

# **State Development and Other Legislation Amendment Bill 2006**

## **Explanatory notes for Amendments to be moved during consideration in detail by The Honourable Anna Bligh MP**

### **General Outline**

#### **Short Title**

State Development and Other Legislation Bill 2006

#### **Objectives of the Amendments**

The amendments are to be moved during consideration in detail of the State Development and Other Legislation Amendment Bill 2006 introduced into the Legislative Assembly on 2 November 2006.

The amendments to be considered in detail:

- Introduce a threshold of \$50 million into the Prescribed project provisions contained in the Bill introduced into the Legislative Assembly on 2 November 2006;
- Require the Coordinator-General to impose any lawful infrastructure charges received in a recommendation from a local government at or prior to the time of issuing conditions following a decision to step in;
- Allow the creation of a critical infrastructure easement in favour of the Coordinator-General over the area of an existing public utility easement. Such easements seek to utilise existing capacity within existing public utility easements as a means of mitigating the impact of the critical infrastructure projects on landowners in South-East Queensland and to allow the timely delivery of such projects;
- Allow the variation or transfer of a critical infrastructure easement;

- Preserve the rights to compensation under the *Acquisition of Land Act 1967* for those persons impacted by the creation and amendment of a critical infrastructure easement.

The objectives of the amendments will be achieved primarily through the insertion of new ss76E(5), 76EA, 76M(3) and (4) and 76P(4A) and a new Part 6, Division 8 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

Other minor amendments to the State Development and Other Legislation Amendment Bill 2006 include:

- amendments to definitions proposed for inclusion in the SDPWO Act;
- amendment to the heading of s76M.

### **Alternative Ways of Achieving Policy Objectives**

The amendments contained in clauses 1 to 4 of the Bill to be considered in detail result from consultation with the Local Government Association of Queensland.

The alternative to the amendments contained in clause 6 to 14 of the Bill to be considered in detail would be to continue with the acquisition processes under the *Acquisition of Land Act 1967* and the *State Development and Public Works Organisation Act 1971*. In the current circumstances of the water emergency projects and the government's intention to use existing corridors for the delivery of those projects, the processes available under the *Acquisition of Land Act 1967* or the *State Development and Public Works Organisation Act 1971* will prove unacceptably slow in securing land to allow the delivery of the water grid. It is in the public interest to ensure timely construction of the water pipelines for the water grid.

### **Estimated Cost for Government Implementation**

The administrative costs to Government will be those normally associated with the resumption of interests under the *Acquisition of Land Act 1967* or the *State Development and Public Works Organisation Act 1971*. Compensation rights of current landowners and others with an interest in the land will not be changed by the amendments.

## **Consistency with Fundamental Legislative Principles**

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

Whilst the amendments effectively remove the right of an owner to be notified or to object to the resumption of land, the Bill protects the owner’s right to claim compensation and the right to have compensation determined by the Land Court.

The amendments provide a right of compensation under the *Acquisition of Land Act 1967* where a person’s interest in burdened land is effected by the registration or amendment of critical infrastructure easement.

This unusual course of action is considered by the Government to be balanced by the greater public interest of being able to progress with much needed critical infrastructure projects such as the delivery of the water grid.

## **Consultation**

The following relevant organisations have been consulted:

- Department of Local Government, Planning, Sport and Recreation
- Department of Justice and Attorney-General
- Department of Premier and Cabinet
- Department of Natural Resources and Water
- Treasury

## **Notes on Provisions**

The clauses referred to in these explanatory notes relate to the clauses of the Amendments to be moved during the consideration in detail stage of the State Development and Other Legislation Bill 2006.

Clause 1 provides that new ss76E(5) and 76EA should be inserted in Clause 7 of the State Development and Other Legislation Amendment Bill

2006. The new s76E(5) provides that s76E applies subject to section 76EA.

The new s76EA provides that if the Minister intends to declare a project with a capital investment value of not more than \$50 million to be a prescribed project, the Minister must do the following before making the declaration:

- give each interested person for the project a written notice that:
  - describes the project and the area in which the project is proposed to be undertaken;
  - states the grounds on which the Minister considers the project should be declared a prescribed project;
  - invites the person to give the Minister a submission about the proposed declaration within the period stated in the notice (i.e. at least 10 business days after the interested person is given a notice); and
- consider each properly made submission about the proposed declaration given to the Minister.

