





# **Infrastructure Australia Amendment Act 2014**

**No. 77, 2014**

**An Act to amend the *Infrastructure Australia Act  
2008*, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Infrastructure Australia Amendment Act 2014

No. 77, 2014

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## **An Act to amend the *Infrastructure Australia Act 2008*, and for other purposes**

[Assented to 17 July 2014]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Infrastructure Australia Amendment Act 2014*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 July 2014
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	The day this Act receives the Royal Assent.	17 July 2014
4. Schedule 2, Parts 2 to 4	At the same time as the provision(s) covered by table item 2.	
5. Schedule 2, Part 5	The day this Act receives the Royal Assent.	17 July 2014
6. Schedule 2, Parts 6 to 8	At the same time as the provision(s) covered by table item 2.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Amendments relating to Infrastructure Australia and the Infrastructure Coordinator

#### *Infrastructure Australia Act 2008*

##### 1 Title

Omit “and the Infrastructure Coordinator”.

##### 2 Section 3

Insert:

*Board* means the Board of Infrastructure Australia established by section 6D.

*CEO* means the Chief Executive Officer of Infrastructure Australia appointed under section 29.

##### 3 Section 3 (definition of *Chair*)

Omit “Infrastructure Australia”, substitute “the Board”.

##### 4 Section 3

Insert:

*Finance Minister* means the Minister who administers the *Financial Management and Accountability Act 1997*.

##### 5 Section 3 (definition of *Infrastructure Coordinator*)

Repeal the definition.

##### 6 Section 3 (definition of *member*)

Omit “Infrastructure Australia”, substitute “the Board”.

##### 6A Section 3

Insert:

*quarter* means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of a year.

## **7 Division 1 of Part 2 (heading)**

Repeal the heading.

## **8 Sections 4 and 5**

Repeal the sections, substitute:

### **4 Establishment**

- (1) Infrastructure Australia is established by this section.
- (2) Infrastructure Australia:
  - (a) is a body corporate; and
  - (b) must have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to Infrastructure Australia. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of executive officers.

- (3) Infrastructure Australia's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of Infrastructure Australia appearing on a document; and
  - (b) presume that the document was duly sealed.

### **5 Functions—general**

Infrastructure Australia has the following functions:

- (a) to conduct audits to determine the adequacy, capacity and condition of nationally significant infrastructure, taking into account:
  - (i) forecast growth; and
  - (ii) economic, social and environmental sustainability;
- (b) to develop lists (to be known as Infrastructure Priority Lists), based on audits conducted under paragraph (a) and any

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additional research by Infrastructure Australia, that prioritise Australia's infrastructure needs;

- (c) to evaluate infrastructure proposals in accordance with section 5A;
- (d) to develop plans (to be known as Infrastructure Plans) in accordance with section 5B;
- (e) to provide advice on infrastructure matters in accordance with section 5C;
- (f) to identify any impediments to investment in nationally significant infrastructure and identify strategies to remove any impediments identified;
- (g) to promote investment in infrastructure;
- (ga) to review and provide advice on proposals to facilitate the harmonisation of policies, and laws, relating to development of, and investment in, infrastructure;
- (gb) to review Commonwealth infrastructure funding programs and their alignment with Infrastructure Plans given to the Minister under section 5B;
- (h) to undertake or commission research relating to Infrastructure Australia's other functions;
- (i) any other functions conferred on Infrastructure Australia by or under this Act or any other law.

#### **5A Functions—evaluating infrastructure proposals**

- (1) For the purposes of paragraph 5(c), Infrastructure Australia has the function of evaluating proposals for investment in, or enhancements to:
  - (a) nationally significant infrastructure; and
  - (b) other infrastructure determined by the Minister.
- (3) A determination made by the Minister under paragraph (1)(b) is a legislative instrument.
- (4) As soon as practicable after the end of each quarter, Infrastructure Australia must make a summary of each proposal evaluated during the quarter available on its website.

