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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Infrastructure Australia Bill 2008

No. , 2008

(Infrastructure, Transport, Regional Development and Local Government)

**A Bill for an Act to establish Infrastructure
Australia and the Infrastructure Coordinator, and
for related purposes**

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1 **A Bill for an Act to establish Infrastructure**
2 **Australia and the Infrastructure Coordinator, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

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

9 **2 Commencement**

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

Section 3

1 **3 Definitions**

2 In this Act:

3 ***Chair*** means the Chair of Infrastructure Australia.

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

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

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

7 ***Infrastructure Coordinator*** means the Infrastructure Coordinator
8 established by section 27.

9 ***member*** means a member of Infrastructure Australia and includes
10 the Chair.

11 ***nationally significant infrastructure*** includes:

- 12 (a) transport infrastructure; and
13 (b) energy infrastructure; and
14 (c) communications infrastructure; and
15 (d) water infrastructure;

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

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

1

2 **Part 2—Infrastructure Australia**

3 **Division 1—Establishment and functions of Infrastructure**
4 **Australia**

5 **4 Establishment**

6 Infrastructure Australia is established by this section.

7 **5 Functions**

8 *Primary function—providing advice*

- 9 (1) Infrastructure Australia has the primary function of providing
10 advice to the Minister, Commonwealth, State, Territory and local
11 governments, investors in infrastructure and owners of
12 infrastructure on matters relating to infrastructure, including in
13 relation to the following:
- 14 (a) Australia's current and future needs and priorities relating to
15 nationally significant infrastructure;
 - 16 (b) policy, pricing and regulatory issues that may impact on the
17 utilisation of infrastructure;
 - 18 (c) impediments to the efficient utilisation of national
19 infrastructure networks;
 - 20 (d) options and reforms, including regulatory reforms, to make
21 the utilisation of national infrastructure networks more
22 efficient;
 - 23 (e) the needs of users of infrastructure;
 - 24 (f) mechanisms for financing investment in infrastructure.

25 *Additional functions*

- 26 (2) Infrastructure Australia has the following additional functions:
- 27 (a) to conduct audits to determine the adequacy, capacity and
28 condition of nationally significant infrastructure, taking into
29 account forecast growth;

Section 5

- 1 (b) to develop lists (to be known as Infrastructure Priority Lists)
2 that prioritise Australia's infrastructure needs;
- 3 (c) to review and provide advice on proposals to facilitate the
4 harmonisation of policies, and laws, relating to development
5 of, and investment in, infrastructure;
- 6 (d) to evaluate proposals for investment in, or enhancements to,
7 nationally significant infrastructure;
- 8 (e) to identify any impediments to investment in nationally
9 significant infrastructure and identify strategies to remove
10 any impediments identified;
- 11 (f) to promote investment in infrastructure;
- 12 (g) to provide advice on infrastructure policy issues arising from
13 climate change;
- 14 (h) to review Commonwealth infrastructure funding programs to
15 ensure they align with any Infrastructure Priority Lists;
- 16 (i) to undertake or commission research relating to Infrastructure
17 Australia's other functions;
- 18 (j) any functions that the Minister, by writing, directs
19 Infrastructure Australia to perform;
- 20 (k) any other functions conferred on Infrastructure Australia by
21 this Act or any other law.

22 *Performance of functions*

- 23 (3) Infrastructure Australia is to perform a function under
24 subsection (1) or paragraph (2)(a), (b), (e), (f) or (i):
25 (a) if it thinks fit; or
26 (b) on request by the Minister.
- 27 (4) Infrastructure Australia is to perform a function under
28 paragraph (2)(c), (d), (g) or (h) on request by the Minister.

29 *Direction is not a legislative instrument*

- 30 (5) A direction made under paragraph (2)(j) is not a legislative
31 instrument.

1 **6 Minister may give directions to Infrastructure Australia**

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

Section 7

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2 **Division 2—Constitution and membership of**
3 **Infrastructure Australia**

4 **7 Constitution**

5 Infrastructure Australia consists of:

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

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

10 **8 Appointment of members**

11 (1) Members (including the Chair) are to be appointed by the Minister
12 by written instrument.

