State Development and Public Works Organisation and Other Legislation Amendment Bill 2005

Explanatory Notes

Title of the Bill

State Development and Public Works Organisation and Other Legislation Amendment Bill 2005

Objectives of the Bill

The *State Development and Public Works Organisation Act 1971* ('the SDPWO Act') provides for 'State planning and development through a coordinated system of public works organisation, for environmental coordination, and for related purposes.'

To support this purpose, the Bill seeks to:

- Update and clarify certain provisions about environmental coordination for significant projects and the framework by which the Coordinator-General ('the CG') evaluates the environmental effect of those projects. The proposed amendments put in place mechanisms to ensure the timely completion of environmental assessments and ensure that construction of projects proceeds soon after the CG completes his or her evaluation.
- Assist planning for the provision of linear infrastructure across the State by amendments to the existing State development area provisions to provide that the CG can take land for multi-user infrastructure corridors.
- Improve the environmental assessment of significant projects by responding to changes proposed by proponents and providing for the timely completion of environmental impact statements.
- Ensure that a whole of government response is provided only to those projects of such significance to the State that they warrant facilitation through the significant project Environmental Impact

Statement ('EIS') framework. Projects not facilitated through the significant project EIS framework will be facilitated through normal development assessment processes under the *Integrated Planning Act 1997* and other legislation.

- Ensure that proponents commence a use approved under an approved Development Scheme for a State development area within four years of the approval being given, including existing approvals not yet acted upon in the Gladstone State Development Area.

- Provide links to *Petroleum and Gas (Production and Safety) Act 2004* ('the P&G Act') and the *Environmental Protection Act 1994* ('the EP Act') to enable the CG to coordinate the assessment and facilitation of significant projects which require leases or licences under the P&G Act and/or environmental assessment under the EP Act. Some minor amendments are also required to the *Petroleum and Gas (Production and Safety) Act 2004* as a consequence of the amendments to the SDPWO Act.

Reasons for the Bill

On 28 February 2005, the Honourable the Premier and the Lord Mayor of Brisbane signed a Memorandum of Understanding about the North-South Bypass Tunnel ('NSBT') project which contemplated, among other things, the Queensland Government making legislative amendments to the SDPWO Act to provide for changes to the EIS process to facilitate the NSBT project.

The Bill seeks to:

- Enable the CG to evaluate changes made to a project by a proponent of a significant project following the completion of the CG's report evaluating the EIS, but before the project commences, and

- Provide that certain works approved by the Governor in Council can be carried out by an approved person who has entered into an agreement with a local body to carry out those works.

These amendments are initially required to facilitate the NSBT project but will also address the emerging needs of other public private partnership projects in the State.

A number of other minor amendments to the SDPWO Act are also proposed to:

- align it with the provisions of the *Integrated Planning Act 1997*;
- clarify drafting to remove ambiguity; and
- update the SDPWO Act to provide compatibility with other related legislation.

Achievement of the Objectives

The objectives of the Bill have been achieved by amending the *State Development and Public Works Organisation Act 1971* and the *Petroleum and Gas (Production and Safety) Act 2004.*

In this regard the Bill:

Amends the EIS provisions in Part 4 of the SDPWO Act by:

— Inserting timeframes for the finalisation of the terms of reference for an EIS about a significant project; completion of the EIS; and substantial commencement of the development;

— Providing that the CG can evaluate changes made to a project by a proponent of a significant project following the completion of the CG's report evaluating the EIS, but before the project commences;

— Removing the requirement to give reasons for each condition stated or recommended in the CG's report, when the CG's report recommends that an application be approved; and

— Inserting a new provision so that the CG may coordinate the assessment and facilitation of significant projects which require leases or licences under the P&G Act. A number of consequential amendments are also made to the P&G Act.

Amends the Planned Development provisions in Part 6 of the SDPWO Act by:

— Inserting a provision to enable CG to acquire land in a State development area for the establishment of an infrastructure corridor;

— Including a timeframe in which a proponent must substantially commence a use under a development approval given under an approved Development Scheme for a State development area;

— Providing for an approved person who has entered into an agreement with a local body to carry out certain works approved by the Governor in Council;

— Inserting a provision to enable the CG to take and register a public utility easement for water storage purposes under the *Land Act 1994* and *Land Title Act 1994* without the need to obtain landowners consent which would otherwise be required; and

— Clarifying that the process for the taking of land under ss 125 and 126 is for parties other than the State or a local body.

Amends the Miscellaneous provisions in Part 8 of the SDPWO Act by:

— providing that the Guidelines made under s 174 may provide requirements for procedures to be compiled with prior to a consultation and negotiation period; and

— inserting a new division 4 recognising the environmental assessment of the Papua New Guinea (PNG) pipeline project completed under the SDPWO Act in 1998.

Amends the transitional provisions in Part 9 of the SDPWO Act by:

— inserting a timeframe for the commencement of use approved under an approved Development Scheme for a State development area.

Amends the Schedule (Dictionary) to the SDPWO Act by:

— editing the definition of 'private works' so that these works may be carried out for purposes not related to the establishment of a town or other community; and

— inserting definitions for an '*approved person*', '*Coordinator-General's change report*', and '*EIS*'.

Amends the P&G Act by:

— providing a link to that Act for a project declared to be a significant project to enable the CG to state conditions to be included in a lease or licence under the P&G Act.

Estimated Cost for Government Implementation

Any costs incurred as a result of these amendments, in respect to drafting and preparation of the Bill, represent a minimal cost to Government. The impact of the changes should be 'Budget neutral'. The amendments are not expected to require any additional financial resources and will be managed within existing operational, administrative and departmental processes and

resources for the coordination and facilitation of significant and other projects.