## **5B Functions—developing Infrastructure Plans**

- (1) For the purposes of paragraph 5(d), Infrastructure Australia has the function of developing plans, to be given to the Minister, that:
    - (a) specify priorities for nationally significant infrastructure for Commonwealth, State, Territory and local governments for the period covered by the plan (see subsection (2)); and
    - (b) specify the following for proposals relating to those priorities during that period:
      - (i) productivity gains that may be anticipated from each proposal;
      - (ii) any complementary infrastructure required to maximise productivity gains from the proposals;
      - (iii) timeframes for delivering the proposals; and
    - (ba) includes a cost benefit analysis of each such proposal; and
    - (c) take into account:
      - (i) the audits, lists and evaluations mentioned in paragraphs 5(a), (b) and (c); and
      - (ii) consultations with Commonwealth, State, Territory and local governments; and
      - (iii) any other matters Infrastructure Australia considers relevant.
  - (2) A plan must cover a period of 15 years from the time the plan is prepared, or such other period as the Board determines.
  - (3) A cost benefit analysis included in a plan as mentioned in paragraph (1)(ba) must be prepared using the method approved by Infrastructure Australia. The method must enable the proposals to be compared.
  - (4) A plan must be prepared under this section every 5 years, or at such other intervals as the Board determines.
  - (5) Within 14 days of a plan being given to the Minister, the plan must be made available on Infrastructure Australia's website.
  - (6) Infrastructure Australia must cause the method approved under subsection (3) to be reviewed:
    - (a) no later than 6 months after the commencement of this section; and
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- (b) every 24 months after that first review.
- (7) Without limiting subsection (6), a review under that subsection must consider whether the cost benefit analyses take into account social, environmental and economic costs and benefits adequately.
- (8) The report of the review must be made available on Infrastructure Australia's website within 14 days of the report being given to Infrastructure Australia.

#### **5C Functions—providing advice on infrastructure matters**

- (1) For the purposes of paragraph 5(e), Infrastructure Australia has the function of providing advice to the Minister, Commonwealth, State, Territory and local governments, investors in infrastructure and owners of infrastructure on matters relating to infrastructure, including in relation to the following:
    - (a) Australia's current and future needs and priorities relating to nationally significant infrastructure;
    - (b) policy, pricing and regulatory issues that may impact on the utilisation of infrastructure;
    - (ba) policy issues arising from climate change;
    - (c) impediments to the efficient utilisation of national infrastructure networks;
    - (d) options and reforms, including regulatory reforms, to make the utilisation of national infrastructure networks more efficient;
    - (e) the needs of users of infrastructure;
    - (f) mechanisms for financing investment in infrastructure;
    - (g) the delivery of infrastructure projects.
  - (2) For the purposes of paragraph (1)(g), Infrastructure Australia may evaluate the delivery of an infrastructure project, including evaluating:
    - (a) the delivery against any targets set before or during delivery; and
    - (b) any relevant assumptions made before or during delivery.
  - (3) Infrastructure Australia also has the function of promoting public awareness of the matters mentioned in subsections (1) and (2), including by publishing information on its website.
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## **9 Subsection 6(4)**

Repeal the subsection, substitute:

- (4) However, the Minister must not give directions about the content of any audit, list, evaluation, plan or advice to be provided by Infrastructure Australia.

## **10 After section 6**

Insert:

### **6A Powers**

- (1) Infrastructure Australia has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Infrastructure Australia's powers include, but are not limited to, the following powers:
  - (a) the power to enter into contracts and agreements;
  - (b) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of Infrastructure Australia;
  - (c) the power to acquire, hold and dispose of real or personal property;
  - (d) the power to negotiate and cooperate with other Commonwealth bodies and with State, Territory and local government bodies;
  - (e) the power to do anything incidental to any of its powers.

### **6B Consultation**

Infrastructure Australia must, in performing its functions and exercising its powers, consult with such of the following as it considers appropriate:

- (a) government, commercial, industrial, consumer, academic, professional and other relevant bodies and organisations;
- (b) investors in infrastructure and owners of infrastructure.

**6C Infrastructure Australia does not have privileges and immunities of the Crown**

Infrastructure Australia does not have the privileges and immunities of the Crown in right of the Commonwealth.

**11 At the end of Division 1 of Part 2**

Add:

**Part 2A—Board of Infrastructure Australia**

**Division 1—Establishment and functions of the Board**

**6D Establishment**

There is to be a Board of Infrastructure Australia.

