

State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Deputy Premier and Minister for State Development, Infrastructure and Planning

Title of the Bill

State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 (the Bill).

Objectives of the amendments

Amendment of the *Economic Development Act 2012*

The Bill contains provisions that amend the *Economic Development Act 2012* (ED Act) to provide for an infrastructure expenses recoupment charge. The objective of the amendment to the Bill is to ensure that where a superseding public sector entity becomes the charging entity for the purposes of giving the infrastructure expenses recoupment charge notice, the entity should be given flexibility in the way in which the notice is issued. For example, if the charging entity is a local government or water distributor-retailer, the entity can give the notice as either a charge notice or include the infrastructure expenses recoupment charge on its rates notice or account.

Amendment of the *Queensland Industry Participation Policy Act 2011*

The Bill provides for amendments to the *Queensland Industry Participation Policy Act 2011* (QIPP Act) to incorporate the annual reporting requirements of the QIPP Act into the Annual Report of the administering agency (the Department of State Development, Infrastructure and Planning). The Bill is further amended to amend section 16 of the QIPP Act for clarity and to remove out-dated references.

Amendment of the *Sustainable Planning Act 2009* (SARA related)

The objective of the amendments to the Bill are to enable a development assessment entity with dual jurisdictions to charge appropriate development assessment fees for all jurisdictions held on a development application. That is, where an entity is both assessment manager and concurrence agency a fee for both jurisdictions can be charged to ensure an appropriate level of cost recovery can be obtained for the assessment service provided.

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

The objective of the amendments to the Bill are to refine elements of the Coordinator-General's Environmental Impact Statement (EIS) and Impact Assessment Report (IAR) process conducted under Part 4 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

The amendments:

- remove the Coordinator-General decision on a staged EIS and all other staged EIS provisions in the Act;
- clarify requirements where resubmitting a draft EIS/IAR following an additional information request; and
- clarify the IAR notification processes.

Watercourse crossing provisions

The objective of the amendments to the Bill is to enable the Coordinator-General to give sufficient regard to land owners rights and liberties with regard to notification of entry and/or occupation of their land by a third party intending to investigate or construct a watercourse crossing.

***Wild Rivers Act 2005* related amendments**

The objective of the amendments related to the repeal of the *Wild Rivers Act 2005* is to provide appropriate transitional provisions to streamline the requirements resulting from the repeal of the Act.

Transitional provisions are provided for:

- existing approvals that are in place prior to the repeal of the *Wild Rivers Act 2005*,
- applications for environmental authorities that are lodged, but not decided, at the time of the repeal of the *Wild Rivers Act 2005*; and
- resource activities proposed in a strategic environmental area that has an environmental authority that has been assessed and conditioned under the repealed *Wild Rivers Act 2005*.

Achievement of the objectives

Amendment of the *Economic Development Act 2012*

The objective will be achieved by enabling charging entities to give the infrastructure expenses recoupment charge either on a charge notice, or as part of another notice given by the charging entity.

Amendment of the *Queensland Industry Participation Policy Act 2011*

The amendments are minor and will not affect the intent or operation of the QIPP Act.

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

The objective will be achieved by removing staged EIS provisions and refining the EIS and IAR requirements in Part 4 of the SDPWO Act.

Amendment of the *Sustainable Planning Act 2009* (SARA related)

The amendment to section 249 of the *Sustainable Planning Act 2009* (SPA) allows fees to be collected where an assessment entity has the jurisdiction of both assessment manager and concurrence agency. This enables the level of cost recovery to be better aligned with the full extent of assessment being undertaken for different jurisdictions.

***Wild Rivers Act 2005* related amendments**

The objective will be achieved through transitional provisions inserted in the *Environmental Protection Act 1994*, the *Regional Planning Interests Act 2014* and SPA.

Conditions on existing approvals will continue in effect for one year, and those approvals may be amended if required, to ensure no change in rights or obligations under those approvals.

