Queensland

STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT ACT 1999

Act No. 32 of 1999

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TABLE OF PROVISIONS

Queensland

State Development and Public Works Organisation Amendment Act 1999

Act No. 32 of 1999

An Act to amend the *State Development and Public Works Organization Act 1971*

[Assented to 16 June 1999]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *State Development and Public Works Organisation Amendment Act 1999*.

Act amended

2. This Act amends the *State Development and Public Works Organization Act 1971.*

Amendment of s 5 (Meaning of terms)

3.(1) Section 5, heading—

omit, insert—

'**Definitions**'.

(2) Section 5, definition **"environmental effects"**—

omit.

(3) Section 5—

insert—

' **"environment"** includes—

(a) ecosystems and their constituent parts, including people and communities; and

(b) all natural and physical resources; and

(c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and

(d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

"environmental effects" means the effects of development on the environment, whether beneficial or detrimental.'.

Amendment of s 29 (Supervision of environment)

4. Section 29—

renumber as section 29A.

Insertion of new pt 4, div 1

5. In part 4, before section 29A—

insert—

'***Division 1—Preliminary***

'**Definitions for pt 4**

'**29.** In this part—

"assessment manager", for an application, means the assessment manager under the *Integrated Planning Act 1997*.

"development approval" means a development approval under the *Integrated Planning Act 1997*.

"EIS" means an environmental impact statement.

"IDAS" see *Integrated Planning Act 1997*, schedule 10.

"properly made submission", for an EIS, means a submission that—

(a) is made to the coordinator-general in writing; and

(b) is received on or before the last day of the submission period; and

(c) is signed by each person who made the submission; and

(d) states the name and address of each person who made the submission; and

(e) states the grounds of the submission and the facts and circumstances relied on in support of the grounds.

"proponent" means the person who proposes a significant project.

"significant project" means a project declared under section 29B to be a significant project.

"submission period", for a submission about an EIS, see section 29I(1)(d).'.

Amendment of s 29A (Supervision of environment)

6. Section 29A—

insert—

'**(3)** Subsection (2) does not apply to a significant project.

'**(4)** Subsections (2) and (3) and this subsection expire when the

Integrated Planning Act 1997, section 6.1.40 expires.[1]'.

Insertion of new pt 4, divs 2–6

7. After section 29A—

insert—

'***Division 2—Significant project***

'**Declaration of significant project**

'**29B.(1)** The coordinator-general may declare a project to be a significant project for which an EIS is required.

'**(2)** The declaration must be made by gazette notice.

'**(3)** If the project involves development that requires an application for a a development approval, the coordinator-general must give a copy of the gazette notice to the person who is, or would be, the assessment manager for the application.

'**(4)** If the project involves mining, the coordinator-general must give a copy of the gazette notice to the Minister administering the *Mineral Resources Act 1989.*

'**Matters coordinator-general considers before making declaration**

'**29C.** In considering whether the project should be declared a significant project, the coordinator-general must have regard to 1 or more of the following—

(a) detailed information about the project given by the proponent in an initial advice statement;

(b) relevant planning schemes or policy frameworks, including those of a relevant local government or of the State or the Commonwealth;

(c) the project's potential effect on relevant infrastructure;

1 The *Integrated Planning Act 1997*, section 6.1.40 expires on 30 March 2000.

(d) the employment opportunities that will be provided by the project;

(e) the potential environmental effects of the project;

(f) the complexity of local, State and Commonwealth requirements for the project;

(g) the level of investment necessary for the proponent to carry out the project;

(h) the strategic significance of the project to the locality, region or the State.

'**Application of divs 3–6**

'**29D.** Divisions 3 to 6 apply only if the project is declared, under section 29B, to be a significant project.

'***Division 3—EIS process***

'**Notice of requirement for EIS and of draft terms of reference**

'**29E.** The coordinator-general must—

(a) advise the proponent that an EIS is required for the project; and

(b) publicly notify—

(i) that an EIS is required for the project; and

(ii) where copies of the draft terms of reference may be obtained; and

(iii) that comments on the draft terms of reference are invited.

'**Finalising terms of reference**

'**29F.** When finalising the terms of reference for the EIS, the coordinator-general must have regard to comments received.

'**Coordinator-general may seek information to assist preparation of EIS**

'**29G.(1)** The coordinator-general may refer details of the project, the initial advice statement and the terms of reference, to any entity the coordinator-general considers may be able to give the coordinator-general comment and information that will help in preparing the EIS.

'**(2)** If the entity wants the proponent to consider its response when preparing the EIS, the entity must give its response to the coordinator-general within the reasonable time stated by the coordinator-general for giving the response (the **"response time"**).

'**(3)** If the entity does not give its response within the response time, the proponent may prepare the EIS as if the entity had no comment on the project.

'**Preparation of EIS**

'**29H.** The EIS prepared by the proponent must address the terms of reference to the satisfaction of the coordinator-general.