**6E Functions**

- (1) The functions of the Board are:
  - (a) to decide the objectives, strategies and policies to be followed by Infrastructure Australia; and
  - (b) to ensure the proper, efficient and effective performance of the Infrastructure Australia's functions; and
  - (c) any other functions conferred on the Board by this Act.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, Infrastructure Australia by the Board, or with the authority of the Board, is taken to have been done by Infrastructure Australia.
- (4) If a function or power of Infrastructure Australia is dependent on the opinion, belief or state of mind of Infrastructure Australia in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

## **12 Division 2 of Part 2**

Repeal the heading, substitute:

## **Division 2—Constitution and membership of the Board**

### **13 Section 7**

Repeal the section, substitute:

### **7 Constitution of the Board**

Infrastructure Australia consists of:

- (a) the Chair; and
- (b) 11 other members.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

### **14 Sections 13 and 14**

Repeal the sections.

### **15 Subsections 18(1) and (2)**

Repeal the subsections, substitute:

*All members*

- (1) The Minister may terminate the appointment of a member:
  - (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (b) the member fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of

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the *Commonwealth Authorities and Companies Act 1997*  
(disclosure of interests).

**16 Division 3 of Part 2 (heading)**

Repeal the heading, substitute:

**Division 3—Meetings of the Board**

**17 Subsection 19(1)**

Omit “Infrastructure Australia”, substitute “The Board”.

**18 Subsections 19(2) and 21(1)**

Omit “Infrastructure Australia”, substitute “the Board”.

**19 Paragraph 21(2)(a)**

Repeal the paragraph, substitute:

- (a) a member is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and

**20 Sections 23 and 24**

Omit “Infrastructure Australia”, substitute “The Board”.

**21 Subsection 25(1)**

Omit “Infrastructure Australia” (first occurring), substitute “The Board”.

**22 Paragraph 25(1)(b)**

Omit “Infrastructure Australia”, substitute “the Board”.

**23 Subsections 25(2) and (3)**

Omit “Infrastructure Australia”, substitute “the Board”.

**24 Subsection 25(4)**

Omit “Infrastructure Australia”, substitute “The Board”.

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**25 Division 4 of Part 2**

Repeal the Division.

**26 Part 3 (heading)**

Repeal the heading, substitute:

**Part 3—Chief Executive Officer, staff and  
consultants**

**27 Division 1 of Part 3**

Repeal the Division, substitute:

**Division 1—Chief Executive Officer of Infrastructure  
Australia**

**27 Establishment**

There is to be a Chief Executive Officer of Infrastructure Australia.

**28 Role**

- (1) The CEO is responsible for the day-to-day administration of Infrastructure Australia.
- (2) The CEO has any functions conferred on the CEO by or under this Act or any other law.
- (3) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

**28A CEO to act in accordance with policies and directions of Board**

- (1) The CEO is to act in accordance with policies determined by the Board.
- (2) The Board may give written directions to the CEO about the performance of the CEO's responsibilities.
- (3) The CEO must comply with a direction under subsection (2).

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(4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999*.

(5) A direction under subsection (2) is not a legislative instrument.

**28 Division 2 of Part 3 (heading)**

Repeal the heading.

**29 Subsection 29(1)**

Repeal the subsection, substitute:

(1) The CEO is to be appointed by the Board by written instrument.

**30 Subsection 29(2)**

Omit "Infrastructure Coordinator", substitute "CEO".

**31 Section 30**

Omit "Infrastructure Coordinator" (wherever occurring), substitute "CEO".

**32 Section 31 (heading)**

Repeal the heading, substitute:

**31 Acting CEO**

**33 Section 31**

Omit "Minister", substitute "Board".

**34 Sections 31 and 32**

Omit "Infrastructure Coordinator" (wherever occurring), substitute "CEO".

**35 Subsection 33(1)**

Omit "Infrastructure Coordinator", substitute "CEO".

**36 Subsection 33(2)**

Repeal the subsection, substitute:

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- (2) The Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.

### **37 Sections 34 to 38**

Repeal the sections, substitute:

#### **34 Disclosure of interests to the Board**

The CEO must give written notice to the Board of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions and responsibilities.