Applications for environmental authorities in certain cases that are lodged, but not decided, prior to the repeal of the *Wild Rivers Act 2005* will continue to be assessed and decided in accordance with the provisions of the repealed Act.

Resource activities proposed in a strategic environmental area that have an environmental authority that has been assessed and decided in accordance with the provisions of the *Wild Rivers Act 2005* may be exempt from requiring a regional interests development approval.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the intended objectives of the amendments.

Estimated cost for government implementation

Amendment of the *Economic Development Act 2012*

There will be no cost for Government implementation as providing flexibility to a superseding public sector entity in the way in which a charge notice is given will reduce the administrative burden on the entity if they are permitted to include the charge in a manner which accords with their usual practice.

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

The Office of the Coordinator-General intends to manage any need for increased resources resulting from the:

- improvements to the EIS process; and
- new streamlined IAR process.

Amendment of the *Sustainable Planning Act 2009* (SARA related)

The collection of fees where an entity is both the assessment manager and a concurrence agency will assist in the cost recovery of undertaking development assessment. This is aligned with the “user-pays” methodology on which development assessment fees are determined.

***Wild Rivers Act 2005* related amendments**

The cost for Government to implement the provisions relating to amending existing approvals if required and amending the eligibility criteria and standard conditions code, are considered to be minimal. These costs will be managed within existing resources.

Consistency with fundamental legislative principles

The proposed amendments to the Bill are consistent with fundamental legislative principles, except where the Coordinator-General determines that the draft IAR should be publically notified 34(H).

While review processes are preferable for administrative decision-making in, the absence of a provision for such a right of review is justified to achieve consistency with other similar provisions of the SDPWO Act and by the overriding significance of the objectives of that legislation. Such a justification applies in this case and the absence of an appeal right is deliberate.

This is consistent with other parts of Part 4 of the SDPWO Act where parts of the Judicial Review.

Consultation

The amendments to the *State Development and Public Works Organisation Act 1971* have been proposed following the release of the State Development, Infrastructure and Industry

Committee (Report No. 44) where the Committee encouraged the giving of notice to land owners to advise of proposed entry onto their land.

The amendments to the ED Act have been proposed following Committee's public hearing where the Local Government Association of Queensland requested that a local government, when they are the charging entity, should have the discretion to recover the infrastructure expenses recoupment charge either by a charge notice, or as an item on its rates notice.

Notes on Provisions

The amendments below relate to the amendment of the *Economic Development Act 2012*

Amendment 1 omits the definition of ‘charge notice’ from clause 17 as this term is only used in chapter 3, part 6, division 3 so it does not need to be included in new section 116A.

Amendment 2 amends clause 17 new section 116G of the ED Act to ensure that where a superseding public sector entity becomes the charging entity for the purpose of giving the infrastructure expenses recoupment charge notice, that entity is able to issue the notice in a way which reduces the administrative burden (for example, if the charging entity is a local government or water distributor-retailer it is given the option to issue either a charge notice or include the infrastructure expenses recoupment charge on its rates notice or account).

The amendment below relate to the amendment of the *Queensland Industry Participation Policy Act 2011*

Amendment 3 amends Part 2 of the Bill to amend section 16 (Saving of existing local industry policy) of the *Queensland Industry Participation Policy Act 2011*. This amendment makes clear that the Local Industry Policy in force immediately before the commencement of this section is taken to be the Local Industry Policy for the *Queensland Industry Participation Policy Act 2011* from 1 July 2011 to 3 April 2014. On 4 April 2014, the Charter of Local Content became the new policy for the purpose of the *Queensland Industry Participation Policy Act 2011*. Section 16 is also amended to remove an out of date Editor’s Note.

The amendments below relate to the amendment of the *State Development and Public Works Organisation Act 1971*

Amendment 4 amends clause 27 to remove the definitions for a staged EIS and staged EIS request in the dictionary.