There are no new or substantially amended operational or administrative arrangements which subsequently impose any significant implementation, resource or administrative issues. The more substantive amendments, relating to changes to a significant project under Part 4 of the SDPWO Act, enhance the CG's existing role in coordinating a whole of government response to projects declared to be significant projects. In this regard the amendments complement existing administrative arrangements provided by the CG and can be managed within existing resources.

Consistency with Fundamental Legislative Principles

The *Legislative Standards Act 1992* defines fundamental legislative principles ('FLPs') as 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

In addressing the issue of FLPs, the amendments depart from those principles as follows:

1. the retrospective imposition of currency periods on a use approved in a State development area;
2. the inclusion of a power for the CG to take land for an infrastructure corridor; and
3. the inclusion of a power for the CG to take land for public utility easements under the *Land Act 1994* and *Land Title Act 1994*.

1. Imposition of currency periods on a use approved under an approved development scheme for a State development area [Clause 63, insertion of new Division 2 in Part 9]

The Fundamental Legislative Principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The Departure

Currently a use approved by the CG under the approved Development Scheme for the Gladstone State Development Area does not include an expiry date. The new s 177, inserted by clause 63, provides that uses already approved by the CG under an approved Development Scheme for a

State development area have a currency period and sets an end date on the exercise of such rights.

The new s 177 provides that for uses approved prior to the commencement of the new s 84A and not yet substantially commenced, the currency period (generally 4 years) commences with the current amendments. Therefore, a proponent with a use approved by the CG prior to the commencement of this section will generally have 4 years from the commencement of this section to have substantially commenced development (as if the approval had been given on the date that these amendments commence), however, where an approval already included a condition stating or implying a time for that use to lapse, that condition will still apply.

The Reason for Departure

This retrospective operation is not considered to be objectionable, for the following reasons:

A development approval granted by the CG under the approved Development Scheme for the Gladstone State Development Area does not include expiry dates. There is the potential that a proponent may commence development at any time in the future, at which time the approval and in particular the CG's conditions may no longer represent best practice.

A material change of use application approved by the CG under the approved Development Scheme for the Gladstone State Development Area takes effect from the time the decision notice is given by the CG. Currently, such an approval does not lapse even if development under the approval has not commenced within a reasonable period of time.

A number of material change of use approvals granted by the CG under s 84(4)(b) under the approved Development Scheme are for large-scale industrial developments of national significance. Without exception these particular applications have been approved by the CG subject to a range of conditions formulated by the CG in consultation with relevant agencies. The conditions imposed by the CG have in all cases been reasonably required by, and relevant to, the particular development, and have sought to ensure best practice environmental and operational outcomes given the circumstances which existed at the time of approval.

To date, all but one of the large-scale industrial developments, Aldoga Aluminium Smelter, approved by the CG has proceeded to development and operation within a reasonable period of time. As a result, the conditions imposed by the CG have, at the time of project development and

the commencement of operations, still been considered reasonable and relevant and capable of delivering contemporary best practice environmental and operational outcomes. Further, the timely development of these large-scale industries has resulted in positive economic outcomes for the State and the nation and the meeting of national and international demand for products.

In terms of the one large-scale industrial project (Aldoga Aluminium Smelter) which has not proceeded, there is concern that the approval granted by the CG in early 2003 will not lapse even if development under the approval has not commenced within a reasonable period of time. The conditions imposed by the CG for this project have limited currency in terms of achieving best practice environmental and operational outcomes due to the nature of the particular project. This is because the continuing development of the area in which the approved project is proposed to be constructed, and advances in technology are changing the environmental and operational parameters relied on by the CG when imposing the original conditions, thereby eroding the efficacy of those conditions.

The Aldoga air-shed has the capacity to absorb a finite level of industry emissions before acceptable environmental standards are exceeded. Smelters generally, and aluminium smelters in particular, are characterised by a high level of emissions to the atmosphere. A significant portion of the available, acceptable emissions capacity in the Aldoga air-shed has been assigned to the approved Aldoga aluminium smelter. As a result, the remaining available, acceptable emissions capacity in the Aldoga air-shed cannot reasonably sustain a second aluminium smelter. This means that if, for whatever reason, the Aldoga aluminium smelter does not proceed, or does not proceed in a timely way, and the CG's approval does not lapse, the CG will be prevented from favourably considering an alternative aluminium smelter proposal.

2. Power for the CG to take land for an infrastructure corridor [Clause 40, amendment of s 82 (Acquisition of land in State development area)]

The Fundamental Legislative Principle

Section 4(3)(g) and (i) of the *Legislative Standards Act 1992* provide that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively and for the extension of powers to acquire land, but only with fair compensation.

The Departure

Currently the CG may take or otherwise acquire land situated in a State development area for the purpose of providing for the establishment of industry or essential services. There is some doubt whether the CG may also take or otherwise acquire land for the purpose of infrastructure corridors (for one or more users and/or uses) as part of establishing industry or essential services.

Clause 40 amends the acquisition powers in Part 6 (Planned Development) to provide that the CG may also take or otherwise acquire land for the purpose of establishing infrastructure corridors.

Clause 40 amends s 82 (Acquisition of land in State development area) to provide for declaration of a State development area for the establishment of an infrastructure corridor for one of more uses and/or users, thereby enabling the CG to compulsory acquire that land.

These corridors may be directly associated with existing State development areas or for corridors established for one or more uses or users. It is proposed that the CG control the use of the land through licences with service providers for infrastructure such as gas and water pipelines, conveyors and electricity transmission lines, and other infrastructure as required.

The Reason for Departure

It is argued that the potential adverse impact on rights and liberties is justified on the basis that:

Rather than have multiple corridors developed by a range of infrastructure providers to/from similar locations in an ad hoc manner (and the associated assessment, approval and land acquisition processes that must be addressed) infrastructure providers and industry will benefit from the ability to access predetermined strategically placed corridors throughout the State to assist in the timely and efficient delivery of infrastructure through the co-location of linear infrastructure within the same corridor.