'**Public notification of EIS**

'**29I.(1)** After the proponent has prepared the EIS to the satisfaction of the coordinator-general, the proponent must publicly notify the following—

(a) where a copy of the EIS is available for inspection;

(b) where a copy of the EIS may be obtained at a stated reasonable cost;

(c) that submissions may be made to the coordinator-general about the EIS;

(d) the period (the **"submission period"**), set by the coordinator-general, during which a submission may be made.

'**(2)** For subsection (1)(b), the stated reasonable cost must not be more than the actual cost of producing the copy.

'**Making submissions on EIS**

'**29J.(1)** During the submission period, any person may make a submission to the coordinator-general about the EIS.

'**(2)** The coordinator-general must accept properly made submissions.

'**(3)** However, the coordinator-general may accept a written submission even if the submission is not a properly made submission.

'**(4)** If the coordinator-general has accepted a submission, the person who made the submission may, by written notice given to the coordinator-general—

(a) during the submission period—amend the submission; or

(b) at any time before a decision about the EIS is made—withdraw the submission.

'**Coordinator-general evaluates EIS, submissions, other material and prepares report**

'**29K.(1)** The coordinator-general must, after the end of the submission period, consider the EIS, all properly made submissions and other submissions accepted by the coordinator-general about the EIS and any other material the coordinator-general considers is relevant to the project.

'**(2)** The coordinator-general may ask the proponent for additional information or comment about the EIS and the project.

'**(3)** The coordinator-general must prepare a report evaluating the EIS.

'**(4)** After completing the report, the coordinator-general must give a copy of the report to the proponent.

'***Division 4—Relationship with Integrated Planning Act 1997***

'**Application of div 4**

'**29L.** This division applies if the project involves development requiring an application for a development approval.

‘**Applications for material change of use or requiring impact assessment**

‘**29M.(1)** To the extent the application is for a material change of use, or requires impact assessment, under the *Integrated Planning Act 1997*, or both—

(a) the information and referral stage and the notification stage of IDAS do not apply to the application; and

(b) there are no referral agencies, under the *Integrated Planning Act 1997*, for the application; and

(c) a properly made submission about the EIS is taken to be a properly made submission about the application under IDAS; and

(d) despite paragraph (b), the coordinator-general’s report is taken to be a concurrence agency’s response for the application under IDAS.

‘**(2)** Subsection (1)(c) does not apply if the application involves only a material change of use requiring code assessment under the *Integrated Planning Act 1997.*

‘**When the decision stage for the project starts under IDAS**

‘**29N.** Despite the *Integrated Planning Act 1997*, section 3.5.1, the decision stage of IDAS for the application does not start until—

(a) if the coordinator-general is not the assessment manager for the application—the coordinator-general gives the assessment manager a copy of the coordinator-general’s report; or

(b) if the coordinator-general is the assessment manager for the application—the coordinator-general gives the proponent a copy of the report.

‘**Application of coordinator-general’s report to IDAS**

‘**29O.(1)** The coordinator-general’s report may state for the assessment manager 1 or more of the following—

(a) the conditions that must attach to any development approval;

(b) that any development approval must be for part only of the development;

(c) that any approval must be a preliminary approval only.

'(2) Alternatively, the report must state for the assessment manager—

(a) that there are no conditions or requirements for the project; or

(b) that the application for a development approval must be refused.

'**(3)** The report may only state the application must be refused if the coordinator-general is satisfied there are environmental effects in relation to the development that can not be addressed adequately.

'**(4)** The report must give reasons for the statements mentioned in subsections (1) and (2).

'**Assessment manager to be given copy of coordinator-general's report**

'**29P.** If the coordinator-general is not the assessment manager for the application, the coordinator-general must give a copy of the report to the assessment manager for the application.

'***Division 5—Relationship with Mineral Resources Act 1989***

'**Definitions for div 5**

'**29Q.** In this division—

"application" means the application made under the *Mineral Resources Act 1989*, section 245, for the grant of a mining lease for the project.

"certificate of application" means the certificate of application that has, or could be issued, for the application under the *Mineral Resources Act 1989*, section 252.

"environmental management overview strategy", for the application for the project, means an environmental management overview strategy mentioned in the *Mineral Resources Act 1989*, section 245(1)(p), that is prepared for the project as part of an EIS under this Act.

"Minister" means the Minister administering the *Mineral Resources Act*

1989.

"statement of proposals", for the application for the project, means a statement mentioned in the *Mineral Resources Act 1989*, section 245(1)(o)(iii)(B), that is prepared for the project as part of an EIS under this Act.

'**Process if certificate of application has not been issued**

'**29R.(1)** This section applies if a certificate of application has not been issued at the time the project is declared to be a significant project.

'**(2)** Despite the *Mineral Resources Act 1989*, section 245, the mining registrar must accept a statement of proposals or environmental management overview strategy if the coordinator-general gives the registrar written notice stating that the statement or strategy is sufficient for the application under that section.

