

2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Infrastructure Australia Amendment Bill 2013

No. , 2013

(Infrastructure and Regional Development)

**A Bill for an Act to amend the *Infrastructure
Australia Act 2008*, and for other purposes**

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1 **A Bill for an Act to amend the *Infrastructure***
2 ***Australia Act 2008*, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Infrastructure Australia Amendment*
6 *Act 2013*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

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

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**

2 **Part 1—Amendments relating to Infrastructure**
3 **Australia and the Infrastructure Coordinator**

4 *Infrastructure Australia Act 2008*

5 **1 Title**

6 Omit “and the Infrastructure Coordinator”.

7 **2 Section 3**

8 Insert:

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

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

13 **3 Section 3 (definition of *Chair*)**

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

15 **4 Section 3**

16 Insert:

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

19 **5 Section 3 (definition of *Infrastructure Coordinator*)**

20 Repeal the definition.

21 **6 Section 3 (definition of *member*)**

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

23 **7 Division 1 of Part 2 (heading)**

24 Repeal the heading.

25 **8 Sections 4 and 5**

26 Repeal the sections, substitute:

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Part 1 Amendments relating to Infrastructure Australia and the Infrastructure Coordinator

1 **4 Establishment**

2 (1) Infrastructure Australia is established by this section.

3 (2) Infrastructure Australia:

4 (a) is a body corporate; and

5 (b) must have a seal; and

6 (c) may acquire, hold and dispose of real and personal property;
7 and

8 (d) may sue and be sued.

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

13 (3) Infrastructure Australia's seal is to be kept in such custody as the
14 Board directs and must not be used except as authorised by the
15 Board.

16 (4) All courts, judges and persons acting judicially must:

17 (a) take judicial notice of the imprint of the seal of Infrastructure
18 Australia appearing on a document; and

19 (b) presume that the document was duly sealed.

20 **5 Functions—general**

21 Infrastructure Australia has the following functions:

22 (a) to conduct audits to determine the adequacy, capacity and
23 condition of nationally significant infrastructure, taking into
24 account forecast growth;

25 (b) to develop lists (to be known as Infrastructure Priority Lists),
26 based on audits conducted under paragraph (a) and any
27 additional research by Infrastructure Australia, that prioritise
28 Australia's infrastructure needs;

29 (c) to evaluate infrastructure proposals in accordance with
30 section 5A;

31 (d) to develop plans (to be known as Infrastructure Plans) in
32 accordance with section 5B;

33 (e) to provide advice on infrastructure matters in accordance
34 with section 5C;

- 1 (f) to identify any impediments to investment in nationally
2 significant infrastructure and identify strategies to remove
3 any impediments identified;
4 (g) to promote investment in infrastructure;
5 (h) to undertake or commission research relating to Infrastructure
6 Australia's other functions;
7 (i) any other functions conferred on Infrastructure Australia by
8 or under this Act or any other law.

9 **5A Functions—evaluating infrastructure proposals**

- 10 (1) For the purposes of paragraph 5(c), Infrastructure Australia has the
11 function of evaluating proposals for investment in, or
12 enhancements to:
13 (a) nationally significant infrastructure; and
14 (b) other infrastructure determined by the Minister.
- 15 (2) However, Infrastructure Australia must not evaluate a proposal
16 under subsection (1) if the proposal is in a class of proposals
17 determined by the Minister.
- 18 (3) A determination made by the Minister under paragraph (1)(b) or
19 subsection (2) is a legislative instrument.

20 **5B Functions—developing Infrastructure Plans**

- 21 (1) For the purposes of paragraph 5(d), Infrastructure Australia has the
22 function of developing plans, to be given to the Minister, that:
23 (a) specify priorities for nationally significant infrastructure for
24 Commonwealth, State, Territory and local governments for
25 the period covered by the plan (see subsection (2)); and
26 (b) specify the following for proposals relating to those priorities
27 during that period:
28 (i) productivity gains that may be anticipated from each
29 proposal;
30 (ii) any complementary infrastructure required to maximise
31 productivity gains from the proposals;
32 (iii) timeframes for delivering the proposals; and
33 (c) take into account:

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- 1 (i) the audits, lists and evaluations mentioned in paragraphs
2 5(a), (b) and (c); and
3 (ii) consultations with Commonwealth, State, Territory and
4 local governments; and
5 (iii) any other matters Infrastructure Australia considers
6 relevant.
- 7 (2) A plan must cover a period of 15 years from the time the plan is
8 prepared, or such other period of time as the Minister determines,
9 by legislative instrument, for the purposes of this subsection.
- 10 (3) A plan must be prepared under this section every 5 years, or at
11 such other intervals as the Minister determines, by legislative
12 instrument, for the purposes of this subsection.

