

2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**INFRASTRUCTURE AUSTRALIA AMENDMENT BILL 2013**

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Infrastructure and Regional Development,  
the Hon Warren Truss MP)

## **INFRASTRUCTURE AUSTRALIA AMENDMENT BILL 2013**

### **OUTLINE**

The purpose of the Infrastructure Australia Amendment Bill 2013 is to amend the *Infrastructure Australia Act 2008* (IA Act) which established Infrastructure Australia as an advisory body to governments, investors and infrastructure owners on a wide range of issues. These include:

- Australia's current and future infrastructure needs;
- mechanisms for financing infrastructure investments, and
- policy, pricing and regulation and their impacts on investment and on the efficiency of the delivery, operation and use of national infrastructure networks.

The Bill will strengthen the role of Infrastructure Australia, as an independent, transparent and expert advisory body through a change in its governance structure and through better clarification of its functions.

The Bill will re-establish Infrastructure Australia as a separate entity under the *Commonwealth Authorities and Companies Act 1997*, which will provide for an independent governing entity that is both legally and financially separate from the Commonwealth.

The Bill will more clearly define the functions of Infrastructure Australia. Better defining Infrastructure Australia's functions and deliverables will assist in improving infrastructure planning and prioritisation on a national basis, thereby providing a more transparent, robust, evidence-based approach to allocating public funds to projects with the highest yielding productivity returns.

### **FINANCIAL IMPACT STATEMENT**

There is no net impact on the Australian Government Budget flowing from this amendment.

It is proposed that Infrastructure Australia undertake its new functions within existing funding, including the current appropriations of \$12.072 million in 2013-14, \$12.126 million in 2014-15, \$12.224 million in 2015-16 and \$12.303 million in 2016-17.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Infrastructure Australia Amendment Bill 2013**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The Bill will strengthen the role of Infrastructure Australia, as an independent, transparent and expert advisory body through a change in its governance structure and through better clarification of its functions.

Key elements of the Bill include:

- a. re-establishing Infrastructure Australia as a separate entity under legislation, governed by a Board with members appointed by the Minister for Infrastructure and Regional Development;
- b. improve reporting arrangements, with the Board reporting to the Minister for Infrastructure and Regional Development; and
- c. establishing a Chief Executive Officer position to manage Infrastructure Australia, reporting directly to the Board.

#### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure and Regional Development, the Hon Warren Truss MP**

# INFRASTRUCTURE AUSTRALIA AMENDMENT BILL 2013

## NOTES ON CLAUSES

### Clause 1: Short Title

Clause 1 provides for the Act to be called the *Infrastructure Australia Amendment Act 2013*

### Clause 2: Commencement

Sub-clause 2(1) provides that each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Item 1 of the table provides that clauses 1 to 3 of the Bill (which provide for the short title and commencement of the provisions of the Bill, and outline the effect of the Schedules to the Bill), and anything in the Bill not covered elsewhere in the table, commence on the day this Act receives the Royal Assent.

Item 2 of the table provides that Schedule 1 of the Bill “Amendments” is to commence on a day to be fixed by proclamation and in accordance of column 2 of the table.

Item 3 of the table provides that Schedule 2 “Application, transitional and savings provisions” Part 1 “Introduction” is to commence on the day this Act receives the Royal Assent.

Item 4 of this table provides that Schedule 2 “Application, transitional and savings provisions” Parts 2 to 4 of the Bill (transfer of certain assets and liabilities, Transfer of other matters and Infrastructure Australia Special Account respectively) is to commence at the same time as the provisions(s) covered by table item 2.

Item 5 of this table provides that Schedule 2 “Application, transitional and savings provisions” Part 5 “Reporting obligation” is to commence on the day this Act receives the Royal Assent.

Item 6 of this table provides that Schedule 2 “Application, transitional and savings provisions” Parts 6 to 8 of the Bill (Officeholders, Provisions relating to Division 415 of Income Tax Assessment Act 1997 and Miscellaneous respectively) are to commence at the same time as the provisions(s) covered by table item 2.

### Clause 3: Schedules

Clause 3 is intended to outline the effect of the Schedules to the Bill. Each Schedule would amend or repeal the Act(s) specified in that Schedule as provided by the items of the Schedule. Any other item in a Schedule has effect according to its terms.

## Schedule 1 – Amendments

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

#### *Infrastructure Australia Act 2008*

##### Item 1

Item 1 is a formal provision that amends the title. The text ‘and the Infrastructure Coordinator’ has been omitted as the Infrastructure Coordinator position and responsibilities are being repealed as a part of the amendment bill.

##### Item 2

Item 2 inserts new definitions under Section 3 for the Board and Chief Executive Officer of Infrastructure Australia.

##### Item 3

Item 3 amends the definition of the ‘Chair’ under subsection 3 to reflect the new definition for the Board of Infrastructure Australia as provided for under Item 2.

##### Item 4

Item 4 inserts a new definition under Section 3 for the Finance Minister with regard to the administration of the *Financial Management and Accountability Act 1997*.