'**(3)** Despite the *Mineral Resources Act 1989*, section 252(2)(c), the last objection day for the application for the project is the day publicly notified by the coordinator-general.

'**(4)** The day publicly notified under subsection (3) must be a day at least 28 days after the issue of the certificate of application.

'**Process if certificate of application has been issued**

'**29S.(1)** This section applies if a certificate of application has been issued before the project is declared to be a significant project.

'**(2)** Despite the issue of the certificate stating the last objection day for the application as the day endorsed by the mining registrar on the certificate, the last objection day is the day the coordinator-general publicly notifies as the last objection day.

'**(3)** For subsection (2), the coordinator-general must publicly notify a day at least 28 days after the issue of the certificate as the last objection day.

'**Application of coordinator-general's report to issue of mining lease**

'**29T.(1)** The coordinator-general's report may recommend to the

Minister the conditions that must be attached to any mining lease issued under the *Mineral Resources Act 1989* for the project.

'**(2)** Alternatively, the report must recommend that there are no conditions to be attached to any mining lease issued under the *Mineral Resources Act 1989* for the project.

'**(3)** The report must give reasons for the coordinator-general's recommendations.

'**Minister to be given copy of coordinator-general's report**

'**29U.** The coordinator-general must give a copy of the coordinator-general's report to the Minister.

'**Coordinator-general's report is a result of Minister's study for s 268**

'**29V.** For the *Mineral Resources Act 1989*, section 268(9), the coordinator-general's report is taken to be the result of a study requested by the Minister into the environmental impact of granting the application.

'***Division 6—Relationship with other legislation***

'**Application of div 6**

'**29W.** This division applies if an Act other than the *Integrated Planning Act 1997* or the *Mineral Resources Act 1989* requires the preparation of an EIS, or a similar statement to address environmental effects, for the project.

'**EIS under this part is EIS for other Act**

'**29X.** The EIS prepared under this part for the project is taken to be a statement that satisfies the requirement of the other Act.

'**Application of coordinator-general's report to other approval process**

'**29Y.(1)** The coordinator-general's report may recommend to the person who would give approval to the project under the other Act the conditions

that must be attached to any approval given under the other Act.

'**(2)** Alternatively, the report must recommend that there are no conditions to be attached to any approval given under the other Act.

'**(3)** The report must give reasons for the coordinator-general's recommendations.

'**Person approving project to be given copy of coordinator-general's report**

'**29Z.** The coordinator-general must give a copy of the coordinator-general's report to the person required under the other Act to approve of the project.

'**Coordinator-general's report must be taken into consideration**

'**29ZA.** The coordinator-general's report must be taken into consideration by the person required under the other Act to approve of the project.'.

Amendment of s 55 (User of land under approved development scheme)

8.(1) Section 55, heading, '**User**'—

omit, insert—

'**Use**'.

(2) Section 55, 'user'—

omit, insert—

'use'.

(3) Section 55—

insert—

'**(2)** If an approved development scheme states a particular use for a particular parcel of land in a State development area, a person must not use the land for another use.

Maximum penalty—1 665 penalty units

'**(3)** An approved development scheme may impose conditions on a particular use for a particular parcel of land in a State development area.

'**(4)** If an approved development scheme does not state a particular use for a particular parcel of land in a State development area, a person must not use the land for a use unless—

(a) the use is one contemplated by the approved development scheme; and

(b) the coordinator-general gives written approval for the use.

Maximum penalty—1 665 penalty units

'**(5)** The coordinator-general may impose conditions on a use approved under subsection (4).

'**(6)** A condition imposed under subsection (3) or (5) must—

(a) be relevant to, but not an unreasonable imposition on, the use of the land; or

(b) be reasonably required for the use of the land.

'**(7)** A person using land in a State development area must comply with any condition imposed under subsection (3) or (5) on the use of the land.

Maximum penalty for subsection (7)—1 665 penalty units'.

Insertion of new ss 55A–55J

9. After section 55—

insert—

'**Continued existing lawful use not an offence**

'**55A.(1)** This section applies if—

(a) immediately before an approved development scheme applies to land, the land is being lawfully used by a person; and

(b) after the approved development scheme applies to the land, the person continues the use.

'**(2)** Section 55(2) and (4) does not apply to the continuation of the use of the land by the person or the person's successors in title to the land.

'***Division 1A—Compensation***

'***Subdivision 1—Preliminary***

'**Definitions for div 1A**

'**55B.** In this division—

"owner", of an interest in land, means the owner of the interest at the time an approved development scheme first applied to the land.

'***Subdivision 2—Entitlement to compensation***

'**Compensation**

'**55C.(1)** An owner of an interest in land is entitled to be paid reasonable compensation by the coordinator-general if—

(a) immediately before an approved development scheme started applying to the land there was an authorised use, alternative lawful use or approved use for the land; and

(b) after the approved development scheme started applying to the land, using the land for the authorised use, alternative lawful use or approved use would be an offence under section 55; and

(c) the application of the approved development scheme to the land reduces the value of the interest; and

(d) the owner has asked the coordinator-general to approve of the authorised use, alternative lawful use or approved use and the coordinator-general refuses the request.

