

Strategic compliance plan

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The Department of State Development

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Purpose

This strategic compliance plan explains the general principles behind how the Office of the Coordinator-General (OCG), Department of State Development undertakes compliance activities on behalf of the Coordinator-General, under the *State Development and Public Works Organisation Act 1971* (Qld) (the Act).

Through these activities, OCG monitors and evaluates whether projects declared ‘coordinated projects’ under the Act and development approved under a State Development Area (SDA) development scheme are being developed in accordance with Coordinator-General conditions and recommendations.

Proponents of coordinated projects and holders of a SDA approval or persons undertaking SDA self-assessable development (the proponent and any subsequent operators of the use) that have specific obligations under legislation administered by the department are encouraged to familiarise themselves with this plan.

Strategic overview

Under Part 4 of the Act, the Coordinator-General has wide-ranging powers to plan, deliver and coordinate large-scale infrastructure projects, while ensuring their environmental impacts are properly managed. These coordinated projects, in turn, promote economic and social development in Queensland, supporting the government’s focus on making the Queensland economy Australia’s strongest and most diverse.

When evaluating a coordinated project’s environmental impact statement (EIS) under the Act, the Coordinator-General may state conditions, make recommendations and/or impose conditions of approval in an evaluation report. For proponents of coordinated projects and their agents, compliance with conditions and recommendations is legally enforceable.

Under Part 6 of the Act, the Coordinator-General assumes planning and decision making responsibilities in relation to development in a SDA. The approved SDA development scheme regulates development within the SDA. The development scheme states the regulated development, SDA assessable development and identifies SDA self-assessable development.

Potential impacts of a development are identified through an assessment process and if the application is approved, these impacts are managed through SDA approval conditions and SDA self-assessable development requirements.

Conditions and recommendations for infrastructure and other development projects in Queensland may be imposed under a number of other provisions of the Act.

Section 157A of the Act classifies these conditions and recommendations as ‘enforceable conditions’ and the statutory enforcement tools provided for in the Act can be used in response to an alleged contravention of an enforceable condition (see page 2, Compliance and enforcement approach).

It is important to note that assessment of a coordinated project and issuing of a SDA approval under the Act does not exempt the proponent and subsequent operators of the use from the need to obtain all necessary and relevant development approvals and/or operational licences under other relevant Queensland legislation, including development approval under the

Sustainable Planning Act 2009 (Qld) (SPA). Entities with monitoring and enforcement roles under other legislation continue to hold these responsibilities.

Compliance Unit's role

A compliance unit exists within OCG to focus on significant compliance issues.

The primary role of the compliance unit is to evaluate a proponent's compliance with conditions imposed by the Coordinator-General on coordinated projects and to ensure that any non-compliance is addressed appropriately through education, remediation and/or enforcement action. The unit also provides advice and support on compliance issues associated with SDA approval conditions.

The Coordinator-General is responsible for ensuring that conditions are effective and enforceable and the use of third-party auditing is a fundamental aspect of OCG's effective compliance program.

The Coordinator-General may, as a condition of a SDA approval or as an imposed condition of approval in a Coordinator-General's evaluation report, require a proponent to have its activities audited by an independent and suitably qualified person.

A third-party independent audit is carried out to determine whether a project's activities are in compliance with Coordinator-General conditions, with a verified report on the audit findings prepared and submitted to the Coordinator-General for review. Project audit periods and requirements may vary, depending on the nature of the development and project activities.

The unit reviews the submitted audit reports for coordinated projects and may recommend further actions to the Coordinator-General, if considered necessary. The unit may also monitor or audit a project's activities as a result of the findings of an audit report, or as part of a random or targeted audit program. Such audits may include a review of the level of compliance with conditions and/or an assessment of the accuracy of the audit report submitted to the Coordinator-General.

Compliance and enforcement approach

To achieve its compliance and enforcement objectives, OCG uses a range of measures to encourage industry and individuals to comply with the legislation.

