



# **Infrastructure Australia Act 2008**

**No. 17, 2008**

## **Compilation No. 6**

<b>Compilation date:</b>	6 May 2016
<b>Includes amendments up to:</b>	Act No. 47, 2016
<b>Registered:</b>	14 June 2016

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Infrastructure Australia Act 2008* that shows the text of the law as amended and in force on 6 May 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to establish Infrastructure Australia, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Infrastructure Australia Act 2008*.

### 2 Commencement

This Act commences on the day after it receives the Royal Assent.

### 3 Definitions

In this Act:

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

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

**Chair** means the Chair of the Board.

**COAG** means the Council of Australian Governments.

**Finance Minister** means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

**full-time Chair** means a Chair appointed on a full-time basis.

**Infrastructure Australia** means the body established by section 4.

**member** means a member of the Board and includes the Chair.

**nationally significant infrastructure** includes:

- (a) transport infrastructure; and

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- (b) energy infrastructure; and
- (c) communications infrastructure; and
- (d) water infrastructure;

in which investment or further investment will materially improve national productivity.

***part-time Chair*** means a Chair appointed on a part-time basis.

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



## **Part 2—Infrastructure Australia**

### **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 *Public Governance, Performance and Accountability Act 2013* applies to Infrastructure Australia. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (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.

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- (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
  - (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.

### **6 Minister may give directions to Infrastructure Australia**

- (1) The Minister may give written directions to Infrastructure Australia about the performance of its functions.
- (2) The Minister may have regard to any decisions by COAG in giving directions under subsection (1).
- (3) Directions given by the Minister under subsection (1) must be of a general nature only.
- (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.
- (5) Infrastructure Australia must comply with any direction given by the Minister under subsection (1).
- (6) A direction given by the Minister under subsection (1) is not a legislative instrument.

### **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:

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- (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.

## **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.

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

### **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.

### **8 Appointment of members**

- (1) Members (including the Chair) are to be appointed by the Minister by written instrument.
- (2) In making appointments, the Minister must ensure that:
  - (a) he or she is satisfied that each member has knowledge of, or experience in, a field relevant to Infrastructure Australia's functions; and
  - (b) 9 members (of whom one is the Chair) are people nominated by the Commonwealth; and
  - (c) 5 of the members (of whom one is the Chair) covered by paragraph (b) have acquired the knowledge or experience referred to in paragraph (a) in the private sector; and
  - (d) one of the members covered by paragraph (b) has acquired the knowledge or experience referred to in paragraph (a) in local government; and
  - (e) 3 members are people nominated by agreement between the States, the Australian Capital Territory and the Northern Territory.
- (3) The Chair may be appointed on a full-time or part-time basis.
- (4) A member, other than the Chair, must be appointed on a part-time basis.



## 9 Term of appointment

A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A member is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

## 10 Acting appointments

- (1) The Minister may appoint a member to act as the Chair:
  - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a person to act as a member:
  - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## 11 Remuneration

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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### **12 Leave of absence**

#### *Full-time Chair*

- (1) A full-time Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

#### *Part-time Chair*

- (3) The Minister may grant leave of absence to a part-time Chair on the terms and conditions that the Minister determines.

#### *Other members*

- (4) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.
- (5) The Chair must notify the Minister if the Chair grants to a member leave of absence for a period that exceeds 6 months.

### **15 Outside employment**

A full-time Chair must not engage in paid employment outside the duties of his or her office without the Minister's approval.

### **16 Other terms and conditions**

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

### **17 Resignation of members**

- (1) A member may resign his or her appointment by giving the Minister a written resignation.

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

## **18 Termination of appointment**

### *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 the member:
- (a) becomes bankrupt; or
  - (b) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with one or more of his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors.

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

### *Additional grounds for full-time Chair*

- (3) The Minister may terminate the appointment of a full-time Chair if:
- (a) the Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) the Chair engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 15).

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*Additional ground for part-time Chair and other members*

- (4) The Minister may terminate the appointment of a member (other than a full-time Chair) if the member is absent, except on leave of absence, from 3 consecutive meetings of Infrastructure Australia.

## **Division 3—Meetings of the Board**

### **19 Convening meetings**

- (1) The Board must hold the meetings that are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places that the Board determines.

Note: See also section 33B of the *Acts Interpretation Act 1901*, which contains extra rules about meetings by telephone etc.

- (3) The Chair:
  - (a) may convene a meeting; and
  - (b) must convene at least 4 meetings each calendar year; and
  - (c) must convene a meeting if requested in writing by:
    - (i) 3 or more other members; or
    - (ii) the Minister.

### **20 Presiding at meetings**

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the other members present must appoint a member to preside.

### **21 Quorum**

- (1) At a meeting of the Board, 8 members constitute a quorum.
- (2) However, if:
  - (a) a member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and

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(b) when the member leaves the meeting concerned there is no longer a quorum present;  
the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

**22 Voting at meetings**

- (1) A question arising at a meeting is to be determined by a majority of the votes of the members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

**23 Conduct of meetings**

The Board may regulate proceedings at its meetings as it considers appropriate.

**24 Minutes**

The Board must keep minutes of its meetings.

**25 Decisions without meetings**

- (1) The Board is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
  - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
  - (a) has determined that it may make decisions of that kind without meeting; and

- (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

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

### **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).
- (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.



## **29 Appointment**

- (1) The CEO is to be appointed by the Board by written instrument.
- (2) The CEO is to be appointed on a full-time basis.