The intent of the proposed amendments was to provide the Coordinator-General with more control over the existing staged EIS provisions and effectively limit the use of the staged EIS process. The rarely used staged EIS provisions are to be completely removed from the *State Development and Public Works Organisation Act 1971* to simplify and strengthen the assessment process.

Amendment 5 amends clause 30 to now reference 34J(2)(b) where it was previously 34J(2)(c). This consequential amendment is a result from the clarification process in Amendment 10.

Amendment 6 amends clause 31 to remove staged EIS links to the lapsing provisions for a coordinated project declaration.

Amendment 7 amends clause 34 to remove the proponent’s ability to request submission of a staged EIS, the Coordinator-General’s decision on the staged EIS request and other provisions relating to the staged EIS process.

Amendment 8 amends clause 37 to remove staged EIS provisions and remove reference to additional information given under section 34C(2) as this will now be incorporated into a revised draft EIS.

Amendment 9 amends clause 37 to correct terminology as a result of removing staging provisions.

Amendment 10 amends clause 37 to clarify that additional information may be included in a resubmitted draft EIS or attached in a separate document and is now termed a *revised draft EIS*.

Amendment 11 amends clause 37 to correct terminology as a result of removing staging provisions.

Amendment 12 amends clause 37 to reference the new revised draft EIS terminology as a result of the clarification process in Amendment 10.

Amendment 13 amends clause 37 to reference the new revised draft EIS terminology as a result of the clarification process in Amendment 10.

Amendment 14 amends clause 37 to ensure the revised draft EIS will be subject to the Coordinator-General's decision whether to accept draft EIS and final EIS under section 34A.

Amendment 15 amends clause 37 to correct terminology as a result of removing staging provisions.

Amendment 16 amends clause 37 to bring forward the Coordinator-General's discretionary decision for the draft IAR to be publicly notified in 34H where there are no notifiable approvals. The amendment will also better align the EIS and IAR processes from this point forward.

Amendment 17 amends clause 37 to remove reference to additional information under 34K(4) as this will now be incorporated into a revised draft IAR.

Amendment 18 amends clause 37 to remove the Coordinator-General's discretionary decision on whether public notification of an IAR is required as this now in section 34H (as per Amendment 16). The Coordinator-General may still require public notification of a revised draft IAR. The amendment will better align the EIS and IAR processes.

Amendment 19 amends clause 37 to clarify that additional information may be included in a resubmitted draft IAR or attached in a separate document and is now termed a *revised draft IAR*.

Amendment 20 amends clause 37 to remove 'publicly notify draft IAR' from the section 34K heading as the Coordinator-General's discretionary decision on whether the draft IAR should be publicly notified if there are no notifiable approvals has been moved to section 34H (as per Amendment 16).

Amendment 21 amends clause 37 to incorporate new revised draft IAR terminology and public notification requirements of the revised draft IAR. The amendment clarifies that a

revised draft IAR will be subject to the Coordinator-General's decision whether to accept draft IAR as final IAR under section 34I. The amendment will better align the EIS and IAR processes.

Amendment 22 amends clause 40 to make a minor correction to terminology as a result of removing staged EIS provisions.

Amendment 23 amends clause 41 to make a minor correction to terminology as a result of removing staged EIS provisions.

Amendment 24 amends clause 41 to remove staged EIS links to the lapsing of a Coordinator-General's report.

Amendment 25 amends clause 41 to account for the removal of staged EIS links to the lapsing of Coordinator-General report in Amendment 24.

Amendment 26 amends clause 42 to make a minor correction to terminology as a result of removing staged EIS provisions.

Amendment 27 amends clause 43 to make minor corrections to terminology as a result of removing staged EIS provisions.

Amendment 28 amends clause 44 to make a minor correction to terminology as a result of removing staged EIS provisions.

Amendment 29 amends clause 45 to make minor corrections to terminology as a result of removing staged EIS provisions.

