



# **Infrastructure Australia Amendment (Independent Review) Act 2023**

**No. 117, 2023**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Infrastructure Australia Amendment (Independent Review) Act 2023

No. 117, 2023

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

[Assented to 14 December 2023]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Infrastructure Australia Amendment (Independent Review) Act 2023*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</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.	14 December 2023
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	15 December 2023
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provisions 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.	15 April 2024 (F2024N00309)

Note: This table relates only to the provisions of this Act as originally enacted.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.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

#### ***Infrastructure Australia Act 2008***

##### **1 After section 2**

Insert:

##### **2A Object**

The object of this Act is to establish Infrastructure Australia as the Commonwealth Government’s independent adviser on nationally significant infrastructure investment planning and project prioritisation.

##### **2 Section 3 (definition of COAG)**

Repeal the definition.

##### **2A Section 3 (at the end of paragraph (d) of the definition of *nationally significant infrastructure*)**

Add “and”.

##### **2B Section 3 (after paragraph (d) of the definition of *nationally significant infrastructure*)**

Insert:

(e) social infrastructure;

##### **2C Section 3**

Insert:

*social infrastructure* means facilities, spaces, services or networks that support quality of life and wellbeing of communities.

##### **3 Paragraphs 5(a) to (gb)**

Repeal the paragraphs, substitute:

(a) to conduct audits in accordance with section 5A;

- (aa) to conduct or endorse evaluations in accordance with section 5B;
- (b) to develop lists (to be known as Infrastructure Priority Lists) and plans (to be known as Infrastructure Plans) in accordance with section 5C;
- (c) the functions mentioned in section 5D (providing advice on infrastructure matters);
- (d) to assess, and report on, projects relating to nationally significant infrastructure in accordance with section 5DA;

#### **4 Sections 5A to 5C**

Repeal the sections, substitute:

##### **5A Functions—conducting audits**

- (1) For the purposes of paragraph 5(a), Infrastructure Australia has the function of conducting audits to determine the adequacy, capacity and condition of nationally significant infrastructure, taking into account:
  - (a) forecast economic and population growth; and
  - (b) economic, social and environmental sustainability; and
  - (c) Australia’s greenhouse gas emissions reduction targets.
- (2) An audit must be prepared under this section at such intervals as the Board determines.
- (3) In performing this function, Infrastructure Australia may consider State, Territory or local government reports on the adequacy, capacity and condition of nationally significant infrastructure.
- (4) Infrastructure Australia must cause a copy of an audit prepared under this section to be tabled in each House of the Parliament within 10 sitting days of that House after the audit is finalised.

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

###### *National planning and assessment framework*

- (1) Infrastructure Australia must develop a national planning and assessment framework to promote national consistency and coordination in infrastructure evaluations.



- (2) The framework is not a legislative instrument.
- (3) Infrastructure Australia must give the framework to the Minister and publish the framework on Infrastructure Australia's website.
- (4) Infrastructure Australia must review the framework at least every 5 years.
- (5) In developing and reviewing the framework, Infrastructure Australia must consult with States and Territories.

*Evaluations*

- (6) For the purposes of paragraph 5(aa), Infrastructure Australia has the function of evaluating, or endorsing evaluations conducted by or for States or Territories of, proposals covered by subsection (7) that are submitted by any of the following:
  - (a) the Commonwealth;
  - (b) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
  - (c) a Commonwealth company (within the meaning of that Act);
  - (d) a State;
  - (e) a Territory.
- (7) For the purposes of subsection (6), this subsection covers proposals for investment in, or enhancements to, the following infrastructure:
  - (a) nationally significant infrastructure;
  - (b) other infrastructure determined by the Minister.
- (8) A determination made by the Minister under paragraph (7)(b) is a legislative instrument.
- (8A) In performing the function mentioned in subsection (6) in relation to a proposal, Infrastructure Australia must consider what impacts the proposal, if carried out, would have on:
  - (a) Australia's net greenhouse gas emissions, as reported in national inventory reports in accordance with:
    - (i) the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, as amended and in force for Australia from time to time; and

- (ii) the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time; and
- (b) the achievement of Australia’s greenhouse gas emissions reduction targets; and
- (c) any policy issues arising from climate change that Infrastructure Australia considers relevant to the proposal.