#### **35 Outside employment**

The CEO must not engage in paid employment outside the duties of his or her office without the Chair's approval.

#### **36 Other terms and conditions**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

#### **37 Resignation**

- (1) The CEO may resign his or her appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.

#### **38 Termination of appointment**

The Board may terminate the appointment of the CEO at any time, by instrument in writing.

### **38 Division 3 of Part 3**

Repeal the Division, substitute:

## Division 2—Staff and consultants

### 39 Staff of Infrastructure Australia

- (1) Infrastructure Australia may do either or both of the following:
  - (a) engage persons under the *Public Service Act 1999*;
  - (b) employ under written agreements such persons as Infrastructure Australia thinks necessary for the performance or exercise of any of its functions or powers.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the APS employees referred to in paragraph (1)(a) together constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.
- (3) The terms and conditions of employment of persons employed under paragraph (1)(b) are such as the CEO determines from time to time.

### 39A Staff seconded to Infrastructure Australia

- (1) Infrastructure Australia may be assisted by:
  - (a) persons engaged under the *Public Service Act 1999*, and officers and employees of authorities of the Commonwealth, whose services are made available to Infrastructure Australia in connection with the performance of its functions or the exercise of its powers; and
  - (b) persons whose services are so made available under arrangements made under subsection (2).
- (2) Infrastructure Australia may make with the appropriate authority or officer of a State or Territory an arrangement under which the State or Territory may make officers or employees available to Infrastructure Australia to perform services in connection with the performance of its functions or the exercise of its powers.

### 39AA Consultants

Infrastructure Australia may engage consultants to assist in the performance of its functions.

### **39 After Part 3**

Insert:

## **Part 3A—Planning and reporting**

### **39B Corporate plan**

- (1) Infrastructure Australia must prepare a corporate plan at least once each financial year and give it to the Minister.
- (2) The plan must cover a period of 3 financial years.
- (3) The plan must include details of the following matters:
  - (a) a statement of the objectives that Infrastructure Australia will pursue;
  - (b) the strategies and policies that Infrastructure Australia will adopt to achieve those objectives;
  - (c) performance indicators for the assessment of Infrastructure Australia's performance of its functions.
- (5) The Board may vary the plan.

#### *Consultation requirements*

- (6) In preparing the plan, or a variation of the plan, Infrastructure Australia must consult with:
  - (a) the Minister; and
  - (b) such of the following as it considers appropriate:
    - (i) government, commercial, industrial, consumer and other relevant bodies and organisations;
    - (ii) investors in infrastructure and owners of infrastructure.

### **39C Additional content for annual report**

The annual report for Infrastructure Australia prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997* for a year must also include:

- (a) details of any directions given to it by the Minister under subsection 6(1) during the year; and

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- (b) an assessment of the extent to which Infrastructure Australia's operations during the year have contributed to the objectives set out in the corporate plan applicable for the year; and
- (c) an evaluation of Infrastructure Australia's overall performance during the year against the performance indicators set out in the corporate plan for the year;
- (d) details of each method of preparing cost benefit analyses approval of which was in force under subsection 5B(3) at any time during the year, including the weight required to be assigned to each factor the method required to be taken into account.

## Part 3B—Finance

### 39D Money payable to Infrastructure Australia

- (1) There is payable to Infrastructure Australia such money as is appropriated by the Parliament for the purposes of Infrastructure Australia.
- (2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to Infrastructure Australia.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

### 39DA Application of money by Infrastructure Australia

- (1) The money of Infrastructure Australia is to be applied only:
    - (a) in payment or discharge of the costs, expenses and other obligations incurred or undertaken by Infrastructure Australia in the performance of its functions and the exercise of its powers; and
    - (b) in payment of any remuneration or allowances payable under this Act.
  - (2) Subsection (1) does not prevent investment of surplus money of Infrastructure Australia under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
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### **39DB Restrictions on financial transactions**

- (1) Infrastructure Australia must not, without the written approval of the Minister:
  - (a) acquire any property, right or privilege for a consideration exceeding in amount or value the amount prescribed by the regulations for the purposes of this paragraph; or
  - (b) dispose of any property, right or privilege if the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds the amount prescribed by the regulations for the purposes of this paragraph; or
  - (c) enter into a lease of land for a period exceeding 10 years.
- (2) Paragraphs (1)(a) and (b) do not apply to the investment of money by Infrastructure Australia under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
- (3) Infrastructure Australia must not borrow money from any person.
- (4) Nothing in subsection (3) affects Infrastructure Australia's ability to obtain goods or services on credit in accordance with section 28A of the *Commonwealth Authorities and Companies Act 1997*.
- (5) An approval under subsection (1) is not a legislative instrument.

