

Building Boost Grant Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Building Boost Grant Bill 2011*.

Policy objectives and the reasons for them

Building Boost Grant

To stimulate the Queensland housing market by assisting housing affordability, increasing the supply of housing and supporting employment in the housing construction industry, the 2011-12 State Budget announced the availability of a Queensland Building Boost Grant (building boost grant) of \$10,000 for the purchase or construction of a new home in Queensland valued at less than \$600,000. The building boost grant is available for eligible transactions undertaken between 1 August 2011 and 31 January 2012.

The building boost grant is being paid under an administrative arrangement pending passage of the Building Boost Grant Bill 2011 (the Bill), which will give legislative effect to the building boost grant scheme.

Amendments to State Development and Public Works Organisation Act 1971

Costs incurred in assessing a proposed infrastructure facility of significance mentioned in section 125(1)(f) of the *State Development and Public Works Organisation Act 1971* (the SDPWO Act) are often substantial. It is often necessary to obtain advice on legal, technical and financial issues.

There is currently no clear head of power under the SDPWO Act for the Coordinator-General to recover these costs. Agencies have a responsibility under the *Financial and Performance Management Standard 2009* to introduce charges at a rate that accurately reflects the cost of providing the related services. This Bill inserts a head of power into the SDPWO Act for fees to be charged to persons submitting an application under section 125(1)(f). The fees are in proportion to the service provided by the

government as a cost recovery measure, and to ensure costs incurred are borne by the beneficiary. The amendments also ensure consistency in cost recovery provisions across the SDPWO Act.

Other minor amendments to the SDPWO Act are designed to improve the efficiency of current processes and actions, and to clarify intent.

The other minor amendments to the SDPWO Act include:

- amending the calculation of the Consumer Price Index increase in part 4 (Environmental Impact Statement) fees to use the September quarters, rather than the December quarters to allow adequate time to adjust and publicly notify fees prior to the new calendar year;
- allowing the Coordinator-General to correct clerical errors in Coordinator-General reports and Coordinator-General change reports; and
- administrative amendments such as:
 - allowing the Minister to appoint a Deputy Coordinator-General for a period of up to three months;
 - providing for the Coordinator-General, as opposed to the Governor in Council, to appoint persons to assist the Coordinator-General; and
 - clarifying that the Coordinator-General can concurrently hold the position of Chief Executive Officer.

Achievement of policy objectives

Building Boost Grant

General

The 2011-12 State Budget, delivered on 14 June 2011, announced the availability of a building boost grant of \$10,000 for the purchase or construction of a new home in Queensland valued at less than \$600,000. The building boost grant is available for eligible transactions undertaken between 1 August 2011 and 31 January 2012 and may be applied for by a first home owner, a home owner or an investor.

Pending progression of legislation to give the building boost grant scheme effect, an administrative arrangement was implemented to facilitate the scheme's commencement on 1 August 2011. The administrative arrangement specifies the eligible transactions, the eligibility criteria, the

basis on which the building boost grant may be paid, and the conditions that apply.

To provide certainty for potential applicants regarding eligibility and ensure effective administration of the building boost grant during the period of operation of the administrative arrangement, a comprehensive set of frequently asked questions (FAQs) addressing the building boost grant's operation has been published on a special purpose website (<http://boost.treasury.qld.gov.au/>). In addition, the statutory declaration application form includes detailed information about eligibility, applicants' obligations to provide correct information and repay the grant if incorrectly received, and possible liability for penalties and offences where obligations are not met.

The key operative provisions of the Bill will have retrospective effect to 1 August 2011 to cover the period of the administrative arrangement. This will provide the legislative authority for the payment of building boost grants on and from 1 August 2011 and ensure that the scheme can be properly administered in relation to rights and obligations arising prior to Assent.

The scheme for the building boost grant has been modelled to an extent on the First Home Owner Grant (FHOG) that applies under the *First Home Owner Grant Act 2000* (FHOG Act). However, unlike FHOG, the building boost grant does not require the applicant to reside in the home as their principal place of residence (PPR). The absence of this PPR requirement necessitates the inclusion of further controls for the building boost grant to ensure the policy objectives of the scheme are met. However, the operation of these controls is modified in certain cases where a building boost grant applicant is also eligible for FHOG for the transaction.

Eligible transactions

The following transactions may be eligible for the building boost grant, subject to satisfaction of eligibility criteria.

- (a) A written contract made between 1 August 2011 and 31 January 2012, both days inclusive, for the purchase of a new home in Queensland.
- (b) A written comprehensive home building contract made between 1 August 2011 and 31 January 2012 to have a new home built on land if—

- (i) the building work starts within 26 weeks of the transaction commencement day or the longer period allowed by the Commissioner of State Revenue (Commissioner); and
 - (ii) the building work is completed within the prescribed building period or the longer period allowed by the Commissioner.
- (c) The building of a new home in Queensland by an owner builder if the building work starts on or after 1 August 2011 and the transaction is completed within the prescribed building period or the longer period allowed by the Commissioner.

A contract for the purchase of a new home on a proposed lot on an unregistered plan of subdivision of land will be an eligible transaction only if the contract states the building work must start before 1 February 2013 and be completed before 1 February 2015 or, if the contract does not state either or both a start date and a completion date, the building work is started before 1 February 2013 and completed before 1 February 2015, or the longer period allowed by the Commissioner for completion.

However, the following transactions are not eligible transactions.

- (a) *Related party transactions*: Where the transaction is between related persons (as defined), the transaction is not an eligible transaction. However, this exclusion will not apply if FHOG is paid or payable for the transaction.
- (b) *No transfer duty payable*: A transaction is not an eligible transaction if it is a home purchase contract for which transfer duty is not payable under the *Duties Act 2001* other than because of the first home transfer duty concession or the exemptions for charitable institutions and manufactured homes under that Act. This condition ensures that, where the corporate reconstruction exemption under chapter 10 of the *Duties Act 2001* applies, for instance, the building boost grant is not available.
- (c) *Arrangements to defer the making of a contract*: A transaction is not an eligible transaction where there is a legally binding arrangement made on or after 14 June 2011 and before 1 August 2011 having the sole or main purpose of deferring the making of a home purchase contract or a home building contract until on or after 1 August 2011, including the following.
 - (i) A home purchase contract or a home building contract made on or after 1 August 2011 which replaces a contract made before

that date to purchase the same or substantially similar home, and cancelled on or after 14 June 2011.

- (ii) An option granted on or after 14 June 2011 to enter into a home purchase contract or a home building contract and exercised on or after 1 August 2011.
- (d) *Other government assistance:* Where financial assistance is provided by the Commonwealth or the State in relation to the transaction, other than in the cases mentioned below, the transaction will not be an eligible transaction:
 - (i) a grant under the FHOG Act;
 - (ii) the transfer duty first home concession under the *Duties Act 2001*;
 - (iii) a Commonwealth First Home Saver Account contribution;
 - (iv) financial incentives under the National Rental Affordability Scheme;
 - (v) a loan on commercial terms;
 - (vi) assistance given to mitigate the effects of a natural disaster;
 - (vii) other assistance prescribed by regulation.

In particular, a regulation will be made where a local government provides an incentive that furthers the objects of the building boost grant scheme.

- (e) *Arrangements to obtain building boost grant:* Where the Commissioner is satisfied a transaction forms part of a scheme or arrangement to circumvent limitations on, or requirements affecting, eligibility or entitlement to the building boost grant, it will not be an eligible transaction.

New home

Only the purchase or construction of a new home may qualify for the building boost grant. A home (as defined) will be regarded as new if it has not been previously occupied or transferred as a place of residence. The purchase of a substantially renovated home (as defined) may also qualify.

The home, or the land on which it is built, must be used or intended to be used mainly for residential purposes. The exception to this requirement is where the new home is on land used mainly for primary production and residential purposes, or the home is a display home. In addition, where

FHOG is paid or payable for the transaction, the definition of *home* that applies under the FHOG Act will be relevant.

The transaction must also satisfy value limits. That is, for a home purchase contract, the unencumbered value of the home and the unencumbered value of the relevant interest in the residential land must be less than \$600,000. For a home building contract and an owner builder arrangement, the total of the consideration for the transaction and the unencumbered value of the relevant interest in the residential land must be less than \$600,000.

Where land is used mainly for primary production and residential purposes, the relevant value for the residential land is determined by reference to the part of the land on which the home is built or to be built, and the curtilage attributable to the home if the curtilage is used for residential purposes.

In addition, the consideration for the transaction must be less than \$600,000.

A home will not be regarded as a new home, and the building boost grant will not be payable, if the land on which the home is constructed is newly subdivided and the building boost grant was paid for the home on the land before the subdivision. That is, the home remains the same home.

Relevant interests

To be eligible for the building boost grant, a person must have a relevant interest in the land on which the home is built or to be built. The following relevant interests in land are eligible.

- (a) An estate in fee simple in the land.
- (b) An interest as purchaser under a contract for the purchase from the Commonwealth or the State, or any Commonwealth or State instrumentality or authority, of an estate in fee simple in the land by instalments.
- (c) An interest as purchaser under an instalment contract under the *Property Law Act 1974*, part 6, division 4, for the purchase of an estate in fee simple in the land.
- (d) A person's right, given by a relative of the person, to occupy a new home that is a detached dwelling built or to be built on land that is a part of land owned by the relative under a contract entered into by the person or under an owner builder arrangement.
- (e) A manufactured home owner's interest in a site agreement for a site on which a manufactured home is positioned.

