

State Development and Public Works Organisation Amendment Regulation 2018

Explanatory notes for SL 2018 No. 213

made under the
State Development and Public Works Organisation Act 1971

General Outline

Short title

The short title of the regulation is the *State Development and Public Works Organisation Amendment Regulation 2018* (the Amendment Regulation).

Authorising law

Sections 173, 108 and 109 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

Policy objectives and the reasons for them

Building Future Schools Fund projects

The Queensland Government is investing in several educational infrastructure projects through the \$808 million Building Future Schools Fund (BFS Fund). The projects involve master planning for inner-city state schools, delivering new state schools in growth areas, investing in existing school assets and making strategic land acquisitions for the future.

BFS Fund projects currently include:

- establishing a new Inner City North State Secondary College (Fortitude Valley location);
- establishing a new Inner City South State Secondary College (Dutton Park location);
- expansion of the West End State School;
- expansion of the Queensland Academy for Science, Mathematics and Technology;
- expansion of the Kelvin Grove State College Ballet Academy;
- master planning to guide infrastructure improvements to 35 Inner Brisbane state schools;
- and
- delivering six new schools in new and growing communities across Queensland.

The Department of Education (DoE) is responsible for the projects, which are required to be delivered within very tight timeframes. For example, the Inner City South State Secondary College is a new school to be opened for the start of the 2021 school year.

To allow DoE to deliver the projects within the required timeframes, DoE has requested that the Coordinator-General facilitate the project using various functions and powers of the Coordinator-General. These functions and powers include, but are not limited to, land acquisition and road closures. The amendments proposed to the *State Development and Public Works Organisation Regulation 2010* (Regulation) will enable the Coordinator-General functions and powers.

To date, DoE has requested use of the Coordinator-General's powers in connection with two projects forming part of the BFS Fund; the Inner City South State Secondary College and expansion of the West End State School. However, DoE have also expressed an interest in use of the Coordinator-General's powers in connection with all projects included under the BFS Fund. On this basis, the proposed amendment regulation seeks to amend the Regulation to ensure the Coordinator-General can undertake certain works in connection with all projects under the BFS Fund.

Rookwood Weir project

On 6 May 2011, the Lower Fitzroy River Infrastructure Project (the project) was declared a Coordinated Project under the SDPWO Act. One of the key components of the project is the proposal for construction of the Rookwood Weir. The project will address the potential demands from urban populations, industry and agriculture within the Gladstone and Rockhampton regions and along the Capricorn coast to secure future water supply and improve water security in the short to medium term.

In February 2017, the Honourable Josh Frydenberg MP, as Minister for the Environment and Energy, approved the project under the *Environment Protection and Biodiversity Conversation Act 1999* (Cwlth), subject to conditions.

Construction of the Rookwood Weir is proposed to commence in 2019, with targeted completion in 2021 and wet commissioning in 2022. Construction is likely to require a peak workforce of approximately 60 people for 12 months and is anticipated to be staged in response to demand triggers.

To allow the project proponent Sunwater Limited (Sunwater) to undertake investigations and works in relation to the construction of the project, Sunwater has requested the use of various powers of the Coordinator-General. These powers include, but are not limited to, those which relate to acquisition, land access and road closures. The proposed amendment to the Regulation is required to authorise the use of these powers. The Department of Natural Resources, Mines and Energy (DNRME) has been consulted on Sunwater's request to the Coordinator-General for assistance. DNRME has not raised any concerns with the Coordinator-General providing assistance to Sunwater.

Achievement of policy objectives

Building Future School Fund projects

The objective of the Amendment Regulation is to create a new section within the Regulation that directs the Coordinator-General to undertake certain works, in accordance with sections 108 and 109 of the SDPWO Act.

It is intended that the Coordinator-General will be able to exercise the Coordinator-General's functions and powers to undertake works to facilitate projects included in the BFS Fund. Functions and powers that will be used are expected to include securing tenure, access to land, rearrangement and closure of roads.

Rookwood Weir project

The objective of the Amendment Regulation is to create a new section within the Regulation that directs the Coordinator-General to undertake certain works, in accordance with sections 108 and 109 of the SDPWO Act.

Following commencement of the Amendment Regulation, the Coordinator-General's functions and powers will be used to undertake works for the purpose of facilitating the Rookwood Weir. Functions and powers that will be used are expected to include securing tenure, including through land acquisition, access to land, rearrangement and closure of roads.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the primary objectives of the SDPWO Act and the Regulation.

The Coordinator-General's functions and powers under the SDPWO Act are intended to facilitate large-scale and complex projects while ensuring their environmental and social impacts are properly managed.

The Amendment Regulation is also consistent with Part 6, Division 4 (Undertaking of works by Coordinator-General) of the SDPWO Act. Section 108 within Division 4 enables the Coordinator-General to recommend to the Minister that particular works be undertaken by the Coordinator-General, and if the Minister approves of the recommendation, to submit the same to Governor in Council for approval. Section 109 within Division 4 states that a regulation may direct the Coordinator-General or other person to undertake works (following consideration and approval of the regulation by the Governor in Council).