Note: The United Nations Framework Convention on Climate Change is in Australian Treaty Series 1994 No. 2 ([1994] ATS 2) and the Paris Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24). They could in 2023 be viewed in the Australian Treaty Series Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

- (9) As soon as practicable after the end of each quarter, Infrastructure Australia must make available on its website:
  - (a) a summary of each proposal evaluated by Infrastructure Australia during the quarter; and
  - (b) a summary of each proposal for which Infrastructure Australia endorsed an evaluation during the quarter.

*Tabling requirement*

- (10) Infrastructure Australia must cause a copy of the following documents to be tabled in each House of the Parliament within 10 sitting days of that House after the document is finalised:
  - (a) the national planning and assessment framework mentioned in subsection (1);
  - (b) the summaries mentioned in subsection (9).

**5C Functions—developing Infrastructure Priority Lists and Infrastructure Plans**

*Infrastructure Priority Lists*

- (1) For the purposes of paragraph 5(b), Infrastructure Australia has the function of developing targeted Infrastructure Priority Lists that:
  - (a) specify priorities for Commonwealth investment in nationally significant infrastructure across Australia; and
  - (b) take into account:
    - (i) audits mentioned in section 5A; and

- (ii) evaluations conducted or endorsed by Infrastructure Australia in accordance with section 5B; and
  - (iii) consultations with Commonwealth, State and Territory governments; and
  - (iv) any other matters Infrastructure Australia considers relevant.
- (2) Infrastructure Australia must develop Infrastructure Priority Lists at such intervals as the Board determines. Infrastructure Australia must also develop an Infrastructure Priority List if the Minister requests.

*Infrastructure Plans*

- (3) For the purposes of paragraph 5(b), Infrastructure Australia has the function of developing Infrastructure Plans specifying priorities for nationally significant infrastructure across Australia.
- (4) An Infrastructure Plan:
- (a) must be developed at the request of the Minister; and
  - (b) may be developed on Infrastructure Australia's own initiative after consultation with the Minister.
- (5) An Infrastructure Plan must cover the period determined by the Board after consultation with the Minister.
- (6) Infrastructure Australia must make an Infrastructure Plan available on Infrastructure Australia's website within 14 days after it is developed.

*Tabling requirement*

- (7) Infrastructure Australia must cause a copy of an Infrastructure Priority List and an Infrastructure Plan to be tabled in each House of the Parliament within 10 sitting days of that House after the document is finalised.

**5D Functions—providing advice on infrastructure matters**

- (1) For the purposes of paragraph 5(c), Infrastructure Australia has the following functions:

- (a) to identify any impediments to investment in nationally significant infrastructure and identify strategies to remove any impediments identified;
  - (b) to promote the timely and efficient delivery of nationally significant infrastructure projects, consistent with considerations of social and environmental sustainability;
  - (c) to identify and promote best practice in the planning and procurement of nationally significant infrastructure projects;
  - (d) to review and provide advice on proposals to facilitate the harmonisation of policies, and laws, relating to development of, and investment in, infrastructure;
  - (e) to review Commonwealth infrastructure funding programs and their alignment with Infrastructure Plans:
    - (i) at the request of the Minister; or
    - (ii) after consultation with the Minister;
  - (f) to inquire into and report on matters relating to nationally significant infrastructure:
    - (i) at the request of the Minister; or
    - (ii) after consultation with the Minister.
- (2) For the purposes of paragraph 5(c), Infrastructure Australia has the function of providing advice to the Minister and the Commonwealth 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;
  - (c) policy issues arising from climate change, including the achievement of Australia's greenhouse gas emissions reduction targets;
  - (d) impediments to the efficient utilisation of national infrastructure networks;
  - (e) options and reforms, including regulatory reforms, to make the utilisation of national infrastructure networks more efficient;
  - (f) the needs of users of infrastructure;
  - (g) mechanisms for financing investment in infrastructure;

- (h) the delivery of infrastructure projects.
- (3) For the purposes of paragraph (2)(h), 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.
- (4) Infrastructure Australia also has the function of promoting public awareness of the matters mentioned in subsections (2) and (3), including by publishing information on its website.