Following the introduction of the revised draft EIS/IAR terminology in Amendment 10, Amendment 29 also ensures that any submissions made on a revised draft EIS or IAR will be taken to be properly made under the Integrated Development Assessment System.

Amendment 30 amends clause 46 to remove staged EIS provisions.

Amendment 31 amends clause 59 to remove redundant terminology as a result of removing staged EIS provisions.

Amendment 32 amends clause 65 section 160A to include notice of entry provisions which will require a person authorised by the Coordinator-General to give the land owner notice prior to entering the land for the first time. The amendments also allow the Coordinator-General to impose conditions on the entry for a watercourse crossing.

Amendment 33 amends clause 65 to include new section 160B to include compensation provisions for land owners for damages that have resulted from the entry provided under 160A.

Amendment 34 amends clause 68 to retain the existing definition in the *State Development and Public Works Organisation Act 1971* of 'EIS'.

Amendment 35 amends clause 68 to remove reference to staged EIS in the dictionary.

Amendment 36 amends clause 68 to insert the new ‘revised draft EIS’ and ‘revised draft IAR’ terminology in the dictionary.

Amendment 37 amends clause 68 to remove reference to staged EIS and staged EIS request in the dictionary.

Amendment 38 amends clause 68 to make a minor correction to terminology as a result of removing staged EIS provisions.

The amendments below relate to the amendment of the Sustainable Planning Act 2009 (SARA related)

Amendment 39 amends section 249 of the *Sustainable Planning Act 2009* enabling development assessment fees to be charged when an assessment manager also has jurisdiction as a concurrence agency. Schedule 7A of the Sustainable Planning Regulation 2009 enables the collection of fees for particular assessment manager and concurrence agency jurisdictions. However, in circumstances where an assessment manager is also triggered as a concurrence agency, the provisions of the Act were unclear whether fees for both jurisdictions were able to be charged. The ability for separate fees to be charged is important in enabling the recovery of an appropriate proportion of costs incurred in undertaking development assessment. The amendments undertaken clarify that fees are applicable for both roles, where the assessment manager also has jurisdiction as a concurrence agency.

The amendments below relate to the amendment of the Environmental Protection Act 1994

Amendments 40-42 amend clause 103 to insert new transitional provisions for the *Environmental Protection Act 1994* (EP Act).

Environmental authorities issued for activities in wild river areas may include conditions that reference a wild river declaration or the wild rivers code. It is necessary to ensure the rights, liberties, or obligations conferred by these existing environmental authorities are maintained upon repeal of the *Wild Rivers Act 2005*.

A new clause gives effect to the continuation of the wild rivers declarations and wild rivers code (as though the *Wild Rivers Act 2005* had not been repealed) for a period of only one year for the purposes of compliance with wild rivers provisions on approvals issued under the EP Act.

The new clause allows for the administering authority to work with approval holders to make necessary amendments to existing approvals to ensure the rights, liberties, or obligations conferred by the existing environmental authorities are maintained. The provisions provide for the amendments to be made despite sections 216-221 of the EP Act. Amendments to conditions under this clause are limited to those that are consistent with the nature of the requirements that were in effect immediately prior to the repeal of the *Wild Rivers Act 2005*.

This clause is transitional in nature and expires one year after the commencement.

The eligibility criteria and the standard conditions code under the EP Act also refer to terms under the *Wild Rivers Act 2005*. A new clause provides for the transition of environmental

authorities that rely on the eligibility criteria and the standard conditions code (that refer to terms under the *Wild Rivers Act 2005*). This clause is necessary to ensure the rights, liberties, or obligations conferred by these existing environmental authorities are maintained upon repeal of the *Wild Rivers Act 2005*.

This clause provides for the terms used in the eligibility criteria and the standard conditions code to continue to have the meaning given under the *Wild Rivers Act 2005*, and for the eligibility criteria and the standard conditions code to be amended so they contain relevant equivalent requirements.

This clause is transitional in nature and expires one year after the commencement.

