

Passed by both Houses



New South Wales

Infrastructure NSW Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Infrastructure NSW Bill 2011

Act No , 2011

An Act to establish and confer functions on Infrastructure NSW; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Infrastructure NSW Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to secure the efficient, effective, economic and timely planning, co-ordination, selection, funding, implementation, delivery and whole-of-lifecycle asset management of infrastructure that is required for the economic and social well-being of the community, and
- (b) to ensure that decisions about infrastructure projects are informed by expert professional analysis and advice.

4 Definitions

- (1) In this Act:

Board means the Board of Infrastructure NSW.

Chief Executive Officer means the Chief Executive Officer and Co-ordinator General, Infrastructure NSW.

function includes a power, authority or duty, and **exercise a function** includes perform a duty.

government agency means:

- (a) a public authority constituted by or under an Act, or
- (b) a NSW Government agency, or
- (c) a Division of the Government Service, or
- (d) a council (within the meaning of the *Local Government Act 1993*) or other local authority, or
- (e) a SOC.

Infrastructure NSW means Infrastructure NSW constituted under this Act.

major infrastructure project means a project to provide infrastructure:

- (a) that has a capital investment value of more than \$100 million, or

(b) that is nominated by the Premier as a special project requiring oversight or co-ordination by Infrastructure NSW.

The capital investment value of a project includes all costs necessary to establish and operate the project (including design and construction costs, but not including land costs or GST).

private sector includes the not-for-profit sector.

SOC means a State owned corporation.

(2) Notes included in this Act do not form part of this Act.

Part 2 Constitution and management of Infrastructure NSW

5 Constitution of Infrastructure NSW

There is constituted by this Act a body corporate with the corporate name of Infrastructure NSW.

6 Status of Infrastructure NSW

Infrastructure NSW is, for the purposes of any Act, a NSW Government agency.

7 Ministerial control

Infrastructure NSW is subject to the control and direction of the Premier in the exercise of its functions.

8 Board of Infrastructure NSW

- (1) There is to be a Board of Infrastructure NSW.
- (2) The Board is to consist of the following members:
 - (a) a person appointed by the Premier as the Chairperson of the Board,
 - (b) not more than 5 persons appointed by the Premier from the private sector who together have skills and experience in infrastructure planning, funding and delivery,
 - (c) the Chief Executive Officer,
 - (d) the Director-General of the Department of Premier and Cabinet,
 - (e) the Secretary of the Treasury,
 - (f) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services,
 - (g) the Director-General of the Department of Planning and Infrastructure.
- (3) The Board has the function of determining the general policies and strategic direction of Infrastructure NSW and of advising the Premier and the Chief Executive Officer on:
 - (a) the strategies, plans and statements under Part 4, and
 - (b) progress in the delivery of major infrastructure projects identified in those strategies, plans and statements, and
 - (c) other matters relating to infrastructure at the request of the Premier or the Chief Executive Officer or on its own initiative.

- (4) If the Premier makes any amendment to the strategies, plans and statements submitted by Infrastructure NSW under Part 4, the Board may advise the Premier that it does not agree with the amendment and make that advice available to the public.

Note. Schedule 1 sets out the provisions relating to the members and procedure of the Board.

9 Chief Executive Officer and Co-ordinator General

- (1) The Chief Executive Officer and Co-ordinator General, Infrastructure NSW, is the person holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The affairs of Infrastructure NSW are to be managed and controlled by the Chief Executive Officer in accordance with the general policies and strategic direction determined by the Board of Infrastructure NSW.
- (3) Any act, matter or thing done in the name of, or on behalf of Infrastructure NSW by the Chief Executive Officer is taken to have been done by Infrastructure NSW.

10 Staff of Infrastructure NSW

- (1) Infrastructure NSW may arrange for the use of the services of any staff (whether by way of secondment or otherwise) or of any facilities of any government agency to enable Infrastructure NSW to exercise its functions.
- (2) Infrastructure NSW cannot employ any staff.

Note. Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable Infrastructure NSW to exercise its functions. Under section 4K of that Act a reference in this Act to a member of staff of Infrastructure NSW is a reference to staff so employed or to persons of whose services Infrastructure NSW makes use.