13 **5C Functions—providing advice on infrastructure matters**

- 14 For the purposes of paragraph 5(e), Infrastructure Australia has the
15 function of providing advice to the Minister, Commonwealth,
16 State, Territory and local governments, investors in infrastructure
17 and owners of infrastructure on matters relating to infrastructure,
18 including in relation to the following:
- 19 (a) Australia's current and future needs and priorities relating to
20 nationally significant infrastructure;
- 21 (b) policy, pricing and regulatory issues that may impact on the
22 utilisation of infrastructure;
- 23 (c) impediments to the efficient utilisation of national
24 infrastructure networks;
- 25 (d) options and reforms, including regulatory reforms, to make
26 the utilisation of national infrastructure networks more
27 efficient;
- 28 (e) the needs of users of infrastructure;
- 29 (f) mechanisms for financing investment in infrastructure.

30 **5D Functions only performed when directed by the Minister**

- 31 (1) Infrastructure Australia has the following functions which it must
32 only perform when directed by the Minister, in writing, to do so:
- 33 (a) to review and provide advice on proposals to facilitate the
34 harmonisation of policies, and laws, relating to development
35 of, and investment in, infrastructure;
-

- 1 (b) to publish the following material:
- 2 (i) evaluations conducted under section 5A;
- 3 (ii) evidence relied on in preparing, and reasons for any
- 4 opinion or conclusion contained in, the audits, lists,
- 5 evaluations, plans and advice mentioned in paragraphs
- 6 5(a) to (e);
- 7 (c) any other functions that the Minister directs Infrastructure
- 8 Australia to perform.
- 9 (2) For the purposes of paragraph (1)(b):
- 10 (a) the material is to be published on Infrastructure Australia's
- 11 website, or in such other ways as are specified in the
- 12 direction; and
- 13 (b) Infrastructure Australia must omit any information that
- 14 Infrastructure Australia is satisfied is
- 15 commercial-in-confidence from the material it publishes
- 16 under that paragraph.
- 17 (3) A direction made under subsection (1) is not a legislative
- 18 instrument.

19 **9 Subsections 6(3) and (4)**

20 Repeal the subsections, substitute:

- 21 (3) Without limiting subsection (1), a direction may do any or all of
- 22 the following:
- 23 (a) specify a time by which Infrastructure Australia must
- 24 perform a particular function;
- 25 (b) specify a time by which Infrastructure Australia must comply
- 26 with the direction;
- 27 (c) require Infrastructure Australia to perform a function in
- 28 accordance with any requirements that are specified in the
- 29 direction, including requirements relating to:
- 30 (i) the scope of any audit, list, evaluation, plan or advice to
- 31 be provided by Infrastructure Australia; and
- 32 (ii) any matters that Infrastructure Australia must or must
- 33 not consider in performing the function; and
- 34 (iii) the manner in which Infrastructure Australia is to
- 35 perform the function.

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

4 **10 After section 6**

5 Insert:

6 **6A Powers**

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

22 **6B Consultation**

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

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

29 **6C Infrastructure Australia does not have privileges and immunities
30 of the Crown**

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

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

2 Add:

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

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

5 **6D Establishment**

6 There is to be a Board of Infrastructure Australia.

7 **6E Functions**

8 (1) The functions of the Board are:

- 9 (a) to decide the objectives, strategies and policies to be
10 followed by Infrastructure Australia; and
11 (b) to ensure the proper, efficient and effective performance of
12 the Infrastructure Australia's functions; and
13 (c) any other functions conferred on the Board by this Act.

14 (2) The Board has the power to do all things necessary or convenient
15 to be done for or in connection with the performance of its
16 functions.

17 (3) Anything done in the name of, or on behalf of, Infrastructure
18 Australia by the Board, or with the authority of the Board, is taken
19 to have been done by Infrastructure Australia.

20 (4) If a function or power of Infrastructure Australia is dependent on
21 the opinion, belief or state of mind of Infrastructure Australia in
22 relation to a matter, the function or power may be exercised upon
23 the opinion, belief or state of mind of a person or body acting as
24 mentioned in subsection (3) in relation to that matter.