**5DA Functions—assessments of certain nationally significant infrastructure projects without prior evaluation**

- (1) For the purposes of paragraph 5(d), Infrastructure Australia has the function of assessing, and reporting on, projects covered by subsection (2).
- (2) A project is covered by this subsection if:
  - (a) it is a project for investment in, or enhancements to, nationally significant infrastructure; and
  - (b) the project involves expenditure by or on behalf of the Commonwealth; and
  - (c) the Commonwealth Government's total expenditure involved in the project is more than \$250 million; and
  - (d) the Commonwealth Government has committed to the project without prior evaluation (or endorsement of evaluation) of a proposal for the project by Infrastructure Australia.
- (3) Infrastructure Australia must ensure that assessments under this section are conducted at least once in each financial year beginning on or after the commencement of this section and prepare a report on the assessment.
- (4) Infrastructure Australia must cause a copy of the report on the assessment under subsection (3) to be tabled in each House of the Parliament within 10 sitting days after it has been finalised.

*Other assessments*

- (5) Infrastructure Australia may conduct other assessments under this section, and prepare reports on those assessments, on its own initiative.
- (6) Infrastructure Australia must cause a copy of the report on the assessment mentioned in subsection (5) to be tabled in each House of the Parliament within 10 sitting days after it has been finalised.

*Conduct of assessments*

- (7) The regulations may prescribe matters relating to the conduct of assessments under this section.

**5DB Functions—annual statements**

- (1) Infrastructure Australia must, during each financial year, prepare and give to the Minister the following:
  - (a) an annual budget statement to inform the annual Commonwealth budget process on infrastructure investment; and
  - (b) an annual performance statement on the performance outcomes being achieved by States, Territories and local government authorities in relation to the infrastructure investment program and existing project initiatives funded by the Commonwealth.
- (2) Infrastructure Australia must cause each annual statement to be:
  - (a) tabled in both Houses of the Parliament no later than 14 days prior to the scheduled public release of the annual Commonwealth budget each year; and
  - (b) published on Infrastructure Australia’s website as soon as practicable after the annual statement is tabled in the Parliament.

**5E Infrastructure Australia must have regard to policies**

In performing its functions and exercising its powers, Infrastructure Australia must have regard to the policies of the Commonwealth Government in relation to infrastructure.

## **5 Subsection 6(2)**

Repeal the subsection, substitute:

- (2) In giving directions under subsection (1), the Minister may have regard to any relevant decisions of a body (however described) that consists only of, or that includes, the following:
- (a) the Prime Minister;
  - (b) the Premiers of each State;
  - (c) the Chief Ministers of the Australian Capital Territory and Northern Territory.

## **6 After subsection 6E(2)**

Insert:

- (2A) In performing its functions and exercising its powers, the Board must have regard to the policies of the Commonwealth Government in relation to infrastructure.

## **7 Section 39C**

Omit all the words after “must also”, substitute “include details of any directions given to Infrastructure Australia by the Minister under subsection 6(1) of this Act during the period”.

## **8 Application, saving and transitional provisions**

### *Existing Infrastructure Priority Lists*

- (1) Despite the amendments made by this Part, paragraph 5(b) of the *Infrastructure Australia Act 2008* continues to apply, as if those amendments had not been made, in relation to any list developed for the purposes of that paragraph before the commencement of this item.

### *Existing evaluations and Infrastructure Plans*

- (2) An evaluation of an infrastructure proposal conducted before the commencement of this item under subsection 5A(1) of the *Infrastructure Australia Act 2008* as in force before that commencement has effect after that commencement as if it had been conducted under subsection 5B(6) of that Act as amended by this Part.

- (3) A plan developed before the commencement of this item under subsection 5B(1) of the *Infrastructure Australia Act 2008* as in force before that commencement has effect after that commencement as if it had been developed under subsection 5C(3) of that Act as amended by this Part.

*Ministerial directions*

- (4) The amendments of section 6 of the *Infrastructure Australia Act 2008* made by this Part do not affect the continuity of a direction given under that section before the commencement of this item.

*Reporting requirements*

- (5) Subsection 5B(9) of the *Infrastructure Australia Act 2008*, as inserted by this Part, applies in relation to any quarter ending on or after the commencement of this item.
- (6) The amendments of section 39C of the *Infrastructure Australia Act 2008* made by this Part apply in relation to any reporting period (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of Infrastructure Australia starting at or after the commencement of this item.



## **Part 2—Governance**

### ***Infrastructure Australia Act 2008***

#### **9 Section 3 (definition of *Board*)**

Repeal the definition.

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

Repeal the definition.