The interested person will be the local government in which the proposed prescribed project will be located.

The Minister is then required to give each interested person, who gave a properly made submission to the Minister, a written notice stating the Minister's reasons for decision within 10 business days after making a decision about declaring the project to be a prescribed project.

The provision further provides definitions of the following:

- “capital investment value”
- “interested person”; and
- “properly made submission”.

Clause 2 proposes to amend the s76M as proposed in clause 7 of the State Development and Other Legislation Bill 2006, by changing the heading of the section to read “Providing assistance or recommendations”.

Clause 3 proposes to add new subsections (3) and (4) to s76M as proposed by clause 7 of the State Development and Other Legislation Bill 2006 which provide that:-

- subsection (4) will apply if, other than for the giving of the step in notice, under the relevant law for the prescribed decision the local government could have imposed a condition, in relation to the decision, for infrastructure to which the Integrated Planning Act, chapter 5, part 1, applies;
- the local government may, before the Coordinator-General makes a decision under s76O about the prescribed decision, give the Coordinator-General a written recommendation to impose the condition.

Clause 4 proposes to add new subsections (4A) and (4B) to the proposed s76O in clause 7 of the State Development and Other Legislation Amendment Bill 2006 such that where a local government has, under s76M(4), given the Coordinator-General a recommendation to impose a condition in relation to the decision, the Coordinator-General must, unless otherwise directed by the Minister, impose the condition.

The purpose of that amendment is to give the relevant local government 10 business days from the time the development approval is given to the local government to give the applicant an infrastructure charges notice under the *Integrated Planning Act*.

Clause 5 proposes to amend s76W(a) to clarify that parts 3 and 5, other than s41(1) of the *Judicial Review Act 1991* do not apply to a decision of the Minister to declare a project to a critical infrastructure project or a prescribed project if the project is a critical infrastructure project.

Clause 6 provides that after Clause 13 of the State Development and Other Legislation Amendment Bill 2006 a new Clause 13A should be inserted – Clause 13A proposes to insert a new Part 6 Division 8 into the *State Development and Public Works Organisation Act 1971*.

## **Division 8 – Easements for critical infrastructure projects**

### 153A – Definitions for div 8

This provision proposes to insert, for the new division 8, the following defined terms:

- “appropriate register”;
- “critical infrastructure easement” ;
- “easement holder”;

- “registrar” ; and
- “relevant public utility easement”.

#### 153B – Registration of critical infrastructure easement

This provision applies to land that is the subject of a critical infrastructure project and that is burdened by a relevant public utility easement.

Where an instrument of easement for the land is received, the registrar must record the particulars of the easement in the appropriate register if:

- the instrument relates only to land affected by the relevant public utility easement and is signed by the Minister; and
- the easement is in favour of the Coordinator-General.

Despite s363 of the *Land Act 1994* or s83 of the *Land Title Act 1994* the easement may be registered under the Acts without the instrument being signed by a person other than the Minister and, for an easement under the *Land Act 1994*, with out the approval of the Minister under that Act.

The easement is also taken to be a public utility easement under chapter 6, part 4, division 8 of the *Land Act 1994* or part 6, division 4 of the *Land Title Act 1994*.

#### 153C – Terms of easement

This provision provides that a critical infrastructure easement may include the following terms:

- the easement holder, or a person employed or engaged by or otherwise authorised in writing by the holder, may construct, maintain, repair, renew, replace or operate infrastructure in or on land burdened by the easement;
- the easement holder is the owner of the above infrastructure;
- other terms the Minister considers necessary to facilitate the construction, maintenance, repair, renewal, replacement or operation of the infrastructure.

For example, the Minister may consider it necessary for the Coordinator-General to be able to authorise an entity or contractors to enter onto land the subject of the easement to undertake relevant activities, such as, to construct pipes for the water grid within the confines of the existing public utility easement.