### **39DC Taxation**

Infrastructure Australia is not subject to taxation under any law of the Commonwealth or of a State or Territory.

Note: Despite this section, Infrastructure Australia may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999* and section 66 of the *Fringe Benefits Tax Assessment Act 1986*).

### **40 Section 40 (heading)**

Repeal the heading, substitute:

## **40 Delegation by the Minister**

### **41 Section 40**

Omit “paragraph 5(2)(j), section 6, 8 or 18, paragraph 28(2)(a) or section 29 or 38”, substitute “section 6, 8 or 18”.

### **42 After section 40**

Insert:

#### **40A Delegation by Infrastructure Australia**

- (1) Infrastructure Australia may, in writing under its seal, delegate any or all of its powers or functions under this Act to:
  - (a) a member of the Board; or
  - (b) the CEO.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of Infrastructure Australia.

#### **40B Delegation by Board**

- (1) The Board may, in writing, delegate any or all of its powers or functions under this Act to:
  - (a) a member of the Board; or
  - (b) the CEO.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board.

#### **40C Delegation and subdelegation by CEO**

- (1) The CEO may, in writing, delegate any of the CEO’s powers or functions under this Act to a person mentioned in section 39 or 39A who:
    - (a) is an SES employee, or acting SES employee; or
    - (b) holds, or is acting in, an Executive Level 2 position; or
    - (c) occupies an office or holds a position equivalent to that of an SES employee or an Executive Level 2 position.
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- (2) If the Infrastructure Australia or the Board delegates a power or function under subsection 40A(1) or 40B(1) to the CEO, the CEO may, in writing, subdelegate the power or function to a person mentioned in paragraph (1)(a), (b) or (c) of this section.
- (3) In exercising any powers or performing any functions under the delegation or subdelegation, the delegate or subdelegate must comply with any directions of the CEO.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

## Part 2—Consequential amendments

### *Income Tax Assessment Act 1997*

#### **43 Section 415-1**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

#### **44 Paragraph 415-15(3)(c)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

#### **45 Subsection 415-15(3) (note)**

Omit “Infrastructure Coordinator” (wherever occurring), substitute “Infrastructure CEO”.

#### **46 Paragraph 415-20(2)(c) (note)**

Omit “paragraph 5(2)(b)”, substitute “paragraph 5(b)”.

#### **47 Section 415-50**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

#### **48 Subsection 415-55(1)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

#### **49 Subsection 415-55(1)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

#### **50 Subsection 415-55(1) (note)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

#### **51 Paragraph 415-55(4)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

#### **52 At the end of section 415-55**

Add:

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(5) A fee prescribed as mentioned in paragraph (4)(b) is payable to the  
\*Infrastructure CEO, on behalf of the Commonwealth.

**53 Subsection 415-60(1)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**54 Paragraph 415-60(2)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**55 Paragraph 415-60(2)(b)**

Omit “Infrastructure Coordinator” (wherever occurring), substitute  
“Infrastructure CEO”.

**56 Subsection 415-60(3)**

Omit “Infrastructure Coordinator” (first occurring), substitute  
“\*Infrastructure CEO”.

**57 Paragraph 415-60(3)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**58 Subsections 415-60(4) and (5)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**59 Subsection 415-65(1)**

Omit “Infrastructure Coordinator” (first occurring), substitute  
“\*Infrastructure CEO”.

**60 Subsection 415-65(1)**

Omit “Infrastructure Coordinator” (second, third and fourth occurring),  
substitute “Infrastructure CEO”.

**61 Subsection 415-65(3)**

Omit “Infrastructure Coordinator” (first occurring), substitute  
“\*Infrastructure CEO”.