- (f) A leasehold interest in land granted by the Commonwealth or the State where construction of a home is permitted by the terms of the lease or the legislation under which the lease was granted.
- (g) A sublessee's interest under a lease mentioned in (f) that is for a term of at least 10 years.
- (h) An interest in a lease granted under section 119(1)(a) of the *Aboriginal Land Act 1991* or section 84(1)(a) of the *Torres Strait Islander Land Act 1991*.
- (i) Another interest declared by regulation to be a relevant interest.

The relevant interests that qualify for the building boost grant are narrower than those for the FHOG Act. However, if FHOG is paid or payable for a transaction for a home and the transaction would also qualify for the building boost grant but for the different definition of *relevant interest*, the applicant will be taken to have a relevant interest in the land for building boost grant purposes.

The building boost grant may be obtained only once for a particular home and for a particular eligible transaction. The grant may also be obtained only once for a particular relevant interest in land. For instance, where the building boost grant has been paid for a home on a parcel of land and that parcel is subdivided, another home constructed on the subdivided land on which the previous home is also situated will not be eligible for the building boost grant in relation to the same relevant interest in the land.

Eligible applicants

Each of the following is an eligible applicant.

- (a) A natural person who is not a trustee and is at least 18 years of age at the transaction commencement day and is either an Australian citizen or a permanent resident of Australia.
- (b) A corporation which is not a trustee and is substantially Australian owned.
- (c) A trustee of a trust if the trust is substantially Australian owned.

The Bill defines the terms *Australian citizen*, *permanent resident* and *substantially Australian owned*.

If the Commissioner cannot reasonably decide if shares or trust interests are ultimately owned by an Australian entity, including because of the complexity of the ownership arrangements, the entity may be regarded as

substantially Australian owned if the Commissioner is satisfied the shares or trust interest are probably ultimately owned by an Australian entity.

Also, despite these provisions, the Commissioner can decide that an entity is not substantially Australian owned if the Commissioner considers that an ineligible individual may significantly financially benefit, other than as trustee, from the entity. The Bill specifies relevant factors that the Commissioner must have regard to in making this decision.

A person who carries on a business involving building homes, and enters into a transaction in carrying on that business, is not eligible for the grant in relation to that transaction. In addition, a government (Commonwealth, state, territory or local), government owned corporation, government entity, local government owned corporation, a department or administrative office of the Commonwealth or another State, or a statutory body representing the Commonwealth or another State, is not eligible for the building boost grant.

Every person who, on completion of a home purchase contract, will have a relevant interest in the land must be party to the transaction.

Occupancy requirement

The new home must be occupied as a home for at least three months in the year after completion of the eligible transaction. However, where FHOG is also paid or payable for the transaction, the applicant's satisfaction of the FHOG occupancy requirements will be satisfactory for building boost grant purposes.

Amount and number of building boost grants

The amount of the building boost grant payable is the lesser of the consideration for the transaction and \$10,000. For determining the amount of the grant, but not whether or not the applicant is eligible, the consideration payable is adjusted to reflect certain grants and benefits received in relation to the transaction. These include a Commonwealth First Home Saver Account contribution used or to be used for the transaction, a National Rental Affordability Scheme incentive for the home for the 2011-12 financial year, FHOG, and an amount relating to the consideration for the transaction, including an insurance payment to build the home. An amount received from the Commonwealth or the State to mitigate the effects of a natural disaster does not reduce the consideration for this purpose.

A person may obtain more than one building boost grant for separate transactions. However, where the number of building boost grants paid or payable to an applicant, or to related parties of the applicant, would be five or more (including the current application), the applicant is entitled to receive the building boost grant for the fifth and subsequent transaction only if, having regard to relevant factors, the Commissioner is satisfied that the transaction:

- (a) has been entered into for a purpose that advances the purpose of the Act;
- (b) is not an artificial, blatant or contrived arrangement; and
- (c) has not been entered into for the sole or main purpose of obtaining a building boost grant.

To provide certainty for potential applicants, they may apply to the Commissioner for a ruling about their entitlement to the building boost grant for a proposed transaction to which this condition applies.

Applications and payments

Grant applications generally must be made within one year of completion of the transaction. However, where an application for the building boost grant has not been, or will not be, made by 31 May 2012 for a transaction for which the grant is sought, applicants must lodge a notice of intention to apply for the grant by 31 May 2012 (a *preliminary notice*). A building boost grant application must then be lodged within the usual application lodgement timeframes.

Failure to lodge a preliminary notice before 1 June 2012 will preclude a building boost grant application subsequently being lodged for the transaction, except where FHOG is also paid or payable for the transaction and the building boost grant application is lodged no later than when the FHOG application is lodged.

Although the building boost grant is payable on completion of the eligible transaction, the Commissioner may pay the grant before completion if satisfied that it is appropriate to do so.

Where the building boost grant is paid before completion of an eligible transaction, whether in anticipation of compliance with the occupancy requirement or the transaction value/consideration requirement, or is paid subject to conditions, applicants have an obligation to notify the Commissioner where the requirements or conditions are subsequently not met. There is also an obligation to repay the grant.

Review of decisions

A person who is dissatisfied with a decision by the Commissioner in relation to the person's entitlement to the building boost grant may lodge a written objection with the Commissioner. The objection must be lodged within 60 days of being given a decision notice or within 90 days after the original decision is made if a decision notice is not given.

Where the person is dissatisfied with the objection decision, they may seek a review by the Queensland Civil and Administrative Tribunal (QCAT). The request for review must be lodged with QCAT within 60 days of notification of the objection decision.

Investigation, enforcement and offences

The Bill provides powers of investigation and enforcement, and establishes offences, to ensure the effective administration of the building boost grant scheme. These include the following.

- The Commissioner may, by notice, require the provision of information, the production of a document and attendance at a stated place. In addition, an authorised officer may, by notice, require a person to give the officer information relating to an offence that the officer reasonably believes has been committed against the Act.
- Authorised officers have powers of entry to places, with the circumstances in which the power may be exercised dependent on whether the place is a public place or a place of business, the entry is with consent or the entry is under a warrant.
- On entry to a place, an authorised officer may exercise stated powers, including requiring an occupier of the place or a person at the place to provide reasonable help to exercise the powers. The authorised officer may also exercise powers of seizure in stated circumstances.
- A person who gives false or misleading information, or provides false or misleading documents, to the Commissioner or an authorised officer commits an offence.
- Failure to provide notification of, and repay, a wrongly paid grant as required is an offence and may be the subject of a penalty imposed by the Commissioner. The penalty may be equal to the amount of the wrongly paid grant. The Commissioner may also impose a penalty where the grant has otherwise been wrongly paid to a person and the person has been given a repayment notice by the Commissioner or the

grant was wrongly paid because of a false or misleading statement or the provision of a false or misleading document.

- The penalty is an alternative to prosecution for a relevant offence. The Bill specifies the circumstances where the penalty must be refunded or may again become payable, where proceedings are commenced or withdrawn, respectively.
- Where an amount is required to be repaid under a repayment notice or a penalty amount is payable, the Commissioner can register a charge over the relevant land. The Commissioner can also give a garnishee notice to a person who the Commissioner reasonably believes is holding or may hold an amount for or on account of the applicant, who is liable or may become liable to pay an amount to the applicant, or who is authorised to pay an amount to the applicant.

Transitional provisions

The retrospective commencement of certain provisions of the Bill requires the inclusion of transitional provisions to ensure persons are not detrimentally affected retrospectively and ensure they may exercise rights on Assent where those rights did not commence retrospectively. The transitional provisions operate as follows.

- A person does not commit an offence where, before Assent, section 35(1) or (2) applied and the applicant contravened section 35(3) and did not repay the building boost grant as required. However, the person will commit an offence if they fail, within 28 days after Assent, to give the Commissioner notice of the ineligibility of the transaction and repay the grant.
- A person does not commit an offence where, before Assent, section 36(1) applied and the applicant contravened section 36(2) and did not repay the building boost grant as required. However, the person will commit an offence if they fail, within 28 days after Assent, to give the Commissioner notice of the contravention and repay the grant.
- A person does not commit an offence where, before Assent, the Commissioner imposed a condition on a building boost grant stating a repayment requirement and the applicant contravened the requirement and did not repay the building boost grant. However, the person will commit an offence if they fail, within 28 days after Assent, to give the Commissioner notice of the contravention and repay the grant.