25 **12 Division 2 of Part 2**

26 Repeal the heading, substitute:

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

2 **13 Section 7**

3 Repeal the section, substitute:

4 **7 Constitution of the Board**

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 **14 Sections 13 and 14**

11 Repeal the sections.

12 **15 Subsections 18(1) and (2)**

13 Repeal the subsections, substitute:

14 *All members*

15 (1) The Minister may terminate the appointment of a member:

- 16 (a) for misbehaviour; or
17 (b) if the member is unable to perform the duties of his or her
18 office because of physical or mental incapacity.

19 (2) The Minister may terminate the appointment of a member if:

- 20 (a) the member:
21 (i) becomes bankrupt; or
22 (ii) takes steps to take the benefit of any law for the relief of
23 bankrupt or insolvent debtors; or
24 (iii) compounds with one or more of his or her creditors; or
25 (iv) makes an assignment of his or her remuneration for the
26 benefit of one or more of his or her creditors; or
27 (b) the member fails, without reasonable excuse, to comply with
28 an obligation imposed on him or her by section 27F or 27J of
29 the *Commonwealth Authorities and Companies Act 1997*
30 (disclosure of interests).
-

1 **16 Division 3 of Part 2 (heading)**

2 Repeal the heading, substitute:

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

4 **17 Subsection 19(1)**

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

6 **18 Subsections 19(2) and 21(1)**

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

8 **19 Paragraph 21(2)(a)**

9 Repeal the paragraph, substitute:

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

14 **20 Sections 23 and 24**

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

16 **21 Subsection 25(1)**

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

19 **22 Paragraph 25(1)(b)**

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

21 **23 Subsections 25(2) and (3)**

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

23 **24 Subsection 25(4)**

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

25 **25 Division 4 of Part 2**

26 Repeal the Division.

1 **26 Part 3 (heading)**

2 Repeal the heading, substitute:

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

5 **27 Division 1 of Part 3**

6 Repeal the Division, substitute:

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

9 **27 Establishment**

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

11 **28 Role**

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

18 **28A CEO to act in accordance with policies and directions of Board**

- 19 (1) The CEO is to act in accordance with policies determined by the
20 Board.
- 21 (2) The Board may give written directions to the CEO about the
22 performance of the CEO's responsibilities.
- 23 (3) The CEO must comply with a direction under subsection (2).
- 24 (4) Subsection (3) does not apply to the extent that the direction relates
25 to the CEO's performance of functions or exercise of powers under
26 the *Public Service Act 1999*.

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

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

3 Repeal the heading.

4 **29 Subsection 29(1)**

5 Repeal the subsection, substitute:

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

7 **30 Subsection 29(2)**

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

9 **31 Section 30**

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

12 **32 Section 31 (heading)**

13 Repeal the heading, substitute:

14 **31 Acting CEO**

15 **33 Section 31**

16 Omit “Minister”, substitute “Board”.

17 **34 Sections 31 and 32**

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

20 **35 Subsection 33(1)**

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

22 **36 Subsection 33(2)**

23 Repeal the subsection, substitute:

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

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1 **37 Sections 34 to 38**

2 Repeal the sections, substitute:

3 **34 Disclosure of interests to the Board**

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

8 **35 Outside employment**

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

11 **36 Other terms and conditions**

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

15 **37 Resignation**

16 (1) The CEO may resign his or her appointment by giving the Chair a
17 written resignation.

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

20 **38 Termination of appointment**

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

23 **38 Division 3 of Part 3**

24 Repeal the Division, substitute:

1 **Division 2—Staff and consultants**

2 **39 Staff of Infrastructure Australia**

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

15 **39A Staff seconded to Infrastructure Australia**

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

29 **39AA Consultants**

30 Infrastructure Australia may engage consultants to assist in the

31 performance of its functions.

1 **39 After Part 3**

2 Insert:

3 **Part 3A—Planning and reporting**

4

5 **39B Corporate plan**

6 (1) Infrastructure Australia must prepare a corporate plan at least once
7 each financial year and give it to the Minister.

8 (2) The plan must cover a period of 3 financial years.

9 (3) The plan must include details of the following matters:

10 (a) a statement of the objectives that Infrastructure Australia will
11 pursue;

12 (b) the strategies and policies that Infrastructure Australia will
13 adopt to achieve those objectives;

14 (c) performance indicators for the assessment of Infrastructure
15 Australia's performance of its functions;

16 (d) such other matters (if any) as the Minister directs.

