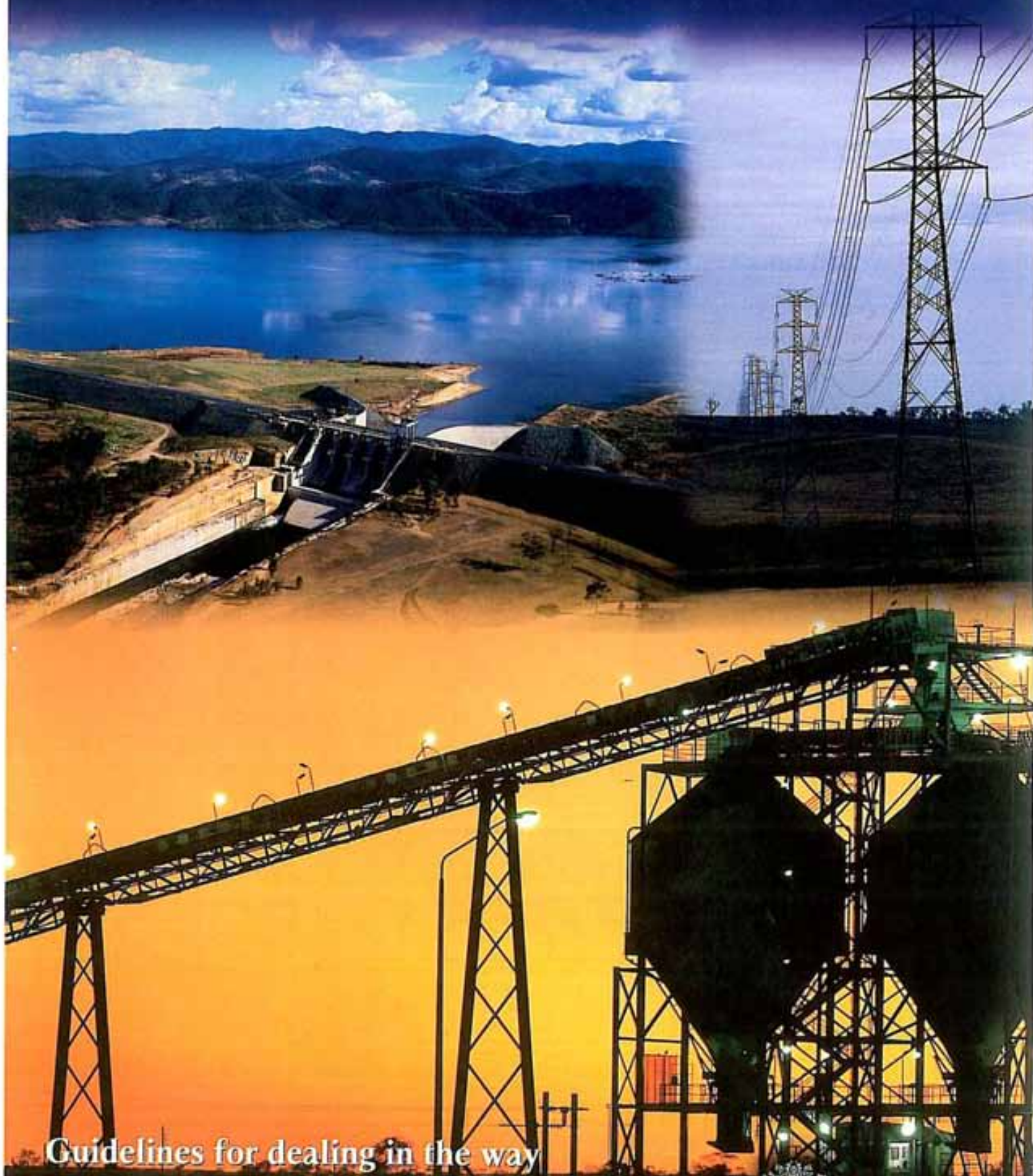


Creating a State of Opportunity for
business & industry

State Development and Public Works Organisation Act 1971



Guidelines for dealing in the way
mentioned in section 129, with
the taken land



State
Development

SEPTEMBER 1999

**State Development and Public Works
Organisation Act 1971**

Guidelines

for

**dealing in the way mentioned
in section 129 with the taken land**

Introduction

There are national and international trends for the increased involvement of the private sector in the construction, ownership, operation and maintenance of public infrastructure. Governments are developing policies that will open up opportunities for private sector provision of infrastructure. These policies acknowledge that infrastructure, however financed, will provide benefits to parties other than the proponent.