This has been done previously for projects such as the Gold Coast University Hospital, the Gold Coast Rapid Transit Project, Griffith University Facilities Project and drought contingency projects.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Building Future Schools Fund projects

There are no alternative ways of achieving the policy objectives. The alternative of not making subordinate legislation has been considered and is not being adopted.

DoE will not be able to deliver the BFS Fund projects within the required timeframes without the use of the Coordinator-General's functions and powers under the SDPWO Act and the Amendment Regulation.

Rookwood Weir project

There are no alternative ways of achieving the policy objectives. The alternative of not making subordinate legislation has been considered and is not being adopted.

Sunwater will not be able to deliver the Rookwood Weir project within the required timeframe without the use of the Coordinator-General's functions and powers under the SDPWO Act and the Amendment Regulation.

Benefits and costs of implementation

Building Future School Fund projects

The government will not incur costs as a result of the Amendment Regulation being made and will enable the required timeframes for delivery of the projects by DoE to be achieved through the use of the Coordinator-General's powers. The BFS Fund will provide additional investment in educational infrastructure for the benefit of Queensland communities.

Rookwood Weir project

The government will not incur costs as a result of the Amendment Regulation being made and will enable the required timeframes for delivery of the projects by Sunwater to be achieved through the use of the Coordinator-General's powers. Rookwood Weir will contribute to reliable water supply to meet the needs of urban populations, industry and agriculture in central Queensland.

Consistency with fundamental legislative principles

Building Future School Fund projects

The Amendment Regulation is consistent with fundamental legislative principles.

The Amendment Regulation is not a creation of new legislation, but a direction to use existing powers under SPDWO Act which are intended to facilitate projects of this nature and have protections to landowners to afford natural justice and compensation.

Rookwood Weir project

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Consultation

Building Future School Fund projects

DoE has carried out consultation in connection with BFS Fund projects, in particular the Inner City South State Secondary College and West End State School projects and intends to continue to consult with the community as required.

Existing legislated landowner protections also continue to apply to the use of the Coordinator-General's powers in accordance with the SDPWO Act and the *Acquisition of Land Act 1967*. For example, statutory provisions relating to notice periods for entry to land and entitlements to compensation for any damage as a result of entry.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission was also consulted under the *Queensland Government Guide to Better Regulation* (the guidelines) to determine if further regulatory impact assessment was required. OBPR advised it considers the proposed amendment to the Regulation relates to the internal management of the public sector, where a function is moved between departments (i.e. it is a function the Department of Education would have undertaken anyway, albeit in a longer timeframe). Given this, OBPR concluded the proposal appeared unlikely to benefit from further regulatory impact analysis under the guidelines.

Rookwood Weir project

The Office of the Coordinator-General (OCG) has consulted with Sunwater regarding the use of Coordinator-General powers to undertake investigations and works in relation to the construction of the Rookwood Weir project. The Department of Natural Resources, Mines and Energy (DNRME) has been consulted on Sunwater's request to the Coordinator-General for assistance. DNRME have not raised any concerns with the Coordinator-General providing assistance to Sunwater.

The Rookwood Weir Project has also undergone an extensive impact assessment process, including public consultation on impacts, a Coordinator-General Evaluation Report imposing conditions, and a Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* approval imposing conditions.

As part of the assessments:

- there has been consultation with all the 52 directly affected landholders;
- the Coordinator-General, in assessing the Environmental Impact Statement (EIS), considered the proponents had undertaken well planned and extensive stakeholder consultation and made appropriate commitments to mitigate and manage social impacts. The Coordinator-General imposed a condition for the proponents to produce an annual Social Impact Management Report (SIMR) for the first five years. The SIMR will report on implementation of the commitments and the outcomes achieved to mitigate and manage social impacts, and will be publicly available; and
- the project, which is forecast to commence its construction phase in November 2019 and be completed by 2021, has not changed since the development of the EIS. OCG does not anticipate any additional impact to landowners than those assessed in the EIS.

Furthermore, existing legislated landowner protections will continue to apply to the use of the Coordinator-General's powers in accordance with the SDPWO Act and the *Acquisition of Land Act 1967*. For example, statutory provisions relating to notice periods for entry to land and entitlements to compensation for any damage as a result of entry.

OBPR was also consulted under the guidelines to determine if further regulatory impact assessment was required regarding the proposed amendment to the Regulation for Rookwood Weir.

OBPR considers, given the information provided by OCG, that the impacts on directly affected landholders have been assessed, strategies to manage these impacts have been developed and landholders have had, and will continue to have, opportunities to communicate their concerns to the project proponents. Therefore, OBPR considers further regulatory impact analysis in the form of a Regulatory Impact Statement would not be beneficial at this stage.