State Development and Public Works Organisation Amendment Regulation (No. 2) 2014

Explanatory Notes for Subordinate Legislation 2014 No. 210

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. 2) 2014*.

This regulation amends the *State Development and Public Works Organisation Regulation 2010* (SDPWO Regulation) to update the existing provisions and fee schedule to reflect amendments to the *State Development and Public Works Organisation Act 1971* (SDPWO Act) in relation to State development areas and the Coordinator-General's provision of environmental coordination services.

The regulation may also be cited as the 'red tape reduction' regulation amendment.

Authorising law

Section 173 of the *State Development and Public Works Organisation Act 1971*.

Policy objectives and the reasons for them

Amendments to the SDPWO Act through the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014* (Red Tape Reduction Act) seek to streamline decision making processes and cut red tape, allowing the Coordinator-General to more efficiently control the environmental assessment process for coordinated projects, coordinate development in State development areas (SDAs) and amend the powers of the Coordinator-General with respect to roads and watercourses.

The *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014* (SPICOLA Act) inserts provisions in the new Part 4A of the SDPWO Act to ensure the Coordinator-General can effectively implement the approvals bilateral agreement between

the Queensland and Commonwealth governments. These provisions will be utilised as part of the authorisation process necessary to enable accreditation from the Commonwealth Minister for the Environment. Amendments to the SDPWO Regulation were made in the approvals bilateral regulation amendment to further define the authorisation process.

The regulation amendment updates the cost recovery fees for matters under Part 4, Part 4A and Part 6 of the SDPWO Act. Specifically, the regulation amendment introduces fees for:

- the streamlined Impact Assessment Report (IAR) process for projects the Coordinator-General considers do not require a full EIS assessment, based on their likely scale and extent
- the new EIS decision points and terminology
- projects being assessed under the approvals bilateral agreement
- development in SDAs.

The regulation amendment also updates the SDPWO Regulation provisions to incorporate the new IAR process, clarifies when proponent payments for coordinated project assessment are required, removes references to the staged EIS process and removes redundant works provisions due to the completion of those projects.

Part 13 of the SDPWO Regulation is updated as a consequence of changes to Part 4 of the Act and to enable the IAR process to be considered for accreditation under the assessment bilateral agreement between the Queensland and Commonwealth governments.

Achievement of policy objectives

To achieve the policy objectives to recover costs through an effective and efficient fee charging process, amendments are proposed to be made to the SDPWO Regulation.

Alternative ways of achieving policy objectives

The regulation amendments are necessary to reflect the amendments to the SDPWO Act through the Red Tape Reduction and SPICOLA Acts and implement the associated cost recovery fees that the new provisions attract.

The SDPWO Act allows for fees to be set through a regulation. The fees proposed in the amendment regulation are intended to provide cost recovery in relation to the resources required by the Office of the Coordinator-General in the assessment and approvals process.

The alternatives to introducing fees would be to reduce the standard of management of the EIS, IAR, approvals bilateral and SDA assessment processes under the SDPWO 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. As project proponents benefit significantly from the provision of the Coordinator-General's services, 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.

The alternative to the IAR process being incorporated into Part 13 of the SDPWO Regulation would be that a coordinated project that is declared as requiring an IAR would be ineligible for accreditation under the assessment bilateral agreement. This does not align with the government's objective to reduce red tape and move towards a 'one-stop-shop' assessment approach. Consequently, this alternative is not considered effective.

There are no viable alternatives to the amendments that are a consequence of the changes to Part 4 of the Act, including updating the Part 13 provisions and removal of redundant staged EIS provisions. There is no viable alternative to the removal of the works regulation provisions other than these provisions remaining in the SDPWO Regulation.

Estimated cost for government implementation

The implementation of the proposed amendments to the SDPWO Act will introduce new statutory obligations for the Office of the Coordinator-General which may result in additional resourcing costs.