'**(2)** In this section—

"authorised use", for land, means a use of the land authorised under a development approval, or an instrument taken to be a development approval under the *Integrated Planning Act 1997*.

"alternative lawful use", for land, means a lawful as of right use for which the owner of the land can use the land.

"approved use", for land, means a use of the land approved under section 55(4).

'**Limitations on compensation under s 55C**

'**55D.** Despite section 55C, compensation is not payable—

(a) for a matter under this division if compensation has already been paid for the matter to a previous owner of the interest in land; or

(b) for anything done in contravention of this Act.

'***Subdivision 3—Claims for, and payment of, compensation***

'**Time limit for claiming compensation**

'**55E.** A claim for compensation under section 55C must be made to the coordinator-general within 3 years after the day the approved development scheme came into effect.

'**Deciding claims for compensation**

'**55F.(1)** The coordinator-general must decide the claim for compensation within 60 business days after the day the claim is made.

'**(2)** In deciding the claim for compensation, the coordinator-general must—

(a) grant all of the claim; or

(b) grant part of the claim and reject the rest of the claim; or

(c) refuse all of the claim.

'**(3)** However, the coordinator-general may decide the claim by giving a notice of intention to resume the interest in the land under section 53.

'**Notification of decision**

'**55G.(1)** The coordinator-general must, within 10 business days after the day the claim is decided, give the claimant written notice of the decision.

'**(2)** The notice must state the following—

(a) the decision, and the reasons for it;

(b) if the decision is to pay compensation, the amount of compensation to be paid;

(c) the claimant may appeal against the decision to the Planning and Environment Court;

(d) how to appeal.

'**Calculating reasonable compensation involving changes**

'**55H.(1)** For section 55C, reasonable compensation is the difference between the market values, appropriately adjusted having regard to the following matters, to the extent they are relevant—

(a) any limitations or conditions that may reasonably have applied to the use of the land immediately before the approved development scheme applied to the land;

(b) any benefit accruing to the land from the approved development scheme coming into effect, including but not limited to the likelihood of improved amenity in the locality of the land;

(c) if the owner owns land adjacent to the interest in land, any benefit accruing to the adjacent land because of—

(i) the coming into effect of the approved development scheme; or

(ii) the construction of, or improvement to, infrastructure on the adjacent land under the approved development scheme (other than infrastructure funded by the owner) before the claim for compensation was made;

(d) the effect of any other changes to the approved development scheme made since the approved development scheme applied to the land;

(e) if the coordinator-general's approval, under section 55(4)(b), to use the land is subject to conditions, the effect of the conditions on the use.

'**(2)** Despite subsection (1), if land for which compensation is claimed has, since the day the approved development scheme came into effect, become or ceased to be separate from other land, the amount of reasonable compensation must not be increased because the land has become, or ceased to be, separate from other land.

'**(3)** In this section—

"difference between the market values" means the difference between the market value of the interest in land immediately before the approved development scheme came into effect and the market value of the interest immediately after the approved development scheme came into effect.

'**When compensation is payable**

'**55I.** If compensation is payable under section 55C, the compensation must be paid within 30 business days after—

(a) the last day an appeal could be made against the coordinator-general's decision about the payment of compensation; or

(b) if an appeal is made, the day the appeal is decided.

'**Payment of compensation to be recorded on title**

'**55J.(1)** The coordinator-general must give the registrar of titles written notice of the payment of compensation under section 55I.

'**(2)** The notice must be in the form approved by the registrar.

'**(3)** The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.[2]

'***Subdivision 4—Appeals***

[2] *Land Title Act 1994*, section 34 (Other information not part of the freehold land register).

'**Appeals against decisions on compensation claims**

'**55K.(1)** A person who is dissatisfied with the coordinator-general's decision on a claim for compensation may appeal against the decision to the Planning and Environment Court.

'**(2)** An appeal must be started within 20 business days after the day notice of the decision is given to the person.

'**How appeals are started**

'**55L.(1)** An appeal is started by lodging written notice of appeal with the registrar of the court.

'**(2)** The notice of appeal must state the grounds of the appeal.

'**(3)** The person starting the appeal must also comply with the rules of the court applying to the appeal.

'**(4)** However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

'**Hearing procedures**

'**55M.(1)** The procedure for hearing an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with the judge constituting the court.

'**(2)** An appeal is by way of rehearing, unaffected by the decision appealed against.

'**Appeal decision**

'**55N.(1)** In deciding an appeal the court may—

(a) confirm the decision appealed against; or

(b) change the decision appealed against; or

(c) set aside the decision appealed against and make a decision replacing the decision set aside.

