

# **State Development and Public Works Organisation and Other Legislation Amendment Bill 2005**

## **Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Peter Beattie MP**

### **Title of the Bill**

*State Development and Public Works Organisation and Other Legislation  
Amendment Bill 2005*

### **Objectives of the Amendments**

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 mechanism by which the Coordinator-General (‘the CG’) can impose conditions on a significant project for which an Environmental Impact Statement (‘EIS’) has been prepared where there are no relevant development approvals; and
- amend references to the SDPWO Act in the *Freedom of Information Act 1992* (‘the FOI Act’) to reflect the recent changes to the administrative arrangements of government.

### **Achievement of the Objectives**

The objectives of the Bill have been achieved by amending the SDPWO Act and the FOI Act.

## **Estimated Cost for Government Implementation**

The estimated administrative costs to government of implementing the proposed amendments are as proposed in the Explanatory Notes.

## **Consistency with Fundamental Legislative Principles**

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

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 amendments depart from those principles as follows:

- retrospective application of the new s 35(4)(d) and Division 8, and
- retrospective application of the amendments to the FOI Act.

### Retrospective application of the new s35(4)(d) and Division 8, Part 4 of the SDPWO Act

#### *The Departure*

Clause 63 inserts new Transitional Provisions in the SDPWO Act to provide that the conditions recommended by the CG in the report evaluating the EIS for the North-South Bypass Tunnel (‘the NSBT’) project are taken to be conditions imposed by the CG under the new Division 8 (see clause 39A).

#### *The Reason for Departure*

The CG’s report about the EIS for the dated 25 August 2005 recommended conditions that should apply to the NSBT project and recommended that a mechanism be drafted to provide for the statutory enforcement of the CG’s conditions. It is desirable to give certainty to the public and the proponent as well as the consortia bidding for the project that the conditions recommended by the CG can be enforced.

The Premier announced in Parliament on the same day that, while giving urgent consideration to the CG’s recommendation to introduce a mechanism to ensure that the CG’s recommendations are enforced,

adequate arrangements would be put in place well before construction on the NSBT project starts.

The proponents of the NSBT project have been consulted and support the amendments.

The imposition of this retrospective amendment is therefore considered appropriate.

### Retrospective application of amendments to the *Freedom of Information Act 1992*.

#### *The Departure*

Clause 67 of the Bill inserts a new section in Part 11 of the FOI Act (Transitional Arrangements). This clause inserts a new s 123 Application of amendment of definition 'department'. This clause provides that clause 66, which inserts a new definition of 'department', is taken to have commenced from the commencement of the *Administrative Arrangements Order (No. 2) 2005*.

#### *The Reason for Departure*

These amendments, although retrospective, will not affect the rights and liberties of individuals as they enable the continued exemption of these documents from access under freedom of information.

The amendment neither increases nor decreases the accessibility of documents and information through the FOI Act.

There are currently no applications on foot in respect of any documents exempted by section 47A of the FOI Act.

The imposition of this retrospective amendment is therefore considered appropriate.

## **Consultation**

The following relevant organisations have been consulted:

Department of the Premier and Cabinet

Queensland Treasury

Department of Local Government, Planning, Sport and Recreation

Environmental Protection Agency

Department of Transport

Department of Justice and Attorney-General

Department of State Development, Trade and Innovation

Brisbane City Council

The proposed amendments have been supported.

## **NOTES ON PROVISIONS**

### **Part 3                      Amendment of the State Development and Public Works Organisation Act 1971**

The new term '*imposed conditions*' is included to refer to the conditions stated under the new s 54B(2) for a significant project which does not involve a material change of use that, under the *Integrated Planning Act*, is impact assessable; and Division 4, subdivision 2 and Divisions 5, 6, 6A and 7 do not apply to the project.

The new term '*nominated entity*' is included to refer to the entity nominated by the CG to have jurisdiction for the imposed conditions under the new s 54B(2).

The new term '*relevant local government*' means the local government for the local government area in which the project is, or is to be, undertaken.

*Clause 20* deletes 'carrying out' and replaces it with 'undertaking' for consistency with the SDPWO Act in which 'undertake' is a defined term in Schedule (Dictionary).

*Clause 26* inserts a new s 35(4)(d) (CG evaluates EIS, submissions, other material and prepares report) to provide that, if Division 8 applies to the project, the CG in preparing a report evaluating the EIS for the project, may impose conditions for the undertaking of the project.

*Clause 27* insert a new s 35A(3) to provide that if Division 8 applies to the project and the CG imposes conditions for the project, the CG's report does not lapse unless the project (as evaluated by the CG in the CG's report

prepared under s 35) is not substantially started within 4 years after the CG's report is prepared.

*Clause 28* inserts the words 'or a condition of the project' in the new s 35B to enable a proponent to request the CG to assess a change to a condition for a significant project that was stated or imposed by the CG in the CG's report prepared evaluating the EIS for the project.