### 153D – Effect of registration of easement

This provision provides that the registration of a critical infrastructure easement over land under s153B does not extinguish the existing public utility easement.

However, the grantee of a public utility easement cannot, without the consent of the easement holder for the critical infrastructure easement, exercise any rights in relation to the relevant public utility easement to the extent the exercise of the rights would interfere with the exercise of rights under the critical infrastructure easement.

### 153E – Transfer of easement

This provision provides that, with the Minister's written approval, a critical infrastructure easement may be transferred to either another public utility provider or to another person approved by the Minister as suitable to provide a public utility service.

When the registrar receives an instrument evidencing the transfer the registrar must record the transfer in the appropriate register.

The transfer may be recorded in the appropriate register without the approval of a person other than the Minister. Where the appropriate register is a register under the *Land Act 1994* it may also be done without the approval of the Minister under that Act.

A person approved by the Minister under subsection (1)(b) is taken to be a public utility provider.

A public utility provider means a public utility provider under chapter 6, part 4, division 8 of the *Land Act 1994* or part 6, division 4 under the *Land Title Act 1994*.

### 153F – Amendment of easement

This provision provides that a critical infrastructure easement may be amended, as appropriate, under s370 of the *Land Act 1994* or s91 of the *Land Title Act 1994*. An amendment to a critical infrastructure easement may only be made with the written approval of the Minister.

It further provides that the amendment may be registered without the instrument of amendment being signed by a person other than the easement holder and, where the amendment is under the *Land Act 1994*, without the approval of the Minister under that Act.

### 153G – Minister to give notice of registration or amendment

This provision provides that the Minister must, as soon as practicable after a critical infrastructure easement is registered or amended under Part 6, Division 8, give written notice of the registration or amendment to each person who has an interest in land the subject of the easement.

It further provides that the notice must include all of the following:

- for registration of an easement – particulars of the easement;
- for amendment of an easement – particulars of the amendment;
- information about the person’s right to claim compensation under s 153I, and the process for claiming the compensation.

### 153H – Application of particular provisions

This provision provides that, to remove any doubt, it is declared that s 153C to 153G continue to apply to a critical infrastructure easement even if the land the subject of the easement is no longer the subject of a critical infrastructure project.

The intent of this provision is to allow the registration of a transfer and amendment of a critical infrastructure easement under Part 6, Division 8 after the lapsing of the declaration of the project as a prescribed project under s76F.

### 153I - Compensation

This provision provides that a person with an interest in land has a right to claim compensation under the *Acquisition of Land Act 1967* in relation to the extent to which their interest in the burdened land is affected by the registration or amendment of a critical infrastructure easement. This will include, for example, an underlying landowner or a local government that is a public utility easement holder.

This applies to a person who has an interest in land burdened by a critical infrastructure easement when it is registered under s153B or its terms are amended under s153F.

For claiming the compensation the process stated in the *Acquisition of Land Act 1967* for the payment of compensation for land taken under that Act applies with any necessary changes as if the registration or amendment were a taking of land under that Act by the State.

It further provides that a person is not otherwise entitled to compensation for a transfer, amendment or registration of an easement.

Clauses 7 and 8 propose to insert a definition of “appropriate register” and “critical infrastructure easement” respectively into Clause 14 of the State Development and Other Legislation Amendment Bill 2006.

Clause 9 proposes to omit “for part 5A” from the definition of “registered owner” in Clause 14 of the State Development and Other Legislation Amendment Bill 2006.

Clauses 10, 11 and 12 propose to insert a definition for “easement holder”, “registrar” and “relevant public utility easement” respectively into Clause 14 of the State Development and Other Legislation Amendment Bill 2006.

Clauses 13 and 14 propose to amend s296 of the *Land Act 1994* and s154 of the *Land Title Act 1994* to provide that a tenure document or certificate of title need not be returned to the registry in order for a dealing under Part 6, Division 8 of the *State Development and Public Works Organisation Act 1971* to be registered.