- A person does not commit an offence in giving false or misleading information or a document containing false or misleading information, and failing to tell the Commissioner how the information was false or misleading or giving the Commissioner the correct information, prior to Assent. However, the person commits an offence if they do not, within 28 days after Assent, give the Commissioner a written statement about how the information was false or misleading or give the Commissioner the correct information.
- Evidential immunity is provided to a person who gives the Commissioner the information required in relation to previously provided false or misleading information or documents.
- The Commissioner may give a person a repayment notice, requiring repayment of a grant, where the person has not repaid an amount as required under section 110, 111 or 112. A repayment notice may also be given where, before Assent, a person has given false or misleading information or documents, a building boost grant was wrongly paid as a result and the person has not repaid the grant within 28 days after Assent.
- The Commissioner may give a person a penalty notice under section 84 if a person contravenes section 110, 111, 112 or 113, a repayment notice is given to the person and the person does not pay the amount as required.
- The time for giving the Commissioner an objection is extended where, before Assent, an original decision in relation to the grant is made but a decision notice is not given for the decision. The applicant may give the Commissioner an objection within 90 days after Assent.
- Where an objection decision is made before Assent that confirmed the original decision, or set aside an original decision and substituted another decision in a way that was not requested by the applicant, the Commissioner must, within 28 days after Assent, give the applicant notice of the objection decision. The notice must comply with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act). The applicant may then seek a review of the objection decision in the way provided for in part 4 division 2.
- A transitional regulation making power is included. A transitional regulation may have retrospective operation to no earlier than Assent. Such a regulation, and the transitional regulation making power, expire one year after Assent.

Amendments to State Development and Public Works Organisation Act 1971

Amendments to the SDPWO Act allow the Coordinator-General to charge an applicant a fee if the person asks the Coordinator-General to seek the Governor in Council's approval for the proposed infrastructure facility under section 125(1)(f), or asks the Coordinator-General to take land for the purpose of the infrastructure facility under section 125(1)(f), or applies for an investigator's authority under section 143 for the infrastructure facility. The amendments also allow the Coordinator-General to recoup any additional costs of obtaining advice or services considered necessary under that part.

Minor administrative amendments clarify provisions under the SDPWO Act to improve the efficiency of current processes and actions, and clarify intent.

Alternative ways of achieving policy objectives

The policy objectives for the building boost grant scheme require the enactment of legislation to properly give them effect.

The Bill provides the necessary frameworks to achieve the objectives in relation to the amendments to the SDPWO Act. There are no other viable alternatives that would achieve the Government's policy objectives.

Estimated cost for government implementation

The building boost grant scheme has been operating under an administrative arrangement since 1 August 2011. There are no additional implementation costs as a result of enactment of the Bill.

Implementation costs relating to the amendments to the SDPWO Act are not expected to be significant. These costs relate to client education activities, changes in publications, documents, website and systems, staff training and managing enquires through the implementation period. In 2011, the fees for Infrastructure Facilities of Significance, per application, range between \$15,000 and \$110,000 depending on the type of application. CPI escalation applies from 1 January 2012 (and each year thereafter). The fee levels are based on recovery of departmental costs (including staff) for processing each application type. The fee revenue will therefore provide departmental resources that are required to process the complex applications.

Consistency with fundamental legislative principles

Retrospective operation of legislation

General

There was insufficient time to progress the Bill before the building boost grant scheme commenced on 1 August. Therefore, implementation of an administrative arrangement was necessary to ensure the building boost grant could be paid from that date. Certain provisions of the Bill therefore have retrospective effect to 1 August 2011 to cover the period of the administrative arrangement. Other provisions commence on Assent where it would be inappropriate or not possible for them to commence retrospectively.

The broad effect of the retrospectivity is beneficial to the community in that the Bill provides the legislative authority for the payment of the \$10,000 building boost grant. The legislation also provides certainty regarding eligibility for the grant, the basis for applying for, and paying, the grant, and the rights and obligations arising under the scheme.

In implementing the building boost grant scheme and the legislative model, a key consideration has been ensuring that an individual's rights and liberties are not adversely affected, and obligations are not imposed, retrospectively. The principal ways in which this is achieved are as follows.

- A comprehensive set of FAQs addressing the building boost grant's operation has been published on the special purpose Boost website (<http://boost.treasury.qld.gov.au/>). The FAQs cover all aspects of the building boost grant scheme, including eligibility, applying for the grant, paying the grant, obligations to notify and repay the grant if incorrectly received, and liability for penalties and offences in certain cases.
- The statutory declaration application form includes detailed information about eligibility, applicants' obligations to provide correct information and repay the grant if incorrectly received, and liability for penalties and offences where requirements are not complied with. At the time of applying, applicants are therefore aware of the basis of their entitlement to the building boost grant and their obligations under the grant scheme.

The provisions of the Bill reflect, and give effect to, the administrative arrangement.

Transitional provisions are included to ensure that a person is not detrimentally affected by the retrospective commencement of the Bill. Relevant matters in relation to managing retrospectivity issues are set out below.

Investigations and offences

Powers of investigation apply from Assent. On this basis, investigations relating to compliance with the building boost grant scheme will only commence following Assent, with the associated powers being capable of exercise from then, and any obligations in relation to those powers generally also arising at that time.

Although a person will not commit an offence if they provide false or misleading information or documents before Assent, they are required after Assent to give the Commissioner a written statement about how the information was false or misleading or give the correct information. An offence is committed if the person does not comply with this requirement within 28 days after Assent.

Similarly, an offence will not be committed where, before Assent, a person fails to notify the Commissioner and repay a wrongly paid grant as required by the Act. However, the person must, within 28 days after Assent, give the Commissioner notice of the ineligibility of the transaction or notice of the contravention, and repay the grant. Failure to comply with these requirements is an offence.

To further address FLP issues, the building boost grant application form requires the making of a statutory declaration and an acknowledgement by an applicant that penalties or prosecution may apply where false or misleading information is provided to the Commissioner. The FAQs on the Boost website also make this clear. Similarly, a person's obligation to notify the Commissioner and repay the building boost grant where the grant has been incorrectly received has been made clear as part of the administrative arrangement.

Objections and reviews

Applicants dissatisfied with the Commissioner's decision in relation to a building boost grant application may lodge an objection. The objection provisions of the Bill will apply from 1 August 2011 to ensure that objections may be lodged and determined before Assent. The basis for exercising these rights of objection will be advised in the decision notice given by the Commissioner for the original decision, so that the absence of

legislation at that time will not prejudice the person's ability to exercise their right of objection. If a decision notice is not given for an original decision, however, the person has 90 days after Assent to give the Commissioner an objection.

As jurisdiction cannot be conferred on QCAT prior to Assent, a transitional provision is included in the Bill allowing an applicant whose objection was disallowed before Assent to appeal to QCAT after Assent. The Commissioner is required, within 28 days after Assent, to give the applicant notice of the objection decision complying with section 157(2) of the QCAT Act. This ensures applicants are aware of their review rights and the time for exercising them.

Debt recovery

Although recovery action in relation to an overpaid building boost grant amount may not be started until after Assent, such action may be started after that date in relation to an amount that became payable to the Commissioner between 1 August 2011 and Assent. This ensures the integrity of the grant scheme and the protection of the public revenue.

Access to premises

To ensure that all necessary information and documents are available to allow proper determination of an applicant's eligibility for the building boost grant, Part 3 provides authorised officers with the power to enter places without a warrant in specified circumstances, being where consent is obtained, it is a public place open to the public, or it is a place of business and the entry is made when the place is open for carrying on business or otherwise open for entry. In other cases, including where the place is used for residential purposes and consent to entry is not given, a warrant will be necessary.

Having accessed a place under this power, the authorised officer may then exercise other specified powers, including searching the place, taking an extract from or copying a document, and seizing documents or other things in stated circumstances. The conditions on which seized documents and things may be retained and returned is also specified.

These powers reflect those that may be exercised under the *First Home Owner Grant Act 2000* and the *Taxation Administration Act 2001*, which applies for all of the taxation laws administered by the Commissioner. Adoption of consistent access powers for this Act ensures that authorised

officers may effectively exercise these powers for investigations involving compliance with more than one Act at the same time.

Protection against self incrimination

For carrying out an authorised investigation, the Commissioner may issue a notice requiring a person to give the Commissioner written information, produce a document or attend before the Commissioner or an authorised officer to answer questions.

When exercising the powers of access provided under Part 3, an authorised officer may require an occupier of the place or a person at the place to give the officer reasonable help.

In each case, a person must comply with these requirements unless the person has a reasonable excuse. It is a reasonable excuse for a person not to comply with the requirement if complying might tend to incriminate the person.

Under the Act, the Commissioner may impose an administrative penalty where a person receives a grant but was not entitled to it, including where they fail to satisfy the occupancy requirements after completion of the transaction, and they fail to notify the Commissioner and repay the grant as required. The ability to impose an administrative penalty is an important element of promoting voluntary compliance and protecting the public revenue. This is particularly so given that the building boost grant may be paid before completion of a transaction and before the applicant has satisfied all of the eligibility criteria.

The information obtained under the powers of investigation is used by the Commissioner for determining an applicant's eligibility for a grant. Where the information obtained indicates that the person wrongly received the grant, the Commissioner may impose the administrative penalty when requiring repayment of the overpaid grant.

Delegation of legislative power only in appropriate cases and to appropriate persons

Amendment of an Act only by another Act

The building boost grant will apply for a six month period until 31 January 2012. Although applications may be made, and grants paid, after the eligibility period ends, there is a need to ensure that the basis on which the grant is payable is clear during this eligibility period. There is also a need to ensure that any avoidance issues that are identified following Assent,

using the investigation powers that will then apply, can be promptly addressed to minimise any risk to the public revenue

The short period of application of the building boost grant, and the limited opportunity for Parliament to consider any urgent amendments that may be required after enactment and before eligibility for the grant ends, mean that an alternative basis for addressing issues with the building boost grant scheme is necessary.