The coordinated development of infrastructure corridors may also minimise the potential impacts on landowners where a number of separate infrastructure corridors may have otherwise been required.

The extension of powers to acquire land and any adverse affect on the rights of individuals resulting from clause 40 is justified on the basis that:

Division 2 of Part 6 (Planned Development) of the SDPWO Act provides for the compensation of an owner of an interest in land whose ability to use

the land for an 'alternative lawful use', an 'approved use' or an 'authorised use', as defined in s 87 of the Act, is impacted by an approved development scheme for a State development area. This provision applies to a State development area established for the purpose of an infrastructure corridor as provided for by clause 40.

The requirement to provide fair compensation arising from the amended power to acquire land provided for by clause 40 is satisfied by the existing s 125(7) of the SDPWO Act which provides that the process stated in the *Acquisition of Land Act 1967* for the taking of land and payment of compensation for the land taken applies.

3. Power for the CG to take land for public utility easements under the *Land Act 1994* and *Land Title Act 1994*. [Clauses 56 and 57, amendment of s 125 (Power of Coordinator-General to take land) and insertion of new s 125A (Power of Coordinator-General to take public utility easement)]

The Fundamental Legislative Principle

Section 4(3)(i) of the *Legislative Standards Act 1992* provides for the extension of powers to acquire land, but only with fair compensation.

The Departure

Clauses 56 and 57 provide that the CG will be able to take a public utility easement for water storage. The need for the owner's consent (for the registration of the easement under the processes of the *Land Title Act 1994*) will not be required where the CG acquires the land by compulsory acquisition.

The Reason for Departure

The *Land Title Act 1994* and the *Land Act 1994* provide for the registration of public utility easements by reference to an 'about' plan rather than a survey plan. There are potential cost savings associated with not doing a survey plan. However, the registration process for these easements requires the consent of the landowner. In cases where the CG is compulsorily taking the land, the requirement for the owner's consent cannot be met.

The use of a water storage easement over land which would only be temporarily inundated would provide a more suitable mechanism by which to control land affected by water storage facilities than taking the land as fee simple.

When Parliament amended the *Water Act 2000* and the *Land Title Act 1994* in 2003, it committed to a review of the Guidelines made under s 174 to

outline the circumstances in which different tenure options were available to affected land owners should be used in respect water storage infrastructure. The effect of these 2003 amendments was to extend the possible use of water storage easements for application to dams where previously they were available only for a use associated with weirs.

The requirement to provide fair compensation arising from the amended power to acquire land provided for by clauses 56 and 57 is satisfied by the existing s 125(7) of the SDPWO Act which provides that the process stated in the *Acquisition of Land Act 1967* for the taking of land and payment of compensation for the land taken applies.

Consultation

The following relevant organisations have been consulted:

Department of the Premier and Cabinet
Department of Local Government, Planning, Sport and Recreation
Environmental Protection Agency
Department of Natural Resources and Mines
Crown Law
Queensland Treasury
Department of State Development, Trade and Innovation.

The proposed amendments have been supported.

Notes on Clauses

The section numbers in the *State Development and Public Works Organisation and Other Legislation Amendment Act 2005* are referred to as clauses in these explanatory notes. Section numbers refer to sections of the relevant Act that is amended.

Part 1—Preliminary

Clause 1 states that the short title of the Act is the *State Development and Public Works Organisation and Other Legislation Amendment Act 2005*.

Part 2—Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 2 defines the Act being amended as the *Petroleum and Gas (Production and Safety) Act 2004* ('the P&G Act').

Clause 3 amends s 20(2) of the P&G Act to provide that if the CG has prepared a report which evaluates an EIS for a significant project that requires a petroleum lease, pipeline licence or petroleum facility licence under the P&G Act, then the conditions stated by the CG in the CG 's report about the EIS for the project must be applied to the lease or licence under the P&G Act and will prevail to the extent of any inconsistency with a mandatory condition for that type of petroleum authority.

Clauses 4 and 5 amend s 120 (Right to grant if requirements for grant met) and s 123 (Provision of petroleum lease) of the P&G Act to provide for the new s 123A (inserted by clause 6), which provides for the grant and conditions of a petroleum lease or proposed petroleum lease for a significant project.

Clause 6 inserts a new s 123A in the P&G Act which provides for the grant and conditions of a petroleum lease or proposed petroleum lease for a significant project under the SDPWO Act. This clause provides that the Minister must not grant a lease where the lease would be for a significant project until the CG has completed the evaluation of the EIS under s 35 of the SDPWO Act and given the Minister administering the P&G Act a copy of the CG's report. The conditions stated by the CG in the CG's report must be stated in the lease and if there is any inconsistency between other conditions, including mandatory conditions, and the CG's conditions, the CG's conditions prevail to the extent of any inconsistency.

Clause 7 provides that a decision made under s 132 (Deciding whether to grant petroleum lease) is made subject to s 123A of the P&G Act (Provisions about grant and conditions of petroleum lease for a significant project), which requires, among other things, that the Minister include in the lease, the conditions stated by the CG in the CG's report evaluating the EIS.

Clause 8 amends s 133 of the P&G Act (Provisions of petroleum lease) by the inclusion of a reference to s 123A, which provides for the grant and conditions of petroleum lease for a significant project and that the Minister must include the CG's conditions in the lease.

Clause 9 amends s 317 of the P&G Act (Proposed mining lease declared a significant project) to provide that if a project for proposed coal or oil shale mining lease is declared to be a significant project under the SDPWO Act, an application related to an authority to prospect under the P&G Act must not be decided until the CG's report evaluating the EIS for the project has been completed in accordance with s 35 of the SDPWO Act.

Clause 10 amends s 410 (Deciding whether to grant licence) of the P&G Act by including a reference to s 412A, which provides for the grant and conditions of a licence for a significant project and that the Minister must include the CG's conditions in the licence.