17 (4) If a direction under paragraph (3)(d) is in writing, the direction is
18 not a legislative instrument.

19 (5) The Board may vary the plan.

20 *Consultation requirements*

21 (6) In preparing the plan, or a variation of the plan, Infrastructure
22 Australia must consult with:

23 (a) the Minister; and

24 (b) such of the following as it considers appropriate:

25 (i) government, commercial, industrial, consumer and other
26 relevant bodies and organisations;

27 (ii) investors in infrastructure and owners of infrastructure.

28 *Endorsement by Minister*

29 (7) The plan, or a variation of the plan, does not take effect unless it
30 has been endorsed by the Minister.

- 1 (8) If an endorsement under subsection (6) is in writing, the
2 endorsement is not a legislative instrument.

3 **39C Additional content for annual report**

4 The annual report for Infrastructure Australia prepared under
5 section 9 of the *Commonwealth Authorities and Companies Act*
6 *1997* for a year must also include:

- 7 (a) details of any directions given to it by the Minister under
8 paragraph 5D(1)(c) or subsection 6(1) during the year; and
9 (b) an assessment of the extent to which Infrastructure
10 Australia's operations during the year have contributed to the
11 objectives set out in the corporate plan applicable for the
12 year; and
13 (c) an evaluation of Infrastructure Australia's overall
14 performance during the year against the performance
15 indicators set out in the corporate plan for the year.

16 **Part 3B—Finance**
17

18 **39D Money payable to Infrastructure Australia**

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

27 **39DA Application of money by Infrastructure Australia**

- 28 (1) The money of Infrastructure Australia is to be applied only:
29 (a) in payment or discharge of the costs, expenses and other
30 obligations incurred or undertaken by Infrastructure Australia
31 in the performance of its functions and the exercise of its
32 powers; and

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1 (b) in payment of any remuneration or allowances payable under
2 this Act.

3 (2) Subsection (1) does not prevent investment of surplus money of
4 Infrastructure Australia under section 18 of the *Commonwealth*
5 *Authorities and Companies Act 1997*.

6 **39DB Restrictions on financial transactions**

7 (1) Infrastructure Australia must not, without the written approval of
8 the Minister:

9 (a) acquire any property, right or privilege for a consideration
10 exceeding in amount or value the amount prescribed by the
11 regulations for the purposes of this paragraph; or

12 (b) dispose of any property, right or privilege if the amount or
13 value of the consideration for the disposal, or the value of the
14 property, right or privilege, exceeds the amount prescribed by
15 the regulations for the purposes of this paragraph; or

16 (c) enter into a lease of land for a period exceeding 10 years.

17 (2) Paragraphs (1)(a) and (b) do not apply to the investment of money
18 by Infrastructure Australia under section 18 of the *Commonwealth*
19 *Authorities and Companies Act 1997*.

20 (3) Infrastructure Australia must not borrow money from any person.

21 (4) Nothing in subsection (3) affects Infrastructure Australia's ability
22 to obtain goods or services on credit in accordance with
23 section 28A of the *Commonwealth Authorities and Companies Act*
24 *1997*.

25 (5) An approval under subsection (1) is not a legislative instrument.

26 **39DC Taxation**

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

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

1 **40 Section 40 (heading)**

2 Repeal the heading, substitute:

3 **40 Delegation by the Minister**

4 **41 Section 40**

5 Omit “paragraph 5(2)(j), section 6, 8 or 18, paragraph 28(2)(a) or
6 section 29 or 38”, substitute “paragraph 5D(1)(c) or section 6, 8 or 18”.

7 **42 After section 40**

8 Insert:

9 **40A Delegation by Infrastructure Australia**

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

17 **40B Delegation by Board**

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

25 **40C Delegation and subdelegation by CEO**

- 26 (1) The CEO may, in writing, delegate any of the CEO’s powers or
27 functions under this Act to a person mentioned in section 39 or
28 39A who:
- 29 (a) is an SES employee, or acting SES employee; or