Upon repeal of the *Wild Rivers Act 2005*, there may be applications for environmental authorities or amendments to environmental authorities that have been lodged, but not decided. A new clause gives effect to the continuation of the wild rivers declarations and wild rivers code (as though the *Wild Rivers Act 2005* had not been repealed) for any applications for new or amendments to environmental authorities for resource activities in a strategic environmental area (that was also a wild river area) to which the application had not been decided, immediately prior to the repeal of the *Wild Rivers Act 2005*.

The continuation of these wild rivers provisions is to allow for applications to be assessed against the laws and policies in place at the time the application was made. This provision applies to the assessment, and to the decision to approve or refuse. Any conditions imposed or amended may take into account the relevant terminology from the strategic environmental area framework, rather than terminology from the wild river declarations that are to be repealed.

This provision works in combination with the provision for these activities to be exempt from requiring an approval under the *Regional Planning Interests Act 2014*.

The amendments below relate to the amendment of the *Regional Planning Interests Act 2014*

Amendments 43-44 insert new provisions to provide an exemption from the requirement to obtain a Regional Interest Development Approval for any resource activity in a strategic environmental area (that was also a wild river area) that is carried out under an environmental authority that was given, or applied for, prior to the repeal of the *Wild Rivers Act 2005*.

The provision provides for a further exemption in acknowledgement that an environmental authority for such activities will continue to include conditions relevant to an area that is a strategic environmental area and was a wild river area after the repeal of the *Wild Rivers Act 2005*. The conditions imposed under the repealed *Wild Rivers Act 2005* would address matters to be included in any Regional Interests Development Approval for an activity in a strategic environmental area.

This exemption does not apply to any part of a strategic environmental area that was not a wild river area, such as parts of the Steve Irwin Wildlife Reserve, because any environmental authorities issued in these parts of the strategic environmental area would not already have wild rivers conditions imposed on them. Furthermore, the exemption would not be valid if:

- (a) after the repeal of the *Wild Rivers Act 2005*, the authority holder makes an amendment application under the EP Act, section 224 to amend the environmental authority; and
- (b) the amendment application is approved; and
- (c) the amendment involves either of the following—
 - (i) an increase in the area of land subject to expected surface impacts from the activity;
 - (ii) a change to the location of the land subject to expected surface impacts from the activity.

This provision works in combination with the transitional provision in the EP Act that ensures that environmental authority applications that have been lodged, but not decided, upon repeal of the *Wild Rivers Act 2005* will continue to be assessed and decided as if the applicable wild river declaration is still in effect.

The amendments below relate to the amendment of the *Sustainable Planning Act 2009*

Amendments 45-47 amend clause 127 to insert new transitional provisions for SPA.

Development approvals issued for activities in wild river areas may include conditions that reference a wild river declaration or the wild rivers code. It is necessary to ensure the rights, liberties, or obligations conferred by these existing environmental authorities are maintained upon repeal of the *Wild Rivers Act 2005*.

A new clause gives effect to the continuation of the wild rivers declarations and wild rivers code (as though the *Wild Rivers Act 2005* had not been repealed) for a period of only one year for the purposes of compliance with wild rivers provisions on approvals issued under SPA.

The new clause allows for the administering authority to work with approval holders to make necessary amendments to existing approvals to ensure the rights, liberties, or obligations conferred by the existing environmental authorities are maintained. The provisions provide for the amendments to be made despite section 378 of SPA. Amendments to conditions under this clause are limited to those that are consistent with the nature of the requirements that were in effect immediately prior to the repeal of the *Wild Rivers Act 2005*.

This clause is transitional in nature and expires one year after the commencement.

The amendments below relate to the amendment of the *State Development and Public Works Organisation Act 1971*

Amendments 48 to 60 amend Schedule 1 (Minor, consequential and other amendments) to correct terminology as a result of removing staging provisions.

Amendment 61 is a minor consequential amendment as a result of the IAR public notification amendments in Amendment 21.