Clause 11 provides that s 412 (Provisions of licence) of the P&G Act applies subject to s 412A, which provides for the grant and conditions of a licence for a significant project and that the Minister must include the CG's conditions in the licence.

Clause 12 inserts a new s 412A of the P&G Act which makes provision for the grant and conditions of a pipeline licence or proposed pipeline licence for a project declared to be a significant project under the SDPWO Act. This clause provides that the Minister must not grant a licence where the licence would be for a significant project until the CG has completed the evaluation of the EIS under s 35 of the SDPWO Act and given the Minister a copy of the CG's report. The CG's conditions stated in the CG's report must be stated in the licence and if there is any inconsistency between other conditions, including mandatory conditions, and the CG's conditions, the CG's conditions prevail.

Clauses 13 and 14 amend s 446 (Deciding whether to grant licence) and s 447 (Provisions of licence) of the P&G Act, by providing that the sections apply subject to the provisions in s 447A about the grant and conditions of a petroleum facility licence of proposed petroleum facility licence for a project declared to be a significant project under the SDPWO Act.

Clause 15 inserts a new s 447A in the P&G Act about the grant and conditions of a licence for a significant project. This clause provides that the Minister must not grant a petroleum facility licence or proposed petroleum facility licence where the licence would be for a significant project until the CG has completed the evaluation of the EIS under s 35 of the SDPWO Act and given the Minister administering the P&G Act a copy of the CG's report. The CG's conditions stated in the CG's report must be stated in the licence and if there is any inconsistency between other conditions and the CG's conditions, the CG's conditions will prevail.

Clause 16 amends s 514 (Significant projects excluded from div 1) of the P&G Act by deleting the reference to the SDPWO Act as the term 'significant project' is inserted in the Schedule 2 by Clause 17 to refer to the projects declared by the CG to be significant projects for which an EIS is required under s 26 of the SDPWO Act.

Clause 17 inserts definitions in Schedule 2 (Dictionary) of the P&G Act for:

— *Coordinator-General's conditions',* for a lease or licence or proposed lease or licence for a significant project, means the conditions for the lease or licence stated in the Coordinator-General's report for the project.

— '*Coordinator-General's report'*, for a significant project, means the Coordinator-General's report under the *State Development and Public Works Organisation Act 1971* for the EIS for the project.

— '*significant project'* means a project declared under the *State Development and Public Works Organisation Act 1971*, section 26, to be a significant project.'.

Part 3—Amendment of the State Development and Public Works Organisation Act 1971

Clause 18 defines the Act amended in Part 3 as being the *State Development and Public Works Organisation Act 1971* ('the Act').

Clause 19 amends s 24 (Definitions for pt 4) of the Act to include new terms, '*Coordinator-General's change report'* by reference to the new s 35I(1). Clause 19 also amends the definition of '*properly made submission'* to reflect the new provisions in the new Division 3A which enable the CG to prepare a report about a change to a significant project. The amendment ensures that the expression 'properly made submission' extends to both a submission about an EIS and a submission about a change to a project, if the CG required that the proponent publicly notify the proposed change and invited comments under s 35G and then considers those comments in evaluating the change under s 35H.

Clause 19 also removes the definition of EIS from s 24 as the definition applies to more than one division. The definition of EIS is inserted in Schedule 1 of the Act by Clause 64.

Clause 20 amends s 26 (Declaration of significant project) of the Act to provide that the CG may declare a project to be a significant project for which an EIS is not required. Significant projects for which an EIS is not required will not be subject to any environmental assessment under the Act. Similarly, they will not be able to make use of the provisions in Division 4, Part 4 of the Act relating to the application of the CG's report to an IDAS application where, for example, the referral coordination and notification stages of IDAS do not apply to those significant projects for which an EIS has been prepared and the CG has prepared a report evaluating the EIS under s 35. The purpose of the declaration of a significant project for which an EIS is not required under the SDPWO Act is to recognise the significant nature of the project by reference to the matters that the CG must consider under s 27 and enable applications to be made for approvals under other statutes, such as the *Water Act 1994* and the *Vegetation Management Act 1999*, which recognise the significant nature of these projects to the State.

Clause 20 also inserts s 26(2)(a) which provides that if the CG makes a declaration that no EIS is required for a project under the new s 26(1)(b), the CG must be satisfied that appropriate environmental assessments will be carried out for the project under another Act.

The declaration of the significant project for which an EIS is not required under the Act, as provided for by clause 20, in no way diminishes any requirement for environmental assessment a proponent may be required to undertake under other legislation, but means that an EIS under this Act is not required.

The CG will be able to consider the matters set out in s 27 of the Act before declaring a significant project, which will enable the CG to consider what assessment will be carried out for the project, recognising that there are a number of assessment processes involved in the assessment of applications other than an EIS under the SDPWO Act.

Clause 20 also inserts new subsections s 26(2) and (3) to support the declaration of a project as a significant project which does not require an EIS. The new s 26(2)(b) explicitly states that the CG can not declare a project does not require an EIS under s 26(1)(b) if the project involves broadscale clearing for agricultural purposes. The new s 26(3) defines broadscale clearing for agricultural purposes.

The CG will also, as a matter of practice, consult with the Department of Natural Resources and Mines before making a declaration under s 26(1)(b) to ensure that the department is aware that a project might result in an application being made under the Vegetation Management Act or the Water Act.

Clause 20 also inserts a new subsections (8) and (9) in s 26 providing that if a significant project involves a lease or licence under the P&G Act, the *Petroleum Act 1923*, and/or the *Petroleum (Submerged Lands) Act 1982*, the CG must give a copy of the gazette notice about the declaration to the Minister administering that Act.