A transitional regulation making power is therefore included to provide about a matter that:

- is necessary to provide for, to allow or facilitate the doing of anything to properly administer the Act in relation to matters arising from the application, or purported application, of the retrospectively applied provisions to events that happened before Assent; and
- the Act does not provide for or sufficiently provide for.

A transitional regulation must declare it is a transitional regulation.

The transitional regulation making power and any transitional regulation made under it will expire one year after Assent.

Amendments to State Development and Public Works Organisation Act 1971

Amendments to the SDPWO Act do not infringe on fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Building Boost Grant

Consultation on aspects of the building boost grant were undertaken with relevant industry groups in developing the details of the building boost grant scheme. Also, following announcement of the building boost grant on 14 June 2011, issues were raised by members of the public about how the grant would apply in particular circumstances.

The consultation undertaken with relevant industry bodies and issues raised by the public informed the final form of the administrative arrangement, on which the Bill has been modelled. The Bill gives effect to this administrative arrangement.

Amendments to State Development and Public Works Organisation Act 1971

Key government agencies which may have an interest in the SDPWO Act amendments have been consulted.

Consistency with legislation of other jurisdictions

The Bill is not part of national scheme legislation.

The amendments to the SDPWO Act are consistent with legislation in other jurisdictions.

Notes on provisions

Part 1 Preliminary

Clause 1 cites the short title of the Act as the *Building Boost Grant Act 2011*.

Clause 2 provides when the provisions of the Act commence. Certain provisions are taken to have commenced on 1 August 2011 to give effect to the administrative arrangement for the building boost grant scheme.

Clause 3 specifies the purpose of the Act and how the purpose is achieved. The Act's purpose is relevant for applying section 23 of the Act in relation to a person's entitlement to multiple grants.

Clause 4 provides that the dictionary defines words used in the Act.

Clause 5 specifies what a building boost is generally and in relation to a particular home.

Clause 6 specifies that, subject to section 18, an eligible transaction is an eligible home purchase contract, an eligible home building contract or an eligible owner builder arrangement.

Clause 7 defines *home*. A building used as a display home after completion of the relevant transaction will be regarded as a home even though it is used for the purpose of a display home and does not therefore satisfy the requirements of subsection (1)(c) and (e).

The definition of *home* in the *First Home Owner Grant Act 2000* differs to the definition of *home* in this Act. Subsection (2) provides that, for a building boost grant application where a grant is also paid or payable under the *First Home Owner Grant Act 2000*, the relevant definition of *home* will be that under the *First Home Owner Grant Act 2000*.

Clause 8 defines *new home*. The home must not have been previously occupied or transferred as a place of residence. A transfer of a home includes its transfer for no consideration. A *substantially renovated home* is also a new home. However, renovation of a home by a person is not a transaction for which the person may claim a building boost grant. Rather, it is necessary that the home is the subject of a home purchase contract and satisfies the other requirements of subsection (2) to be regarded as substantially renovated.

Clause 9 defines *relevant interest*. Additional interests may be declared under a regulation to be relevant interests even though the interest may not be recognised at law or in equity as an interest in land. The holder of the relevant interest must have a right to immediate occupation of the land within stated timeframes.

The definition of *relevant interest* in the *First Home Owner Grant Act 2000* differs to the definition of *relevant interest* in this Act as additional interests are included as relevant interests under the former Act. Subsection (2) provides that, for a building boost grant application where a grant is also paid or payable under the *First Home Owner Grant Act 2000*, the relevant definition of *relevant interest* will be that under the *First Home Owner Grant Act 2000*.

Clause 10 defines *unencumbered value*. In this regard, the value of property, being a home, land or a relevant interest in land, is determined without regard to any encumbrance to which the property is subject, whether or not contingently, and also without regard to certain arrangements that either reduce the value of the property or for which a significant purpose was the reduction of the value of the property. For property held on trust, the unencumbered value is determined without regard to the liabilities of the trust, including the liability to indemnify the trustee.

Clause 11 provides that the Commissioner of State Revenue under the *Taxation Administration Act 2001* is responsible for the administration and enforcement of the Act and has the powers to do all things necessary or convenient to be done to perform these functions. This power includes an

ability to enter into and revoke administration agreements with financial institutions or other persons in relation to the administration of the building boost grant scheme.

Part 2 Building boost grants

Clause 12 specifies when an applicant is entitled to be paid a building boost grant for a transaction. There must be an eligible transaction that has been completed or for which the Commissioner has authorised payment prior to completion. In addition, all applicants must comply with the eligibility criteria and a proper application must be made.

Clause 13 defines *transaction commencement day*, which is relevant for determining whether a transaction is an eligible home purchase contract, an eligible home building contract or an eligible owner builder arrangement. For a home purchase contract or a home building contract, the transaction commencement day is the day the contract is made. For an owner builder arrangement, the transaction commencement day is the day that laying the foundations for the home starts.

Clause 14 specifies when a home purchase contract will be an eligible home purchase contract, being an eligible transaction for section 6. The written contract must:

- be for the purchase of a new home that is, or is to be built, on land in the State;
- have a transaction commencement day that is on or after 1 August 2011 and before 1 February 2012;
- be for the acquisition of a relevant interest in the land on which the home is built, or be for the acquisition of a relevant interest in the land on which the home is to be built, before completion of the contract, by or for the vendor and at the vendor's expense; and
- be entered into by each person who will have a relevant interest in the land on completion of the contract.

In addition, the total of the unencumbered value of the home and the unencumbered value of the relevant interest in the residential land at the transaction commencement day must be less than \$600,000. *Residential land* is defined in the schedule.

Example: A home purchase contract is for the purchase of an estate in fee simple where the property is used for primary production and residential purposes. The unencumbered value of the home is \$200,000 and the unencumbered value of the relevant interest in the land is \$900,000.

Although the total unencumbered value of the home and the relevant interest is > \$600,000, it is the unencumbered value of the residential land that is relevant. As the land is used mainly for primary production and residential purposes, only the part of the land on which the home is built and the curtilage attributable to the home, if the curtilage is used for residential purposes, is taken into account. If the value of this residential land is < \$400,000, the home purchase contract may be an eligible home purchase contract.

If the land is not used mainly for primary production and residential purposes, the residential land is the land on which the home is, or is to be, built.

Where a contract is for the purchase of a new home on a proposed lot on an unregistered plan of subdivision, the building work must be started before 1 February 2013 and be completed before 1 February 2015, or within a longer period allowed by the Commissioner.

Clause 15 defines *prescribed building period*, which is relevant for determining whether a home building contract is an eligible home building contract, and whether an owner builder arrangement is an eligible owner builder arrangement.

Clause 16 specifies when a home building contract will be an eligible home building contract, being an eligible transaction for section 6. The written contract must:

- be a comprehensive home building contract to have a new home built on land in the State;
- have a transaction commencement day that is on or after 1 August 2011 and before 1 February 2012;
- be entered into by each person who will have a relevant interest in the land on completion of the contract.

Building work, evidenced by the start of laying the foundations, must start within 26 weeks after the transaction commencement day, or the longer period allowed by the Commissioner. Also, the contract must provide for

the home being ready for occupation as a place of residence within the prescribed building period or, if this does not apply, the home must be ready for occupation as a place of residence within the prescribed building period, or the longer period allowed by the Commissioner.

In addition, the total of the consideration for the transaction and the unencumbered value of the relevant interest in the residential land at the transaction commencement day must be less than \$600,000.

Clause 17 specifies when an owner builder arrangement is an eligible owner builder arrangement, being an eligible transaction for section 6. The arrangement must be for the building of a new home on land in the State, the transaction commencement day must be on or after 1 August 2011 and before 1 February 2012, and the home must be ready for occupation as a place of residence within the prescribed building period, or the longer period allowed by the Commissioner.

In addition, the total of the consideration for the transaction and the unencumbered value of the relevant interest in the residential land must be less than \$600,000.

Clause 18 specifies the transactions that are not eligible transactions.

A transaction is not an eligible transaction where there is a legally binding arrangement made on or after 14 June 2011 and before 1 August 2011 having the sole or main purpose of deferring the making of a home purchase contract or a home building contract until on or after 1 August 2011, including the following:

- a home purchase contract or a home building contract made on or after 1 August 2011 which replaces a contract made before that date to purchase the same or substantially similar home, and cancelled on or after 14 June 2011;
- an option granted on or after 14 June 2011 to enter into a home purchase contract or a home building contract, which is exercised on or after 1 August 2011.

Also, a transaction is not an eligible transaction if the Commissioner is satisfied it forms part of a scheme or arrangement to circumvent limitations on, or requirements affecting, eligibility or entitlement to the building boost grant.

Financial assistance provided by the Commonwealth or the State in relation to a transaction will ordinarily preclude it from eligibility. However, the following exceptions to this exclusion ensure that a transaction may still be

eligible for the building boost grant even though the stated financial assistance is received for the transaction:

- a grant under the *First Home Owner Grant Act 2000*;
- a transfer duty concession for first homes under section 92 of the *Duties Act 2001*;
- a Commonwealth First Home Saver Account contribution;
- a National Rental Affordability Scheme incentive;
- a loan made on commercial terms, such as the Queensland Housing Finance Loan under the *Housing Act 2003*;
- assistance given to mitigate the effects of a natural disaster, such as payments under the Premier's Disaster Relief Appeal which provide assistance for those affected by flooding in Queensland during early 2011 and Tropical Cyclone Yasi;
- other assistance under a financial assistance scheme prescribed by regulation.