## **30 Term of appointment**

The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

## **31 Acting CEO**

The Board may appoint a person to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## **32 Remuneration**

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed.
- (2) The CEO is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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### **33 Leave of absence**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (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.

### **34 Disclosure of interests**

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

### **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.

## 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.

## Part 3A—Planning and reporting

### 39B Corporate plan

In preparing or varying a corporate plan under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the Board 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 Annual report

The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also include:

- (a) details of any directions given to Infrastructure Australia by the Minister under subsection 6(1) of this Act during the period; and
- (b) details of each method of preparing cost benefit analyses approval of which was in force under subsection 5B(3) of this Act at any time during the period, including the weight required to be assigned to each factor and the method required 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, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of Infrastructure Australia.

### **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
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Section 39DC

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- (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.
- (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*).



## **Part 4—Miscellaneous**

### **40 Delegation by the Minister**

- (1) The Minister may, by writing, delegate any or all of his or her functions and powers under this Act (other than a function or power under section 6, 8 or 18) to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising functions or powers delegated under subsection (1), the delegate must comply with any directions of the Minister.

### **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.

Section 40C

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**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.
- (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.

**41 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Infrastructure Australia Act 2008	17, 2008	8 Apr 2008	9 Apr 2008 (s 2)	
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 711–718) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
Tax Laws Amendment (2013 Measures No. 2) Act 2013	124, 2013	29 June 2013	Sch 2 (items 43–46): 11 July 2013 (s 2(1) item 12 and F2013L01359)	Sch 2 (item 46)
Infrastructure Australia Amendment Act 2014	77, 2014	17 July 2014	Sch 1 (items 1–42): 1 Sept 2014 (s 2(1) item 2 and F2014L01120)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 41–48, 74–77) and Sch 7: 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2015) Act 2016	47, 2016	5 May 2016	Sch 3A: 6 May 2016 (s 2(1) item 4)	—

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
Title .....	am No 77, 2014
<b>Part 1</b>	
s 3 .....	am No 77, 2014; No 36, 2015
<b>Part 2</b>	
<b>Division 1</b>	
Division 1 heading.....	rep No 77, 2014
s 4 .....	rs No 77, 2014 am No 36, 2015
s 5 .....	rs No 77, 2014
s 5A .....	ad No 77, 2014
s 5B.....	ad No 77, 2014
s 5C.....	ad No 77, 2014
s 6 .....	am No 77, 2014
6A.....	ad No 77, 2014
6B.....	ad No 77, 2014
6C.....	ad No 77, 2014
<b>Part 2A</b>	
Part 2A.....	ad No 77, 2014
<b>Division 1</b>	
6D.....	ad No 77, 2014
6E.....	ad No 77, 2014
<b>Division 2</b>	
Division 2 heading.....	rs No 77, 2014
s 7 .....	rs No 77, 2014
s 9 .....	am No 46, 2011
s 10.....	am No 46, 2011
s 13 .....	rep No 77, 2014
s 14 .....	rep No 77, 2014

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## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 18 .....	am No 77, 2014; No 36, 2015
<b>Division 3</b>	
Division 3 heading.....	rs No 77, 2014
s 19 .....	am No 77, 2014
s 21 .....	am No 77, 2014; No 36, 2015
s 23 .....	am No 77, 2014
s 24 .....	am No 77, 2014
s 25 .....	am No 77, 2014
Division 4 .....	rep No 77, 2014
s 26 .....	rep No 77, 2014
<b>Part 3</b>	
Part 3 heading.....	rs No 77, 2014
<b>Division 1</b>	
Division 1 .....	rs No 77, 2014
s 27 .....	rs No 77, 2014
s 28 .....	am No 124, 2013
	rs No 77, 2014
s 28A .....	ad No 77, 2014
Division 2 heading.....	rep No 77, 2014
s 29 .....	am No 77, 2014
s 30 .....	am No 46, 2011; No 77, 2014
s 31 .....	am No 46, 2011; No 77, 2014
s 32 .....	am No 77, 2014
s 33 .....	am No 77, 2014
s 34 .....	rs No 77, 2014; No 36, 2015
s 35 .....	rs No 77, 2014
s 36 .....	rs No 77, 2014
s 37 .....	rs No 77, 2014
s 38 .....	rs No 77, 2014
Division 3 .....	rep No 77, 2014
s 39 .....	rep No 77, 2014

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
Division 2 .....	ad No 77, 2014
s 39 .....	ad No 77, 2014
s 39A .....	ad No 77, 2014
s 39AA.....	ad No 77, 2014
<b>Part 3A</b>	
Part 3A.....	ad No 77, 2014
s 39B.....	ad No 77, 2014 rs No 36, 2015
s 39C.....	ad No 77, 2014 rs No 36, 2015; No 47, 2016
<b>Part 3B</b>	
Part 3B.....	ad No 77, 2014
s 39D .....	ad No 77, 2014
s 39DA.....	ad No 77, 2014 am No 36, 2015
s 39DB.....	ad No 77, 2014 am No 36, 2015
s 39DC.....	ad No 77, 2014
<b>Part 4</b>	
s 40 .....	am No 124, 2013; No 77, 2014
s 40A .....	ad No 77, 2014
s 40B.....	ad No 77, 2014
s 40C.....	ad No 77, 2014