'**(2)** If the court acts under subsection (1)(b) or (c), the court's decision is

taken, for this Act (other than this decision) to be the decision of the coordinator-general.'.

Amendment of s 70 (Project boards)

10. Section 70(3B)—

omit.

Insertion of new s 74A

11. After section 74—

insert—

'**Disclosure of interests**

'**74A.(1)** A member must disclose to a meeting of a project board any direct or indirect financial interest the member has in a matter being considered, or about to be considered, by the board if the interest could conflict with the proper performance of the member's duties about the consideration of the matter.

'**(2)** The disclosure must be recorded in the board's minutes and the member must not take part in any vote of the board on the matter but may participate in discussion of the matter.

'**(3)** Subsection (1) does not apply to an interest which the member may have in common with the public.

'**(4)** For this section, a member is taken to have an indirect financial interest in a matter if the member—

(a) is, personally or through a nominee, a member of a company or other body that has a direct financial interest in the matter; or

(b) is in partnership with a person who has a direct financial interest in the matter; or

(c) is employed by a person who has a direct financial interest in the matter unless the employer is a statutory body established for a public purpose; or

(d) has a spouse, or lives in a de facto relationship with a person, who

has a direct financial interest in the matter or an indirect financial interest of the kind described in paragraph (a), (b) or (c); or

(e) is lineally related to a person, or has a brother or sister, who has a direct financial interest in the matter or an indirect financial interest of the kind described in paragraph (a), (b) or (c).'.

Amendment of s 78 (Power of Coordinator-General to take land)

12.(1) Section 78(1), from 'Without limiting' to 'following purposes'—

omit, insert—

'In addition to the power to take or otherwise acquire land under section 53, the coordinator-general may take an estate in fee simple in land for any of the following purposes'.

(2) Section 78(1)—

insert—

'(f) an infrastructure facility that is—

(i) of significance, particularly economically or socially, to Australia, Queensland or the region in which the facility is to be constructed; and

(ii) approved by the Governor in Council, by gazette notice, as having that significance.'.

(3) Section 78—

insert—

'**(1A)** In considering whether the infrastructure facility mentioned in subsection (1)(f) would be of economic or social significance, the potential for the facility to contribute to community wellbeing and economic growth or employment levels must be taken into account.

'**(1B)** In assessing the potential mentioned in subsection (1A), the contribution the infrastructure facility makes to agricultural, industrial, resource or technological development in Australia, Queensland or the region is a relevant consideration.

'**(1C)** Subsection (1)(f) applies even if the taking of land by the

coordinator-general is for conferring rights or interests in the land taken on a person other than the State.

'**(1D)** If the proposed taking of land by the coordinator-general is for conferring rights or interests in the land to be taken on a person other than the State—

(a) the coordinator-general must—

(i) prepare a statement giving reasons why the infrastructure facility was approved under subsection (1)(f); and

(ii) publish a copy of the statement in the gazette; and

(b) the Minister must table the statement in the Legislative Assembly within 3 sitting days after the gazette notice approving the infrastructure facility is published.

'**(1E)** If the taking of land by the coordinator-general is for conferring rights or interests in the land taken on a person other than the State——

(a) the coordinator-general must prepare a statement giving details of the negotiations by the person with the owners of the land to acquire the land by agreement; and

(b) the Minister must table the statement in the Legislative Assembly within 3 sitting days after the taking of the land.

'**(1F)** The process stated in the *Acquisition of Land Act 1967* for the taking of land and the payment of compensation for the land taken applies to all land taken under subsection (1) as if the taking were a taking under that Act by a constructing authority.

'**(1G)** The power to take land under this section for a purpose (the **"primary purpose"**) includes power to take at any time land either for the primary purpose or for any purpose incidental to the carrying out of the primary purpose.'.

(4) Section 78(2), ', in accordance with the *Acquisition of Land Act 1967* and as a constructing authority under that Act,'—

omit.

(5) Section 78(2), after 'less than fee simple'—

insert—

'for any of the purposes stated in subsection (1)'.

(6) Section 78(2B), '*1962*'—

omit, insert—

'*1994*'.

(7) Section 78—

insert—

'**(2C)** The process stated in the *Acquisition of Land Act 1967* for the taking of land granted in fee simple and the payment of compensation for the land taken applies to all land taken under subsection (2) as if the taking were a taking of land held in fee simple under that Act by a constructing authority.'.

(8) Section 78(3), '(2) to (2B)'—

omit, insert—

'(1F) to (2C)'

(9) Section 78—

insert—

'**(4)** To remove any doubt, it is declared that the taking of land under this section is not a taking of land under the *Acquisition of Land Act 1967*, even though the process to be used for the taking of the land and for the payment of compensation for the land taken is the process stated in that Act.