##### Item 5

Item 5 repeals the definition of Infrastructure Coordinator under Section 3 to reflect that the Bill repeals the Infrastructure Coordinator position and its associated functions and responsibilities.

##### Item 6

Item 6 amends the definition of the ‘member’ under Section 3 to reflect the new definition for the Board as provided for under Item 2.

##### Item 7

Item 7 repeals the heading of Division 1 of Part 2 “Establishment and functions of Infrastructure Australia”.

##### Item 8

Item 8 repeals Section 4 “Establishment” and Section 5 “Functions” and substitutes new Sections 4, 5, 5A, 5B, 5C, 5D and 9.

New subsection 4(1) establishes Infrastructure Australia.

New subsection 4(2) describes Infrastructure Australia as a body corporate with the usual attributes (a common seal, the capacity to acquire and dispose of property, and the capacity to sue and be sued) and clarifies that the *Commonwealth Authorities and Companies Act 1997* applies to Infrastructure Australia.

New subsection 4(3) provides the authority to the Board to manage how the seal is to be kept and how it can be used.

New subsection 4(4) provides that courts and judicial persons will be required to accept documents bearing the seal as Infrastructure Australia documents and presumes that the seal was duly sealed.

New Section 5 describes the general functions of Infrastructure Australia.

New Section 5A provides the requirements for Infrastructure Australia when evaluating infrastructure proposals.

New subsection 5A(1) gives Infrastructure Australia the function of evaluating proposals for investment in, or enhancements to, nationally significant infrastructure and other infrastructure determined by the Minister.

New subsection 5A(2) gives the Minister the power to limit the class of project proposals that Infrastructure Australia will evaluate.

New subsection 5A(3) provides that a determination made by the Minister under paragraph (1)(b) or subsection (2) is a legislative instrument.

New Section 5B provides for the requirements for Infrastructure Australia when developing infrastructure plans.

New subsection 5B(1) provides for specific requirements that Infrastructure Australia must comply with when developing infrastructure plans. This includes, but is not limited to, specifying priorities for nationally significant infrastructure, identifying productivity gains, complimentary infrastructure and timeframes for delivering proposals. It further requires Infrastructure Australia to take into account the audits, lists and evaluation functions as provided for under Section 5.

New subsection 5B(2) provides that the infrastructure plan must cover a period of 15 years from the time the plan is prepared or another period determined by the Minister by legislative instrument.

New subsection 5B(3) provides that the infrastructure plan must be prepared every 5 years or at other such intervals determined by the Minister by legislative instrument.

New Section 5C provides the specific infrastructure issues that Infrastructure Australia provides advice on, and identifies the stakeholders that it is to provide this advice to. This includes the Minister, Commonwealth, State, Territory and local governments, investors in infrastructure and owners of infrastructure.

New Section 5D lists functions that must only be performed when directed by the Minister, and gives direction as to how these functions are to be performed.

New subsection 5D(1) provides for the functions and issues that Infrastructure Australia can only perform when directed by the Minister in writing and the authority for the Minister to direct Infrastructure Australia to perform other functions. It further provides for the Minister to direct Infrastructure Australia to publish material such as evaluations conducted under section 5A.

New subsection 5D(2) requires that the material published under 5D(1) be published on Infrastructure Australia's website, or in other ways specified in the direction. It also provides the authority to Infrastructure Australia to omit information or evidence that they are satisfied is commercial-in-confidence.

New subsection 5D(3) provides that a direction made by the Minister under subsection 5(D)(1) is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

New Section 9 repeals subsections 6(3) and 6(4) under Section 6 "Minister may give directions to Infrastructure Australia" and substitutes new subsections 6(3) and 6(4).

New subsection 6(3) will enable the Minister to be more specific in his or her directions about the performance and applications of its functions as provided for under subparagraph 6(1).

New subsection 6(4) provides that the Minister cannot give directions to Infrastructure Australia that relate to the content of any audit, list, evaluation, plan or advice to be provided by Infrastructure Australia.

#### Item 10

Item 10 inserts new Sections 6A, 6B and 6C.

New Section 6A provides Infrastructure Australia the authority to do what it thinks necessary to ensure it meets its obligations against the functions provided for under Section 5 of the Act. It also provides a list of powers (but not limited to) that will provide Infrastructure Australia the necessary authority to undertake certain functions provided for under Section 5 of the Act.

New Subsection 6B provides that Infrastructure Australia must, where appropriate and practicable, consult broadly in performing its functions and exercising its powers. This may include consulting with government, commercial, industrial, consumer, investors in infrastructure, owners of infrastructure and other relevant bodies and organisations.

New Subsection 6C clarifies that Infrastructure Australia does not have the privileges and immunities of the Crown in right of the Commonwealth.

#### Item 11

Item 11 inserts new Sections 6D and 6E under new Part 2A - Board of Infrastructure Australia at the end of Division 1 of Part 2.

### **Part 2A – Board of Infrastructure Australia**

#### **Divisions 1 – Establishment and functions of the Board**

New Section 6D provides for the establishment of the Board of Infrastructure Australia.