#### **11 Section 3**

Insert:

*Chief Commissioner* means the Chief Commissioner appointed under section 8.

*Commissioner* means a Commissioner appointed under section 8 and includes the Chief Commissioner.

#### **12 Section 3 (definition of *full-time Chair*)**

Repeal the definition.

#### **13 Section 3**

Insert:

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

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

Repeal the definition.

#### **15 Section 3 (definition of *part-time Chair*)**

Repeal the definition.

#### **16 Section 3**

Insert:

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

**17 Subsection 4(3)**

Omit “Board directs”, substitute “Commissioners direct”.

**18 Subsection 4(3)**

Omit “by the Board”, substitute “by the Commissioners”.

**19 Subsection 5A(2)**

Omit “Board determines”, substitute “Commissioners determine”.

**20 Subsection 5C(2)**

Omit “Board determines”, substitute “Commissioners determine”.

**21 Subsection 5C(5)**

Omit “Board”, substitute “Commissioners”.

**22 Part 2A**

Repeal the Part, substitute:

**Part 2A—Commissioners**

**Division 1—Functions**

**6E Functions**

- (1) The functions of the Commissioners 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 Infrastructure Australia’s functions; and
  - (c) any other functions conferred on the Commissioners by this Act.
- (2) The Commissioners have the power to do all things necessary or convenient to be done for or in connection with the performance of their functions.

- (3) In performing their functions and exercising their powers, the Commissioners must have regard to the policies of the Commonwealth Government in relation to infrastructure.
- (4) Anything done in the name of, or on behalf of, Infrastructure Australia by the Commissioners, or with the authority of the Commissioners, is taken to have been done by Infrastructure Australia.
- (5) 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 (4) in relation to that matter.

## **Division 2—Constitution and appointment**

### **7 Constitution**

Infrastructure Australia consists of:

- (a) the Chief Commissioner; and
- (b) 2 other Commissioners.

Note: The Commissioners are the accountable authority of Infrastructure Australia: see section 12 of the *Public Governance, Performance and Accountability Act 2013*.

### **8 Appointment of Commissioners**

- (1) Commissioners (including the Chief Commissioner) are to be appointed by the Minister by written instrument.
- (2) A Commissioner may be appointed on a full-time or part-time basis.
- (2A) In appointing the Commissioners, the Minister must ensure that at least one of the Commissioners has a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement.
- (3) A person must not be appointed as a Commissioner unless the Minister is satisfied that:

- (a) the person has appropriate qualifications, knowledge, skills or experience; and
  - (b) the selection of the person for the appointment is the result of a process that:
    - (i) was merit-based; and
    - (ii) included public advertising of the position.
- (4) Paragraph (3)(b) does not prevent the Minister:
- (a) taking affirmative action in relation to the appointment of women to positions; or
  - (b) taking into consideration appropriate representation among States, Territories and local government areas in relation to appointments to positions.
- (5) Paragraph (3)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as a Commissioner under a previous appointment under subsection (1).

## **9 Term of appointment**

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

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

## **10 Acting appointments**

- (1) The Minister may appoint a Commissioner to act as the Chief Commissioner:
- (a) during a vacancy in the office of Chief Commissioner (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chief Commissioner 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 Commissioner:

- (a) during a vacancy in the office of a Commissioner (whether or not an appointment has previously been made to the office);  
or
- (b) during any period, or during all periods, when a Commissioner 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 Commissioner 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 Commissioner is to be paid the remuneration that is prescribed.
- (2) A Commissioner is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **12 Leave of absence**

### *Full-time Commissioner*

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

*Part-time Commissioner*

- (4) If the Chief Commissioner is a part-time Commissioner, the Minister may grant leave of absence to the Chief Commissioner on the terms and conditions that the Minister determines.
- (5) The Chief Commissioner may grant leave of absence to a part-time Commissioner (other than the Chief Commissioner) on the terms and conditions that the Chief Commissioner determines.

## **15 Outside employment**

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

## **16 Other terms and conditions**

A Commissioner 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 Commissioners**

- (1) A Commissioner may resign the Commissioner's 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 Commissioners*

- (1) The Minister may terminate the appointment of a Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.

- (2) The Minister may terminate the appointment of a Commissioner if the Commissioner:
- (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 the Commissioner's creditors; or
  - (d) makes an assignment of the Commissioner's remuneration for the benefit of one or more of the Commissioner's creditors.