Within the scope of its compliance role, the compliance unit will assess all notifications it receives with respect to a coordinated project proponent's failure to comply with conditions and recommendations imposed by the Coordinator-General. The unit also assists other OCG business units with compliance related issues. Based on these assessments and any associated investigations, an appropriate response will be recommended and the Coordinator-General will decide the most appropriate enforcement option, depending on the situation, the desired outcome and the seriousness of the offence, or threatened offence.

In some cases, the decision may be to take no action, or to respond by providing advice, guidance, and/or assistance to help a proponent comply with Coordinator-General requirements. However, it is recognised that in some instances statutory tools may be necessary to ensure and enforce compliance with conditions and recommendations under the Act.

In more serious cases or matters where other statutory tools have failed to achieve the desired outcome, the Coordinator-General may decide to prosecute.

When considering whether to prosecute for an offence, there are two elements that must be considered:

- (1) whether there is the evidence to establish a *prima facie*¹ case
- (2) whether it is in the public interest.

The *Director's Guidelines* of the Queensland Office of the Director of Public Prosecutions² would be used as a guide for deciding whether to prosecute an alleged contravention of the Act.

The compliance and enforcement options available to the Coordinator-General to respond to contraventions of an enforceable condition or recommendation are set out below.

Written notices (requesting information or warning letters)

A written notice may be provided to a person (a legal person, which includes a company), outlining concerns or providing a warning in relation to non-compliance, and requesting a response be provided to the Coordinator-General, which may require the undertaking of certain action to secure compliance with the legislation.

Enforcement notices

When an enforceable condition has not been complied with, the Coordinator-General can issue an enforcement notice to legally require people and businesses to comply with the requirement.

Under section 157B of the Act, if the Coordinator-General reasonably believes a person has contravened, or is contravening, an enforceable condition the Coordinator-General may give a written enforcement notice. An enforcement notice requires a person to:

- comply with the condition; or
- take stated steps the Coordinator-General considers are reasonably necessary to ensure compliance with the condition.

Without limiting these requirements, an enforcement notice may require the recipient to:

- not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the Coordinator-General; or
- require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- require the recipient to take a stated action within a stated period.

An enforcement notice may also require the recipient to notify the Coordinator-General when the recipient has complied with the notice.

The recipient of an enforcement notice must comply with the notice. The maximum penalty for not complying is 1665 penalty units³ (\$202 963 for an individual or \$1 014 817 for a

¹ Evidence adequate to establish a fact or raise a presumption of fact unless refuted.

² http://www.justice.qld.gov.au/__data/assets/pdf_file/0015/16701/Directors-guidelines.pdf

³ The penalty unit value in Queensland is **\$121.90** (current 1 July 2016 – rounded down) - *Penalties and Sentences Act 1992*.

corporation⁴). This is the same as the penalty for breaching an enforcement notice issued under SPA.

Enforcement orders

The Coordinator-General can seek an enforcement order from the Planning and Environment Court under section 157I of the Act, which may be sought to remedy or restrain a contravention of an enforceable condition. The court may make an enforcement order if it is satisfied that the relevant contravention is happening, has happened or will happen unless the enforcement order is made. The court also has the power to make an interim enforcement order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make an interim order.

When issuing an enforcement order, the court has very broad powers and may direct a party to the proceeding for the order:

- to stop an activity that constitutes, or will constitute, a contravention of an enforceable condition, or
- not to start an activity that will constitute a contravention of an enforceable condition, or
- to do anything required to stop a contravention of an enforceable condition, or
- to return anything to a condition as close as practicable to the condition it was in immediately before a contravention of an enforceable condition, or
- to do anything about the land or activity which is the subject of the order to comply with an enforceable condition.

When making an enforcement order, the court will specify the time the order is to be complied with.

It is an offence for a person to contravene an enforcement order. The maximum penalty for not complying with an enforcement order is 3000 penalty units (\$365 700 for an individual or \$1 825 500 for a corporation), or two years imprisonment. The penalty reflects the seriousness of the offence and must be higher than the penalty for the breach of an enforcement notice. This is the same as the penalty for breaching a court order issued under SPA.