New subsection 6E outlines the primary roles, functions and responsibilities of the Board. It provides for the Board to have the power to do whatever is necessary to perform its functions and clarifies that any work undertaken by the Board or with authority of the Board is taken to be done by Infrastructure Australia. It further provides that 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.

#### Item 12

Item 12 repeals the heading of Division 2 of Part 2 “Constitution and membership of Infrastructure Australia” and substitutes with “Division 2—Constitution and membership of the Board”.

#### Item 13

Item 13 repeals Section 7 “Constitution” and replaces it with new Section 7 “Constitution of the Board”.

New Section 7 provides for the maximum number of Board members to be 12, including the Chair.

#### Item 14

Item 14 repeals Section 13 – ‘Disclosure of interests to the Minister’ and Section 14 – ‘Disclosure of interest to Infrastructure Australia’.

#### Item 15

Item 15 repeals subsections 18(1) and (2) and substitutes new subsections 18(1) and (2).

New subsection 18(1) provides that the Minister may terminate the appointment of a member for misbehaviour or incapacity.

New subsection 18(2) provides that the Minister may terminate the appointment of a member in circumstances relating to bankruptcy or failure to declare interests under the *Commonwealth Authorities and Companies Act 1997*.

#### Item 16

Item 16 repeals the heading of Division 3, Part 2 “Meetings of Infrastructure Australia” and substitutes a new heading “Division 3 - Meetings of the Board”.

#### Item 17

Item 17 replaces “Infrastructure Australia” with “The Board” in subsection 19(1).

#### Item 18

Item 18 replaces “Infrastructure Australia” with “the Board” in subsections 19(2) and 21(1).



#### Item 19

Item 19 replaces paragraph 21(2)(a) and provides for a quorum to be less than the number required in 21(1) if Board members are prevented from voting under the *Commonwealth Authorities and Companies Act 1997*.

#### Item 20

Item 20 replaces “Infrastructure Australia” with “The Board” in Sections 23 and 24.

#### Item 21

Item 21 replaces “Infrastructure Australia” with “The Board” in subsection 25(1) when first occurring.

#### Item 22

Item 22 replaces “Infrastructure Australia” with “the Board” in paragraph 25(1)(b).

#### Item 23

Item 23 replaces “Infrastructure Australia” with “the Board” in subsections 25(2) and (3).

#### Item 24

Item 24 replaces “Infrastructure Australia” with “The Board” in subsection 25(4).

#### Item 25

Item 25 repeals Division 4 of Part 2 “Reports”.

#### Item 26

Item 26 repeals the heading of Part 3 “The Infrastructure Coordinator” and substitutes “Chief Executive Officer, staff and consultants”.

#### Item 27

Item 27 repeals Division 1 of Part 3 “Establishment and functions of the Infrastructure Coordinator” and inserts new Sections 27, 28 and 28A under new Division 1 “Chief Executive Officer of Infrastructure Australia”.

New Section 27 provides that Infrastructure Australia will have a Chief Executive Officer (CEO).

#### New Section 28

Subsection 28(1) provides that the CEO will be responsible for the day-to-day administration of Infrastructure Australia.

Subsection 28(2) provides that the CEO will have functions conferred by or under the Act or any other law.

Subsection 28(3) provides that the CEO has the power to do all things necessary or convenient for the performance of his duties.

New Section 28A provides that the CEO is to act in accordance with the policies and directions of the Board.

Subsection 28A(1) provides that the CEO is to act in accordance with the policies determined by the Board.

Subsection 28A(2) provides that the Board may give written directions to the CEO about the performance of his or her responsibilities.

Subsection 28A(3) provides that the CEO must comply with a direction under subsection 2.

Subsection 28A(4) provides that Subsection 3 does not apply where the direction relates to the CEO's performance of functions of exercise of power under the *Public Service Act 1999*.

Subsection 28A(5) provides that a direction under subsection 2 is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

#### Item 28

Item 28 repeals the Division 2, Part 3 heading "Terms and conditions of appointment".

#### Item 29

Item 29 repeals Subsection 29(1) and substitutes new subsection 29(1).

New subsection 29(1) provides that the CEO will be appointed by the Board by written instrument.

#### Item 30

Item 30 replaces "Infrastructure Coordinator" with "CEO" in Subsection 29(2).

#### Item 31

Item 31 replaces "Infrastructure Coordinator" with "CEO" in Section 30 wherever occurring.

#### Item 32

Item 32 repeals the heading of Section 31 "Acting Infrastructure Coordinator" and replaces it with "Acting CEO".

#### Item 33

Item 33 replaces "Minister" with "Board" in Section 31.

#### Item 34

Item 34 replaces "Infrastructure Coordinator" with "CEO" wherever occurring in Sections 31 and 32.

#### Item 35

Item 35 replaces "Infrastructure Coordinator" with "CEO" in subsection 33(1).

### Item 36

Item 36 repeals subsection 33(2) and substitutes new subsection 33(2).