Part 3 Functions of Infrastructure NSW

11 General and specific functions of Infrastructure NSW

- (1) Infrastructure NSW has the following functions:
 - (a) to prepare and submit to the Premier a 20-year State infrastructure strategy,
 - (b) to prepare and submit to the Premier 5-year infrastructure plans and other plans requested by the Premier,
 - (c) to prepare and submit to the Premier sectoral State infrastructure strategy statements,
 - (d) to prepare project implementation plans for major infrastructure projects,
 - (e) to review and evaluate proposed major infrastructure projects by government agencies or the private sector and other proposed infrastructure projects (including recommendations for the role of Infrastructure NSW in the delivery of those projects),
 - (f) to oversee and monitor the delivery of major infrastructure projects and other infrastructure projects identified in plans adopted by the Premier,
 - (g) to carry out or be responsible for the delivery of a specified major infrastructure project in accordance with an order of the Premier under Part 5,
 - (h) to assess the risks involved in planning, funding, delivering and maintaining infrastructure, and the management of those risks,
 - (i) to provide advice to the Premier on economic or regulatory impediments to the efficient delivery of specific infrastructure projects or infrastructure projects in specific sectors,
 - (j) to provide advice to the Premier on appropriate funding models for infrastructure,
 - (k) to co-ordinate the infrastructure funding submissions of the State and its agencies to the Commonwealth Government and to other bodies,
 - (l) to carry out reviews of completed infrastructure projects at the request of the Premier,
 - (m) to provide advice on any matter relating to infrastructure that the Premier requests.
- (2) Infrastructure NSW is to exercise its functions with a view to achieving the objects of this Act.

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- (3) Infrastructure NSW may exercise any other function delegated to it by another government agency.
 - (4) Infrastructure NSW has such other functions as are conferred or imposed on it by or under this or any other Act.

12 Acceptance of delegated functions by Infrastructure NSW

- (1) Infrastructure NSW may accept a delegation of the functions of a government agency relating to the planning, funding, delivery or maintenance of infrastructure.
- (2) The government agency is authorised to delegate any such function to Infrastructure NSW.

13 Delegation of Infrastructure NSW's functions

- (1) Infrastructure NSW may delegate to an authorised person any of its functions, other than this power of delegation. This power of delegation extends to a function delegated to Infrastructure NSW by a government agency.
- (2) A delegate may sub-delegate to an authorised person any function delegated by Infrastructure NSW if the delegate is authorised in writing to do so by Infrastructure NSW.
- (3) In this section, *authorised person* means:
 - (a) a member of the staff of Infrastructure NSW, or
 - (b) a person, a committee of persons or a person of a class approved by the Premier or prescribed by the regulations.

14 Exercise of functions through joint ventures etc

Any function of Infrastructure NSW may be exercised by:

- (a) Infrastructure NSW itself, or
- (b) Infrastructure NSW in a partnership, joint venture or other association with government agencies or other persons or bodies.

15 Obligations of government agencies

- (1) A government agency has the following obligations in respect of infrastructure projects:
 - (a) to co-operate with Infrastructure NSW in the exercise of the functions of Infrastructure NSW, including complying with any reasonable request of Infrastructure NSW for information to enable Infrastructure NSW to exercise its functions,
 - (b) to notify Infrastructure NSW of any proposed exercise of the functions of the agency that may impact adversely on the current

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Part 3 Functions of Infrastructure NSW

5-year infrastructure plan or a project implementation plan under Part 4.

- (2) This section does not extend to the investigative, complaints handling and other law enforcement functions of the NSW Police Force, the Independent Commission Against Corruption, the Ombudsman's Office, the Police Integrity Commission or the office of the Auditor-General.

Part 4 Infrastructure strategies and planning

Division 1 20-year State infrastructure strategy

16 Preparation of 20-year State infrastructure strategy

- (1) Infrastructure NSW must prepare and submit to the Premier a 20-year State infrastructure strategy.
- (2) The strategy is to be prepared within such time as the Premier directs.
- (3) Infrastructure NSW is to review the strategy every 5 years (and at such other times as the Premier directs or it considers appropriate) and submit a revised strategy to the Premier.

17 Content of 20-year State infrastructure strategy

- (1) The 20-year State infrastructure strategy must assess the current state of infrastructure in New South Wales and the needs and strategic priorities for infrastructure in New South Wales for the next 20 years.
- (2) The strategy may include the following:
 - (a) economic, social and environmental objectives against which the performance of the State's infrastructure network can be assessed and benchmarked,
 - (b) the identification, on the basis of detailed, objective and quantitative evidence, of current land use plans and population projections, deficiencies in the State's infrastructure and the areas in which deficiencies in the State's infrastructure network are causing the most serious economic, social or environmental costs,
 - (c) an assessment of options available to deal with those identified deficiencies and to reduce those economic, social and environmental costs, including options relating to demand management and other policy, pricing and regulatory reform options,
 - (d) the identification of projects and policies that will best deal with those identified deficiencies and reduce those economic, social and environmental costs.
- (3) Infrastructure NSW must, in preparing or reviewing the strategy, have regard to any State strategic priority of which Infrastructure NSW has been advised by the Premier.