Clause 19 specifies when an entity is *substantially Australian owned*. Whether or not a trust or a corporation is substantially Australian owned is relevant for determining whether it is an eligible applicant for the building boost grant.

If the Commissioner cannot reasonably decide if shares or trust interests are ultimately owned by an Australian entity, including because of the complexity of the ownership arrangements, the entity may be regarded as substantially Australian owned if the Commissioner is satisfied the shares or trust interest are probably ultimately owned by an Australian entity.

Also, despite these provisions, the Commissioner can decide that an entity is not substantially Australian owned if the Commissioner considers that an ineligible individual may significantly financially benefit, other than as trustee, from the entity. Subsection (5) specifies the relevant factors that the Commissioner must have regard to in making this decision.

Clause 20 clarifies the meaning of *ultimately owned* for the purposes of deciding when an entity is substantially Australian owned. The provision allows tracing through a series of companies, trusts or a combination of them to determine the ultimate owner of shares in a corporation or trust interests in a trust.

Clause 21 specifies the criteria that must be satisfied for an applicant to be an eligible applicant. A trustee of a trust and a corporation must be substantially Australian owned. An individual must be at least 18 years of age at the transaction commencement day and be either an Australian citizen or a permanent resident. In addition, the applicant must have a relevant interest in the land on which the home is, or is to be built, and comply with the occupancy requirement for the grant. This section is subject to sections 22 and 26 dealing with general restrictions on eligibility and particular exclusions, respectively.

Clause 22 specifies the general restrictions on eligibility for the grant. A building boost grant is payable only once for:

- (a) a particular eligible transaction;
- (b) a transaction relating to a particular home; and
- (c) a particular relevant interest held in land on which a new home is, or is to be, built.

The example for subsection (c) illustrates the operation of that provision where land is subdivided.

Clause 23 specifies the circumstances where a person is entitled to receive five or more building boost grants. In determining whether or not a person has applied for or received at least four building boost grants, regard is had to applications made by that person and related persons, whether or not the applications were made jointly or separately.

The applicant is entitled to receive a building boost grant for the fifth and any subsequent transaction only if the Commissioner is satisfied that the transaction:

- (a) has been entered into for a purpose that advances the purpose of the Act as stated in section 3;
- (b) is not an artificial, blatant or contrived arrangement; and
- (c) has not been entered into for the sole or main purpose of obtaining a building boost grant.

In forming satisfaction as to the matters in subsection (3)(a)–(c), the Commissioner must have regard to the relevant factor specified in subsection (4).

Clause 24 Provides that a person may apply for a ruling from the Commissioner in relation to whether a proposed transaction satisfies the

matters in section 23(3)(a)–(c) and may be eligible for a building boost grant. The Commissioner must give the applicant a decision notice for the ruling if the Commissioner decides that the applicant is not entitled to receive the grant.

Clause 25 specifies the requirements in relation to occupation of a home for which the building boost grant has been paid. The home must be occupied as a place of residence for a total of three months, whether or not continuous, in the year after completion of the transaction. There is no stipulation as to who must occupy the home as required.

If a grant under the *First Home Owner Grant Act 2000* is paid or payable for the transaction, the occupancy requirement under section 25 will be taken to be satisfied if the applicant satisfies the residence requirement under the *First Home Owner Grant Act 2000*.

If the home is not occupied for the required period, or the applicant's relevant interest is transferred before the home has been occupied as required, the occupancy requirement will not be satisfied and section 36 will apply to require notification and repayment of the grant for the transaction.

Clause 26 specifies the particular entities that are not eligible for the grant. A person who carries on a business involving building, and who enters into a transaction in carrying on that business, is not eligible for the building boost grant for that transaction. However, a person who purchases the home from the builder may be eligible for the building boost grant in relation to that transaction.

Clause 27 specifies how a grant application is to be made. An application for a grant must generally be made within the period starting on the transaction commencement day for the eligible transaction and ending one year after completion of the eligible transaction. However, the Commissioner may allow an application to be made outside the application period specified in subsection (3). Section 27 is subject to section 29, which requires the giving of a notice of intention to apply for a building boost grant in certain circumstances.

Clause 28 requires each interested person to be an applicant for the grant for a transaction. Subsection (3) and (4) clarify that, where the relevant interest is one under section 9(1)(c), (d), (f) or (g), the holder of a coexisting relevant interest in the land, such as the holder of an estate in fee simple, is not an interested person for subsection (1).

Clause 29 requires lodgement of a notice of intention to apply before 1 June 2012, or the later time allowed by the Commissioner, if an application for a building boost grant has not been made for an eligible transaction but is intended to be made. Failure to give the notice by the required time will preclude an application being made for a building boost grant for the transaction. These requirements are modified where a first home owner grant under the *First Home Owner Grant Act 2000* is paid or payable for the transaction and the applicant applies for the building boost grant no later than when applying for the first home owner grant.

Clause 30 allows the Commissioner to require an applicant to provide further information or documents for an application. The Commissioner may refuse the application if the information or documents are not provided as required. A decision notice for the refusal would be given under section 31(5).

Clause 31 specifies how the Commissioner must decide an application. The Commissioner may authorise the payment of the building boost grant subject to reasonable conditions. As stated in section 37, these conditions may include an obligation to give the Commissioner notice of a contravention of the conditions and repay the grant within a period that is stated as part of the conditions.

Payment of the grant without conditions is taken to be notice of the decision. If the Commissioner refuses an application or imposes a condition, a decision notice must be given with the notice of the decision.

Clause 32 provides that the amount of the building boost grant is the lesser of \$10,000 and the consideration for the transaction. Subsection (2) specifies the amounts in relation to the transaction that will reduce the consideration for subsection (1)(a). The amount of any assistance given by the Commonwealth or the State to mitigate the effects of a natural disaster, such as a payment under the Premier's Disaster Relief Appeal to assist those affected by flooding in Queensland during early 2011 and Tropical Cyclone Yasi, will not reduce the consideration for subsection (1)(a).

Clause 33 specifies when the building boost grant is payable. Although a building boost grant is generally payable after completion of the eligible transaction, the Commissioner may pay the grant before completion if satisfied it is appropriate in the circumstances.

Clause 34 states how the building boost grant must be paid.

Clause 35 imposes an obligation to notify the Commissioner and repay the building boost grant within the stated timeframe where the grant has been paid before completion of the relevant transaction and:

- (a) for a home purchase contract, the unencumbered value of the home results in it not being an eligible transaction under section 14(e); or
- (b) for a home building contract or an owner builder arrangement, the consideration for the transaction results in it not being an eligible transaction under section 16(f) or 17(d), respectively.

Failure to do so is an offence unless the applicant has a reasonable excuse.

Clause 36 imposes an obligation to notify the Commissioner and repay the grant within the stated timeframe where the grant has been paid before the occupancy requirement for the home has been complied with and the requirement is not satisfied. Failure to do so is an offence unless the applicant has a reasonable excuse.

Clause 37 imposes an obligation to notify the Commissioner and repay the grant within the stated timeframe where the Commissioner has imposed conditions for the grant which included the notification and repayment obligation. Failure to do so is an offence unless the applicant has a reasonable excuse.

Clause 38 authorises the Commissioner to require repayment of a wrongly paid grant by giving a person a repayment notice. A decision notice must be given with the repayment notice.

Part 3 Enforcement

Clause 39 empowers the Commissioner to issue a written notice that requires a person to give specified written information stated in the notice, to attend and answer questions relevant to an investigation, or to produce a document. The information may be required to be verified on oath or by statutory declaration. The section creates an offence where a person fails to comply with such a requirement, or where the person who has attended before the Commissioner fails to answer a question relevant to the investigation, without reasonable excuse. To provide appropriate protection, it is a reasonable excuse for a person to fail to comply with such a requirement or to answer such a question if complying with the

requirement or answering the question would tend to incriminate the person.

Clause 40 permits the Commissioner to inspect and take copies without fee of any record kept by a public sector unit or local government for the purposes of an authorised investigation.

Clause 41 provides that this division and divisions 3 to 6 include provisions for authorised officers.

Clause 42 empowers the Commissioner to appoint a public service officer as an authorised officer, if the Commissioner is satisfied that they have the necessary expertise or experience.

Clause 43 provides for the appointment conditions and limits on an authorised officer's powers. Subsection (1) provides that an authorised officer holds office on any conditions stated in:

- (a) the officer's instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.

Subsection (2) provides that the instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the officer's powers. *Signed notice* is defined in subsection (3) to mean a notice signed by the Commissioner.

Clause 44 provides for when an authorised officer ceases to hold office. Subsection (1) provides that the office of a person as an authorised officer ends if any of the following happens:

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the officer ceases to hold office;
- (c) the officer's resignation under section 45 takes effect.

Subsection (2) provides that subsection (1) does not limit the ways the office of a person as an authorised officer ends. *Condition of office* is defined in subsection (3) to mean a condition under which the authorised officer holds office.

Clause 45 provides that an authorised officer may resign by signed notice given to the Commissioner.