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

1 **Part 2—Consequential amendments**

2 *Income Tax Assessment Act 1997*

3 **43 Section 415-1**

4 Omit “Infrastructure Coordinator”, substitute “responsible person”.

5 **44 Paragraph 415-15(3)(c)**

6 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

7 **45 Subsection 415-15(3) (note)**

8 Omit “Infrastructure Coordinator” (wherever occurring), substitute
9 “responsible person”.

10 **46 Paragraph 415-20(2)(c) (note)**

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

12 **47 Section 415-50**

13 Omit “Infrastructure Coordinator”, substitute “responsible person”.

14 **48 Subsection 415-55(1)**

15 Omit “Infrastructure Coordinator” (first occurring), substitute
16 “*responsible person”.

17 **49 Subsection 415-55(1)**

18 Omit “Infrastructure Coordinator” (second occurring), substitute
19 “responsible person”.

20 **50 Subsection 415-55(1) (note)**

21 Repeal the note.

22 **51 Paragraph 415-55(4)(a)**

23 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

24 **52 At the end of section 415-55**

25 Add:

1 (5) A fee prescribed as mentioned in paragraph (4)(b) is payable to the
2 *responsible person, on behalf of the Commonwealth.

3 **53 Subsection 415-60(1)**

4 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

5 **54 Paragraph 415-60(2)(a)**

6 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

7 **55 Paragraph 415-60(2)(b)**

8 Omit “Infrastructure Coordinator” (wherever occurring), substitute
9 “responsible person”.

10 **56 Subsection 415-60(3)**

11 Omit “Infrastructure Coordinator” (first occurring), substitute
12 “*responsible person”.

13 **57 Paragraph 415-60(3)(b)**

14 Omit “Infrastructure Coordinator”, substitute “responsible person”.

15 **58 Subsections 415-60(4) and (5)**

16 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

17 **59 Subsection 415-65(1)**

18 Omit “Infrastructure Coordinator” (first occurring), substitute
19 “*responsible person”.

20 **60 Subsection 415-65(1)**

21 Omit “Infrastructure Coordinator” (second, third and fourth occurring),
22 substitute “responsible person”.

23 **61 Subsection 415-65(3)**

24 Omit “Infrastructure Coordinator” (first occurring), substitute
25 “*responsible person”.

26 **62 Subsection 415-65(3)**

27 Omit “Infrastructure Coordinator” (second occurring), substitute
28 “responsible person”.

1 **63 Subsection 415-65(5)**

2 Omit “Infrastructure Coordinator” (first occurring), substitute
3 “*responsible person”.

4 **64 Subsection 415-65(5)**

5 Omit “Infrastructure Coordinator” (second, third and fourth occurring),
6 substitute “responsible person”.

7 **65 Paragraph 415-65(6)(a)**

8 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

9 **66 Paragraph 415-65(6)(b)**

10 Omit “Infrastructure Coordinator”, substitute “responsible person”.

11 **67 Subsection 415-65(7)**

12 Omit “Infrastructure Coordinator” (first occurring), substitute
13 “*responsible person”.

14 **68 Subsection 415-65(7)**

15 Omit “Infrastructure Coordinator” (second occurring), substitute
16 “responsible person”.

17 **69 Subsection 415-70(1)**

18 Omit “Infrastructure Coordinator” (first occurring), substitute
19 “*responsible person”.

20 **70 Paragraphs 415-70(1)(a) and (b)**

21 Omit “Infrastructure Coordinator”, substitute “responsible person”.

22 **71 Paragraph 415-70(2)(a)**

23 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

24 **72 Paragraph 415-70(2)(b)**

25 Omit “Infrastructure Coordinator”, substitute “responsible person”.

26 **73 Subsection 415-70(4)**

27 Omit “Infrastructure Coordinator” (first occurring), substitute
28 “*responsible person”.

1 **74 Subsection 415-70(4)**

2 Omit “Infrastructure Coordinator” (second occurring), substitute
3 “responsible person”.

4 **75 Subsection 415-70(6)**

5 Omit “Infrastructure Coordinator” (first occurring), substitute
6 “*responsible person”.

7 **76 Subsection 415-70(6)**

8 Omit “Infrastructure Coordinator” (second occurring), substitute
9 “responsible person”.

10 **77 Paragraph 415-70(7)(a)**

11 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

12 **78 Paragraph 415-70(7)(b)**

13 Omit “Infrastructure Coordinator”, substitute “responsible person”.

14 **79 Subsection 415-70(8)**

15 Omit “Infrastructure Coordinator” (first occurring), substitute
16 “*responsible person”.