**62 Subsection 415-65(3)**

Omit “Infrastructure Coordinator” (second occurring), substitute  
“Infrastructure CEO”.

**63 Subsection 415-65(5)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**64 Subsection 415-65(5)**

Omit “Infrastructure Coordinator” (second, third and fourth occurring), substitute “Infrastructure CEO”.

**65 Paragraph 415-65(6)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**66 Paragraph 415-65(6)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**67 Subsection 415-65(7)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**68 Subsection 415-65(7)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**69 Subsection 415-70(1)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**70 Paragraph 415-70(1)(a) and (b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**71 Paragraph 415-70(2)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**72 Paragraph 415-70(2)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**73 Subsection 415-70(4)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**74 Subsection 415-70(4)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**75 Subsection 415-70(6)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**76 Subsection 415-70(6)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**77 Paragraph 415-70(7)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**78 Paragraph 415-70(7)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**79 Paragraph 415-70(8)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**80 Paragraph 415-70(8)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**81 Subsection 415-70(9) (heading)**

Repeal the heading, substitute:

*Infrastructure CEO must notify Commissioner*

**82 Subsection 415-70(9)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**83 Subsection 415-70(9)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**84 Subsection 415-75(3) (note)**

Omit “paragraph 5(2)(b)”, substitute “paragraph 5(b)”.

**85 Subsection 415-80(1)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**86 Paragraph 415-80(1)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**87 Subsection 415-80(2)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**88 Subsection 415-80(3)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**89 Subsection 415-80(3)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**90 Paragraph 415-80(4)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**91 Paragraph 415-80(4)(b)**

Omit “Infrastructure Coordinator”, substitute “Infrastructure CEO”.

**92 Subsection 415-80(5)**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**93 Subsection 415-80(5)**

Omit “Infrastructure Coordinator” (second occurring), substitute “Infrastructure CEO”.

**94 Paragraph 415-80(6)(a)**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

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**95 Sections 415-85 and 415-90**

Omit “Infrastructure Coordinator”, substitute “\*Infrastructure CEO”.

**96 Section 415-95**

Omit “Infrastructure Coordinator” (first occurring), substitute “\*Infrastructure CEO”.

**97 Section 415-95**

Omit “Infrastructure Coordinator’s” (second occurring), substitute “Infrastructure CEO’s”.

**98 Section 415-95**

Omit “Infrastructure Coordinator” (last occurring), substitute “Infrastructure CEO”.

**99 Subsection 995-1(1)**

Insert:

*Infrastructure CEO* means the Chief Executive Officer of Infrastructure Australia appointed under section 29 of the *Infrastructure Australia Act 2008*.

## Schedule 2—Transitional and savings provisions

### Part 1—Introduction

#### 1 Definitions

(1) In this Schedule:

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**assets official**, in relation to an asset other than land, means the person or authority who:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

**CEO** means the Chief Executive Officer of Infrastructure Australia within the meaning of the *Infrastructure Australia Act 2008* as amended by this Act.

**Infrastructure Australia** means Infrastructure Australia within the meaning of the *Infrastructure Australia Act 2008* as amended by this Act.

**Infrastructure Coordinator** means the Infrastructure Coordinator within the meaning of the *Infrastructure Australia Act 2008* as in force immediately before the transition time.

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

***old Infrastructure Australia*** means Infrastructure Australia within the meaning of the *Infrastructure Australia Act 2008* as in force immediately before the transition time.

***specified succession time***, for an asset or liability covered by a declaration under item 2 or 3, means the time that the Commonwealth becomes the successor in law in relation to the asset or liability.

***transition time*** means the time that Part 1 of Schedule 1 commences.

## **Part 2—Transfer of certain assets and liabilities**

### **2 Transfer of certain Commonwealth assets**

- (1) This item applies to an asset of the Commonwealth that, immediately before the transition time, was being held or used by the Department in connection with the performance of a function of the old Infrastructure Australia or the Infrastructure Coordinator.
- (2) The Minister may, by legislative instrument, declare that a specified asset ceases to be an asset of the Commonwealth and becomes an asset of Infrastructure Australia, at the specified time, without any conveyance, transfer or assignment.
- (3) If the Minister does so, Infrastructure Australia becomes the successor in law in relation to the specified asset at the specified time.
- (4) This item does not prevent the Commonwealth from transferring an asset to Infrastructure Australia otherwise than under this item.

