maker.

In making a decision to issue a step in notice, the Coordinator-General must consider:

- the criteria for making the prescribed decision or process under the relevant law for the decision or process;
- the purposes of this part under s76A(b), (c)(i) and (ii), and (d);
- the matters relevant to the undertaking of a prescribed project and prescribed under a regulation;
- any other matter relevant to the prescribed decision or process or the prescribed project to which it relates and prescribed under a regulation.

Where the prescribed decision or process relates to an application for a development approval, the assessment manager and concurrence agencies are taken to be advice agencies until such time as the Coordinator-General makes a decision about the prescribed decision or process under s76O.

If an appeal was made or review was started in relation to the prescribed decision or process the appeal or review will be of no further effect.

The Coordinator-General's decision about the prescribed decision or process is taken to be the exercise of a power or performance of a function or duty of the Coordinator-General under this Act.

76O provides as to what decisions the Coordinator-General may make after having issued a step in notice and making an assessment about a decision or process.

If no decision has been made or the process has not been undertaken by the decision maker the Coordinator-General may make the decision or undertake the process; or send back the decision or process to the decision maker, with or without conditions; or, only decide aspects of the decision and send back to the decision maker for undecided aspects. Otherwise the Coordinator-General may confirm or amend the decision or cancel the decision and substitute a new decision.

The Coordinator-General may impose a condition he or she considers necessary or desirable when having regard to the nature of the prescribed project and whether a voluntary environmental agreement has been entered into as well as the matters the Coordinator-General is required to have regard to under s76N(c).

An imposed condition may require an applicant to carry out an activity or works that prevent, control or mitigate detrimental environmental effects arising from the undertaking of the prescribed project. It may also require an applicant to restore or enhance aspects of the environment affected by the prescribed project.

An activity or works that the applicant is required to carry out is not limited to land on which the project is being undertaken.

The Coordinator-General is to nominate a particular entity that will have jurisdiction over the enforcement of an imposed condition. An entity nominated for this purpose must be given written notice by the Coordinator-General of the nomination. A copy of the written notice must also be provided to the decision maker and the applicant for the prescribed project.

The relevant law for the prescribed decision or process will apply to the making of the Coordinator-General's decision.

76P provides what is the effect of the Coordinator-General's decision.

The Coordinator-General's decision is taken to be a decision of the original decision maker under the relevant laws for the prescribed decision or process for making that decision, however, a person may not appeal against the Coordinator-General's decision under this Act or the relevant law. The decision takes effect when the decision notice is issued.

Where the original decision maker has imposed a condition on an application and that condition is inconsistent with a condition imposed by the Coordinator-General, the Coordinator-General's decision prevails.

Pursuant to s76P, the Coordinator-General's decision is taken to be final and is not subject to appeal. The provisions would prevent any person from appealing the Coordinator-General's decision under the SDPWO Act and the legislation covering the original decision maker.

Review rights are retained for projects which are not classed as critical infrastructure (see s76E(4)) and actions to the inherent jurisdiction of the Supreme Court remain open.

76Q The Coordinator-General must give a written notice about the prescribed decision or process to:

- the applicant and decision maker; and
- each entity nominated by the Coordinator-General to have jurisdiction for a condition in relation to the prescribed decision or process.

The notice must include:

- reasons for the Coordinator-General's decision; and
- details of any conditions imposed in relation to the decision.

76R provides that the Coordinator-General must prepare a report about each step in notice.

The information to be included within that report includes:

- a copy of the step in notice;
- details of each entity nominated to have jurisdiction for a condition in relation to the prescribed decision or process;
- a copy of the notice of the Coordinator-General's decision; and
- other details about the Coordinator-General's decision required by the Minister.

The Coordinator-General's report must be tabled by the Minister within the Legislative Assembly within 14 sitting days of the decision notice being given for the prescribed project.

Division 4 Voluntary Environmental Agreements

76S provides guidance for entering into voluntary environmental agreements for prescribed projects. The Coordinator-General, with the Minister's approval, may enter into a voluntary environmental agreement with an applicant of a prescribed project, or the applicant and another person about

- preventing, controlling or mitigating detrimental environmental effects of a prescribed project; or
- conserving, maintaining, rehabilitating or enhancing aspects of the environment.

The Coordinator-General must have regard to the rights of persons who may be materially affected by the agreement and must obtain that persons consent before entering into the agreement. Persons who might be affected include:

- where the applicant is not the registered owner of the land to which the agreement relates – the registered owner of the land; and
- if the land to which the agreement relates is subject to a lease or other interest – the lessee or interest holder.

76T provides for the content and duration of an agreement.

The section provides that a voluntary environmental agreement may contain terms that are binding on the registered owner of the land and the registered owner's successors in title and other persons who have an interest in the land.

It further provides that a voluntary environmental agreement may contain the following terms:

- requiring the applicant to provide financial or other assistance;
- requiring the applicant to provide financial assurance to the State;
- requiring the applicant to provide technical advice or carry out stated activities;
- prohibiting a stated use of land to which the agreement relates;
- restricting the use or management of land mentioned in the above paragraph;
- requiring the applicant to permit or restrict access to land mentioned above;
- requiring the applicant to refrain from, or not permit stated activities;

- stating the way in which amounts provided by the applicant under the agreement are to be applied by the State or the applicant;
- providing for any other matter relating to the conservation or enhancement of the environment.

While this provision is extensive the terms that the agreement may contain are not limited to those mentioned above.

A voluntary environmental agreement has effect until it ends under its terms.

76U provides for the recording of particular agreements.

The section provides that the Coordinator-General must give the registrar written notice of a voluntary environmental agreement within 14 days after entering into such an agreement.

The notice must include particulars of land to which the agreement relates.