The Office of the Coordinator-General intends to prevent additional costs resulting from the EIS/IAR processes, the approvals bilateral assessment process and regulating a wider range of development in SDAs by way of cost recovery through imposing appropriate fees and charges on proponents for assessment of applications.

Consistency with fundamental legislative principles

There are no inconsistencies with fundamental legislative principles as a result of the regulation amendments.

Consultation

Between 28 February 2014 and 31 March 2014, the Office of the Coordinator-General consulted with industry, local government and key conservation groups on a range of amendments to the SDPWO Act through the Red Tape Reduction and SPICOLA Acts (including those contained within this Regulation amendment). Industry broadly accepted proposed fees as part of cost recovery. No comments were received from local government or the key conservation groups with respect to fees.

Consistency with legislation of other jurisdictions

The Commonwealth Government's *Environment Protection and Biodiversity Conservation Act (Cost Recovery) Amendment Bill 2014* was passed on 24 June 2014 to create a fees regime for impact assessment under the *Environment Protection and Biodiversity Conservation Act 1999*. These fees broadly cover the same services as those encompassed by the amendment regulation relating to the Coordinator-General's environmental coordination services and will become effective after regulations set the cost recovery fees.

The charging of fees for the assessment of development applications in SDAs is consistent with the approach taken by the Minister for Economic Development Queensland in Priority

Development Areas, under the *Economic Development Act 2012* and by local governments under the *Sustainable Planning Act 2009*.

Notes on provisions

State Development and Public Works Organisation Amendment Regulation (No. 2) 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. 2) 2014*.

Clause 2 Commencement

Clause 2 states the Act is scheduled to commence on 1 October 2014. The regulation commences immediately upon the commencement of the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014* (Red Tape Reduction Act).

Clause 3 Regulation amended

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

Clause 4 Omission of pts 6 and 10

Clause 4 omits part 6 (Connors River Dam Investigations) and part 10 (Cloncurry Pipeline Project) as redundant provisions in the Regulation.

Clause 5 Amendment of s 30 (Definitions for pt 12)

Clause 5 omits the definition for operational work as this definition is now contained in the Red Tape Reduction Act.

Clause 6 Amendment of s 32 (Definitions for pt 13)

Clause 6 amends the definition for environmental impact statement (EIS) process and includes a definition for the new impact assessment report (IAR) process. This amendment is a consequence of changes in the Act and to enable the IAR process to be considered for accreditation as part of the assessment bilateral agreement between the Queensland and Commonwealth governments.

Clause 7 Amendment of s 33 (Application for pt 13)

Clause 7 amends the reference to EIS process to be a reference to the EIS process or the IAR process for the purposes of an assessment under the bilateral agreement.

Clause 8 Amendment of s 34 (Coordinator-General's public notification about terms of reference and EIS)

Clause 8 omits the heading as it only relates to public notification requirements for the EIS (and not IAR) and replaces with a new general heading 'Requirements for public notification'. A new s 34(1) (1A) specifies public notification information requirements where public notification of the EIS terms of reference, a draft EIS and additional information, a draft IAR public notification and public notification of a revised draft IAR. References to specific sections that only relate to EIS public notification requirements are now removed and replaced with the more general term 'the public notification' so as to cover the new IAR.

This amendment is a consequence of changes in the SDPWO Act and to enable the IAR process to be considered for accreditation as part of the assessment bilateral agreement between the Queensland and Commonwealth governments.

Clause 9 Amendment of s 35 (Other matters about EIS)

Clause 9 specifies that that the EIS is subject to the requirements of schedule 1. The minimum requirements for a submission period is omitted from this section and inserted in a new s 35A. While the IAR is not required to adhere to the processes in schedule 1, this does not exclude a future amendment to the bilateral assessment agreement or the proposed bilateral approvals agreement specifying that the requirements of schedule 1 be followed.

Clause 10 Insertion of new s 35A

Clause 10 inserts a new s 35A that sets the submission period for the draft EIS or draft IAR.