*Clause 28* also inserts a new s 35I(2)(d) to enable the CG, when making his/her evaluation of a change to a project under s 35I, to impose conditions for the undertaking of the project pursuant to the new division 8, Part 4.

*Clause 39A* inserts a new Division 8 in Part 4 (ss 54A – 54G below). The new s 54A explains the scope of the new Division 8. Division 8 applies if the significant project does not involve a material change of use that, under the *Integrated Planning Act*, is impact assessable; and Division 4, subdivision 2 and Divisions 5, 6, 6A and 7 do not apply to the project.

Ordinarily, where the CG declares a project to be a significant project for which an EIS is required and proceeds to facilitate the project culminating in the evaluation of the EIS for the project in the CG's report in which the CG can either recommend or state conditions to be attached to the relevant approvals for the project. This serves to link the environmental assessment and approval stages of the project. However, the CG considers that proponents of significant projects should comply with environmental management plans and other measures designed to lessen the impact of the project even where there is no relevant regulatory approval required for the project.

It is considered desirable to have a statutory mechanism to enable conditions to be imposed by the CG on a significant project where there is no other approval to which the CG can recommend or state conditions to be attached. The new division will provide a mechanism to ensure that conditions the CG determines for the project are complied with by the proponent or any entity undertaking the project. This will provide for the proponent to comply with conditions requiring the preparation of, for example, environmental management plans required by the CG, and mechanisms for monitoring complaints.

The new s 54B(1) provides that the CG's report prepared under division 8 may impose conditions for the project and state when the conditions take effect.

The new ss 54B(3) and (4) also provides that if the CG's report imposes conditions, it may also nominate one or more entities to have jurisdiction for one or more of the conditions.

The new ss 54B(5) and (6) provide that the CG may either nominate an entity in the CG's report prepared under s 35 or by public notification made at any time. Public notification of the entity to have jurisdiction for a condition may be made at any time in accordance with the public notification provisions in s 171 of the SDPWO Act, whereby the CG must place a link to the document nominating the entity on the agency's website.

The new s 54B(7) requires that the CG give a copy of the CG's report for the relevant project to the nominated entity that will have jurisdiction for a condition in the CG's report.

The new s 54B(8) provides that if the CG nominates an entity for an imposed condition by public notification, the CG must give a copy of the notice to the nominated entity; the project proponent; and the relevant local government. A copy of the notice nominating the entity to have jurisdiction will also be provided to the department administering the *Environmental Protection Act* to recognise that agency's interest in dealing with complaints in its administration of the *Environmental Protection Act* and ensure that it is aware which entity is responsible for the enforcement of a conditions and can direct enquiries to the appropriate entity if necessary.

The new s 54C provides that the test for conditions imposed by the CG in Division 8 is that they be reasonable and relevant to the project as set out in ss 3.5.30(1) and 3.5.31(1) of the *Integrated Planning Act*.

The new s 54D details the effect of the conditions imposed by the CG under Division 8 for the undertaking of a significant project.

The new s 54D(2) provides that for the purposes of s 4.3.3 (Compliance with development approval) of the *Integrated Planning Act*, the undertaking of the project as if it were 'development' as defined in *Integrated Planning Act*; and the imposed conditions as if they were a 'development approval' for the development under the *Integrated Planning Act*. Accordingly, a person must not contravene an imposed condition and the penalty provisions set out in s 4.3.3 will apply to a contravention.

In addition to the penalty provisions set out in s 4.3.3 of the *Integrated Planning Act*, the penalty provisions of the Chapter 8, Parts 2A and 3 of the *Environmental Protection Act 1994* apply as if the imposed conditions were development conditions for a development approval under the *Environmental Protection Act*. The new s 54D(3) provides that Chapter 8,

Parts 2A and 3 of the *Environmental Protection Act*, which provide for offences relating to conditions and environmental harm, applies to the project as if the conditions imposed by the CG were imposed under that Act.

The new s 54D(3) provides that compliance with the imposed conditions can be relied upon as a defence to possible offences relating to unlawful environmental harm under s 436 of the *Environmental Protection Act*.

The conditions imposed by the CG apply to anyone undertaking the project, including the proponent, the proponent's contractors, subcontractors, agents, licensees and executive officers, and any of their contractors, subcontractors, agents, licensees and executive officers.

The new s 54E provides for the circumstance where there is another approval given for a significant project where the CG has imposed conditions under the new Division 8. In the event that the project required an approval under another piece of legislation, or under a local government planning scheme after the CG had imposed conditions and there is an inconsistency between conditions, the conditions imposed by the CG prevails to the extent of any inconsistency.