17 **80 Subsection 415-70(8)**

18 Omit “Infrastructure Coordinator” (second occurring), substitute
19 “responsible person”.

20 **81 Subsection 415-70(9) (heading)**

21 Repeal the heading, substitute:

22 *Responsible person must notify Commissioner*

23 **82 Subsection 415-70(9)**

24 Omit “Infrastructure Coordinator” (first occurring), substitute
25 “*responsible person”.

26 **83 Subsection 415-70(9)**

27 Omit “Infrastructure Coordinator” (second occurring), substitute
28 “responsible person”.

1 **84 Subsection 415-75(3) (note)**

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

3 **85 Subsection 415-80(1)**

4 Omit “Infrastructure Coordinator” (first occurring), substitute
5 “*responsible person”.

6 **86 Paragraph 415-80(1)(b)**

7 Omit “Infrastructure Coordinator”, substitute “responsible person”.

8 **87 Subsection 415-80(2)**

9 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

10 **88 Subsection 415-80(3)**

11 Omit “Infrastructure Coordinator” (first occurring), substitute
12 “*responsible person”.

13 **89 Subsection 415-80(3)**

14 Omit “Infrastructure Coordinator” (second occurring), substitute
15 “responsible person”.

16 **90 Paragraph 415-80(4)(a)**

17 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

18 **91 Paragraph 415-80(4)(b)**

19 Omit “Infrastructure Coordinator”, substitute “responsible person”.

20 **92 Subsection 415-80(5)**

21 Omit “Infrastructure Coordinator” (first occurring), substitute
22 “*responsible person”.

23 **93 Subsection 415-80(5)**

24 Omit “Infrastructure Coordinator” (second occurring), substitute
25 “responsible person”.

26 **94 Paragraph 415-80(6)(a)**

27 Omit “Infrastructure Coordinator”, substitute “*responsible person”.

1 **95 Sections 415-85 and 415-90**

2 Omit “the Infrastructure Coordinator”, substitute “a *responsible
3 person”.

4 **96 Section 415-95**

5 Repeal the section, substitute:

6 **415-95 Responsible person**

7 *Responsible persons for provisions in this Subdivision*

8 (1) A person is the **responsible person** for the purposes of a provision
9 of this Subdivision, or the *infrastructure project designation rules,
10 if:

11 (a) the person:

12 (i) from time to time occupies a position, or holds an
13 office, specified in a determination made under
14 subsection (3); or

15 (ii) is a body corporate specified in such a determination;
16 and

17 (b) the provision is specified in the determination for that
18 position, office or body.

19 *Delegation*

20 (2) The *responsible person for the purposes of a provision of this
21 Subdivision or the *infrastructure project designation rules may, by
22 instrument in writing, delegate any of the person’s powers,
23 functions or duties under or in relation to this Subdivision, or those
24 rules, to an SES employee or an acting SES employee.

25 Note: The expressions **SES employee** and **acting SES employee** are defined
26 in the *Acts Interpretation Act 1901*.

27 *Infrastructure Minister to determine positions etc. and provisions*

28 (3) The Minister administering the *Infrastructure Australia Act 2008*
29 (the **Infrastructure Minister**) must, by legislative instrument,
30 determine:

31 (a) one or more of the following:

- 1 (i) a position within an Agency (within the meaning of the
2 *Public Service Act 1999*) that is usually occupied by an
3 SES employee;
4 (ii) an office under a law of the Commonwealth;
5 (iii) a body corporate incorporated for a public purpose by
6 an Act; and
7 (b) provisions of this Subdivision and the *infrastructure project
8 designation rules for each position, office or body determined
9 under paragraph (a).

- 10 (4) An instrument varying or revoking a determination made under
11 subsection (3) may provide for or in relation to any transitional
12 matters (including by specifying any saving or application
13 provisions) arising out of the variation or revocation.

14 Note: For variation and revocation, see subsection 33(3) of the *Acts*
15 *Interpretation Act 1901*.

16 *Consultation*

- 17 (5) The Infrastructure Minister must consult with the Treasurer before
18 making, varying or revoking a determination under subsection (3).

19 **97 Subsection 995-1(1)**

20 Insert:

21 *responsible person*, for the purposes of a provision in
22 Subdivision 415-C, has the meaning given by section 415-95.