Clause 21 inserts a new s 27A in the Act which provides that a declaration of a significant project which does not require an EIS under s 26(1)(b) will lapse, generally, at the end of the 4 years starting the day the declaration was made, or, if the declaration states or implies a time for it to lapse, at the stated or implied time.

Clause 21 also provides that the CG may, by written notice, extend the lapsing period to another later time.

In the case of projects declared to be significant projects for which an EIS is required, the new s 32(4), inserted by clause 25, provides that the declaration will remain in place for 2 years or such other date as provided for by the CG from the date that the terms of reference for the EIS are provided to the proponent in accordance with s 32(i)(c). The preparation of an EIS within the 2 years is considered reasonable, however may be extended by the CG under s 27A(3) if the CG decides an extension is appropriate.

Clause 22 amends s 28 (Application of divs 3–6) of the Act, providing that Divisions 3-6 of Part 4, which includes the division outlining the EIS framework and establishes the relationship between the CG's report and other legislation, applies only to significant projects for which an EIS is required under s 26(1)(a).

Clause 23 inserts a provision in s 29 (Notice of requirement for EIS and of draft terms of reference) providing that the notice about the public notification advising that an EIS is required for the project, where copies of the terms of reference can be obtained and inviting comments on the draft terms of reference, must state a period within which comments about the draft terms of reference must be made and received.

Clause 24 deletes and replaces s 30 (Finalising terms of reference) of the Act, providing that the CG must finalise the terms of reference for an EIS

about a significant project as soon as practicable after the comment period ends and give the proponent a copy. Clause 24 also provides that the CG must, in finalising the terms of reference, have regard to comments about the draft terms of reference received by him/her within the comment period defined in the notice given under s 29.

Clause 24 also defines the term 'comment period', to refer to the period stated in notice under the new s 29(2) inviting comments about the draft terms of reference.

Clause 25 inserts new provisions within s 32 (Preparation of EIS) of the Act, providing that the proponent of a significant project must give the CG a copy of the EIS within 2 years after the finalisation of the terms of reference for the EIS under s 30. At anytime within the 2 years the CG may, after receiving written notice from the proponent of the project, extend the period in which the proponent must finalise the EIS to a later period.

Clause 26 amends s 35 (CG evaluates EIS, submissions, other material and prepares report) to provide that the CG may state conditions for a significant project subject to ss 39, 45, 47C, 49 or 49B. Clause 26 provides that CG may state conditions, subject to the new s 47C (see clause 34) for a non-code compliant environmental authority for petroleum activities under chapter 4A of the EP Act, and state conditions subject to the new s 49B (see clause 37) for a lease or licence under the P&G Act.

Clause 27 inserts a new s 35A under Division 3, Part 4 of the Act, providing that a CG's report about an EIS for a significant project generally lapses at the end of 4 years starting the day after the report is prepared (and finalised) under s 35(3) or at a time stated or implied in the CG's report.

The new s 35A(1)(c) provides that the CG's report does not lapse, if before the 4 years or other stated or implied time, the proponent makes an application for an approval/licence/lease and it has not yet been decided. This provision is intended to ensure that the decision maker is still able to have regard to the CG's report in making the decision and complete the process, including any applicable appeal period. The provision also includes instances where an appeal against a decision has been made, in which case the CG's report does not lapse until the appeal is finally decided or process otherwise ends.

Clause 27 also provides at anytime before the CG report lapses under any of the circumstance above, the CG may, by written notice to the proponent, determine another later time for the CG's report to lapse.

Clause 28 inserts a new Division 3A in Part 4 (ss 35B-35L below) to enable the CG to assess changes to a significant project following the completion of the CG's report under s 35(5). Increasingly, proponents are completing an EIS at an earlier stage in the development of a proposal, as part of the feasibility stage. This is particularly so in the case of Public Private Partnerships where the EIS is used as the basis for calling tenders for the construction of the project which may then result in changes to aspects of the project, such as the design, construction methodology, or available technology.

Clause 28 will facilitate an additional process to enable the CG to respond to advice from the proponent of a significant project about a proposed change to the project and require assessment of the impacts of the proposed change together with public notification of those changes and their impacts without the need to commence a new EIS to address the proposed changes to the project. The CG would then evaluate the changes and any submissions received about the proposed changes and prepare a report about the change. The report, together with the first CG's report would have effect, with the report dealing with the change prevailing to the extent of any inconsistency.

The new s 35B explains the scope of Division 3A. The new Division 3A only applies after the CG gives a copy of the CG's report (prepared under s 35) to the proponent of the project pursuant and publicly notifies the report pursuant to s 35(5). The proponent may then request the CG assess a proposed change to the project. The types of changes which may be proposed could be additional elements to a project, a variation to the alignment of a route for infrastructure or the use of an alternative technology than that originally proposed in an EIS, amongst others.

The new s 35C gives the CG power to evaluate the environmental effects of the proposed change to the project and its effect on the project and any other matters that the CG considers to be relevant to the evaluation of the change. Due to the nature of the possible changes that may be made to a project, the new s 35C provides that the CG considers the change to the project and also the effect of the change on the project resulting from any changes proposed. It is not intended that the effects of the entire project be re-evaluated, rather only the effects of the change relative to the project as assessed in the CG's report.

The new s 35D provides that the proponent must provide the CG with written notice of the proponent's intention to make a change to the project and request that the CG evaluate the change.

The new s 35E prescribes the contents of the written notice to be given to the CG under the new s 35D, including a description of the proposed change and effect on the project, reason for the change, and enough information about the proposed change and effect on the project to enable the CG to evaluate the proposed change. The written notice will, where appropriate, identify those parts of the EIS, any properly made submissions, and the CG's report which are affected by the change. Because of the wide variety of changes that might be made to a project, s 35E does not seek to be particular or precise in prescribing the detailed contents of a written notice.