The registrar is required to keep records that show the land to which the agreement relates is the subject of a voluntary environmental agreement and state the places where particulars of the agreement may be inspected. Further, the registrar is required to keep the records in a way that will show the existence of the agreement.

After the end of the agreement the Coordinator-General must give the registrar written notice of its ending and the registrar is required to remove the particulars of the agreement from its records.

While the agreement is in effect and recorded by the registrar it is binding on the successors in title to a registered owner who entered into the agreement or consented under s76S(2) to the agreement and persons who have an interest in the land.

A definition of 'recorded voluntary environmental agreement' and 'registrar' is provided.

Division 5 Other matters

76V allows the Coordinator-General to seek remuneration from applicants of a prescribed project for the direct costs incurred for advice or services associated with the assessment of that project. This

remuneration would be assessed on a project by project basis by the Coordinator-General and would be limited to the reasonable cost of obtaining the advice or services.

76W provides how the *Judicial Review Act 1991* is to apply to this part.

This section provides the parts of the *Judicial Review Act 1991* relating to statutory orders of review and prerogative orders and injunctions do not apply to decisions that relate to a prescribed project that has been assessed by the Minister to be critical infrastructure.

In particular, certain decisions are stated as not subject to judicial review and include the following:

- a decision of the Minister to declare a project to be a prescribed project if the project is a critical infrastructure project; or
- a decision of the Coordinator-General to give a progression notice, a notice to decide or a step in notice for a critical infrastructure project; or
- the Coordinator-General's decision under s76O about a prescribed decision or process for a critical infrastructure project; or
- a decision or conduct leading up to or forming part of a the process of making a decision mentioned above.

Section 77 – Declaration of State Development Areas, variation and termination thereof

Clause 8 amends s77 to include a third subsection which provides that in considering whether the public interest or general welfare of persons requires a State development area to be declared the Governor In Council may have regard to the purposes for taking or acquiring land under s82(1) and other matters considered relevant.

Section 82 - Acquisition of land in State development area

Clause 9 amends s82 to provide an additional subsection which takes beyond doubt that the process for compulsory acquisition by the Coordinator-General for a State development area mirrors that for compulsory acquisitions under s125.

Sections 109, 110, 111 – Approval of certain works

Clauses 10, 11 and 12 amend ss109, 110 and 111 to clarify drafting and make consistent terms used within these sections as they relate to approved works by either a local body or the Coordinator-General.

Section 140 – Powers in respect of works on foreshore and under waters

Clause 13 amends s140(1)(b) (Powers in respect of works on foreshore and under waters) to update and remove the references to repealed legislation.

Clause 14 amends the dictionary found in the Schedule to the SDPWO Act.

Part 3 Amendment of *Integrated Planning Act 1997*

Clause 15 provides that this part amends the *Integrated Planning Act 1997*.

Clause 16 amends s3.2.1 (Applying for development approval) by inserting provisions that allow applicants to make a development application under that Act without landowners consent in circumstances where the Coordinator-General has issued notices of intention to resume the subject properties under provisions of the SDPWO Act.

Clause 17 amends s3.5.19 (When approval takes effect) to insert a new subsection (2) which provides that where the application relates to land that was acquisition land when the application was made, the development approval does not have effect until either the day the land is taken or acquired or the time the development approval would have effect, whichever is the later.

Clause 18 amends s3.5.24 (Request to change development approval (other than a change of a condition)) to insert, after the word ‘consent’, that unless the approval relates to land that was acquisition land to which s3.2.1(13) applied when the application for the approval was made.

Clause 19 amends Schedule 10 (Dictionary) to include a definition of ‘acquisition land’.

Part 4 Amendment of *Judicial Review Act 1991*

Clause 20 defines the Act being amended as the *Judicial Review Act 1991*

Clause 21 amends Schedule 1 (Operation of other laws) of the *Judicial Review Act 1991* to include the SDPWO Act, s76W.

Part 5 Amendment of *Land Act 1994*

Clause 22 defines the Act being amended as the *Land Act 1994*.

Clause 23 amends s369 (Public utility easements) of the *Land Act* to provide that an infrastructure corridor or a purpose mentioned in s125(1) of the SDPWO Act, may also be registered as a public utility easement and to provide that a public utility easement may be registered for a right of way for the public only if the use of the easement is limited to include cyclists.

Part 6 Amendment of *Land Title Act 1994*

Clause 24 defines the Act being amended as the *Land Title Act 1994*.

Clause 25 amends s89 (Easements for public utility providers) to provide that an infrastructure corridor or a purpose mentioned in s125(1) of the SDPWO Act, may also be registered as a public utility easement and to provide that a public utility easement may be registered for a right of way for the public only if the use of the easement is limited to include cyclists.

Part 7 Amendment of *Water Act 2000*

Clause 26 defines the Act being amended as the *Water Act 2000*.

Clause 27 amends s25L(2)(c) (Relationship with *State Development and Public Works Organisation Act 1971*) to provide that the SDPWO Act has effect in that ss109 and 110 apply as if a statement in the water supply emergency regulation about works to be carried out by the Coordinator-General were a regulation under s109 directing works be undertaken.

Schedule Other amendments of the *State Development and Public Works Organisation Act 1971*

Clause 1 provides that the heading of s108 should now read 'Recommendation of particular works'

Clause 2 provides that s128(1) should now read 'Land taken by the Coordinator-General under this Act shall, ...'

Clause 3 provides that s130(1) should now read 'The Governor In Council may, by the proclamation whereby land is taken by the CG under this Act or ...'

Clause 4 provides that s132 should now read 'If land taken by the Coordinator-General under this Act and ...'

Clause 5 provides that s133 should now read 'A writing purporting to be a certificate of the Coordinator-General that land therein specified and taken or acquired by the Coordinator-General under this Act was ...'