These Guidelines describe the power to use, lease or dispose of land that was compulsorily acquired by the Coordinator-General under section 78 of the *State Development and Public Works Organisation Act 1971*. The Guidelines are a statutory instrument for the purpose of the *Statutory Instruments Act 1992*.

These Guidelines will be reviewed in 12 months to ensure that they are meeting the needs of all involved parties. However, no changes will be made without further consultation with stakeholders.

Ross Rolfe
Coordinator-General

Overview of access and acquisition process By persons other than the State

An overall outline of the *State Development and Public Works Organisation Act 1971* (SD&PWOA) on access and acquisition of land for infrastructure facilities provided by persons other than the State is as follows:

- (a) A permit to enter for investigative purposes may be granted by the Coordinator-General under Division 6 of the Act in the following circumstances:
- The infrastructure is one that is likely to have significance, particularly economically or socially, for Australia, Queensland or the region in which it is to be constructed.
 - The project is likely to be viable and the applicant is of substance.
 - The applicant has been unable to gain access on a negotiated basis and is able to demonstrate a genuine attempt at negotiations.

If these conditions are satisfied the Coordinator-General may in turn grant an investigator's authority subject to conditions designed to minimise impacts on the landholder and ensure that any loss or damage associated with the investigation is rectified quickly and effectively.

- (b) Compulsory acquisition however will only be available for the benefit of persons other than the State pursuant to section 78 of the Act in the following circumstances:
- The Governor in Council has determined that the infrastructure facility is of significance, particularly economically or socially, to Australia, Queensland or the region in which it is to be constructed.
 - The proponent is able to demonstrate that reasonable steps have been taken to acquire the necessary land by agreement. For land other than native title these reasonable steps are essentially those expected in a normal commercial negotiation. For native title, there must be a genuine attempt to negotiate an indigenous land use agreement (ILUA).
- (c) Land acquisition through this process will be dealt with according to normal policies for the procurement of land associated with infrastructure. When it is the strategic interest of the State to retain long term control of such land, leasehold title will usually be offered to the infrastructure provider.

Guidelines for dealing in the way mentioned in section 79A with the land taken describe the power to use, lease or dispose of land that was acquired under section 78 of the Act.

Application of the Guidelines

Power to use, lease or dispose of land

1.00 Application	Section reference*
1.01 The Guidelines relate to the Coordinator-General's power to use, lease or dispose of land which was compulsorily acquired under section 78 of the State Development and Public Works Organisation Act 1971. The Guidelines must be read in conjunction with this Act.	174(1)
1.02 The Coordinator-General will consult with the Government department that has responsibility for the particular class of infrastructure to establish normal policies and procedures that apply to ownership and tenure of the land needed for the infrastructure project. The Coordinator-General will also seek a recommendation from the department on how the land could be vested or otherwise assigned.	
1.03 Unless the Coordinator-General is satisfied that there is a case for ownership and tenure arrangements other than those recommended by the department responsible for the particular class of infrastructure, the department's recommendations will apply.	
1.04 Upon acquisition, the land will be held by the Coordinator-General until assigned in accordance with Clauses 1.02 and 1.03 above.	
2.00 Power to use, lease or dispose of land	
2.01 The Coordinator-General may do any of the following:	129
<ul style="list-style-type: none">• Lease or agree to lease to any person land taken, or proposed to be taken, under section 78;• Sign an agreement with any person to carry out, own, operate and maintain any works or development on land taken, or proposed to be taken, under section 78;• Sign an agreement with any person in relation to works or development for land taken, or proposed to be taken, under section 78;• Sell land taken, or agree to sell land to be taken, under section 78.	

* *State Development and Public Works Organisation Act 1971*

2.02 Any arrangement entered into by the Coordinator-General with departments under section 79A will reflect the principles outlined in Clauses 1.02 to 1.04.

2.03 Guidelines are available for:

- Access to land for infrastructure projects by persons other than the State*
- Acquisition of land for infrastructure projects: Guidelines for consultation and negotiation with native title interests*
- Acquisition of land for infrastructure projects by persons other than the State.*

3.00 Financing the acquisition of land

3.01 Before the Coordinator-General undertakes any action under section 78, there must be a binding agreement in place between the Coordinator-General and the proponent addressing responsibility for and the timing of payment of all costs and expenses (including compensation payments) associated with the acquisition of land.