Offence to not comply with conditions imposed by the Coordinator-General

There are a number of offence provisions under different parts of the Act, relating to contravening conditions imposed by the Coordinator-General.

For example, where the Coordinator-General imposes conditions under section 54B of the Act, a contravention of such an imposed condition is an offence under section 580 of SPA. The maximum penalty is 1665 penalty units (\$202 963 for an individual or \$1 014 817 for a corporation). It should also be noted that such conditions apply to anyone undertaking the project, including for example, the proponent and an agent, contractor or subcontractor or licensee of the proponent (see section 54D of the Act).

Similarly, in relation to conditions imposed by the Coordinator-General on a use of land approved in a SDA under section 84 of the Act, a person using the land must comply with any

⁴ The value of a penalty unit for a corporation is calculated at five times the amount imposed on an individual.
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condition imposed on the use of that land. The maximum penalty for not complying is 1665 penalty units (\$202 963 for an individual or \$1 014 817 for a corporation).

Offence of giving Coordinator-General a false or misleading document

The Coordinator-General relies upon information supplied by proponents and other persons to make decisions and take actions under the Act. The foundation of an effective third-party compliance auditing system is the receipt of accurate and complete audit reporting documentation. For these reasons, it is crucial that the information supplied to the Coordinator-General is not false or misleading.

Section 157O of the Act makes it an offence, in relation to the performance of the Coordinator-General's functions, to give the Coordinator-General a document containing information that the person knows is false or misleading in a material particular. The maximum penalty for not complying is 1665 penalty units (\$202 963 for an individual or \$1 014 817 for a corporation), which is consistent with contemporary regulatory legislation.

Liability of directors and executive officers

A company is able to be held directly liable for committing an offence and can be found guilty of a criminal offence. A company's status is considered as a separate legal person. Liability for a criminal offence will be its own. However, many statutory provisions exist in Queensland legislation that lift the 'corporate veil' to expose those involved in the running of the corporation and/or those involved in performing the corporation's activities to have concurrent criminal liability with the corporation.

The Act requires that executive officers of a corporation must ensure that their corporation complies with particular sections of the Act. If they fail to ensure this then they are deemed to have committed the offence of failing to ensure the corporation complies with the Act. It is a defence for an executive officer to prove that:

- if the officer was in a position to influence the conduct of the corporation in relation to the offence - the officer exercised reasonable diligence to ensure the corporation complied with the Act, or
- the officer was not in a position to influence the conduct of the corporation in relation to the offence.

This provision ensures that those individuals who were actually responsible for an offence can be punished in their personal capacity for the offence and ensures executive officers cannot hide behind the corporate veil. Consistent with similar contemporary regulatory legislation, the penalty for the executive officer is the same as the penalty for the contravention of the section by an individual.

An executive officer of a corporation is defined in the Act as a person who is concerned with, or takes part in, its management whether or not the person is a director or the person's position is given the name of executive officer.

Relationship with other entities

Under the terms of the Bilateral Agreement between the Commonwealth and the State of Queensland, projects that are assessed under Part 4 of the Act and the *State Development*

and Public Works Organisation Regulation 2010, should also meet the Commonwealth's requirements for assessment of the impacts of a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*.

Clause 22.2 of the agreement requires the Commonwealth and the state to cooperate when monitoring conditions attached to approvals. This aims to ensure that reporting and compliance activities, including site inspections are, to the extent practicable consistent and effective.

In order to achieve this, the Compliance Unit will set in place complementary arrangements for monitoring compliance with conditions on any project which is approved by both the state and the Commonwealth, subject to the existing systems and legal requirement of both parties.

Similarly, where state agencies or other entities have jurisdiction or a compliance role in relation to a project, the unit will ensure that reporting and compliance activities, including site inspections, are coordinated.

Further information

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