Clause 46 provides for the issue of identity cards to authorised officers.

Clause 47 requires that, except in cases where it is not practicable to do so, an authorised officer must produce their authorised officer's identity card for inspection by a person, or display the identity card so that it is clearly visible to the person, prior to exercising a power in relation that person.

However, subsection (3) provides that for subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 51(1)(b) or (d).

Clause 48 provides for the return of identity cards for authorised officers.

Clause 49 clarifies the interpretation of the Act in relation to a reference to the exercise of a power.

Clause 50 clarifies the interpretation of the Act in relation to a reference to a document.

Clause 51 empowers authorised officers to enter places for carrying out an authorised investigation. For residential premises, the occupier must consent or a warrant must authorise the entry. For a public place or place of business, entry may occur without a warrant if the place is open to the public, or open for the conduct of business or entry respectively.

Subsection (2) provides that for subsection (1)(d), a *place of business* does not include a part of the place where a person resides.

Subsection (3) provides that if the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn. Subsection (4) provides that if the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subsection (5) provides a definition of *public place*.

Clause 52 provides that subdivision 2 applies if an authorised officer intends to ask an occupier of a place for consent to the officer or another authorised officer entering the place under section 51(1)(a).

Clause 53 clarifies the power of authorised officers to enter land to obtain consent to enter.

Clause 54 specifies the procedure to be followed when an authorised officer seeks consent to enter a place.

Clause 55 makes provision for the giving of a consent acknowledgment. Subsection (1) provides that if the consent is given, the authorised officer

may ask the occupier to sign an acknowledgement of the consent. Subsection (2) then lists the matters the acknowledgement must state.

Subsection (3) provides that if the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

Subsection (4) provides that if an issue arises in a proceeding about whether the occupier consented to the entry, and an acknowledgement complying with subsection (2) for the entry is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Clause 56 sets out the procedure for application for a warrant to enter or search a place.

Clause 57 clarifies when a magistrate may issue a warrant, and the matters that must be stated in the warrant.

Clause 58 makes provision for the application of a warrant by electronic communication.

Clause 59 provides the additional procedures for an application made by electronic communication.

Clause 60 provides that a warrant is not invalidated by a defect in the warrant or in compliance with the subdivision unless the defect affects the substance of the warrant in a material particular. Subsection (2) defines *warrant* to include a duplicate warrant mentioned in section 59(3).

Clause 61 clarifies the procedure to be followed when an authorised officer intends to enter a place under the authorisations of a warrant.

Clause 62 makes provision for the application of division 4.

Clause 63 empowers an authorised officer to exercise certain powers when the officer had entered a place, including, but not limited to, powers to search and inspect and copy documents.

Clause 64 provides that an authorised officer may also require a person to assist the authorised officer to exercise the general powers (a *help requirement*) by answering questions or producing documents. When making a help requirement, the authorised officer must give the person an offence warning for the requirement. That is, the officer must warn the person that, without reasonable excuse, it is an offence not to comply with the help requirement.

Clause 65 creates an offence where a person fails to comply with a help requirement without reasonable excuse. It is a reasonable excuse for a person to fail to comply if doing so would tend to incriminate the person.

Clause 66 makes provision for evidential immunity for individuals complying with a help requirement. Subsection (1) provides that subsection (2) applies if an individual gives or produces information or a document to an inspector under a help requirement.

Subsection (2) provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual in the proceeding.

Subsection (3) provides that subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document, or in which the false or misleading nature of the information or document is relevant evidence.

Clause 67 provides that an authorised officer who enters a place the officer may enter under the Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against the Act.

Clause 68 makes provision for an authorised officer's power to seize evidence and subsection (1) provides that the section applies if:

- (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
- (b) the authorised officer enters the place after obtaining the consent or under a warrant.

Subsection (2) provides that if the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place only if:

- (a) the officer reasonably believes the thing is evidence of an offence against the Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

Subsection (3) provides that if the authorised officer enters the place under a warrant, the officer may seize the evidence for which the warrant was issued.

Subsection (4) provides that the authorised officer may also seize anything else at the place if the officer reasonably believes:

- (a) the thing is evidence of an offence against the Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

Clause 69 deals with seizing property subject to security. Subsection (1) provides that an authorised officer may seize a thing, and exercise powers relating to the thing despite a lien or other security over it claimed by another person. However, subsection (2) provides that the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the authorised officer.

Clause 70 makes provision for an authorised officer's power to secure a seized thing.

Subsection (1) provides that having seized a thing under the division, an authorised officer may:

- (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
- (b) move it from the place of seizure.

Subsection (2) provides that, for subsection (1)(a), the authorised officer may, for example:

- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
- (b) for equipment—make it inoperable; or
- (c) require a person the officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an officer could do under subsection (1)(a).

Clause 71 provides that a person must comply with a requirement made of the person under section 70(2)(c), unless the person has a reasonable excuse.

Clause 72 makes it an offence to interfere with a seized thing. Subsection (1) provides that if access to a seized thing is restricted under section 70, a person must not tamper with the thing or with anything used to restrict access to the thing without an authorised officer's approval or a reasonable excuse.

Subsection (2) provides that if access to a place is restricted under section 70, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an authorised officer's approval or a reasonable excuse.

Clause 73 places a requirement on an authorised officer to give a receipt and review notice for a seized thing.

Subsection (1) provides that the section applies if an inspector seizes anything under the division unless:

- (a) the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the officer to comply with the section.

Subsection (2) provides that the authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized:

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) a review notice about the decision to make the seizure.

However, subsection (3) provides that if an owner or person from whom the thing is seized is not present when it is seized, the receipt and review notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

Subsection (4) allows the receipt and review notice to be given in the same document and relate to more than 1 seized thing.

Under subsection (5), the authorised officer may delay giving the receipt and review notice if the officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the officer under the Act. However, subsection (6) provides that the delay may only be for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

Clause 74 allows for access to a seized thing. Subsection (1) provides that until a seized thing is returned, the authorised officer who seized the thing must allow an owner of the thing:

- (a) to inspect it at any reasonable time and from time to time; and
- (b) if it is a document—to copy it.

Subsection (2) provides that subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. Subsection (3) provides that the inspection or copying must be allowed free of charge.

Clause 75 makes provision for the return of seized things and subsection (1) provides that the section applies if a seized thing has some intrinsic value.

Subsection (2) requires the authorised officer to return the thing to its owner:

- (a) generally—at the end of 6 months after the seizure; or
- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

Subsection (3) provides that despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the officer is satisfied:

- (a) its continued retention as evidence is no longer necessary; and
- (b) it is lawful for the owner to possess it.

Subsection (4) provides that nothing in the section affects a lien or other security over the thing.

Clause 76 allows an authorised officer to, by notice in writing, give an information requirement requiring a person to give the officer information related to an offence against the Act that the officer reasonably believes is being committed.

Clause 77 provides that it is an offence not to comply with an information requirement unless the person has a reasonable excuse.

Clause 78 provides that in exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Clause 79 makes provision for the giving of a notice of damage and under subsection (1), the section applies if:

- (a) an authorised officer damages something when exercising, or purporting to exercise a power; or

- (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.

However, subsection (2) provides that the section does not apply to damage the authorised officer reasonably considers is trivial or if the officer reasonably believes:

- (a) there is no-one apparently in possession of the thing; or
- (b) the thing has been abandoned.

Subsection (3) requires the authorised officer to give notice of the damage to the person who appears to the officer to be the owner, or person in control, of the thing. However, subsection (4) provides that if for any reason it is not practicable to comply with subsection (3), the authorised officer must:

- (a) leave the notice at the place where the damage happened; and
- (b) ensure it is left in a conspicuous position and in a reasonably secure way.

Subsection (5) provides that the authorised officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the officer's functions. Subsection (6) provides that the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.

Subsection (7) provides that if the authorised officer believes the damage was caused by a latent defect in the thing or circumstances beyond the control of the officer or the assistant, the authorised officer may state the belief in the notice. Under subsection (8), the notice must state the particulars of the damage and that the person who suffered damage may claim compensation.

Clause 80 makes provision for compensation because of an authorised officer's exercise of a power. Subsection (1) provides that a person may claim compensation from the State if the person incurs a cost, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised officer including a loss arising from compliance with a requirement made of the person under division 3, 4 or 5. However, subsection (2) provides that subsection (1) does not include loss arising from a lawful seizure.

Subsection (3) provides that the compensation may be claimed and ordered in a proceeding:

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an alleged offence against the Act the investigation of which gave rise to the claim for compensation.

Subsection (4) provides that a court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case. In considering whether it is just to order compensation, subsection (5) provides that the court must have regard to any relevant offence committed by the claimant.

Under subsection (6), a regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Subsection (7) provides that section 78 does not provide for a statutory right of compensation other than is provided by the section. Subsection (8) defines *loss* to include costs and damage.

Clause 81 creates an offence where a person gives the Commissioner or authorised officer information, or a document containing information, that the person knows is false or misleading in a material particular.

Subsection (2) provides that subsection (1) applies to information or a document given in relation to the administration of the Act whether or not the information or document was given in response to a specific power under the Act.

Under subsection (3), the offence does not apply if, when giving the document, the person tells the Commissioner or authorised officer, to the best of the person's ability, how the document is false or misleading, and, if the person has or reasonably can get the correct information, gives that information to the Commissioner or authorised officer.