Under the new s 35F the CG may refer details of the change to the project to any one who the CG considers may be able to provide comment and information that would assist the CG in evaluating the change and the effect of the change. The CG may also ask the proponent for more information about the change if required. Sections 31(1) and 35(2) make similar provision for the EIS process.

The changes and appropriateness of assessment under the new Division 6A will be considered by the CG on a project by project basis. Although not stated explicitly in the new s 35F, if, after considering any comments or information provided by the proponent and/or any other person the CG has asked for comments or information about the proposed change, the CG considers that a change to a project is so substantial that a new EIS should be prepared, he/she may decide not to assess the change using the new change provisions in the new Division 6A.

The new s 35F also provides that in the event the proponent does not comply with the request to provide more information about the change within a reasonable period after it was given, the CG may proceed to make the evaluation without the further information.

The new s 35G allows the Coordinator-General, in addition to the powers under ss 35E and 35F, to require the proponent to publicly notify the change to the project in a way decided by the CG. If public notification is required, submissions may be made about the change to the project, in the same way that submissions could have been made about the EIS for the project under ss 33 and 34.

The new s 35H states the matters which the CG must consider in evaluating the environmental effects of the change, its effect on the project and any other related matters. It is not intended that the effects of the entire project be re-evaluated, rather only the effects of the change relative to the project that was the subject of the evaluation made in the CG's report.

S 35H is modelled upon s 35(1). The new s 35H provides that the CG must consider:

(a) the nature of the proposed change and its effects on the project;

(b) the project as evaluated in the CG's report under s 35;

(c) the environmental effects of the proposed change and its effects on the project;

(d) if applicable, all properly made submissions about the proposed change and its effects on the project;

(e) material that the CG considered in evaluating the project under s 35(1) to the extent the CG considers it is relevant to the proposed change. The material may include the EIS, any properly made submissions and other submissions accepted by the Coordinator-General about the EIS and any other material the Coordinator-General considered relevant to the project in preparing the CG's report.

The new s 35I provides that the CG must prepare a CG's change report that makes the evaluation of a proposed change to a project and the effect of the proposed change. The new s 35I also introduces the term 'Coordinator-General's change report' which means the report that the CG must prepare under the new s 35I evaluating the proposed change. The section is modelled on sections 35(3) and 35(4). The CG may state conditions (of the type mentioned in ss 39, 45, 47C, 49 or 49B) or make recommendations (of the type mentioned in ss 43 or 52) which are relevant to a change, including the power to vary any conditions or recommendations already stated or made under section 35(4).

The new s 35J provides for the public notification of the CG's change report and provision of a copy of the report to the proponent. The new s 35J is modelled on s 35(5).

The new s 35K provides that both the CG's report and CG's change report apply to the project, including any conditions and recommendations. If, however, there is any inconsistency between the later CG's change report and the earlier CG's report prepared under s 35, the later change report prevails to the extent of any inconsistency.

The new s 35L provides that the CG's change report also lapses when the CG's report lapses pursuant to the new s 35A (see clause 27), unless the CG determines a later time for the CG's report (and the change report) to lapse under the new s 35A.

Clause 29 amends s 39 (Application of CG's report to IDAS) so that reasons are only provided when the CG recommends that an application for a development approval must be refused. The CG's report will continue to provide a detailed evaluation of the project and analysis of the key issues together with conclusions which provide the rationale for any recommended conditions or requirements. A detailed Statement of Reasons in the form prescribed in the *Acts Interpretation Act 1954* would, however, only be included in the CG's report where the CG recommends that an application be refused. Similar amendments are also made by clauses 31 and 36, 39.

Clause 30 inserts a new s 42A (subsections 1 to 8 are explained below) which explains the relationship between the CG's change report and Integrated Development Assessment System (IDAS) under the *Integrated Planning Act 1997* ('IPA'). The status of the change report under IDAS depends on when the change report is given to the proponent.

The new s 42A(1) explains that the new s 42A applies if the CG has competed the CG's change report and given a copy to the proponent under the new s 35J(a).

The new s 42A(2) provides that the CG's change report is taken to be an amended concurrence agency report under s 3.3.17(1) of the IPA and to which the proponent has given written agreement.

The new s 42A(3) and (4) provide that, if the change report was given after the decision stage of IDAS started but before the assessment manager has made a decision on the application, section 3.5.8 of the IPA applies for the decision period for the application. This provides that the decision making period starts again from its beginning once the CG has competed the CG's change report under s 35J(a).

The new s 42A(5) and (6) provide that if the CG's change report was given to the proponent after the assessment manager made a decision on the application, the proponent must take the necessary steps to obtain a development approval under the IPA that authorises the new development to be carried out. This applies in instances where either a new development application, a change to the decided development approval, or to the conditions of the approval, must be made.

The new s 42A(7) provides that if under the IPA a new development application is required, because the assessment manager has already made a decision on the application, references to the CG's report in ss 37 to 42 of the Act are to be taken to be references to the CG's change report.

Similarly, references to properly made submission about the EIS in ss 37 to 42 of the Act are to be taken as if it were a reference to properly made submission about the proposed change.

The new s 42A(8) provides that, in instances where a change to the decided development approval or to the conditions of the approval must be made, a proponent must take steps to obtain a development approval that authorises the new development as evaluated in the CG's change report even if there is an undecided appeal against the development approval for the project as evaluated in the CG's report.

Clause 31 amends s 45 (Application of CG's report to proposed mining lease) to remove the requirement to state reasons for the inclusion of conditions for a proposed mining lease. Similar amendments are made in clause 29, 36 and 39.

Clause 32 inserts a new s 47A providing that if there is any inconsistency between a CG's condition imposed under ss 45 or 46 about a proposed mining lease and conditions for the granting of a proposed mining lease determined or declared under the *Native Title Act 1993* (Cwlth), the CG's condition/s do not apply to the extent of the inconsistency.