Clause 11 Amendment of s 36 (Coordinator-General's report)

Clause 11 updates this section to include references to both the EIS and the new IAR process. This amendment is a consequence of changes in the SDPWO Act and to enable the IAR process to be considered for accreditation as part of the assessment bilateral agreement between the Queensland and Commonwealth governments.

Clause 12 Amendment of s 37A (Fees)

Clause 12 updates fees payable under the SDPWO Act to include provision for the new part 4A - bilateral project declaration and assessment and approval process for coordinated projects.

Clause 13 Amendment of s 39 (Fees for the Act, part 4 for coordinated projects declared before 4 July 2014)

Clause 13 provides additional transitional provisions to section 197 of the SDPWO Act in relation to fees. The effect of the transitional provisions is that where an EIS has been publically notified prior to the commencement of the Red Tape Reduction amendments (1 October 2014) the schedule 1B fees as in force immediately before 1 October 2014 would still continue to apply. New coordinated project declarations and those projects in the EIS

process that are yet to be publicly notified would be subject to the new schedule 1B fees from 1 October 2014.

Clause 14 Amendment of sch 1 (Matters to be addressed by assessment)

Clause 14 amends the reference to section 35(1) in the schedule 1 heading as a result of the amendments to section 35 in Clause 9.

Clause 15 Amendment of sch 1B (Fees for the Act, part 4)

Clause 15 removes reference to staged EIS and inserts a definition for 'superseded lapse date' which is 18 months following the provision to the proponent of the final terms of reference for an EIS and 18 months following the declaration of an IAR. This clause also replaces the reference to Tables 1-3 and with a reference to Tables 1-5, the revised fees regime.

Table of fees

Clause 15 also inserts new fee tables 1 to 5 for the revised Coordinator-General fees regime.

Table 1 contains the amended coordinated project declaration application fees.

Table 2 contains amended fees for the EIS process under part 4 of the Act and new coordinated project fee points for the submission of the draft EIS and coordinator-General consideration of a revised draft EIS (if applicable).

Table 3 introduces coordinated project fees for the new IAR process. As there are no terms of reference for an IAR there is no corresponding fee point. Fees are payable when the proponent has prepared a draft IAR to the satisfaction of the Coordinator-General and consideration of a revised draft IAR (if applicable).

Tables 4 and 5 specify the fees for Coordinator-General evaluation of changes to a coordinated project and any evaluation of an application for extension of project declaration and Coordinator-General's report lapse dates.

Clause 16 Insertion of new sch 1BA

Clause 16 inserts a new sch 1BA for fees for the new Part 4A of SDPWO Act – Assessment and approval of particular coordinated projects under bilateral agreement. The new sch 1BA includes definitions for the new sch 1BA that cross reference to Part 4A provisions in the SDPWO Act.

Clause 16 also inserts Tables 1 and 2 for the Coordinator-General fees regime for the approval bilateral.

Table 1 provides for the fees for an application for a bilateral project declaration and the assessment and approval process for which a bilateral project declaration has been made.

Table 2 provides the new fees for an amendment application for an environmental approval and a reinstatement request for an environmental approval.

Clause 17 Insertion of new sch 1C

Clause 17 includes:

- Part 1 – Preliminary, includes the definitions for sch 1C and identifies how the schedule operates.
- Part 2 – Amount of Fees, identifies how fees are calculated for:
  - operational work applications
  - the fees for part 4
  - development involving more than one aspect of development
  - pre-lodgement consideration of a proposed SDA application
  - change applications.
- Part 3 – Paying and adjusting fees, states when fees are payable and that fees and adjusted fees must be published on the Department of State Development, Infrastructure and Planning's web site.
- Part 4 – Table of fees, stating the fees for development in a State development area if the development scheme for an area regulates that development. This includes new fees for:
  - reconfiguring a lot
  - other development
  - stating a later currency period
  - prior affected development (previously prior affected use)
  - plan for reconfiguration.