Clause 82 creates an offence where a person obstructs an authorised officer, or someone helping an authorised officer, from exercising a power, without reasonable excuse.

Clause 83 creates an offence where a person impersonates an authorised officer.

Clause 84 authorises the Commissioner to impose a penalty in the stated circumstances and issue a penalty notice. The amount of the penalty may

be equal to the amount of the wrongly paid grant. The penalty notice issued must include or be accompanied by a decision notice.

Clause 85 provides that, where an applicant for a building boost grant is required to repay a grant to the Commissioner, or is required to pay an amount under a repayment notice or a penalty amount to the Commissioner, any joint applicant is jointly and severally liable to pay these amounts to the Commissioner. The section provides for recovery of these amounts by the Commissioner in a court of competent jurisdiction, and for the Commissioner to enter into arrangements for repayment of these liabilities by instalments.

Clause 86 provides that, in cases where an applicant for a building boost grant is liable to repay an amount under section 85 to the Commissioner, and the applicant has an interest in the land where the home to which the grant relates is situated, the liability of the applicant is a first charge on the applicant's interest in the land on which the home is built. Subsection (3) provides that the charge has priority over all other encumbrances over the interest in the land. This ability to impose a first charge on an applicant's land protects the State's financial interests by assisting the Commissioner to recover amounts owing.

The section also specifies the procedure for registering and release of such charges and that the applicant is liable for the fees payable for registration or release of the charge, and that the amount of the fees is recoverable by the Commissioner if paid by him.

Clause 87 allows the Commissioner to recover a debt payable by an applicant for the building boost grant by serving a garnishee notice on a person who holds, or may receive money for the applicant, on a person who is liable or may become liable to pay money to the applicant, or on a person who has authority to pay money to the applicant, even though the applicant's entitlement to the money may be subject to conditions that have not been satisfied.

Payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the applicant. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount or amounts at intervals. This would allow the Commissioner, when issuing the garnishee notice and requiring payment by the garnishee, to take account of reasonable living costs for which the applicant requires some of the monies held by the garnishee.

Clause 88 specifies the time for which a garnishee notice has effect.

Clause 89 provides for the adjustment of the amount required to be paid under a garnishee notice if part or all of the debt is satisfied before the due date of the garnishee notice. If the debt is fully discharged, the Commissioner must withdraw the notice.

Clause 90 specifies the effect of payment by a garnishee under a garnishee notice.

Clause 91 clarifies that the writing off of an applicant's liability to pay an amount under section 85 or to the Commissioner or costs ordered by a court or QCAT for the purposes of the *Financial Accountability Act 2009* does not extinguish the applicant's liability or the Commissioner's rights in respect of such amounts.

Clause 92 provides that, if a person is required to pay a penalty amount to the Commissioner because of an act or omission of the person, the payment of such penalty amount is to be an alternative, not in addition to, prosecution of the person for an offence arising out of that act or omission.

Clause 93 provides guidance to the court in relation to ordering repayment of a grant and imposing penalties where a person has been convicted of an offence under section 35(3), 36(2), 37(2) or 81(1). In those cases, the court may order the repayment of a grant and, may order payment of twice the grant amount if it is satisfied the circumstances of the contravention form part of a scheme to circumvent limitation on, or requirements affecting, eligibility or entitlement to a grant. However, the provision does not limit the court's powers under another law.

Part 4 Objections and reviews

Clause 94 provides that an applicant for a building boost grant who is dissatisfied with a decision of the Commissioner for which a decision notice is given or required to be given, may lodge a written objection with the Commissioner. The section also sets out the time limits and process for lodging such an objection.

Clause 95 clarifies the powers of the Commissioner in deciding an objection. Where a delegate of the Commissioner made the decision that is subject of the objection, the section prevents that delegate or a person in a less senior office than the delegate from deciding the objection. The

Commissioner must also notify an objector of the Commissioner's decision in relation to the objection which must comply with the requirements of section 157(2) of the QCAT Act.

Clause 96 provides for an objector who is dissatisfied with the Commissioner's objection decision to apply to QCAT for a review of the decision. The application must be made within 60 days after receiving notice of the Commissioner's decision.

Clause 97 confirms that the review by QCAT and any reopening of the review decision will be by way of rehearing and will be limited to the grounds and evidence given in the objection unless QCAT orders otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review. Any reopening of the review will be similarly limited.

Clause 98 confirms that a party to a proceeding before QCAT relating to an objection decision under the Act may be represented by a lawyer.

Part 5 Miscellaneous provisions

Clause 99 states that in a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is to be evidence of the matter.

Clause 100 states that in a proceeding, a certificate as to specified matters that is signed by the Commissioner is to be evidence of those matters.

Clause 101 clarifies that proceedings for an offence against the Act will be by way of summary proceeding which must start within 5 years after commission of the offence.

Clause 102 permits delegation of the Commissioner's powers under the Act to an appropriately qualified officer or employee of the department.

Clause 103 provides certain officials with protection from civil liability in respect of an act done or an omission made honestly and without negligence. The section imports the liability that would otherwise attach to officials in these circumstances to the State.

Clause 104 imposes confidentiality obligations on persons in relation to confidential information, being information relating to an application for a

grant, including information requested by the Commissioner to be provided in support of such an application. The confidentiality obligations extend to any person who has been engaged in the administration of the Act, an employee of an agent of the Commissioner, and any person who has directly or indirectly obtained confidential information from such a person. The section also specifies the circumstances where disclosure of confidential information cannot be compelled and where disclosure is permitted.

Clause 105 confirms that the Commissioner may use information obtained in the administration or enforcement of taxation laws for the purposes of administration or enforcement of the building boost grant scheme.

Clause 106 states the manner in which the Commissioner may require evidence of value, cause a valuation to be made or rely on a valuation for determining the value of an eligible transaction. Subsection (3) provides that where the Commissioner is not satisfied with a valuation or the evidence provided, the Commissioner may obtain a valuation or rely on a valuation. Subsection (4) allows the Commissioner to recover the cost of the valuation from the person applying for the grant. Subsection (5) defines the terms *appropriately qualified person*, *property* and *registered valuer* for the purposes of the section.

Clause 107 empowers the Commissioner to approve forms for use under the Act.

Clause 108 empowers the Governor in Council to make regulations under the Act.

Part 6 Transitional provisions

Clause 109 defines terms for part 6.

Clause 110 is a transitional provision in relation to the obligations imposed under section 35. Where, before Assent, section 35(1) or (2) applied for a transaction and the applicant contravened the notification and repayment obligations under subsection (3), the applicant will not be liable for an offence in relation to the contravention. However, the applicant must, within 28 days after Assent, give notice to the Commissioner that the transaction is ineligible and repay the grant. Failure to do so is an offence.

Clause 111 is a transitional provision in relation to the obligations imposed under section 36. Where, before Assent, section 36(1) applied for a transaction and the applicant contravened the notification and repayment obligations under subsection (2), the applicant will not be liable for an offence in relation to the contravention. However, the applicant must, within 28 days after Assent, give notice to the Commissioner of the contravention and repay the grant. Failure to do so is an offence.

Clause 112 is a transitional provision in relation to the obligations imposed under section 37. Where, before Assent, the Commissioner imposed a condition on a building boost grant stating a repayment requirement and the applicant contravened the repayment requirement, the applicant will not be liable for an offence under section 37(2) in relation to the contravention. However, the applicant must, within 28 days after Assent, give notice to the Commissioner of the contravention and repay the grant. Failure to do so is an offence.

Clause 113 applies where, before Assent, a person gave the Commissioner information, or a document containing information, that the person knew was false or misleading in a material particular, and did not take the required steps to tell the Commissioner how the information was false or misleading or give the Commissioner the correct information. The person must, within 28 days after Assent, give the Commissioner a written statement about how the information was false or misleading or give the Commissioner the correct information. Failure to do so is an offence.

Clause 114 provides evidential immunity for a statement or information given under section 113.

Clause 115 empowers the Commissioner to issue a repayment notice where:

- a person has failed to repay an amount under section 110(3), 111(3) or 112(3); or
- before Assent, a person gave the Commissioner information of a type, or in a way, mentioned in section 113(1), a building boost grant was wrongly paid as a result and the person has not repaid the grant within 28 days after Assent.

A decision notice must be given with the repayment notice.

Clause 116 empowers the Commissioner to issue a penalty notice if:

- a person contravenes section 110(3), 111(3), 112(3) or 113(2);

- the Commissioner gave the person a repayment notice; and
- the grant is not repaid as required.

The penalty notice will allow the imposition of a penalty on the basis set out in section 84.

Clause 117 extends the time for lodging an objection where, before Assent, the Commissioner made an original decision in relation to a building boost grant, the Commissioner did not give the applicant a decision notice for the decision, and the applicant is dissatisfied with the decision. The applicant may give the Commissioner an objection within 90 days after Assent. This provision has no operation where a decision notice for a decision in relation to the building boost grant was given before Assent as the decision notice specifies all of the information that the applicant requires to enable an objection to be given as required under section 94.