Clause 33 amends the heading of Division 6 in Part 4 about the Act's relationship with the *Environmental Protection Act 1994* to reflect changes made by clauses 34 and 35 below.

Clause 34 inserts a new Subdivision in Division 6 of Part 4 (ss 47B – 47C below), providing for the application of CG's report to Chapter 4A (Environmental authorities for petroleum activities) of the *Environmental Protection Act 1994* to provide that conditions stated by the CG for a significant project must be attached to an authority under the *Environmental Protection Act 1994* [non-code compliant environmental authority (petroleum activities)].

The new s 47B provides that Division 6, subdivision 1 applies if the project involves a proposed environmental authority (petroleum activities) under the *Environmental Protection Act 1994*; and if the proposed authority were to be issued, it would be a non-code compliant authority for chapter 4A of that Act.

The new s 47C provides for the application of CG's report to an environmental authority, including the ability to state conditions for a proposed environmental authority and the requirement to provide a copy of the CG's report to the EPA Minister.

Clause 34 also amends the heading for the relationship for environmental authority (mining lease) under the *Environmental Protection Act 1994*, making it a Subdivision 2, as result of the new Subdivision 1 in Division 6 of Part 4 (per the new ss 47B & 47C above).

Clause 35 makes consequential amendments to s 48 to reflect changes made by clause 34. S 48 explains the application of subdivision 2 which deals with the application of the CG's report to environmental authorities (mining lease) under Chapter 5 of the EP Act.

Clause 36 removes the requirement in s 49(2) to state reasons for the inclusion of conditions for a proposed mining lease. Similar amendments are made in clauses 29, 31 and 39.

Clause 37 inserts a new Division 6A in Part 4 (ss 49A – 49C below) providing for the application of CG's report to a lease or licence under the P&G Act, including the ability to state conditions for a lease or licence and the requirement to provide a copy of the CG's report to the Minister administering the P&G Act.

The new s 49A explains the scope of Division 6A. The new Division 6A applies only if a project involves a proposed petroleum lease, pipeline licence or petroleum facility licence under the P&G Act.

The new s 49B provides that the CG's report may state conditions for a proposed lease or licence to be granted under the P&G Act, and, if so, the CG must give the Minister administering that Act a copy of the report.

The new s 49C provides that for a proposed petroleum lease if there is any inconsistency between a CG's condition stated under s 49B and conditions for the granting of a proposed petroleum lease determined or declared under the *Native Title Act 1993* (Cwlth), the CG's condition/s do not apply to the extent of the inconsistency.

Clause 38 amends s 50 about the application of Division 7 (Relationship with other legislation) in Part 4. Clause 38 provides that Division 7 does not apply if the project involves a proposed lease or a proposed licence or pipeline licence under the P&G Act. Clause 38 provides that Division 7 does not apply to chapter 4A of the *Environmental Protection Act 1994* as result of provisions inserted by clause 34.

Clause 39 provides that if, under s 52 (Application of CG's report to other approval process), the CG's recommendation is to refuse an approval; the report must give reasons for that recommendation. Similar amendments are made by clauses 29, 31 and 36.

Clause 40 amends s 82 (Acquisition of land in State development area) to provide for the declaration of a State development area for the establishment of an infrastructure corridor for one of more uses and/or users. These corridors may be directly associated with existing State development areas or for corridors established for one or more uses or users. It is proposed that the CG control the use of the land through licences with service providers for infrastructure such as gas and water pipelines, conveyors and electricity transmission lines, and other linear and ancillary infrastructure as required.

Clause 40 also defines the term '*infrastructure corridor'* as 'an area for the establishment of infrastructure relating to roads, public transport or the transportation, movement, transmission or flow of anything, including, for example, goods, material, substances, matter, particles with or without charge, light, energy, information and anything generated or produced.'

Clause 41 amends s 84 (Use of land under approved development scheme) to provide that a proponent may only commence a use if it has been approved under s 84(4)(b) and the approval has not lapsed under the new s 84A inserted by clause 42 below.

Clause 42 inserts a new s 84A that provides an approval for a use of land in a State development area under s 84(4)(b) lapses at the end of the currency period unless the change of use happens before the end of the currency period; or the use substantially starts before the end of the currency period. Clause 42 provides that the currency period ends 4 years after the day the approval took effect or from the day the approval took effect until some other stated or implied time for the approval to lapse. The CG may, within the currency period, by written notice to the proponent, extend the currency period to another later time.

Clauses 43 - 51 amend Division 3 of Part 6 so that certain works can be carried out by a person, (an 'approved person'), who has entered into an agreement with a local body to carry out those works. The amendments, for example, provide that works (approved by the Governor in Council on recommendation from the Minister) may be carried out by a private sector concession holder where it enters into an agreement with a local body about those works. The approval of works to be carried out in this way will not affect the need to obtain necessary environmental authorities under the *Environmental Protection Act 1994* nor will it give rise to acquisition powers which are only triggered where the works are to be undertaken by local bodies or the CG (under s 125 of the Act).

Clauses 52 – 55 amend ss 108 – 111 to provide that work(s) undertaken by the CG in those sections includes work(s) undertaken by another person on behalf of the CG. For the purposes of s 109(b) the reference to the local body or local bodies also includes an 'approved person' that may have entered into an agreement with the local body or local bodies to do the works, as provided for by the new ss 99 & 100 (clauses 44 & 45).

Clause 56 amends s 125(4) to (6) to clarify that the process for the taking of land under s 125(1)(f), for an infrastructure facility of significance, also applies to the taking of land for a person other than the state or a local body (ie. third parties). Clause 58 makes similar amendments.

