



New South Wales

Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to ensure the timely delivery in NSW of the infrastructure projects funded by the Commonwealth under the Nation Building and Jobs Plan to implement the COAG partnership agreement of 5 February 2009 to reduce the impact on Australia of the global economic recession.

For that purpose, the Bill:

- (a) establishes a NSW Infrastructure Co-ordinator General who will be responsible for planning and implementing the timely delivery of the infrastructure projects, and
- (b) establishes an advisory Taskforce consisting of government and private sector representatives, and
- (c) requires State government agencies to co-operate with the Co-ordinator General in relation to infrastructure projects, and
- (d) provides for the Co-ordinator General to take over the delivery of infrastructure projects on behalf of State government agencies, and
- (e) enables the Co-ordinator General to streamline the planning and other approval processes for infrastructure projects.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the object of the proposed Act, which is to ensure the timely delivery of the infrastructure projects funded by the Commonwealth under the national partnership agreement on the Nation Building and Jobs Plan.

Clause 4 defines certain words and expressions used in the proposed Act. The *Co-ordinator General* is defined as the NSW Infrastructure Co-ordinator General appointed under the proposed Act. A *government agency* is defined to include a public authority, a NSW government agency, a Division of the Government Service, a council, and a state-owned corporation, but does not include the NSW Police Force, the Independent Commission Against Corruption or the Ombudsman's Office.

Clause 5 provides that the proposed Act applies only to infrastructure projects that are funded under the Nation Building and Jobs Plan, which consists of development whose construction the Co-ordinator General certifies is to be funded by the Commonwealth from money appropriated under the Commonwealth Funding Acts (being the *Appropriation (Nation Building and Jobs) Act (No. 1) 2008-2009* and the *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-2009* of the Commonwealth). Examples of such infrastructure projects include halls, libraries and maintenance work for government and non-government schools, social housing, community infrastructure provided by local councils (such as halls and sports facilities) and local transport infrastructure (such as road repairs, railway boomgates and road safety "black spots" projects).

Part 2 Infrastructure Co-ordinator General

Clause 6 provides that the Co-ordinator General is to be the person appointed to that office under the *Public Sector Employment and Management Act 2002* (or the Director-General of the Department of Premier and Cabinet during any vacancy in that office). The clause sets out the functions of the Co-ordinator General as outlined in the Overview above.

Clause 7 provides for the establishment of a Taskforce, which is to be comprised of the Co-ordinator General (as presiding member), members of government agencies and private sector representatives and experts. The Taskforce is to advise on the exercise of functions in relation to infrastructure projects. Separate Taskforces may be established for different projects or different classes of projects.

Clause 8 enables the Co-ordinator General to delegate the Co-ordinator-General's functions to Taskforce members, government agencies and their staff or other approved or prescribed persons.

Part 3 Co-ordination of State government agencies in delivering infrastructure projects

Clause 9 imposes an obligation on State government agencies to co-operate with the Co-ordinator General in relation to infrastructure projects, including by providing information and assistance and complying with reasonable requests of the Co-ordinator General for the agency to exercise functions in a timely manner.

Clause 10 authorises State government agencies to exercise their functions and to enter into agreements for the purposes of complying with any requests or directions of the Co-ordinator General and for the purposes of the proposed Act.

Clause 11 enables the Minister to direct State government agencies that are responsible for, or involved with, the delivery of infrastructure projects (or other government agencies declared by the regulations) to comply with a request or direction of the Co-ordinator General.

Clause 12 excludes councils and other local authorities from the operation of the proposed Part.

Part 4 Carrying out infrastructure projects on behalf of State government agencies

Clause 13 defines certain terms used in the proposed Part.

Clause 14 enables the Premier to make project authorisation orders in relation to any infrastructure projects. Other Ministers may also make such orders with the concurrence of the Co-ordinator General.

Clause 15 provides that a project authorisation order may authorise the Co-ordinator General to carry out an infrastructure project specified in the order.

Clause 16 provides that a project authorisation order may declare that the Co-ordinator General is responsible for the carrying out of an infrastructure project of another government agency. In this case, the Co-ordinator General will be able to exercise all of the functions of the agency in relation to the project. With the concurrence of the Minister who made the order and after consulting with the agency, the Co-ordinator General will also be able to issue directions to the agency and the agency must comply with those directions.