13 (2) In making appointments, the Minister must ensure that:

14 (a) he or she is satisfied that each member has knowledge of, or
15 experience in, a field relevant to Infrastructure Australia's
16 functions; and

17 (b) 9 members (of whom one is the Chair) are people nominated
18 by the Commonwealth; and

19 (c) 5 of the members (of whom one is the Chair) covered by
20 paragraph (b) have acquired the knowledge or experience
21 referred to in paragraph (a) in the private sector; and

22 (d) one of the members covered by paragraph (b) has acquired
23 the knowledge or experience referred to in paragraph (a) in
24 local government; and

25 (e) 3 members are people nominated by agreement between the
26 States, the Australian Capital Territory and the Northern
27 Territory.

28 (3) The Chair may be appointed on a full-time or part-time basis.

29 (4) A member, other than the Chair, must be appointed on a part-time
30 basis.

1 **9 Term of appointment**

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

4 Note: A member is eligible for reappointment: see subsection 33(4A) of the
5 *Acts Interpretation Act 1901*.

6 **10 Acting appointments**

7 (1) The Minister may appoint a member to act as the Chair:

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

13 (2) The Minister may appoint a person to act as a member:

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

19 Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to
20 acting appointments.

21 (3) Anything done by or in relation to a person purporting to act under
22 an appointment is not invalid merely because:

- 23 (a) the occasion for the appointment had not arisen; or
24 (b) there was a defect or irregularity in connection with the
25 appointment; or
26 (c) the appointment had ceased to have effect; or
27 (d) the occasion to act had not arisen or had ceased.

28 **11 Remuneration**

29 (1) A member is to be paid the remuneration that is determined by the
30 Remuneration Tribunal. If no determination of that remuneration
31 by the Tribunal is in operation, the member is to be paid the
32 remuneration that is prescribed.

Section 12

1 (2) A member is to be paid the allowances that are prescribed.

2 (3) This section has effect subject to the *Remuneration Tribunal Act*
3 *1973*.

4 **12 Leave of absence**

5 *Full-time Chair*

6 (1) A full-time Chair has the recreation leave entitlements that are
7 determined by the Remuneration Tribunal.

8 (2) The Minister may grant a full-time Chair leave of absence, other
9 than recreation leave, on the terms and conditions as to
10 remuneration or otherwise that the Minister determines.

11 *Part-time Chair*

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

14 *Other members*

15 (4) The Chair may grant leave of absence to any other member on the
16 terms and conditions that the Chair determines.

17 (5) The Chair must notify the Minister if the Chair grants to a member
18 leave of absence for a period that exceeds 6 months.

19 **13 Disclosure of interests to the Minister**

20 A member must give written notice to the Minister of all interests,
21 pecuniary or otherwise, that the member has or acquires and that
22 conflict or could conflict with the proper performance of the
23 member's functions.

24 **14 Disclosure of interests to Infrastructure Australia**

25 (1) A member who has an interest, pecuniary or otherwise, in a matter
26 being considered or about to be considered by Infrastructure
27 Australia must disclose the nature of the interest to a meeting of
28 Infrastructure Australia.

- 1 (2) The disclosure must be made as soon as possible after the relevant
2 facts have come to the member's knowledge.
- 3 (3) The disclosure must be recorded in the minutes of the meeting of
4 Infrastructure Australia.
- 5 (4) Unless Infrastructure Australia otherwise determines, the member:
6 (a) must not be present during any deliberation by Infrastructure
7 Australia on the matter; and
8 (b) must not take part in any decision of Infrastructure Australia
9 with respect to the matter.
- 10 (5) For the purposes of making a determination under subsection (4),
11 the member:
12 (a) must not be present during any deliberation of Infrastructure
13 Australia for the purpose of making the determination; and
14 (b) must not take part in making the determination.
- 15 (6) A determination under subsection (4) must be recorded in the
16 minutes of the meeting of Infrastructure Australia.

17 **15 Outside employment**

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

20 **16 Other terms and conditions**

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

24 **17 Resignation of members**

- 25 (1) A member may resign his or her appointment by giving the
26 Minister a written resignation.
- 27 (2) The resignation takes effect on the day it is received by the
28 Minister or, if a later day is specified in the resignation, on that
29 later day.

Section 18

1 **18 Termination of appointment**

2 *All members*

- 3 (1) The Minister may terminate the appointment of a member for
4 misbehaviour or physical or mental incapacity.
- 5 (2) The Minister may terminate the appointment of a member if:
6 (a) the member:
7 (i) becomes bankrupt; or
8 (ii) applies to take the benefit of any law for the relief of
9 bankrupt or insolvent debtors; or
10 (iii) compounds with his or her creditors; or
11 (iv) makes an assignment of his or her remuneration for the
12 benefit of his or her creditors; or
13 (b) the member fails, without reasonable excuse, to comply with
14 section 13 or 14 (disclosure of interests).