'**(5)** In this section—

"infrastructure facility" includes any of the following—

(a) a road, railway, bridge or other transport facility;

(b) a jetty or port;

(c) an airport, landing strip or spaceport;

(d) an electricity generation, transmission or distribution facility;

(e) a storage, distribution or gathering or other transmission facility for—

(i) oil or gas; or

(ii) derivatives of oil or gas;

(f) a storage or transportation facility for coal, any other mineral or any mineral concentrate;

(g) a water storage facility, pipeline, channel or other water management, distribution or reticulation facility;

(h) a cable, antenna, tower or other communication facility;

(i) infrastructure for health or educational services.'.

Insertion of new ss 78A and 78B

13. After section 78—

insert—

'**Ensuring reasonable steps are taken to acquire land by agreement**

'**78A.(1)** This section applies if a proposed taking of land under section 78 is for conferring rights or interests in the land on a person other than the State.

'**(2)** The coordinator-general must not take the land unless the coordinator-general is satisfied—

(a) reasonable steps have been taken to take the land by agreement; and

(b) the guidelines made for section 121A have been followed; and

(c) if the land being taken contains native title—reasonable steps have been taken to enter into an indigenous land use agreement that provides for the non-extinguishment principle to apply to the taking of the land.

'**(3)** In this section—

"indigenous land use agreement" means an indigenous land use agreement under the *Native Title Act 1993* (Cwlth), section 24BA, 24CA or 24DA.

"non-extinguishment principle" has the same meaning as in the *Native Title Act 1993* (Cwlth), section 238.

'**Relationship with native title legislation**

'**78B.(1)** For the taking of land under section 78(2) and the payment of compensation for the land taken—

(a) the process mentioned in section 78(2C) must be carried out in a way that is consistent with the *Native Title (Queensland) Act 1993* and the *Native Title Act 1993* (Cwlth); and

(b) if the *Native Title (Queensland) Act 1993* or the *Native Title Act 1993* (Cwlth) states a process in relation to the taking or payment that is in addition to the process stated in the *Acquisition of Land Act 1967*, the additional process also applies to the taking or payment; and

(c) the Land and Resources Tribunal is the independent body for the *Native Title Act 1993* (Cwlth), section 24MD(6B).

'**(2)** For a proceeding the tribunal must decide under subsection (1)(c), the tribunal is constituted as a standard panel under the *Land and Resources Tribunal Act 1999*, section 39(2)(a).'.

Insertion of new s 79A

14. After section 79—

insert—

'**Power to use, lease or dispose of land**

'**79A.** The coordinator-general may, to give effect to a purpose mentioned in section 78, do any or all of the following—

(a) lease, or agree to lease, to any person land taken, or proposed to be taken, under section 78;

(b) sign an agreement with any person to carry out, own, operate and maintain any works or development on land taken, or proposed to be taken, under section 78;

(c) sign an agreement with any person in relation to works or development for land taken, or proposed to be taken, under section 78;

(d) sell land taken, or agree to sell land to be taken, under section 78.'.

Insertion of new pt 6, div 6

15. In part 6, after section 91—

insert—

'***Division 6—Investigating potential infrastructure facility***

'**Purpose of div 6**

'**91A.** The purpose of this division is—

(a) to allow persons authorised by the coordinator-general to enter land to investigate the land's potential and suitability for the development of an infrastructure facility mentioned in section 78(1)(f) before the powers under the section are exercised; and

(b) to safeguard the interests of the owner of the land.

'**Definitions for div 6**

'**91B.** In this division—

"associated person", of an investigator, means any of the following—

(a) if the investigator is a corporation—the corporation's chief executive, secretary or directors;

(b) the investigator's employees or partners who are individuals;

(c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the investigator's authority;

(d) employees of an agent or contractor mentioned in paragraph (c);

(e) if a person mentioned in paragraph (c) is a corporation—the corporation's chief executive, secretary, directors or employees.

"investigator" means a person who holds an investigator's authority.

"investigator's authority" means an investigator's authority granted under this division.

"owner", of land, includes a person who to the knowledge of the coordinator-general is an occupier of the land.

'**How to apply for investigator's authority**

'**91C.(1)** This section applies if the person proposing the infrastructure facility can not successfully negotiate entry to the land with the owner.

'**(2)** The person may apply to the coordinator-general for an investigator's authority for the land.

'**(3)** The applicant must give the coordinator-general the following in support of the application—

(a) details of the proposed facility, including the land on which the facility is proposed to be located;

(b) the likely demand for the services associated with the proposed facility;

(c) advice as to how the proposed facility would satisfy an identified need;

(d) details of the applicant's financial and technical capacity to implement the proposed facility;

(e) details of the steps the applicant has taken, or tried to take, to satisfy its obligations under subsection (1);

(f) any other information the coordinator-general considers is necessary to assess the application.

'**(4)** The application must be in writing and state the following information—

(a) the land intended to be entered under the authority;

(b) the purpose for which the authority is sought;

(c) details of the nature of the activities proposed to be conducted on the land;

(d) the period for which the authority is sought.