New subsection 33(2) provides that the Chair may grant the CEO a leave of absence, other than recreation leave and determines the terms and conditions of such leave.

### Item 37

Item 37 repeals Sections 34 to 38 and substitutes new Sections 34 to 38.

New Section 34 requires the CEO to give written notice to the Board of all interests that conflict or could conflict with the proper performance of his or her functions and responsibilities.

New Section 35 provides that the CEO must not engage in other paid employment without the Chair's approval.

New Section 36 provides for terms and conditions of office for the CEO, not otherwise provided for in the Act, to be determined by the Board.

### New Section 37

New subsection 37(1) provides that the CEO may resign by giving written notice to the Chair.

New subsection 37(2) provides that the resignation will take effect on the day it is received by the Chair unless a later day is specified in the resignation.

New Section 38 provides that the Board may terminate the appointment of the CEO at any time by written instrument.

### Item 38

Item 38 repeals Division 3 of Part 3 "Staff assisting the Infrastructure Coordinator" and inserts new subsections 39, 39A, 39AA, under new Division 2 "Staff and consultants".

## **Division 2 – Staff and consultants**

### New Section 39 – Staff of Infrastructure Australia

New subsection 39(1) provides that Infrastructure Australia may engage persons from the Public Service under the *Public Service Act 1999* and any other persons it thinks necessary for the performance or exercise of any of its functions or powers by written agreements.

New subsection 39(2) specifies that for the purposes of the *Public Service Act 1999*, the CEO and Australian Public Service employees constitute a Statutory Agency, with the CEO as Head of that Statutory Agency.

New subsection 39(3) provides that the terms and conditions of employment for staff employed under subsection 39(1) will be determined by the CEO.

### New Section 39A – Staff seconded to Infrastructure Australia

New subsection 39A(1) provides that Infrastructure Australia may be assisted by employees or officers from appropriate Commonwealth, State or Territory authorities.

New subsection 39A(2) provides that Infrastructure Australia may second employees from state and territory governments to perform services in the connection with the performance of its functions.

### New Section 39AA - Consultants

New Section 39AA provides that Infrastructure Australia may engage consultants to assist in the performance of its functions.

### Item 39

Item 39 inserts Sections 39B and 39C under Part 3A-Planning and reporting and Sections 39D, 39DA, 39DB and 39DC under Part 3B-Finance.

## **Part 3A – Planning and Reporting**

### New Section 39B – Corporate Plan

New subsection 39B(1) provides that Infrastructure Australia must provide the Minister with a corporate plan at least once every financial year.

New subsection 39B(2) provides that the corporate plan must cover a period of 3 financial years.

New subsection 39B(3) provides that the corporate plan must include a statement of objectives; information on strategies and policies to achieve those objectives; performance indicators; and other matters at the direction of the Minister.

New subsection 39B(4) provides that any direction made by the Minister under new subsection 39B(3)(d) is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

New subsection 39B(5) provides that the Board may vary the corporate plan.

New subsection 39B(6) provides that Infrastructure Australia must consult when preparing the plan or a variation of the plan. They must consult with government, commercial, industrial, consumer, investors in infrastructure, owners of infrastructure and other relevant bodies and organisations.

New subsection 39B(7) provides that plan does not take effect unless it has been endorsed by the Minister.

New subsection 39B(8) provides that any endorsement made by the Minister under new subsection 39B(6) is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

New Section 39C provides requirements for Infrastructure Australia's annual report, additional to those provided for in Section 9 of the *Commonwealth Authorities and Companies Act 1997*.

## **Part 3B – Finance**

### New Section 39D – Money payable to Infrastructure Australia

New subsection 39D(1) provides authority for the Government to appropriate funds to Infrastructure Australia.

New subsection 39D(2) provides that the Finance Minister may give directions about the timing and amounts in which Infrastructure Australia receives its appropriation, under 39D(1).

New subsection 39D(3) provides that any direction by the Finance Minister under subsection 39D(2) is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

### New Section 39DA – Application of money by Infrastructure Australia

New subsection 39DA(1) provides that Infrastructure Australia is only to spend monies in payment of costs associated with the performance of its functions and the exercise of its powers and any remuneration or allowances payable under the Act.

New subsection 39DA(2) provides that subsection 39DA(1) does not prevent the investment of any surplus money by Infrastructure Australia under the *Commonwealth Authorities and Companies Act 1997*.

### New Section 39DB – Restrictions on financial transactions

New subsection 39DB(1) outlines restrictions where Infrastructure Australia must seek approval by the Minister on financial transactions relating to acquisition and disposal of property, construction contracts and leases of land exceeding 10 years.

New subsection 39DB(2) provides that the restrictions on acquisition and disposal of property in subsection 1 do not apply to the investment of money under the *Commonwealth Authorities and Companies Act 1997*.

New subsection 39DB(3) prohibits Infrastructure Australia from borrowing money from any person.

New subsection 39DB(4) specifies that subsection 3 does not affect Infrastructure Australia's ability to obtain goods and services on credit.