Clause 17 enables a project authorisation order that declares the Co-ordinator General to be responsible for another government agency's infrastructure project to also provide for the transfer to the State of NSW of any of the assets, rights and liabilities of the agency in relation to the project.

Clause 18 enables the Co-ordinator General to acquire land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of exercising the Co-ordinator General's functions in relation to infrastructure projects.

Clause 19 provides that the assets, rights and liabilities of the State of NSW in relation to an infrastructure project may, in accordance with a project divesting order by the Premier or the Minister responsible for the project authorisation order, be transferred to a government agency.

Clause 20 makes it clear that a project authorisation order or a project divesting order may apply to the whole of an infrastructure project or to part of the project only.

Clause 21 excludes infrastructure projects carried out by councils or other local authorities from the operation of the proposed Part.

Part 5 Authorisation of infrastructure projects

Clause 22 defines the term *development control legislation*, for the purposes of the proposed Part, to mean provisions made by or under the *Environmental Planning and Assessment Act 1979 (the EPA Act)* or any other Act that prohibit, or require approval for, the carrying out of development.

Clause 23 enables the Co-ordinator General to declare that an infrastructure project is exempt from all or any specified development control legislation or to declare that an infrastructure project will be exempt from such legislation if the carrying out of the project is authorised by the Co-ordinator General.

Clause 24 provides (where an exemption from development control legislation is subject to the authorisation of the project by the Co-ordinator General) for a proponent of the project to apply in writing for the authorisation. The Co-ordinator General may authorise the carrying out of the infrastructure project subject to conditions (relating for example to public notification, environmental protection, heritage conservation, threatened species and bushfire protection). Such an authorisation is taken to be a development consent under the EPA Act for the purposes of the *National Parks and Wildlife Act 1974*, the *Fisheries Management Act 1994*, and the *Native Vegetation Act 2003*, and other prescribed legislation.

Clause 25 relates to the application of the EPA Act to infrastructure projects where an exemption from that Act is given by the Co-ordinator General. The clause provides, among other things, that an environmental planning instrument under that Act cannot require development consent for, or otherwise restrict, such a project and that the environmental assessment requirements under Part 5 of that Act do not apply to such a project.

Clause 26 enables information about exemptions or authorisations given by the Co-ordinator General to be provided to councils for inclusion in planning certificates issued to prospective purchasers of land under section 149 of the EPA Act.

Part 6 Miscellaneous

Clause 27 protects the exercise of certain functions of the Co-ordinator General, his or her delegate or a Minister from challenge or review before a court or administrative review body or from being restrained, removed or otherwise affected by any proceedings.

Clause 28 protects the Co-ordinator General, Taskforce members, and a person acting under the direction of any of them, from personal liability in respect of acts done in good faith for the purposes of executing the proposed Act.

Clause 29 enables the Governor to make regulations for the purposes of the proposed Act, including regulations of a savings or transitional nature consequent on the enactment of the proposed Act. The regulations may also make provision for the purposes of restoring the application of the *Environmental Planning and Assessment Act 1979* to infrastructure projects carried out under the proposed Act.

Clause 30 provides for the review of the Co-ordinator General's exercise of his or her functions under the proposed Act 12 months after the Act has commenced by either a joint committee of both Houses of Parliament or, if there is no joint committee that can undertake the review, an appropriately qualified person appointed by the Minister.

Clause 31 provides for the repeal of the proposed Act. The Co-ordinator General is to keep the need for the Act under review and, if the Co-ordinator General certifies it is no longer required, the Act may be repealed by proclamation.

Schedule 1 Transfer of assets, rights and liabilities

Schedule 1 contains provisions relating to the transfer of assets, rights and liabilities in relation to project authorisation orders and project divesting orders.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Public Sector Management (Goods and Services) Regulation 2000* (to authorise the Co-ordinator General to determine procurement and related policies and procedures of public sector agencies that deliver infrastructure projects) and **Schedule 2.2** amends the *Subordinate Legislation Act 1989* (to exclude regulations under the proposed Act from the requirements of that Act).