Clause 118 applies where, before Assent, the Commissioner made an objection decision in relation to the building boost grant that either confirmed the original decision or set aside an original decision and substituted another decision other than in a way requested by the applicant in the objection. As an applicant's rights of review to QCAT commenced on Assent, the Commissioner is required to give the applicant a notice complying with section 157(2) of the QCAT Act within 28 days of Assent. The applicant will then, under part 4 division 2, have 60 days after receiving the notice to apply to QCAT for a review of the decision.

Clause 119 provides a transitional regulation making power. A transitional regulation may have retrospective effect to no earlier than the date of Assent. This section, and any transitional regulation made under it, expire one year after Assent.

Part 7 Amendment of this Act

Clause 120 amends this Act immediately after commencement of section 2.

Clause 121 amends the long title of the Act.

Clause 122 amends the reference to schedule 2 in section 4.

Clause 123 amends the heading for schedule 2.

Part 8 **Amendment of State Development and Public Works Organisation Act 1971**

Clause 124 states that this part and schedule 1 amend the *State Development and Public Works Organisation Act 1971*.

Clause 125 replaces the existing section 7(1)(a) (Termination of appointment under sections 4 and 5) with a new section that clarifies that the Coordinator-General can concurrently hold the position of Chief Executive Officer.

It provides that the Coordinator-General and Deputy Coordinator-General are deemed to have vacated their offices if they engage in remunerative employment outside the duties of the office to which they are appointed unless they hold the second position by virtue of the appointment as Coordinator-General or Deputy Coordinator-General.

On occasions, the Coordinator-General has concurrently held the position of Chief Executive Officer of a Department and Coordinator-General. The new section 7(2) removes any doubt that the Chief Executive Officer of a Department is an office that may be held by the Coordinator-General.

Clause 126 inserts a new section 7A (Appointment of acting Deputy Coordinator-General) that provides for the appointment of an acting Deputy Coordinator-General for a period of three months or less by the Minister in consultation with the Coordinator-General and Public Service Commission Chief Executive.

A Deputy Coordinator-General is typically delegated many of the Coordinator-General powers by way of a positional delegation. The process to appoint a person to a position of this level is therefore necessarily rigorous. Where the position is to be filled on a short-term basis, the length of this process may lead to possible interruptions to business functions.

Section 5 of the SDPWO Act (Appointment of Deputy Coordinator-General) currently provides that appointments to the office of Deputy Coordinator-General are made by the Governor in Council, a process that can take up to three months. This clause will allow short term vacancies to be filled with minimal interruptions to business functions. Accountability considerations are addressed by requiring the Minister to

consult with the Chief Executive of the Public Service Commission with regard to the temporary appointment.

The amendment provides for an appointment of a term up to three months. It provides that such an appointment can not be longer than three months and can not be extended. Written conditions of the appointment must also be signed by the Minister and provided to the appointee.

Clause 127 aligns the SDPWO Act's provisions for appointing persons to aid the Coordinator-General with similar provisions for the appointment of the Senior Executive Service under the *Public Service Act 2008*. The current section 14 (Appointment of persons to aid Coordinator-General) provides that these appointments are made by the Governor in Council. This clause replaces this section to provide that the Coordinator-General, in consultation with the Public Service Commission Chief Executive, can appoint persons to assist the Coordinator-General.

This amendment provides for a more efficient way to appoint persons to aid the Coordinator-General than the existing provisions. The requirement to consult the Chief Executive of the Public Service Commission provides for the necessary accountability mechanisms.

In accordance with contemporary drafting practice, the amendment provides for written conditions of appointment and clarifies that appointment is under the SDPWO Act rather than the *Public Service Act 2008*.

This amendment arose following consultation on the *Review of Matters Proceeding to Governor in Council for Approval*. The corresponding issues paper sought feedback on matters which currently require Governor in Council approval and could potentially be approved via an alternative mechanism.

Clause 128 inserts a new section 35AA (Amendment of Coordinator-General's report) to provide that the Coordinator-General may amend a completed report for an environmental impact statement for a project to correct a clerical error. To ensure transparency, the amendment provides for the Coordinator-General to provide written notice of the amendment to the proponent and, if the project is the subject of an application for a development approval, to the assessment manager (if the Coordinator-General is not the assessment manager) and for public notification of the amendment and amended report.

Occasionally Coordinator-General's reports contain clerical or administrative errors. For example, the original report for the North-South Bypass Tunnel had incorrect units used in one of the tables. The SDPWO Act does not currently provide for the ability to correct clerical or administrative errors in the Coordinator-General's reports.

Section 24AA of the *Acts Interpretation Act 1954* provides that the power to make an instrument or decision includes the power to amend or repeal the instrument or decision. If this were to be applied to correct Coordinator-General's reports, it would also require that the amendment or repeal be exercised in the same way, and subject to the same conditions, as the power to make the instrument or decision. The Act is being amended to allow the Coordinator-General to correct a clerical error made in an environmental impact statement report prepared under the Act via a simple and efficient process.

Clause 129 replaces existing words within section 35(1)(a) (Coordinator-General evaluates EIS, submissions, other material and prepares report) to improve clarify about the date on which a Coordinator-General's report for the Environmental Impact Statement lapses. The amended section will provide that the report will generally lapse at the end of the four year period, which is to be calculated from the day after the report is publicly notified under section 35(5)(b). This provides for greater certainty of the date for the commencement of the four year period by referring to a publicly notified event.

Clause 130 inserts a new section 35KA (Amendment of Coordinator-General's change report) to provide that the Coordinator-General may amend a change report to correct a clerical error. To ensure transparency, the amendment provides for the Coordinator-General to provide written notice of the amendment to the proponent and, if the project is the subject of an application for a development approval, to the assessment manager (if the Coordinator-General is not the assessment manager) and for public notification of the amendment and amended change report.

Occasionally Coordinator-General's change reports contain clerical or administrative errors. The SDPWO Act does not currently provide for the ability to correct clerical or administrative errors in the Coordinator-General's change reports.

Section 24AA of the *Acts Interpretation Act 1954* provides that the power to make an instrument or decision includes the power to amend or repeal

the instrument or decision. If this were to be applied to correct Coordinator-General's change reports, it would also require that the amendment or repeal be exercised in the same way, and subject to the same conditions, as the power to make the instrument or decision. The Act is being amended to allow the Coordinator-General to correct a clerical error made in a change report prepared under the Act via a simple and efficient process.

Clause 131 adds an additional condition to section 36 (Application of sdiv 1) to provide that part 4, division 4, subdivision 1 only applies to projects for which the Coordinator-General's report for the EIS for the project has not lapsed. Effectively this means that for significant projects where the Coordinator-General's report has lapsed, they are subject to the Integrated Development Assessment System process set out in the *Sustainable Planning Act 2009*.

Clause 132 inserts a new division, Part 6, Division 6A (Coordinator-General's costs for infrastructure facilities mentioned in section 125(1)(f)) to create a head of power for the recovery of fees from a person proposing an infrastructure facility if the person does any of the following:

- asks the Coordinator-General to seek approval from the Governor in Council for an infrastructure facility that is of significance. The fee is for cost recovery of the assessment of whether the infrastructure facility proposed by a person is of significance under section 125(1)(f) for submission for Governor in Council consideration.
- asks the Coordinator-General to take land for the purpose of the infrastructure facility that is of significance under section 125(1)(f). The fee is for cost recovery of the Coordinator-General's assessment of the request by a person for the Coordinator-General to exercise his power to take land for an infrastructure facility that is of significance under section 125(1)(f).
- applies for an investigator's authority. The fee is for recovery of the assessment and processing costs of a person's application for an investigator's authority by the Coordinator-General.

The fees, as set out in the new schedule 1A provided by clause 134, are payable to the Coordinator-General on the happening of the events stated in the Table of fees in part 2. The new section also provides that the Coordinator-General's obligations under part 6 (Planned development) are suspended until the relevant fee has been paid.

The payment of a fee will not guarantee a favourable outcome.

The clause also inserts a new section 140B (Recovering cost of advice or services) that provides for the recovery of third party costs incurred by or invoiced to the Coordinator-General such as:

- specialist advisors, experts, consultants and contractors to be engaged by the Coordinator-General
- costs invoiced to the Coordinator-General by other agencies for their assessments
- advertising, printing, travel and accommodation, and incidentals.

Clause 133 removes the definition of CPI from schedule 1 so that it may be placed in the dictionary at schedule 2. This avoids the need to duplicate the definition of CPI.

Clause 134 inserts a new schedule 1A (Fees for part 6, division 6A) that establishes fees for the matters provided by clause 132. The clause provides for a number of matters, including the quantum of the fee based on the date payable, and the manner by which the fees will be indexed in future, including the method for rounding fractions of dollars. The schedule also provides that the Coordinator-General must publish the indexed fees on the department's website, while noting that failure to do so does not impact on whether the fee is payable.

Clause 135 includes the definition of *CPI* in the dictionary contained in schedule 2. The definition of *CPI* is amended to calculate the percentage increase in *CPI* between the September quarters, rather than between December quarters, to allow adequate time to adjust and publicly notify fees prior to the new calendar year.

Schedule 1 Consequential amendments of State Development and Public Works Organisation Act 1971

Schedule 1 makes consequential amendments to the *State Development and Public Works Organisation Act 1971*.

Schedule 2 Dictionary

Schedule 2 defines terms used in the Act.

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