New subsection 39DB(5) provides that a Ministerial approval to enter into a financial transaction under subsection 1 is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

New Section 39DC provides that Infrastructure Australia is not subject to taxation under any law of the Commonwealth or any State or Territory. Despite this, Infrastructure Australia may be subject to taxation under certain laws.

#### Item 40

Item 40 repeals the heading for Section 40 “Delegation” and substitutes “Delegation by the Minister”.

#### Item 41

Item 41 – repeals provisions and references that relate to the Minister’s delegation of functions and powers (“paragraph 5(2)(j), section 6, 8 or 18, paragraph 28(2)(a) or section 29 or 38”) and replaces them with new provisions and references (“paragraph 5D(1)(c) or section 6, 8 or 18”).

#### Item 42

Item 42 inserts new Sections 40A to 40C.

#### Section 40A – Delegation by Infrastructure Australia

New subsection 40A(1) provides that Infrastructure Australia may delegate any or all of its powers or functions to a Board member or the CEO.

New subsection 40A(2) provides that a delegate must comply with the directions of Infrastructure Australia when exercising delegated powers or performing delegated functions.

#### Section 40B – Delegation by Board

New subsection 40B(1) provides that the Board may delegate to a member of the Board or the CEO any or all of its powers or functions under the Act.

New subsection 40B(2) provides that the delegate must comply with any directions from the Board when exercising delegated powers or performing delegated functions.

#### Section 40C – Delegation and subdelegation by CEO

New subsection 40C(1) provides that the CEO may delegate any of the CEO’s powers or functions under this Act to a person mentioned in section 39 and 39A. These include employees who are an SES employee, or acting SES employee, an acting or substantial Executive Level 2 position or a person who occupies an office or holds a position equivalent to that of an SES employee or an Executive Level 2 position.

New subsection 40C(2) provides that the CEO may sub-delegate powers or functions delegated to the CEO by Infrastructure Australia or the Board under 40A(1) or 40B(1) to a person mentioned in paragraph (1)(a), (b) or (c) of this section.

New subsection 40C(3) provides that the delegate or subdelegate must comply with any directions from the CEO when exercising delegated or subdelegated powers or performing delegated or subdelegated functions.

New subsection 40C(4) provides that Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* applies to subdelegation in the same manner as delegation.

## **Part 2 – Consequential amendments**

### ***Income Tax Assessment Act 1997* (ITA Act)**

#### Item 43

Item 43 replaces “Infrastructure Coordinator” with “responsible person” in section 415-1 of the ITA Act.

#### Item 44

Item 44 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-15(3)(c) of the ITA Act.

#### Item 45

Item 45 replaces “Infrastructure Coordinator” (wherever it occurs) with “responsible person” in Subsection 415-15(3)(note).

#### Item 46

Item 46 replaces “paragraph 5(2)(b)” with “paragraph 5(b)” in paragraph 415-20(2)(c)(note) of the ITA Act.

#### Item 47

Item 47 replaces “Infrastructure Coordinator” with “responsible person” in Section 415-50 of the ITA Act.

#### Item 48

Item 48 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-55(1) of the ITA Act.

#### Item 49

Item 49 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-55(1) of the ITA Act.

#### Item 50

Item 50 repeals subsection 415-55(1) (note).

#### Item 51

Item 51 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-55(4)(a) of the ITA Act.

#### Item 52

Item 52 provides for the fee paid to the “responsible person” as described under section 415-95 of the ITA Act on behalf of the Commonwealth.

Item 53

Item 53 replaces “Infrastructure Coordinator” with “responsible person” in subsection 415-60(1) of the ITA Act.

Item 54

Item 54 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-60(2)(a) of the ITA Act.

Item 55

Item 55 replaces “Infrastructure Coordinator” wherever it occurs with “responsible person” in paragraph 415-60(2)(b) of the ITA Act.

Item 56

Item 56 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-60(3) of the ITA Act.

Item 57

Item 57 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-60(3)(b) of the ITA Act.

Item 58

Item 58 replaces “Infrastructure Coordinator” with “responsible person” in subsections 415-60(4) and (5) of the ITA Act.

Item 59

Item 59 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(1) of the ITA Act.

Item 60

Item 60 replaces the second, third and fourth occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(1) of the ITA Act.

Item 61

Item 61 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(3) of the ITA Act.

Item 62

Item 62 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(3) of the ITA Act.



Item 63

Item 63 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(5) of the ITA Act.

Item 64

Item 64 replaces the second, third and fourth occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(5) of the ITA Act.

Item 65

Item 65 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-65(6)(a) of the ITA Act.

Item 66

Item 66 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-65(6)(b) of the ITA Act.

Item 67

Item 67 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(7) of the ITA Act.

Item 68

Item 68 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-65(7) of the ITA Act.

Item 69

Item 69 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(1) of the ITA Act.

Item 70

Item 70 replaces “Infrastructure Coordinator” with “responsible person” in paragraphs 415-70(1)(a) and (b) of the ITA Act.

Item 71

Item 71 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-70(2)(a) of the ITA Act.