3.02 Prior to the Coordinator-General preparing any notice of intention to resume, the proponent shall lodge with the Coordinator-General sufficient guarantees which must be one or more of the following types of security from an approved security provider:

- A banker's undertaking;
- Cash;
- Government bonds and inscribed stock;
- Insurance bonds or guarantee policies; and
- Interest bearing deposits

or alternatively a guarantee in a form acceptable to the Coordinator-General to cover the following:

- cost of developing, issuing and implementing the notices of intention to resume; and
- all land resumption costs for freehold, leasehold and Crown land interests (eg. State Forests, reserves, road closures).

Alternatively, the Coordinator-General may enter into contractual arrangements with the proponent, which address issues such as payment of compensation and costs associated with any land resumption.

3.03 Any funds held by the Coordinator-General will be identified separately in the accounts of the department that administers the *State Development and Public Works Organisation Act 1971*.

4.00 Call Up of Funds

4.01 The Coordinator-General may without notice to the proponent have recourse to funds, guarantees, or other security lodged by the proponent to pay costs, expenses or other requirements (including compensation payments) associated with acquisition of the land acquired under section 78 for the project.

4.02 The Coordinator-General will release to the proponent any surplus funds and any unutilised guarantees or other securities held by the Coordinator-General after all resumption costs and expenses (including compensation costs and expenses) have been met.

5.00 Disposal of Land

5.01 Land, compulsorily acquired under section 78, held by the State and not used for the purpose for which it was acquired, shall be disposed of in accordance with section 13 and/or section 41 of the Acquisition of Land Act 1967. This Clause does not apply to native title.

5.02 Land, which was compulsorily acquired under section 78, sold to the proponent but not used for the purpose for which it was acquired, shall by commercial agreement between the Coordinator-General and the proponent be offered back to the original owner in accordance with the process outlined in section 13 and/or section 41 of the Acquisition of Land Act 1967. This Clause does not apply to native title.

5.03 Where the land is disposed of by the State pursuant to Clause 5.01, all sale proceeds (net of costs and expenses incurred by or on behalf of the State in selling the land) received by the State for such sale shall be refunded to the proponent.

5.04 If the infrastructure facility is sold by the original proponent then the sale agreement with the new owners must oblige the new owners and their successors in title to comply with the requirements of Clause 5.02

For further information on any of our comprehensive range of services call 13 26 50

State Development Centres

Brisbane City
Floor 21, 111 George Street
BRISBANE QLD 4000

Brisbane Northside
Suite 1, Level 2
Christies Homebase Centre
Cnr Gympie and Zillmere Roads
ASPLEY QLD 4034

Brisbane Southside
6 Paxton Street
SPRINGWOOD QLD 4127

Bundaberg
205 Bourbong Street
BUNDABERG QLD 4670

Cairns
Ground Floor
Cairns Port Authority Building
Cnr Hartley and Grafton Streets
CAIRNS QLD 4870

Gladstone
The Old Gladstone Post Office Bldg
33 Goonoon Street
GLADSTONE QLD 4680

Gold Coast
26 Marine Parade
SOUTHPORT QLD 4215

Hervey Bay
Ground Floor
State Office Building
50-54 Main Street
PIALBA QLD 4655

Ipswich
26 East Street
IPSWICH QLD 4305

Mackay
Floor 1
Cnr Gordon and Nelson Streets
MACKAY QLD 4740

Maryborough
Floor 2
Wide Bay-Burnett Electricity
Corporation Building
97-99 Adelaide Street
MARYBOROUGH QLD 4650

Mount Isa
75 Camooweal Street
MOUNT ISA QLD 4825

Rockhampton
Ground Floor
Cnr Fitzroy and Bolsover Streets
ROCKHAMPTON QLD 4700

Sunshine Coast
108 Brisbane Road
MOOLOOLABA QLD 4557

Toowoomba
4 Little Street
TOOWOOMBA QLD 4350

Townsville
Floor 1, Enterprise House
Cnr The Strand and
Sir Leslie Thiess Drive
TOWNSVILLE QLD 4810