### **3 Transfer of certain Commonwealth liabilities**

- (1) This item applies to a liability of the Commonwealth that was incurred before the transition time in connection with the performance of a function of the old Infrastructure Australia or the Infrastructure Coordinator.
- (2) The Minister may, by legislative instrument, declare that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of Infrastructure Australia, at the specified time, without any conveyance, transfer or assignment.
- (3) If the Minister does so, Infrastructure Australia becomes the successor in law in relation to the specified liability at the specified time.
- (4) This item does not prevent the Commonwealth from transferring a liability to Infrastructure Australia otherwise than under this item.

### **4 Transfers of land may be registered**

- (1) This item applies if:
  - (a) any land vests in Infrastructure Australia under this Part; and

- (b) there is lodged with a land registration official a certificate that:
  - (i) is signed by the Minister; and
  - (ii) identifies the land, whether by reference to a map or otherwise; and
  - (iii) states that the land has become vested in Infrastructure Australia under this Part.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

## **5 Certificates relating to vesting of assets other than land**

- (1) This item applies if:
  - (a) an asset other than land vests in Infrastructure Australia under this Part; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in Infrastructure Australia under this Part.
- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Schedule.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

## Part 3—Transfer of other matters

### 6 Transfer of records to Infrastructure Australia

The Secretary of the Department may transfer to Infrastructure Australia records or documents of the Commonwealth that relate to the functions of Infrastructure Australia.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

### 7 Legal proceedings of the Commonwealth

- (1) This item applies if:
  - (a) any proceedings to which the Commonwealth was a party were pending in any court or tribunal immediately before the transition time; and
  - (b) the proceedings:
    - (i) relate to an asset or liability that, as a result of a declaration made under item 2 or 3, has vested in Infrastructure Australia; or
    - (ii) otherwise relate to a function of Infrastructure Australia.
- (2) Infrastructure Australia is substituted for the Commonwealth as a party to the proceedings:
  - (a) for proceedings not covered by subparagraph (1)(b)(i)—from the transition time; and
  - (b) in any other case—from the specified succession time in relation to the asset or liability.

### 8 References in certain instruments to the Commonwealth, old Infrastructure Australia or Infrastructure Coordinator

- (1) This item applies if:
  - (a) an instrument was in force immediately before the transition time or the specified succession time for an asset or liability; and
  - (b) the instrument contains a reference to:
    - (i) the Commonwealth; or
    - (ii) the old Infrastructure Australia; or

- (iii) the Infrastructure Coordinator; and
- (c) the reference:
  - (i) relates to an asset or liability that, as a result of a declaration under item 2 or 3, has vested in Infrastructure Australia; or
  - (ii) otherwise relates to a function of Infrastructure Australia or the CEO.
- (2) The Minister may, by legislative instrument, determine that the instrument has effect, from the transition time or the specified succession time (as appropriate), as if the reference to the body or person mentioned in paragraph (1)(b) were a reference to:
  - (a) Infrastructure Australia; or
  - (b) the CEO.
- (3) For the purposes of this item, *instrument*:
  - (a) includes:
    - (i) a contract, undertaking, deed or agreement; and
    - (ii) a notice, authority, order or instruction; and
    - (iii) an instrument made under an Act or under regulations; but
  - (b) does not include an exempt instrument.
- (4) For the purposes of this item, *exempt instrument* means:
  - (a) an Act; or
  - (b) an instrument made under this Act.