Item 72

Item 72 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-70(2)(b) of the ITA Act.

Item 73

Item 73 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(4) of the ITA Act.

Item 74

Item 74 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(4) of the ITA Act.

Item 75

Item 75 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(6) of the ITA Act.

Item 76

Item 76 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(6) of the ITA Act.

Item 77

Item 77 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-70(7)(a) of the ITA Act.

Item 78

Item 78 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-70(7)(b) of the ITA Act.

Item 79

Item 79 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(8) of the ITA Act.

Item 80

Item 80 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(8) of the ITA Act.

Item 81

Item 81 repeals the heading for subsection 415-70(9) “*Infrastructure Coordinator must notify Commissioner*” and substitutes “*Responsible person must notify Commissioner*”.

Item 82

Item 82 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(9) of the ITA Act.

Item 83

Item 83 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-70(9) of the ITA Act.

Item 84

Item 84 replaces “paragraph 5(2)(b)” with “paragraph 5(b)” in subsection 415-75(3)(note) of the ITA Act.

Item 85

Item 85 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-80(1) of the ITA Act.

Item 86

Item 86 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-80(1)(b) of the ITA Act.

Item 87

Item 87 replaces “Infrastructure Coordinator” with “responsible person” in subsection 415-80(2) of the ITA Act.

Item 88

Item 88 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-80(3) of the ITA Act.

Item 89

Item 89 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-80(3) of the ITA Act.

Item 90

Item 90 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-80(4)(a) of the ITA Act.

Item 91

Item 91 replaces “Infrastructure Coordinator” with “responsible person” in in paragraph 415-80(4)(b) of the ITA Act.

Item 92

Item 92 replaces the first occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-80(5) of the ITA Act.

### Item 93

Item 93 replaces the second occurrence of “Infrastructure Coordinator” with “responsible person” in subsection 415-80(5) of the ITA Act.

### Item 94

Item 94 replaces “Infrastructure Coordinator” with “responsible person” in paragraph 415-80(6)(a) of the ITA Act.

### Item 95

Item 95 replaces “Infrastructure Coordinator” with “a responsible person” in sections 415-85 and 415-90 of the ITA Act.

### Item 96

Item 96 repeals Section 415-95 and replaces it with new Section 415-95.

New subsection (1) describes when a person is the responsible person for a provision under this Subdivision and/or the infrastructure project designation rules. The responsible person must either be a person holding a position or office specified in a determination made by the Minister under subsection (3) or a body corporate specified in such a determination. The determination must specify which provision the person or body corporate is a responsible person for.

New subsection (2) provides the responsible person may, by written instrument, delegate his or her powers to an SES employee or an acting SES employee as defined in the *Acts Interpretation Act 1901*.

New subsection (3) requires the Infrastructure Minister administering the *Infrastructure Australia Act 2008* to, by legislative instrument, assign the positions in this Subdivision and the infrastructure project designation rules to either a particular position within an Agency (within the meaning of the *Public Service Act 1999*), a Commonwealth statutory office or a body corporate.

New subsection (4) allows the Infrastructure Minister to make transitional arrangements when varying or revoking a determination made under Section 3.

New subsection (5) requires the Infrastructure Minister to consult with the Treasurer before varying or revoking a determination made under subsection (3).

### Item 97

Item 97 inserts new subsection 995-1(1) which defines a responsible person within Subdivision 415-C as per the definition in Section 415-95.

## **Schedule 2 –Transitional and savings provisions**

Schedule 2 inserts new Sections 1 to 19 that provides transitional arrangements for assets, liabilities, records, legal proceedings, instruments, reporting obligations, office holders and other related matters.

### **Part 1- Introduction**

#### Item 1

Item 1 provides full definitions of a number of terms used extensively in Schedule 2 of the Bill that relate directly to the transition for re-establishing Infrastructure Australia as a separate independent entity under the *Commonwealth Authorities and Companies Act 1997*.

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

#### Item 2

Item 2 inserts new Section 2 “Transfer of certain Commonwealth assets”.

New subsection 2(1) provides that Section 2 applies to assets held or used by the Department prior to transfer in connection with the performance of a function of the old Infrastructure Australia or the Infrastructure Coordinator.

New subsection 2(2) provides the Minister the authority to declare that a specified asset ceases to be an asset of the Commonwealth and becomes an asset of Infrastructure Australia by legislative instrument at a specified time.

New subsection 2(3) provides that when the Minister declares that a specified asset ceases to be an asset of the Commonwealth, Infrastructure Australia will take full legal responsibility for that asset at the specified time.

New subsection 2(4) provides that Section 2 does not limit the Commonwealth from transferring an asset to Infrastructure Australia outside the authority of this Section.

#### Item 3

Item 3 inserts new Section 3 “Transfer of certain Commonwealth liabilities”.

New subsection 3(1) provides that Section 3 applies to an existing liability of the Commonwealth that was incurred before the commencement of the new entity in connection with the performance of a function of the old Infrastructure Australia or the Infrastructure Coordinator.