15 *Additional grounds for full-time Chair*

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

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

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

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2 **Division 3—Meetings of Infrastructure Australia**

3 **19 Convening meetings**

4 (1) Infrastructure Australia must hold the meetings that are necessary
5 for the efficient performance of its functions.

6 (2) Meetings are to be held at the times and places that Infrastructure
7 Australia determines.

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

10 (3) The Chair:

11 (a) may convene a meeting; and

12 (b) must convene at least 4 meetings each calendar year; and

13 (c) must convene a meeting if requested in writing by:

14 (i) 3 or more other members; or

15 (ii) the Minister.

16 **20 Presiding at meetings**

17 (1) The Chair must preside at all meetings at which he or she is
18 present.

19 (2) If the Chair is not present at a meeting, the other members present
20 must appoint a member to preside.

21 **21 Quorum**

22 (1) At a meeting of Infrastructure Australia, 8 members constitute a
23 quorum.

24 (2) However, if:

25 (a) section 14 prevents a member from participating in the
26 deliberations or decisions of Infrastructure Australia with
27 respect to a particular matter; and

28 (b) when the member leaves the meeting concerned there is no
29 longer a quorum present;

Section 22

1 the remaining members at the meeting constitute a quorum for the
2 purpose of any deliberation or decision at that meeting with respect
3 to that matter.

4 **22 Voting at meetings**

5 (1) A question arising at a meeting is to be determined by a majority of
6 the votes of the members present and voting.

7 (2) The person presiding at a meeting has a deliberative vote and, in
8 the event of an equality of votes, a casting vote.

9 **23 Conduct of meetings**

10 Infrastructure Australia may regulate proceedings at its meetings as
11 it considers appropriate.

12 **24 Minutes**

13 Infrastructure Australia must keep minutes of its meetings.

14 **25 Decisions without meetings**

15 (1) Infrastructure Australia is taken to have made a decision at a
16 meeting if:

17 (a) without meeting, a majority of the members entitled to vote
18 on the proposed decision indicate agreement with the
19 decision; and

20 (b) that agreement is indicated in accordance with the method
21 determined by Infrastructure Australia under subsection (2);
22 and

23 (c) all the members were informed of the proposed decision, or
24 reasonable efforts were made to inform all the members of
25 the proposed decision.

26 (2) Subsection (1) applies only if Infrastructure Australia:

27 (a) has determined that it may make decisions of that kind
28 without meeting; and

29 (b) has determined the method by which members are to indicate
30 agreement with proposed decisions.

Section 25

- 1 (3) For the purposes of paragraph (1)(a), a member is not entitled to
2 vote on a proposed decision if the member would not have been
3 entitled to vote on that proposal if the matter had been considered
4 at a meeting of Infrastructure Australia.
- 5 (4) Infrastructure Australia must keep a record of decisions made in
6 accordance with this section.

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2 **Division 4—Reports**

3 **26 Annual reports**

4 (1) Infrastructure Australia must, as soon as practicable after the end
5 of each financial year, prepare and give to the Minister, for
6 presentation to the Parliament, a report on Infrastructure
7 Australia's operations during that year.

8 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
9 contains extra rules about annual reports.

10 (2) Infrastructure Australia must include in the report details of any
11 directions given to it by the Minister under paragraph 5(2)(j) or
12 subsection 6(1) during the year.

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2

Part 3—The Infrastructure Coordinator

3

Division 1—Establishment and functions of the Infrastructure Coordinator

4

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27 Establishment

6

There is to be an Infrastructure Coordinator.

7

28 Functions

8

(1) The primary function of the Infrastructure Coordinator is to assist
Infrastructure Australia in the performance of Infrastructure
Australia's functions.

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(2) The Infrastructure Coordinator also has any functions that the
Minister, by writing, directs the Infrastructure Coordinator to
perform.

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(3) The Minister may have regard to any views of Infrastructure
Australia in making directions under subsection (2).

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

17

Section 29

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2 **Division 2—Terms and conditions of appointment**

3 **29 Appointment**

4 (1) The Infrastructure Coordinator is to be appointed by the Minister
5 by written instrument.

6 (2) The Infrastructure Coordinator is to be appointed on a full-time
7 basis.

8 **30 Term of appointment**

9 The Infrastructure Coordinator holds office for the period specified
10 in the instrument of appointment. The period must not exceed 5
11 years.