The new s 54F(1) provides that a proceeding may be brought in the Planning and Environment Court, either under chapter 4, part 3, division 5 of the *Integrated Planning Act* for an enforcement order; or under s 505 of the *Environmental Protection Act* for a restraint of contraventions of the SDPWO Act. The nature of the conditions will determine the appropriate proceeding that would apply, that is those conditions relating to 'environmental' matters would be dealt with under s 435 of the *Environmental Protection Act*. A party bringing a proceeding will have to choose to bring the action under either chapter 4, part 3, division 5 of the *Integrated Planning Act* or under s 505 of the *Environmental Protection Act*.

The new s 54F(1)(b) provides that the remedies available for an offence or threatened or anticipated offence relating to the project under the new 54F(1)(a) apply as if the offence was an offence relating to a development approval for the development under the *Integrated Planning Act* or an offence relating to a development condition of a development approval under the *Environmental Protection Act*.

The new s 54F(2) provides that the proceedings able to be started under chapter 4, part 3, division 5 of the *Integrated Planning Act* and s 505 of the *Environmental Protection Act* are restricted to persons genuinely affected

by the project. A proceeding under s 54F can only be started by the following people:

- the Coordinator-General;
- the entity nominated by the CG under s 54B to have jurisdiction for a condition imposed by the CG in the CG's report;
- the local government for the local government area in which the project is, or is to be, undertaken;
- the proponent of the project; and
- someone else whose interests are significantly adversely affected by the subject matter of the proceeding.

The new s 54G(1) provides that a proceeding for a declaration under s 4.1.21 of the *Integrated Planning Act* can not be started about a significant project for which the CG has imposed conditions under division 8.

The new s 54G(2) provides that only a person mentioned in the new s 54F(2) (that is, the CG; the entity nominated by the CG under the new s 54B to have jurisdiction for a condition imposed by the CG in the CG's report; the local government for the local government area in which the project is, or is to be, undertaken; the proponent of the project; and someone else whose interests are significantly adversely affected by the subject matter of the proceeding) may bring a proceeding in the Planning and Environment Court for a declaration about whether there has been substantial compliance with a condition imposed by the CG for the undertaking of the project.

The nature of the conditions imposed by the CG for a project may be stated as objectives to be achieved in the undertaking of the project or desired outcomes which are capable of being achieved by range of measures, rather prescriptive conditions which have clearly identifiable parameters. Accordingly, it is appropriate for the court to consider a range of relevant policies in determining what order can be made in a proceeding about whether there has been substantial compliance with an imposed condition.

The new s 54G(3) provides that the Planning and Environment Court has jurisdiction to hear and decide a proceeding under the new s 54G(2).

The new s 54G(4) provides that the Court may make orders about a declaration in accordance with s 4.1.22 of the *Integrated Planning Act* as if it were a proceeding under s 4.1.21 of the *Integrated Planning Act*. The provisions of s 4.1.23 of the *Integrated Planning Act* apply to costs in relation to a proceeding under s 54(2).



The new s 54G(5) provides that in deciding what orders the Court can make, the Court may have regard to one or more of the following:

- the laws and policies applying when the condition was imposed;
- the environmental impact statement for the project;
- the Coordinator General's report and a Coordinator-General's change report for the project;
- the financial implications of the imposed conditions or any proposed orders;
- the public interest;
- any applicable environmental management plan for the project as identified in the CG's report;
- any other matter the Court considers relevant.

Section 4.1.56 of the *Integrated Planning Act* applies to proceedings to enable appeal rights from enforcement orders and declaratory relief to the Court of Appeal. Sections 4.1.56, 4.1.57 and 4.1.58 of the *Integrated Planning Act* apply to a party to a proceeding commenced pursuant to provisions of this Division.

*Clause 63* provides new transitional provisions in Part 9 by inserting a new Division 2, s 178, providing for the application of the new s 35(4)(d) and Division 8 (see clauses 28 and 39A) to the NSBT project. The conditions recommended by the CG in appendix 1, schedule 3 of the CG's report evaluating the Environmental Impact Statement for the NSBT project dated 25 August 2005 are taken to be imposed conditions under the new division 8.

*Clause 64* inserts the following definitions in the Schedule (Dictionary):

- 'imposed condition' means a condition imposed by the CG in the CG's report for the undertaking of the project and is defined in the new s 54B(2);
- 'nominated entity' means, for an imposed condition, the entity nominated to have jurisdiction for the condition by the CG and is defined in s 24, and
- 'relevant local government' means, for a project, the local government for the local government area in which the project is, or is to be, undertaken and is defined in s 24.

## **Part 4                      Amendment of the Freedom of Information Act 1992**

*Clause 65* defines the Act being amended as the *Freedom of Information Act 1992*.

*Clause 66* amends the definition of ‘department’ in section 47A of the Act to reflect the changes to the administrative arrangement of government.

*Clause 67* inserts a new Part 11, which contains a transitional provision that ensures the amendment under clause 66 has effect from the commencement of the *Administrative Arrangement Order (No.2) 2005*.