New subsection 3(2) provides the Minister the authority to declare, by legislative instrument, that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of Infrastructure Australia at a specified time.

New subsection 3(3) provides that when the Minister declares that a specified liability ceases to be a liability of the Commonwealth, Infrastructure Australia will take full legal responsibility for that liability at the specified time.

New subsection 3(4) provides that Section 3 does not limit the Commonwealth from transferring a liability to Infrastructure Australia outside the authority of this Section.

#### Item 4

Item 4 inserts new Section 4 “Transfers of land may be registered”.

New subsection 4(1) describes requirements for when Section 4 applies. This includes land being vested in Infrastructure Australia under this Part, and other requirements when lodging a certificate with a land registration official.

New subsection 4(2) describes how the land registration official may register the land and how the official may deal with, and give effect to, the certificate.

New subsection 4(3) provides that the certificate covered by this Section is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

#### Item 5

Item 5 inserts new Section 5 “Certificates relating to vesting of assets other than land”.

New subsection 5(1) describes when Section 5 applies. This includes when Infrastructure Australia acquires an interest in any asset other than land under this Part and other requirements when lodging a certificate with the assets official.

New subsection 5(2) describes how the assets official may deal with and give effect to, the certificate in relation to assets other than land and that the official must have regard to the effect of this Schedule when making entries in the register.

New subsection 5(3) provides that the certificate under this Section is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

### **Part 3- Transfer of other matters**

#### Item 6

Item 6 inserts new Section 6 “Transfer of records to Infrastructure Australia”.

New Section 6 provides the authority for the Secretary of the Department of Infrastructure and Regional Development to transfer to Infrastructure Australia records or documents of the Commonwealth that relate to the functions of Infrastructure Australia. These records and documents would become Commonwealth records for the purposes of the *Archives Act 1983*.

#### Item 7

Item 7 inserts new Section 7 “Legal proceedings of the Commonwealth”.

New subsection 7(1) provides that Section 7 applies to any legal proceedings that the Commonwealth was a party to prior to transition time and where the proceedings relate to either an asset or liability transferred to Infrastructure Australia or a function relating to Infrastructure Australia.

New subsection 7(2) describes when Infrastructure Australia is to be substituted for the Commonwealth as a party to legal proceedings, where the conditions in subsection 7(1) are met. Infrastructure Australia will be substituted for the Commonwealth for proceedings not related to transferred assets or liabilities from the time of transition. Infrastructure Australia will be substituted for the Commonwealth for proceedings involving transferred assets from the time that those assets are transferred.

#### Item 8

Item 8 inserts new Section 8 “References in certain instruments to the Commonwealth, old Infrastructure Australia or Infrastructure Coordinator”.

New subsection 8(1) provides that Section 8 applies to an instrument that contains a reference to the Commonwealth, old Infrastructure Australia or the Infrastructure Coordinator for an asset or liability that was in force prior to transition time. The reference in the instrument must relate to either an asset or liability transferred to Infrastructure Australia or a function relating to Infrastructure Australia.

New subsection 8(2) gives the Minister the power by instrument to determine that an applicable instrument has effect from the transition time as if the references to a body or person made under the old Infrastructure Australia or the Infrastructure Coordinator are to be referenced as Infrastructure Australia, the CEO or a responsible person described under section 415-95 of the *Income Tax Assessment Act 1997*.

New subsection 8(3) provides a description of what may be included in an *Instrument* for the purposes of this Section, excluding exempt instruments.

New subsection 8(4) provides a definition for an exempt instrument.

### **Part 4-Infrastructure Australia Special Account**

#### Item 9

Item 9 inserts new Section 9 “Infrastructure Australia Special Account”.

New subsection 9(1) abolishes, at the time of transition, the special account established under the *Financial Management and Accountability Act 1997* and administered by the old Infrastructure Australia.

New subsection 9(2) transfers any residual balance from the special account to Infrastructure Australia at the time of transition.

New subsection 9(3) requires that the amount payable to Infrastructure Australia under new subsection 9(2) be paid out of the Consolidated Revenue Fund, being appropriated accordingly. As a statutory authority under the *Commonwealth Authorities and Companies Act 1997*, Infrastructure Australia cannot hold a special account under the *Financial Management and Accountability Act 1997*. Section 9 therefore allows for funds previously allocated to the old Infrastructure Australia to be transferred to the new Infrastructure Australia through an appropriation.

## **Part 5-Reporting obligation**

### Item 10

Item 10 inserts new Section 10 “Final Annual Report”

New subsection 10(1) requires the old infrastructure Australia to give the Minister a report for presentation to the Parliament on the operations of the old Infrastructure Australia during the final reporting period. The final reporting period is defined by new subsection 10(5).

New subsection 10(2) provides that the report required in new subsection 10(1) must include details of any directions given to Infrastructure Australia by the Minister in the final reporting period immediately before the transition time, under subsection 26(2) of the *Infrastructure Australia Act 2008*.

New subsection 10(3) requires the Minister to table the report in each House of Parliament as soon as practicable.