1 **Schedule 2—Transitional and savings**
2 **provisions**

3 **Part 1—Introduction**

4 **1 Definitions**

5 (1) In this Schedule:

6 **asset** means:

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

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

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

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

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

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

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

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

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

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

- 1 ***old Infrastructure Australia*** means Infrastructure Australia within the
2 meaning of the *Infrastructure Australia Act 2008* as in force
3 immediately before the transition time.
- 4 ***specified succession time***, for an asset or liability covered by a
5 declaration under item 2 or 3, means the time that the Commonwealth
6 becomes the successor in law in relation to the asset or liability.
- 7 ***transition time*** means the time that Part 1 of Schedule 1 commences.

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

2 **2 Transfer of certain Commonwealth assets**

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

15 **3 Transfer of certain Commonwealth liabilities**

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

28 **4 Transfers of land may be registered**

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

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

14 **5 Certificates relating to vesting of assets other than land**

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

1 **Part 3—Transfer of other matters**

2 **6 Transfer of records to Infrastructure Australia**

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

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

8 **7 Legal proceedings of the Commonwealth**

9 (1) This item applies if:

10 (a) any proceedings to which the Commonwealth was a party
11 were pending in any court or tribunal immediately before the
12 transition time; and

13 (b) the proceedings:

14 (i) relate to an asset or liability that, as a result of a
15 declaration made under item 2 or 3, has vested in
16 Infrastructure Australia; or

17 (ii) otherwise relate to a function of Infrastructure Australia.

18 (2) Infrastructure Australia is substituted for the Commonwealth as a party
19 to the proceedings:

20 (a) for proceedings not covered by subparagraph (1)(b)(i)—from
21 the transition time; and

22 (b) in any other case—from the specified succession time in
23 relation to the asset or liability.

24 **8 References in certain instruments to the Commonwealth,
25 old Infrastructure Australia or Infrastructure
26 Coordinator**

27 (1) This item applies if:

28 (a) an instrument was in force immediately before the transition
29 time or the specified succession time for an asset or liability;
30 and

31 (b) the instrument contains a reference to:

32 (i) the Commonwealth; or

33 (ii) the old Infrastructure Australia; or

- 1 (iii) the Infrastructure Coordinator; and
2 (c) the reference:
3 (i) relates to an asset or liability that, as a result of a
4 declaration under item 2 or 3, has vested in
5 Infrastructure Australia; or
6 (ii) otherwise relates to a function of Infrastructure
7 Australia or the CEO.
- 8 (2) The Minister may, by legislative instrument, determine that the
9 instrument has effect, from the transition time or the specified
10 succession time (as appropriate), as if the reference to the body or
11 person mentioned in paragraph (1)(b) were a reference to:
12 (a) Infrastructure Australia; or
13 (b) the CEO; or
14 (c) a responsible person for the purposes of a provision under
15 section 415-95 of the *Income Tax Assessment Act 1997*.
- 16 (3) For the purposes of this item, **instrument**:
17 (a) includes:
18 (i) a contract, undertaking, deed or agreement; and
19 (ii) a notice, authority, order or instruction; and
20 (iii) an instrument made under an Act or under regulations;
21 but
22 (b) does not include an exempt instrument.
- 23 (4) For the purposes of this item, **exempt instrument** means:
24 (a) an Act; or
25 (b) an instrument made under this Act.

1 **Part 4—Infrastructure Australia Special Account**

2 **9 Infrastructure Australia Special Account**

- 3 (1) At the transition time, the Special Account established under
4 subsection 20(1) of the *Financial Management and Accountability Act*
5 *1997* with the name “Infrastructure Australia Special Account” is
6 abolished.
- 7 (2) If an amount (the *old amount*) stands to the credit of that Special
8 Account immediately before the transition time, there is payable to
9 Infrastructure Australia, at the transition time, an amount equal to the
10 old amount.
- 11 (3) The amount payable to Infrastructure Australia under subitem (2) is to
12 be paid out of the Consolidated Revenue Fund, which is appropriated
13 accordingly.

1 **Part 5—Reporting obligation**

2 **10 Final annual report**

3 (1) The old Infrastructure Australia must, before the transition time, prepare
4 and give to the Minister, for presentation to the Parliament, a report on
5 the old Infrastructure Australia's operations during the final reporting
6 period.

7 (2) Subsection 26(2) of the *Infrastructure Australia Act 2008* as in force
8 immediately before the commencement of this item applies to the
9 report, as if a reference to a financial year were a reference to the final
10 reporting period.

11 (3) The Minister must table the report in each House of the Parliament as
12 soon as practicable after the transition time.

