

# State Development and Public Works Organisation Amendment Regulation (No. 1) 2014

Explanatory Notes for Subordinate Legislation 2014 No. 148

made under the

*State Development and Public Works Organisation Act 1971*

## General Outline

### Short title

The short title for the regulation is the *State Development and Public Works Organisation Amendment Regulation (No. 1) 2014*.

This regulation amends the *State Development and Public Works Organisation Regulation 2010* (SDPWO Regulation) to support the delivery of an approvals bilateral agreement and update the existing fee schedule associated with the Coordinator-General's provision of environmental coordination services.

The regulation may also be cited as the 'approvals bilateral' regulation amendment.

### Policy objectives and the reasons for them

The Queensland and Australian Governments signed a Memorandum of Understanding (MOU) on 18 October 2013 to deliver streamlining of environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act). A key initiative of the MOU is the implementation of an approvals bilateral agreement that would enable the Queensland Government to assess and approve actions that may have significant impacts on matters protected under the EPBC Act.

The objects of the approvals bilateral assessment and approvals agreements will be to:

- Ensure high standards are maintained for the protection of the environment, in particular, matters of national environmental significance (MNES);
- Promote the conservation and ecologically sustainable use of natural resources;
- Ensure an efficient, timely and effective process for environmental assessment and approval of actions; and

- Remove unnecessary duplication in the environmental assessment and approvals processes of the Commonwealth and Queensland Governments.

Streamlining the environmental approvals process by replacing the current duplicate assessment and approval process by the Commonwealth and the Queensland Governments with a 'one-stop-shop' for Queensland under an approvals bilateral agreement is expected to lead to faster decision-making timeframes and simpler communication with project proponents and stakeholders providing greater certainty for all parties.

The Commonwealth Government has prepared a document *Standards for Accreditation of Environmental Approvals* under the EPBC Act. The document sets out contextual information about the EPBC Act and the requirements for accrediting approval systems under bilateral agreements. Whilst it is recognised that States should have flexibility in proposing how they would achieve these standards, there are statutory requirements imposed on the Commonwealth under the EPBC Act that must be satisfied.

The Commonwealth Environment Minister has to be satisfied of a number of statutory pre-conditions under the EPBC Act, before the State's authorisation process can be accredited, including:

- Adequate assessment of the impacts that actions approved in accordance with the authorisation process have, will have or are likely to have on MNES;
- Actions approved in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on MNES; or
- Particular criteria are met for specified MNES as set out in sections 51 to 55 of the EPBC Act. These sections generally provide that the authorisation process is not inconsistent with Australia's environmental obligations.

Queensland is seeking accreditation of provisions of the SDPWO Act and Regulation as an authorisation process for the purposes of the proposed approvals bilateral agreement under EPBC Act.

The *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* (the Bill) inserts provisions in the SDPWO Act for the authorisation process necessary to enable accreditation. Amendments are also required to the SDPWO Regulation to define the authorisation process.

This amendment regulation also includes changes to the fee regime to cover the actual cost of delivery of services provided by the Coordinator-General under Part 4 of the Act to project proponents. A comprehensive review of fees and charges undertaken by the Coordinator-General during late 2013 and early 2014 clearly concluded that, while the cost of provision of services was not being met by fees revenues, the variation in costs between coordinated projects varied substantially. The key fees reform responses arising from that review was to:

- increase both the magnitude and scope of fees to better match actual costs for the different types of services under Part 4; and
- better tailor the fees regime more closely to the range of circumstances that arise during each stage of the EIS assessment processes.

## **Achievement of policy objectives**

The bilateral approvals regulation amendment inserts a new Part 13A for the protected matters assessment and decisions on coordinated projects. The assessment documentation for protected matters must address the matters set out in a new Schedule 1AA. The public notification provision will apply for a protected matters report mirroring the requirements for a coordinated project being assessed under the assessment bilateral agreement.

Replacement fee tables are inserted in Part 2, Schedule 1B of the Regulation that meet the current estimates of the actual cost of services provided by the Coordinator-General to project proponents in the provision of environmental coordination services under Part 4 of the SDPWO Act.

## **Alternative ways of achieving policy objectives**

The regulation amendments provide the necessary processes and procedures that must be followed to meet the accreditation criteria specified by the EPBC Act.

The alternatives would be to either include the regulation material in the SDPWO Act or to incorporate the material as administrative guidelines under the bilateral approvals agreement. Including the requirements within the Bill not would provide enough flexibility for the assessment and approvals process which must be able to adapt over time to changes in the statutory framework of related legislation, technology developments, and shifts in community standards. Alternatively, implementation of the regulation requirements as administrative guidelines would not provide sufficient certainty to enable the Commonwealth Environment Minister to accredit the process for the purposes of a bilateral approvals agreement.

The alternatives to increasing and restructuring of fees for services provided under Part 4 of the SDPWO Act would be to reduce the standard of management of the EIS process under the Act or to cover these costs from consolidated revenue. Maintenance of the current standards of service by the Coordinator-General to proponents of major projects is considered essential to the economic development of Queensland and maintenance of high environmental standards. The current capital value of the 30 projects under EIS assessment by the Coordinator-General is approximately \$60 billion. As project proponents benefit significantly from the provision of Coordinator-General's services under Part 4 of the Act, it is considered reasonable that they cover the relatively small costs of those services. Therefore, the alternatives of achieving policy objectives are not considered effective.