New subsection 10(4) provides that once the final report is provided to the Minister under this item, it completes all obligations by the old infrastructure Australia with respect to Section 26 of the *Infrastructure Australia Act 2008*.

New subsection 10(5) provides a definition for “final reporting period”.

## **Part 6-Officeholders**

### Item 11

Item 11 inserts new Section 11 “No transfer of appointment or engagement of officeholders etc.”

New subsection 11(1) provides that appointments, engagements or employment of old Infrastructure Australia officers will not be treated as an appointment, engagement or employment of the person in the new Infrastructure Australia.

New subsection 11(2) defines *old Infrastructure Australia officers* as either a member of the old Infrastructure Australia or; the Infrastructure Coordinator.

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

### Item 12

Item 12 inserts new Section 12 “Things done by, or in relation to, Infrastructure Coordinator”.

New subsection 12(1) provides that Section 12 applies to applications for designated infrastructure project status that were made to the Infrastructure Coordinator before the transition time but where no decision on the application was made are to be taken as done by, or in relation to, the responsible person as described under Section 415-95 of the *Income Tax Assessment Act 1997*. Receiving designated infrastructure project status allows an applicant access to a tax loss incentive under Division 415 of the *Income Tax assessment Act 1997*.



New subsection 12(2) provides that outstanding applications for designated infrastructure project status made to the Infrastructure Coordinator prior to the transition time will be taken to be made to the responsible person (as described under Section 415-95 of the *Income Tax Assessment Act 1997*) after the transition time.

New subsection 12(3) provides for any proceedings to which the Infrastructure Coordinator was a party to any court or tribunal or to proceedings involving things done in relation to Division 415 of the *Income Tax Assessment Act 1997* are to be taken as done by or in relation to, the responsible person as described under Section 415-95 of the *Income Tax Assessment Act 1997* and as provided for under the new subsection 12(1).

New subsection 12(4) provides the Minister the authority to determine when subsection 12(1) will not apply with things done in relation to the Infrastructure Coordinator, and also allows the Minister to determine that a different responsible person has taken action as described in 12(1).

New subsection 12(5) provides that a determination made by the Minister under subsection 12(4) is not a legislative instrument within the meaning of Section 5 of the *Legislative Instruments Act 2003*.

### Item 13

Item 13 inserts new Section 13 “Infrastructure project designation rules”

New subsection 13(1) provides that where the Infrastructure Coordinator is referenced in a provision of the infrastructure project designation rules made under the section 415-100 of the *Income Tax Assessment Act 1997*, it is to be taken as if it is a reference to the responsible person as described under Section 415-95 of the *Income Tax Assessment Act 1997*.

New subsection 13(2) provides that subsection 415 100(2) of the *Income Tax Assessment Act 1997* refers to the Infrastructure Australia as if it were the old Infrastructure Australia.

## **Part 8-Miscellaneous**

### Item 14

Item 14 inserts new Section 15A “Continuation of Infrastructure Priority Lists”.

New Section 14 provides for any infrastructure priority list developed under the *Infrastructure Australia Act 2008* before the transition time, to be taken as if it had been developed by the new Infrastructure Australia.

Item 16 inserts new Section 15 “Exemption from stamp duty and other State or Territory taxes”.

New subsection 15(1) provides that no stamp duty or other tax is payable under any State or Territory law in connection with exempt matters, as defined in subsection 15(2).

New subsection 15(2) defines an *exempt matter* as the vesting of an asset or liability made under Sections 2 and 3 of the Schedule or the operation of this Schedule in any other respect.

New subsection 15(3) provides that the Minister may certify in writing that a matter is an exempt matter or that a specified thing was connected with an exempt matter, consistent with the definition in new subsection 15(2).

New subsection 15(4) provides that a certificate made under subsection 15(3) will be taken as prima facie evidence in all courts and for all purposes, other than criminal proceedings.

#### Item 16

Item 16 inserts new Section 16 “Certificates taken to be authentic”.

New Section 16 provides that a certificate issued under Schedule 2 is taken to be a proper certificate unless otherwise established.

#### Item 17

Item 17 inserts new Section 17 “Delegation by Minister”

New subsection 17(1) allows the Minister to delegate any of his or her powers or functions under Schedule 2 to the Secretary of the Department or an SES employee in the Department (including acting SES employees).

New subsection 17(2) requires a delegate to comply with any directions of the Minister when exercising delegated powers or functions.

#### Item 18

Item 18 inserts new Section 19 “Constitutional safety net”

New subsection 18(1) provides that the Commonwealth is liable to pay reasonable compensation if the operation of Schedule 2 results in the acquisition of property from a person not on just terms (within the meaning of paragraph of 51(xxxi) of the Constitution).

New subsection 18(2) provides that if the Commonwealth and the person do not agree on the amount of compensation, the person may institute legal proceedings to recover a reasonable amount as determined by the relevant court.

#### Item 19

Item 19 allows the Minister to make, by legislative instrument, rules in relation to transitional matters in connection with the amendments made by Schedule 1.