Queensland Government Trade and Investment Offices

Tokyo
Tel: +813 3201 7861
email: tokyo@sd.qld.gov.au

Osaka
Tel: +817 2460 1412
email: osaka@sd.qld.gov.au

Hong Kong
Tel: +852 2827 1839
email: hongkong@sd.qld.gov.au

Taipei
Tel: +886 22 723 0656
email: taipei@sd.qld.gov.au

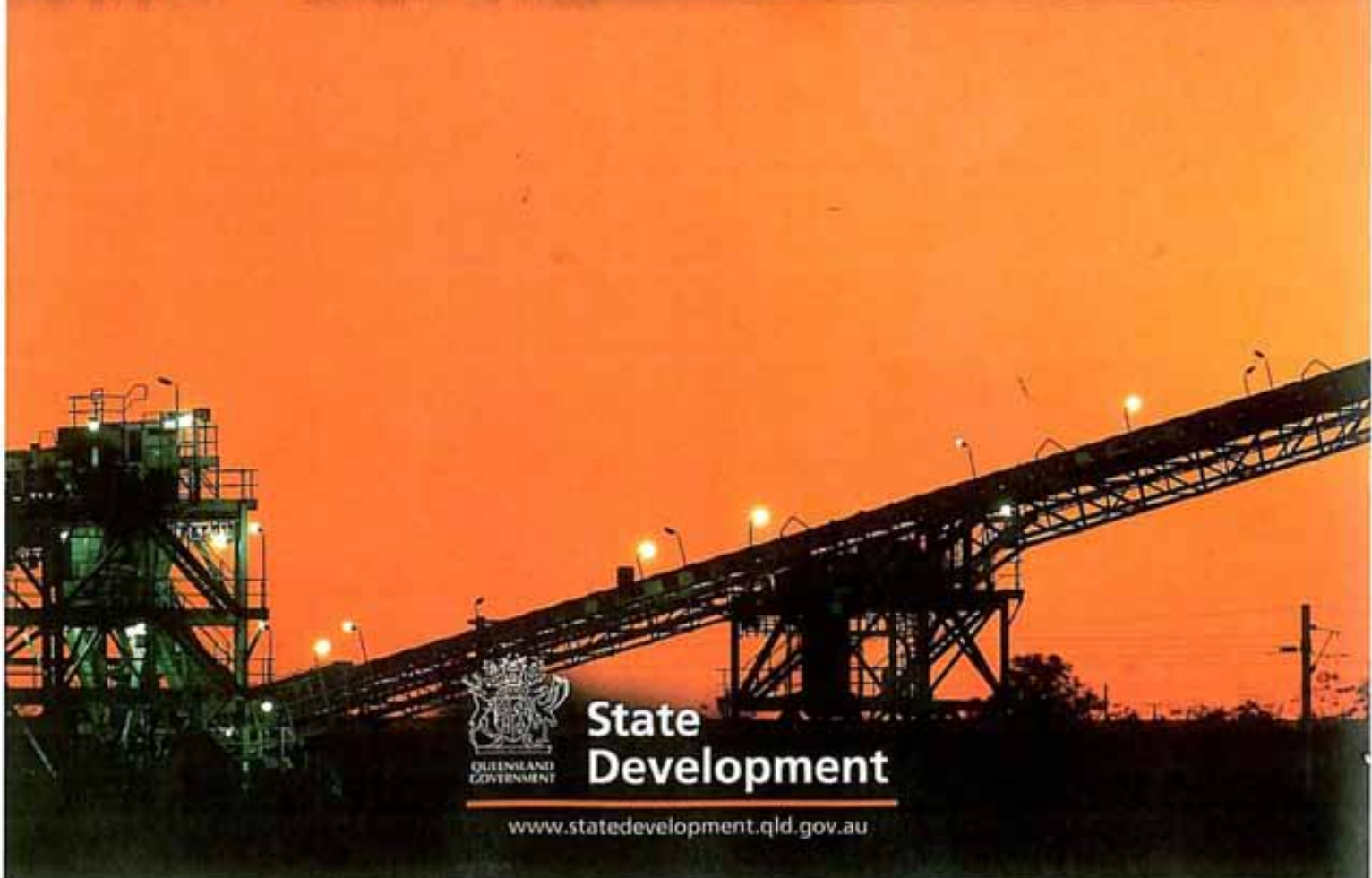
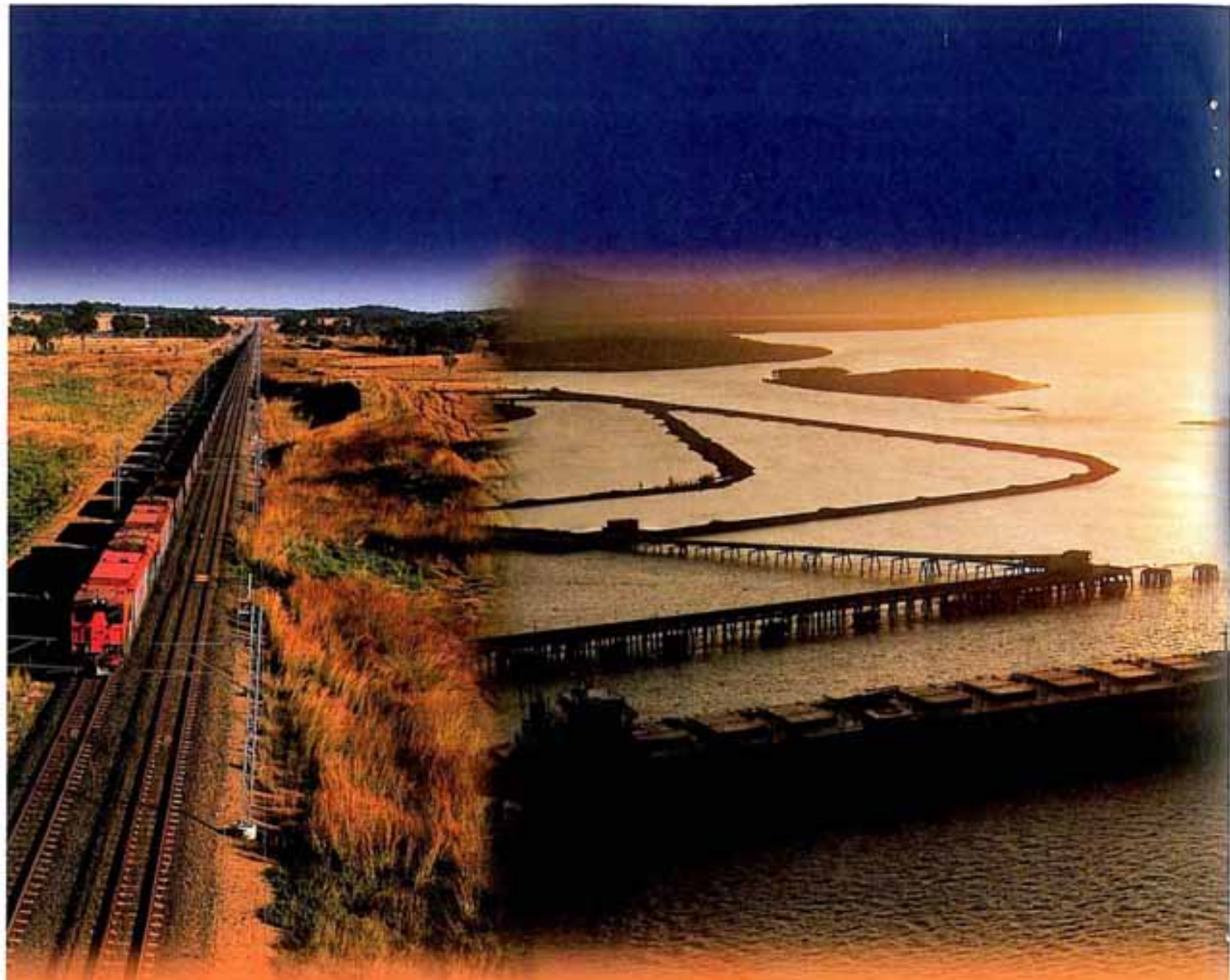
Shanghai
Tel: +8621 6350 0455
email: shanghai@sd.qld.gov.au

London
Tel: +44 171 836 1333
email: london@sd.qld.gov.au

Los Angeles
Tel: +1 310 203 3955
email: losangeles@sd.qld.gov.au

Jakarta
Tel: +62 21 526 6632
email: jakarta@sd.qld.gov.au

Semarang
Tel: +62 24 563 606
email: semarang@sd.qld.gov.au



**State
Development**

www.statedevelopment.qld.gov.au