12 Note: The Infrastructure Coordinator is eligible for reappointment: see
13 subsection 33(4A) of the *Acts Interpretation Act 1901*.

14 **31 Acting Infrastructure Coordinator**

- 15 (1) The Minister may appoint a person to act as the Infrastructure
16 Coordinator:
- 17 (a) during a vacancy in the office of the Infrastructure
18 Coordinator (whether or not an appointment has previously
19 been made to the office); or
 - 20 (b) during any period, or during all periods, when the
21 Infrastructure Coordinator is absent from duty or from
22 Australia, or is, for any reason, unable to perform the duties
23 of the office.

24 Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to
25 acting appointments.

- 26 (2) Anything done by or in relation to a person purporting to act under
27 an appointment is not invalid merely because:
- 28 (a) the occasion for the appointment had not arisen; or
 - 29 (b) there was a defect or irregularity in connection with the
30 appointment; or
 - 31 (c) the appointment had ceased to have effect; or

1 (d) the occasion to act had not arisen or had ceased.

2 **32 Remuneration**

3 (1) The Infrastructure Coordinator is to be paid the remuneration that
4 is determined by the Remuneration Tribunal. If no determination of
5 that remuneration by the Tribunal is in operation, the Infrastructure
6 Coordinator is to be paid the remuneration that is prescribed.

7 (2) The Infrastructure Coordinator is to be paid the allowances that are
8 prescribed.

9 (3) This section has effect subject to the *Remuneration Tribunal Act*
10 *1973*.

11 **33 Leave of absence**

12 (1) The Infrastructure Coordinator has the recreation leave
13 entitlements that are determined by the Remuneration Tribunal.

14 (2) The Minister may grant the Infrastructure Coordinator leave of
15 absence, other than recreation leave, on the terms and conditions as
16 to remuneration or otherwise that the Minister determines.

17 **34 Disclosure of interests to the Minister**

18 The Infrastructure Coordinator must give written notice to the
19 Minister of all interests, pecuniary or otherwise, that the
20 Infrastructure Coordinator has or acquires and that conflict or
21 could conflict with the proper performance of the Infrastructure
22 Coordinator's functions.

23 **35 Outside employment**

24 The Infrastructure Coordinator must not engage in paid
25 employment outside the duties of his or her office without the
26 Minister's approval.

Section 36

1 **36 Other terms and conditions**

2 The Infrastructure Coordinator holds office on the terms and
3 conditions (if any) in relation to matters not covered by this Act
4 that are determined by the Minister.

5 **37 Resignation**

6 (1) The Infrastructure Coordinator may resign his or her appointment
7 by giving the Minister a written resignation.

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

11 **38 Termination of appointment**

12 (1) The Minister may terminate the appointment of the Infrastructure
13 Coordinator for misbehaviour or physical or mental incapacity.

14 (2) The Minister may terminate the appointment of the Infrastructure
15 Coordinator if:

16 (a) the Infrastructure Coordinator:

17 (i) becomes bankrupt; or

18 (ii) applies to take the benefit of any law for the relief of
19 bankrupt or insolvent debtors; or

20 (iii) compounds with his or her creditors; or

21 (iv) makes an assignment of his or her remuneration for the
22 benefit of his or her creditors; or

23 (b) the Infrastructure Coordinator is absent, except on leave of
24 absence, for 14 consecutive days or for 28 days in any 12
25 months; or

26 (c) the Infrastructure Coordinator engages, except with the
27 Minister's approval, in paid employment outside the duties of
28 his or her office (see section 35); or

29 (d) the Infrastructure Coordinator fails, without reasonable
30 excuse, to comply with section 34 (disclosure of interests).

1

2 **Division 3—Staff assisting the Infrastructure Coordinator**

3 **39 Staff assisting the Infrastructure Coordinator**

4 The staff assisting the Infrastructure Coordinator are to be persons
5 engaged under the *Public Service Act 1999* and made available for
6 the purpose by the Secretary of the Department.

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Part 4—Miscellaneous

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40 Delegation

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(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 paragraph 5(2)(j), section 6, 8 or 18, subsection 28(2) or section 29 or 38) to:

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(a) the Secretary of the Department; or

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(b) an SES employee, or acting SES employee, in the Department.

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(2) In exercising functions or powers delegated under subsection (1), the delegate must comply with any directions of the Minister.

13

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41 Regulations

15

The Governor-General may make regulations prescribing matters:

16

(a) required or permitted by this Act to be prescribed; or

17

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

18