'**(5)** The coordinator-general must advise the owner—

(a) that an application for an authority has been made for the land; and

(b) the powers a person granted an authority may exercise under this division.

'**Additional information about application**

'**91D.(1)** Before deciding the application, the coordinator-general—

(a) must consult with the owner about the proposed entry to the land; and

(b) may require the applicant to give additional information about the proposed entry.

'**(2)** The coordinator-general may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

'**Granting authority**

'**91E.(1)** The coordinator-general may—

(a) grant an investigator's authority, with or without conditions; or

(b) refuse to grant the authority.

'**(2)** If the coordinator-general refuses to grant the authority, the coordinator-general must give the applicant written reasons for the refusal.

'**(3)** Without limiting subsection (1)(a), a condition may require the lodging of a bond or security deposit with the coordinator-general.

'**(4)** The authority must be only for the part of the land the coordinator-general is satisfied is reasonably necessary for conducting the investigations.

'**Investigator's authority**

'**91F.(1)** The investigator's authority must be in writing stating the following—

(a) the land to which it applies;

(b) the purpose for which it is granted;

(c) when it expires;

(d) any conditions imposed on the authority.

'**(2)** The authority authorises the investigator and associated persons—

(a) to enter and re-enter land the subject of the authority for investigating the land's potential and suitability for the construction of the infrastructure facility; and

(b) to the extent reasonably necessary or convenient for the purpose—

(i) to do anything on the land; or

(ii) to bring anything onto the land; or

(iii) to temporarily leave machinery, equipment or other items on the land.

Examples of things authorised by the authority—

1. To conduct surveys, investigate and take samples.

2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary.

3. To construct temporary access tracks using the land or using materials brought onto the land.

'**(3)** It is declared that—

(a) the grant of the authority is not an indication of a commitment or approval by the State, the coordinator-general or any other person to any proposal, and in particular, does not commit the State to acquiring any land for construction of the infrastructure facility; and

(b) a person is not an employee or agent of the State merely because the person is an investigator.

'**(4)** The investigator or associated person must comply with each condition of the authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

'**What investigator must do before land is entered for the first time**

'**91G.(1)** Before land is entered for the first time under the investigator's authority, the investigator must give a written notice to the owner of the land together with a copy of the authority.

'**(2)** The notice must state the following—

(a) the investigator has been granted the investigator's authority;

(b) the things the investigator and associated persons of the investigator are authorised to do under the authority;

(c) a general outline of the things intended to be done on the land, including the construction of any temporary access track;

(d) the approximate period during which the land is to be entered under the authority;

(e) the rights of the owner under section 91K or 91L for the rectification of, or compensation for, any loss or damage suffered during the investigation;

(f) the grant of the authority is not an indication of a commitment or approval by the State, the coordinator-general or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land for construction of the infrastructure facility.

'**(3)** The investigator or associated person may enter onto land only if—

(a) the owner of the land gives written consent to the entry; or

(b) at least 7 days have passed since the notice was given.

'**Investigator to issue associated person with identification**

'**91H.(1)** Before the investigator allows an associated person to act under the investigator's authority, the investigator must issue the associated person with identification.

Maximum penalty—10 penalty units.

'**(2)** The identification must—

(a) state the names of the investigator and the person to whom the identification is issued; and

(b) indicate that, for this Act, the person is associated with the holder of the authority; and

(c) state the capacity in which the associated person is an associated

person; and

(d) be signed by or for the investigator; and

(e) be signed by or for the associated person; and

(f) state its expiry date.

'**(3)** A person who stops being an associated person of an investigator must return the person's identification issued under subsection (1) to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

'**(4)** Subsections (5) and (6) apply if a person who claims to be, or appears to be, the owner of the land asks an individual who has entered, is entering or is about to enter land under the authority—

(a) for identification; or

(b) about the person's authority to enter the land.

'**(5)** If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the authority.

Maximum penalty—10 penalty units.

'**(6)** If the request is made of an associated person of the investigator, the associated person must immediately state his or her name and show the other person the identification issued to the associated person under subsection (1).

Maximum penalty for subsection (6)—10 penalty units.

'**Pretending to be an investigator etc.**

'**91I.** A person must not pretend—

(a) to be an investigator; or

(b) to be an associated person of an investigator.

Maximum penalty—80 penalty units.

'**Investigator to take care in acting under authority**

'**91J.** The investigator and all associated persons of the investigator—

(a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner; and

(b) may do anything necessary or desirable to minimise the damage or inconvenience.

'**Rectification of damage by investigator**

'**91K.(1)** The owner of the land may, by written notice given to the investigator, require the investigator, within a reasonable time after the investigator has finished investigating the land under the authority, to rectify loss or damage suffered by the owner arising out of—

(a) the entry onto the land; or

(b) any use made of the land; or

(c) anything brought onto the land; or

(d) anything done or left on the land in connection with the investigator's authority; or

'**(2)** If the loss or damage mentioned in subsection (1) is not rectified or can not be rectified, the owner of the land may, by written notice given to the investigator, claim compensation for the loss or damage not rectified.