## Part 4—Infrastructure Australia Special Account

### 9 Infrastructure Australia Special Account

- (1) At the transition time, the Special Account established under subsection 20(1) of the *Financial Management and Accountability Act 1997* with the name “Infrastructure Australia Special Account” is abolished.
- (2) If an amount (the *old amount*) stands to the credit of that Special Account immediately before the transition time, there is payable to Infrastructure Australia, at the transition time, an amount equal to the old amount.
- (3) The amount payable to Infrastructure Australia under subitem (2) is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

## **Part 5—Reporting obligation**

### **10 Final annual report**

- (1) The old Infrastructure Australia must, before the transition time, prepare and give to the Minister, for presentation to the Parliament, a report on the old Infrastructure Australia's operations during the final reporting period.
- (2) Subsection 26(2) of the *Infrastructure Australia Act 2008* as in force immediately before the commencement of this item applies to the report, as if a reference to a financial year were a reference to the final reporting period.
- (3) The Minister must table the report in each House of the Parliament as soon as practicable after the transition time.
- (4) A report given to the Minister under this item discharges the old Infrastructure Australia's obligations under section 26 of the *Infrastructure Australia Act 2008* in respect of any period covered by the report.
- (5) In this item:  
*final reporting period* means the period:
  - (a) beginning:
    - (i) if, at the commencement of this item, no report under section 26 of the *Infrastructure Australia Act 2008* has been given to the Minister for the financial year ending before that commencement—at the start of that financial year; or
    - (ii) otherwise—at the start of the financial year in which this item commences; and
  - (b) ending immediately before the transition time.

## Part 6—Officeholders

### 11 No transfer of appointment of officeholders

- (1) Nothing in this Schedule produces the result that the appointment of an old Infrastructure Australia officer has effect as if it were an appointment, engagement or employment of the person in relation to Infrastructure Australia.
- (2) In this item:  
*old Infrastructure Australia officer* means:
  - (a) a member of the old Infrastructure Australia; or
  - (b) the Infrastructure Coordinator.

## **Part 7—Provisions relating to Division 415 of the Income Tax Assessment Act 1997**

### **12 Things done by, or in relation to, Infrastructure Coordinator**

- (1) If, before the transition time, a thing was done by, or in relation to, the Infrastructure Coordinator, then, for the purposes of the operation of:
  - (a) Division 415 of the *Income Tax Assessment Act 1997* as in force from the transition time; and
  - (b) the infrastructure project designation rules made under section 415-100 of that Act; and
  - (c) any other law to the extent that it relates to that Division or those rules;the thing is taken to have been done by, or in relation to, the CEO for the purposes of the provision under, or in relation to, which the thing would have been done if the thing had been done immediately after the transition time.
- (2) For the purposes of subitem (1), a thing done before the transition time under a provision amended by Part 2 of Schedule 1 to this Act has effect from that time as if it had been done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) For the purposes of subitem (1), if:
  - (a) any proceedings to which the Infrastructure Coordinator was a party were pending in any court or tribunal immediately before the transition time; and
  - (b) the proceedings relate to a thing done by, or in relation to, the Infrastructure Coordinator under Division 415 of the *Income Tax Assessment Act 1997*;the CEO is substituted for the Infrastructure Coordinator as a party to the proceedings from the transition time.
- (4) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Infrastructure Coordinator. The determination has effect accordingly.
- (5) A determination made under subitem (4) is not a legislative instrument.

Note: See also item 14 of this Schedule (continuation of Infrastructure Priority Lists).

### **13 Infrastructure project designation rules**

- (1) A reference to the Infrastructure Coordinator in a provision of the infrastructure project designation rules made under section 415-100 of the *Income Tax Assessment Act 1997* has effect, after the transition time, as if it were a reference to the CEO.
- (2) Subsection 415-100(2) of the *Income Tax Assessment Act 1997* applies on and after the transition time as if the reference in that subsection to Infrastructure Australia included a reference to the old Infrastructure Australia.

## **Part 8—Miscellaneous**

### **14 Continuation of Infrastructure Priority Lists**

An Infrastructure Priority List under paragraph 5(2)(b) of the *Infrastructure Australia Act 2008* in effect immediately before the transition time has effect, from the transition time, as if it had been made by Infrastructure Australia.

### **15 Exemption from stamp duty and other State or Territory taxes**

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
  - (a) the vesting of an asset or liability as a result of a declaration made under item 2 or 3; or
  - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
  - (a) that a specified matter is an exempt matter; or
  - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

### **16 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

### **17 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to:
-

- (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

### **18 Constitutional safety net**

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **19 Transitional rules**

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments made by Schedule 1.

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*[Minister's second reading speech made in—  
House of Representatives on 20 November 2013  
Senate on 11 December 2013]*

(232/13)

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