13 (4) A report given to the Minister under this item discharges the old
14 Infrastructure Australia's obligations under section 26 of the
15 *Infrastructure Australia Act 2008* in respect of any period covered by
16 the report.

17 (5) In this item:

18 ***final reporting period*** means the period:

19 (a) beginning:

20 (i) if, at the commencement of this item, no report under
21 section 26 of the *Infrastructure Australia Act 2008* has
22 been given to the Minister for the financial year ending
23 before that commencement—at the start of that financial
24 year; or

25 (ii) otherwise—at the start of the financial year in which
26 this item commences; and

27 (b) ending immediately before the transition time.

1 **Part 6—Officeholders**

2 **11 No transfer of appointment of officeholders**

3 (1) Nothing in this Schedule produces the result that the appointment of an
4 old Infrastructure Australia officer has effect as if it were an
5 appointment, engagement or employment of the person in relation to
6 Infrastructure Australia.

7 (2) In this item:

8 ***old Infrastructure Australia officer*** means:

- 9 (a) a member of the old Infrastructure Australia; or
10 (b) the Infrastructure Coordinator.

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

3 **12 Things done by, or in relation to, Infrastructure**
4 **Coordinator**

5 (1) If, before the transition time, a thing was done by, or in relation to, the
6 Infrastructure Coordinator, then, for the purposes of the operation of:

7 (a) Division 415 of the *Income Tax Assessment Act 1997* as in
8 force from the transition time; and

9 (b) the infrastructure project designation rules made under
10 section 415-100 of that Act; and

11 (c) any other law to the extent that it relates to that Division or
12 those rules;

13 the thing is taken to have been done by, or in relation to, the responsible
14 person under section 415-95 of that Act for the purposes of the
15 provision under, or in relation to, which the thing would have been done
16 if the thing had been done immediately after the transition time.

17 (2) For the purposes of subitem (1), a thing done before the transition time
18 under a provision amended by Part 2 of Schedule 1 to this Act has effect
19 from that time as if it had been done under that provision as amended.
20 However, this is not taken to change the time at which the thing was
21 actually done.

22 (3) For the purposes of subitem (1), if:

23 (a) any proceedings to which the Infrastructure Coordinator was
24 a party were pending in any court or tribunal immediately
25 before the transition time; and

26 (b) the proceedings relate to a thing done by, or in relation to, the
27 Infrastructure Coordinator under Division 415 of the *Income*
28 *Tax Assessment Act 1997*;

29 the responsible person mentioned in that subitem in relation to the thing
30 is substituted for the Infrastructure Coordinator as a party to the
31 proceedings from the transition time.

32 (4) The Minister may, by writing, determine either or both of the following:

33 (a) that subitem (1) does not apply in relation to a specified thing
34 done by, or in relation to, the Infrastructure Coordinator;

1 (b) that subitem (1) has effect as if a different responsible person
2 for the purposes of a provision under section 415-95 of the
3 *Income Tax Assessment Act 1997* were substituted for the
4 responsible person mentioned in that subitem.

5 The determination has effect accordingly.

6 (5) A determination made under subitem (4) is not a legislative instrument.

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

8 **13 Infrastructure project designation rules**

9 (1) A reference to the Infrastructure Coordinator in a provision of the
10 infrastructure project designation rules made under section 415-100 of
11 the *Income Tax Assessment Act 1997* has effect, after the transition
12 time, as if it were a reference to the responsible person for the purposes
13 of the provision under section 415-95 of that Act.

14 (2) Subsection 415-100(2) of the *Income Tax Assessment Act 1997* applies
15 on and after the transition time as if the reference in that subsection to
16 Infrastructure Australia included a reference to the old Infrastructure
17 Australia.

1 **Part 8—Miscellaneous**

2 **14 Continuation of Infrastructure Priority Lists**

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

7 **15 Exemption from stamp duty and other State or Territory**
8 **taxes**

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

23 **16 Certificates taken to be authentic**

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

- 26 (a) is taken to be such a certificate; and
27 (b) is taken to have been properly given;

28 unless the contrary is established.

29 **17 Delegation by Minister**

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

- 1 (a) the Secretary of the Department; or
2 (b) an SES employee, or acting SES employee, in the
3 Department.

- 4 (2) In exercising powers or functions under a delegation, the delegate must
5 comply with any directions of the Minister.

6 **18 Constitutional safety net**

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

16 **19 Transitional rules**

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