Note: The appointment of a Commissioner 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 Commissioner*

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

*Additional ground for part-time Commissioner*

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

## **Division 3—Meetings**

### **19 Convening meetings**

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

- (3) The Chief Commissioner:
  - (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) another Commissioner; or
    - (ii) the Minister.

## **20 Presiding at meetings**

- (1) The Chief Commissioner must preside at all meetings at which the Chief Commissioner is present.
- (2) If the Chief Commissioner is not present at a meeting, the other Commissioners present must appoint one of themselves to preside.

## **21 Quorum**

- (1) At a meeting of the Commissioners, 2 Commissioners constitute a quorum.
- (2) However, if:
  - (a) a Commissioner 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 Commissioners with respect to a particular matter; and
  - (b) when the Commissioner leaves the meeting concerned there is no longer a quorum present;the remaining Commissioners 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 Commissioners 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 Commissioners may regulate proceedings at their meetings as they consider appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Commissioners may participate in meetings.

## **24 Minutes**

The Commissioners must keep minutes of their meetings.

## **25 Decisions without meetings**

- (1) The Commissioners are taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the Commissioners 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 Commissioners under subsection (2); and
  - (c) all the Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all the Commissioners of the proposed decision.
- (2) Subsection (1) applies only if the Commissioners:
  - (a) have determined that they may make decisions of that kind without meeting; and
  - (b) have determined the method by which Commissioners are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Commissioner is not entitled to vote on a proposed decision if the Commissioner would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Commissioners.
- (4) The Commissioners must keep a record of decisions made in accordance with this section.

## **23 Section 28A (heading)**

Omit “**Board**”, substitute “**Commissioners**”.

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**24 Subsections 28A(1) and (2)**

Omit “Board”, substitute “Commissioners”.

**25 Subsection 29(1)**

Omit “Board”, substitute “Commissioners”.

**26 Section 31**

Omit “Board”, substitute “Commissioners”.

**27 Subsection 33(2)**

Omit “Chair” (wherever occurring), substitute “Chief Commissioner”.

**28 Subsection 34(1)**

Omit “Board”, substitute “Commissioners”.

**29 Section 35**

Omit “Chair’s”, substitute “Chief Commissioner’s”.

**30 Section 36**

Omit “Board”, substitute “Commissioners”.

**31 Subsections 37(1) and (2)**

Omit “Chair”, substitute “Chief Commissioner”.

**32 Section 38**

Omit “Board”, substitute “Commissioners”.

**33 Section 39B**

Omit “Board”, substitute “Commissioners”.

**34 Paragraph 39B(b)**

Omit “it considers”, substitute “the Commissioners consider”.

**35 Section 39C**

Omit “Board”, substitute “Commissioners”.

**36 Paragraph 40A(1)(a)**

Omit “member of the Board”, substitute “Commissioner”.

**37 Section 40B (heading)**

Omit “Board”, substitute “Commissioners”.

**38 Subsection 40B(1)**

Omit “Board may, in writing, delegate any or all of its powers”, substitute “Commissioners may, in writing, delegate any or all of the Commissioners’ powers”.

**39 Paragraph 40B(1)(a)**

Omit “member of the Board”, substitute “Commissioner”.

**40 Subsection 40B(2)**

Omit “Board”, substitute “Commissioners”.

**41 Subsection 40C(2)**

Omit “the Infrastructure Australia or the Board delegates”, substitute “Infrastructure Australia or the Commissioners delegate”.

**42 Application, saving and transitional provisions**

*Things done by or in relation to Board before commencement*

- (1) A thing done before the commencement of this item under the *Infrastructure Australia Act 2008* by, or in relation to, the Board (within the meaning of that Act immediately before that commencement) is taken, after that commencement, to have been done by, or in relation to, the Commissioners.

*Things done by or in relation to Chair before commencement*

- (2) A thing done before the commencement of this item under the *Infrastructure Australia Act 2008* by, or in relation to, the Chair (within the meaning of that Act immediately before that commencement) is taken, after that commencement, to have been done by, or in relation to, the Chief Commissioner.

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*[Minister's second reading speech made in—  
House of Representatives on 22 March 2023  
Senate on 13 June 2023]*

*(29/23)*

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24      *Infrastructure Australia Amendment (Independent Review) Act 2023*      *No. 117, 2023*