'**(3)** A notice under subsection (1) or (2) must be given—

(a) within 1 year after the loss or damage happened; or

(b) at a later time allowed by the Land Court.

'**(4)** The claim for compensation may be made—

(a) whether or not the act or omission giving rise to the claim was authorised under the authority; and

(b) whether or not the investigator took steps to prevent the loss or damage; and

(c) even though the loss or damage was caused, or contributed to, by an associated person.

‘**Compensation payable by investigator**

‘**91L.(1)** The investigator must compensate the owner of the land for the loss or damage the owner has suffered and that has not been rectified.

‘**(2)** The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree on the amount within a reasonable time—the amount decided by the Land Court.

‘**Release of bond or security deposit**

‘**91M.(1)** This section applies if, under a condition of an investigator’s authority, a bond or security deposit is required to be lodged with the coordinator-general.

‘**(2)** The coordinator-general may keep the bond or security deposit until—

(a) if the owner of the land does not give a notice of damage within the prescribed time—1 year after the investigator’s authority expires; or

(b) if the owner of the land gives a notice of damage within the prescribed time and the coordinator-general is satisfied the damage or loss has been repaired or rectified or compensation for the damage or loss has been paid to the owner—the damage or loss has been repaired or rectified or the compensation has been paid.

‘**(3)** If the owner of the land gives a notice of damage within the prescribed time and the coordinator-general is satisfied the damage or loss has not been repaired or rectified or compensation for the damage or loss has not been paid to the owner the coordinator-general—

(a) may use the bond or security deposit to repair or rectify the damage or loss or pay compensation to the owner; and

(b) must pay the balance, if any, to the investigator.

‘**(4)** In this section—

“notice of damage” means a notice under section 91K.

"prescribed time", for giving a notice of damage arising out of the entry onto land by an investigator, means 1 year after the investigator was last on the land.'.

Insertion of new s 121A

16. After section 121—

insert—

'**Coordinator-general must make guidelines**

'**121A.(1)** The coordinator-general must make guidelines for the processes to be followed by proponents and the coordinator-general for—

(a) taking land under section 78 for infrastructure facilities; and

(b) dealing in the way mentioned in section 79A with the land taken; and

(c) investigating, under part 6, division 6, the potential of land for infrastructure facilities.

'**(2)** The guidelines are statutory instruments under the *Statutory Instruments Act 1992.*

'**(3)** A guideline made under subsection (1)(a) must provide for the following—

(a) the giving of notice, including public notice, about the proposed acquisition of the land;

(b) that the notice must state that it is intended to reach agreement through consultation and negotiation to acquire the land, but that if agreement can not be reached, the land may be compulsorily taken;

(c) notification of the day for starting consultation and negotiation for the proposed taking of the land, which must be at least 1 month after the notice is given;

(d) a consultation and negotiation period of at least 4 months;

(e) that the notice must state the day the consultation and negotiation period ends;

(f) that there must be at least 2 months of consultation and negotiation after the statement has been published in the gazette under section 78(1D)(a)(ii);

(g) that a notice of intention to resume the land by compulsory acquisition must not be given until 2 months after the consultation and negotiation period starts;

(h) that the holder of an interest in the land proposed to be acquired may lodge an objection against the acquisition at any time after 2 months after the consultation and negotiation period starts and before the consultation and negotiation period ends.

'**(4)** Subject to subsection (3), a guideline made under subsection (1)(a) must be formulated having regard to the procedures and underlying principles of the *Mineral Resources Act 1989*, part 17 and in particular, the obligation for consultation and negotiation.'.

Insertion of new pt 9

17. After section 122—

insert—

'PART 9—TRANSITIONAL PROVISIONS FOR THE STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT ACT 1999

'**Studies being prepared are taken to be EISs for this part**

'**123.(1)** This section applies if—

(a) a project involves—

(i) development requiring an application for a development approval; or

(ii) mining; and

(b) at the commencement of section 29B, the proponent is preparing a study under this Act about the environmental effects of the project; and

(c) the coordinator-general, under section 29B, declares the project to be a significant project.

'**(2)** The proponent may complete the study as if the *State Development and Public Works Organisation Amendment Act 1999* had not commenced.

'**(3)** The study, when completed and given to the coordinator-general, is taken to be an EIS prepared under part 4.

'**(4)** Any written submission made about the study is taken to be a properly made submission for an application for the project if the application—

(a) is for a development approval requiring impact assessment under the *Integrated Planning Act 1997;* or

(b) is for an approval under an Act other than the *Integrated Planning Act 1997* and the application requires public notification.

'**(5)** Words used in this section that are defined in part 4 have the same meaning in this section.'.

SCHEDULE

MINOR AMENDMENTS

section 2

1. Section 1, *'Organization'*—

omit, insert—

'*Organisation*'.

2. Section 2—

omit.