Clause 56 also includes a new s 125(8) which deals with the acquisition process that applies to infrastructure facilities which was previously dealt with in the requirements for Guidelines in ss 174(3)(g) and (h). The new subsection provides that if the taking of land is for an infrastructure facility under s 125(1)(f) the notice of intention to resume the land by compulsory acquisition must not be given until at least 2 months after the start of the consultation and negotiation period required by the Guidelines made under the new s 174(1)(a) and which must be completed prior to the taking of the land by compulsory acquisition. See also amendments to s 174 made by clause 60.

Clause 57 inserts a new s 125A to provide that the CG's power to take land under s 125 for a purpose under s 125(1), includes the ability to register a public utility easement for water storage purposes under either the *Land Act 1994*, chapter 6, part 4, division 8, or the *Land Title Act 1994*, part 6, division 4.

Clause 57 also provides that, for the purposes of the *Land Act 1994* and the *Land Title Act 1994*, the person for whom the land is taken is taken to be a public service provider as defined under those Acts.

Clause 57 also insert the new s 125A(3) which provides that the document creating the easement may be registered without the document having been signed by the landowner to be burdened by the easement. If however the acquisition is for a party other than the State or a local body (ie. a third party) and the process in s 126 and the procedures in the Guidelines prepared under s 174 of the Act apply for the taking of the land, the document creating the easement must state that the requirements of those sections have been complied with in order to register the easement.

The above amendments provide that the CG may take a public utility easement for water storage in the event that the consent of the landowner

can not be obtained. The ability to take an easement is required to provide for temporary water storage on properties adjacent to dams or weirs, and have the easements registered without the cost involved of a survey plan of the easement which would otherwise be required for the registration of other easements. The amendments also clarify the ability of the CG to take easements over non-freehold land such as leases.

Clause 58 amends s 126 (Ensuring reasonable steps are taken to acquire land by agreement) to provide that the notification process under s 125(4), (5) and (6) applies only for the taking of land for a party that is not the State or a local body. The provisions in s 125(4), (5) and (6), and s 126(1) were intended to relate only to land taken for a third party for an infrastructure facility of significance under s 125(1)(f). Clause 56 above makes similar amendments to s 125(4) to (6).

Clause 59 makes consequential amendments to s 127. The changes are consequential renumbering for cross references to subsections within s 125 that were amended by clause 56 above.

Clause 60 replaces s 174(1)(a) (CG must make guidelines) to clarify that the CG must make Guidelines about consultation and negotiation period for the proposed taking of land for infrastructure facilities under s 125(1)(f). The processes for the taking of land remains unaffected but is addressed in the new s 125(8).

Clause 60 also deletes the existing ss 174(3)(g) and (h) which dealt with the acquisition process and the timing for the giving of a notice of intention to resume the land by compulsory acquisition and the timing for lodging an objection against the acquisition. These provisions have been removed to clarify that the Guidelines deal only with the consultation and negotiation period and that the acquisition process for an infrastructure facility is dealt with in the new s 125(8) inserted by clause 56.

Clause 60 also inserts a new s 174(3)(g) which clarifies that the CG's Guidelines must provide procedural requirements for the consultation and negotiation period in order to provide guidance to proponents of infrastructure facilities and affected persons about the procedures which must be complied with during the consultation and negotiation about the taking of land.

Clause 60 inserts a new s 174(5) that in addition to the requirements of s 174(3)(a)-(g), the guidelines made by the CG may also provide procedural requirements for the consultation and negotiation period that must be complied with prior to the formal consultation and negotiation period

commencing to ensure that proponents of infrastructure facilities commence negotiations with affected land owners at an early stage before the minimum 2 month consultation period commences as described in s 174(3)(f).

Clause 61 amends Part 8 of the Act by inserting a new division 4 about the assessment of the Papua New Guinea ('PNG') pipeline project that was the subject of an Impact Assessment Study ('IAS') under the Act in 1998. Clause 61 inserts a new s 175A providing that despite s 104 of the *Environmental Protection Act 1994* and s 39B of the *Nature Conservation Act 1992,* no EIS is required under either of those Acts for the PNG pipeline project that was the subject of an IAS under the SDPWO Act in 1998. This provision does not apply to any new or additional components or significant variations to the project. Any significant variation from the project that was the subject of an IAS under the Act, such as additional pipeline laterals, are subject to assessments under relevant legislation.

An IAS was prepared for the PNG pipeline project prior to the inclusion of significant project provisions in the Act in 1999. While the study had been completed in 1998, there were a number of outstanding information requests which still need to be satisfied. The project has been in abeyance since 1998 but has recently been revived. The proponent, APC, is seeking to have the work comprising the IAS recognised, and complete any further studies required to finalise the environmental assessment, without the need to duplicate the environmental assessment already undertaken.

There is a further potential trigger for an EIS under the *Nature Conservation Act 1992*. The amendments also exclude this possible trigger for an EIS for the project under the Nature Conservation Act.

Clause 62 amends the headings of Part 9 Transitional Provisions as a result of amendments made by clause 63 below.

Clause 63 inserts new transitional provisions in Part 9 by inserting a new Division 2 s 177 to provide that an approval for the use of land in a State development area already given under section 84(4)(b) that has not substantially commenced before the commencement of this section is subject to the currency period provided for by the new s 84A. However the new s 84A(3) is taken to have only taken effect upon the commencement of this section. Therefore a proponent with a use approved by the CG prior to the commencement of this section will have 4 years to substantially commence the development from the commencement of this section unless the approval states or implies some other period in which the approval will

lapse. Additionally, the CG may extend the currency period that applies pursuant to the new s 84A(3)(c).

Clause 64 inserts the following definitions in the Schedule (Dictionary):

— 'approved person' by reference to s 100(1).

— 'Coordinator-General's change report' by reference to s 35I(1); and

— 'EIS' means Environmental Impact Statement.

Clause 64 also amends the definition of 'private works' so that private work may be carried out for purposes not related to the establishment of a town or other community.