## **Estimated cost for government implementation**

The implementation of the proposed approvals bilateral agreement will introduce new statutory obligations for the State. Management of the approvals step for MNES under the SDPWO Act will result in additional costs to the Office of the Coordinator-General.

The Office of the Coordinator-General recently conducted a comprehensive review of fees and charges for services delivered under the SDPWO Act. The Office of the Coordinator-

General will manage additional costs resulting from the implementation of the approvals bilateral agreement by imposing a fee for each project subject to that agreement and implement further EIS process efficiencies. This fee is proposed to be prescribed in a later amendment regulation, along with other new fees to be charged for services delivered under the SDPWO Act as part of the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014*, which is currently before Parliament.

## **Consistency with fundamental legislative principles**

There are no inconsistencies with fundamental legislative principles in the regulation amendments.

## **Consultation**

The Office of the Coordinator-General consulted with industry, local government and key conservation groups between 28 February – 31 March 2014 on a range of proposed SDPWO Act legislative amendments (including those contained within this Bill). Consultation on the SDPWO Act amendments included the proposed amendment to Part 4 of the SDPWO Act and the regulation to facilitate accreditation of the EIS process and the proposed new Coordinator-General fee regime. Industry and local government groups supported amendments to the SDPWO Act for an approvals bilateral and industry broadly accepted Coordinator-General fee increases as part of cost recovery. No comments were received from the key environmental groups.

## **Consistency with legislation of other jurisdictions**

All States and Territories have signed a MOU with the Commonwealth to develop a ‘one-stop shop’ for environmental assessment and approvals. Draft approvals bilateral agreements for Queensland and NSW were released for public notification on the 14 May 2014 and closed on 13 June 2014.

The Australian Government introduced a Bill on 14 May 2014 to create a fees regime for impact assessment under the EPBC Act. These fees broadly cover the same services as those encompassed by the SDPWO amendment regulation.

## Notes on provisions

### State Development and Public Works Organisation Amendment Regulation (No. 1) 2014

#### Clause 1 Short title

*Clause 1* states that the regulation may be cited as the State Development and Public Works Organisation Amendment Regulation (No. 1) 2014.

#### Clause 2 Commencement

*Clause 2* states the regulation commences on the 4 July 2014.

#### Clause 3 Regulation amended

*Clause 3* provides that the *State Development and Public Works Organisation Regulation 2010* is amended.

#### Clause 4 Amendment of s 32 (Definitions for pt 13)

*Clause 4* omits two redundant definitions in part 13 of the regulation as these terms will be defined in the dictionary of the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

*Clause 4* also corrects redundant 'significant' project terminology and replaces with current 'coordinated' project terminology.

#### Clause 5 Amendment of s 33 (Application for pt 13)

*Clause 5* provides that Part 13 does not apply to the project where subject to an approvals bilateral.

#### Clause 6 Insertion of new pt 13A

*Clause 6* inserts a new part for protected matters assessment and approval of particular coordinated projects.

#### Part 13A Assessment and approval of particular coordinated projects under bilateral agreement

##### 36A Required information for protected matters report

This clause inserts that a protected matters report must address the matters set out in a new Schedule 1AA. This schedule reflects the existing Schedule 1, with necessary amendments to reflect that a separate EPBC Act controlled action decision will not apply to a project subject to Part 4A.

### **36B Public notification requirements and minimum submission period**

The public notification provision will apply for a protected matters report, mirroring the requirements for a coordinated project being assessed under the assessment bilateral.

The Coordinator-General must publish particular documents associated with the Part 4A process on the department's website.

### **Clause 7 Insertion of new pt 16**

#### **Part 16 Transitional provision for State Development Public Works Organisation Amendment Regulation (No. 1) 2014**

This clause stipulates that new fees will apply for all coordinated projects that are declared after 4 July 2014; and from 1 July 2015 for all coordinated projects declared before 4 July 2014.

### **Clause 8 Insertion of new sch 1AA**

*Clause 8* inserts a new schedule for information to be included in the protected matters report. Schedule 1AA generally reflects Schedule 1 of the existing regulation, with necessary amendments to the authorisation process in Part 4A.

Schedule 1AA requires the protected matters report to provide background information and a description of the project along with the relevant environmental, economic and social matters, and proposed mitigation measures. The protected matters report must also provide details of the proponent's environmental record as this is a relevant consideration under Part 4A of the Act.

### **Clause 9 Amendment of schedule 1B (Fees for the Act, part 4)**

*Clause 9* inserts new definitions for schedule 1B for *CPI indexed, part 13 project, resource tenure* and *significant off-tenure project*.

### **Part 2 Table of fees**

*Clause 9* also inserts new tables 1, 2 and 3 for the Coordinator-General fees regime.

Table 1 contains the coordinated project fees for assessment points in the process. A new column 4 and column 5 fees apply where the project is also a project being assessed under the assessment bilateral agreement and/or has significant off-tenure approval requirements respectively.

Table 2 contains amended coordinated project fees for any evaluation of changes to a coordinated project. Table 3 contains new coordinated project fees for consideration of an application for an extension to a lapse date.