18 Adoption by Premier of 20-year State infrastructure strategy

- (1) The Premier is to consider any 20-year State infrastructure strategy submitted by Infrastructure NSW, and adopt the strategy with or

without amendments or refer it back to Infrastructure NSW for further consideration.

- (2) The Premier must notify Infrastructure NSW of the Premier's decision and make the adopted strategy publicly available.

Division 2 5-year infrastructure plans

19 Preparation of 5-year infrastructure plan

- (1) Infrastructure NSW must prepare and submit to the Premier a 5-year infrastructure plan.
- (2) The plan is to identify specific major infrastructure projects to be undertaken as a priority in the following 5 years.
- (3) Infrastructure NSW is to review the plan each year (and at such other times as the Premier directs or it considers appropriate) and submit a revised plan to the Premier.

20 Content of 5-year infrastructure plans

- (1) A 5-year infrastructure plan may include the following in relation to the identified priority major infrastructure projects:
 - (a) the rationale for the selection of the priority projects,
 - (b) the estimated cost of the priority projects,
 - (c) the recommended funding and delivery arrangements for the priority projects,
 - (d) the estimated timeframe for the delivery of the priority projects.
- (2) In preparing the plan, Infrastructure NSW must have regard to the 20-year State infrastructure strategy adopted by the Premier.

21 Adoption by Premier of 5-year infrastructure plans

- (1) The Premier is to consider a 5-year infrastructure plan submitted by Infrastructure NSW, and adopt the plan with or without amendments or refer it back to Infrastructure NSW for further consideration.
- (2) The Premier must notify Infrastructure NSW of the Premier's decision, and make the adopted plan publicly available.

22 Other infrastructure plans

- (1) Infrastructure NSW is to prepare and submit to the Premier such other infrastructure plans as the Premier directs.
- (2) The Premier may direct that any such plan be included in the 5-year infrastructure plan or in a separate plan.

Division 3 Sectoral State infrastructure strategy statements

23 Preparation of sectoral State infrastructure strategy statements

- (1) Infrastructure NSW must prepare and submit to the Premier a sectoral State infrastructure strategy statement for any particular sector or sectors that the Premier considers significant for the State.
- (2) The statement is to be prepared within such time as the Premier directs.

24 Content of sectoral State infrastructure strategy statements

A sectoral State infrastructure strategy statement may include the following:

- (a) an analysis of existing infrastructure in the sector,
- (b) an analysis of current and future needs in the sector,
- (c) options available to deal with those needs or to influence demand in the sector,
- (d) criteria for evaluating those options and selecting the preferred options,
- (e) consideration of impacts on land use planning in the sector, on other sectors and on key stakeholders in the sector,
- (f) the preferred long term infrastructure strategy for the sector.

25 Adoption by Premier of sectoral State infrastructure strategy statements

- (1) The Premier is to consider any sectoral State infrastructure strategy statement submitted by Infrastructure NSW, and adopt the statement with or without amendments or refer it back to Infrastructure NSW for further consideration.
- (2) The Premier must notify Infrastructure NSW of the Premier's decision, and make the adopted statement publicly available.

Division 4 Project implementation plans

26 Project implementation plans for major infrastructure projects

- (1) Infrastructure NSW may determine that a project implementation plan should be prepared for a major infrastructure project identified under this Part in order to facilitate the oversight and monitoring of the delivery of the project by Infrastructure NSW.
- (2) In deciding whether a project implementation plan is required for a project, Infrastructure NSW is to take into account the importance of the project to the State and the resources of the relevant government agency to deliver the project on time and within budget.

- (3) Infrastructure NSW may prepare a project implementation plan in consultation with the government agency responsible for the delivery of the project or may direct the agency to prepare the plan to the satisfaction of Infrastructure NSW.
- (4) The Treasurer is to be consulted on the preparation of a project implementation plan.
- (5) Section 15 sets out the obligations of government agencies with respect to its co-operation with Infrastructure NSW.

27 Content of project implementation plan

- (1) A project implementation plan may include the following in relation to the project concerned:
 - (a) the government agency or agencies responsible for the construction and delivery of the project,
 - (b) the funding envelope for the project cost,
 - (c) the funding and procurement model for the project,
 - (d) the project delivery method, including the role (if any) of the private sector,
 - (e) the timeframe for the delivery of the project,
 - (f) the ongoing operation and maintenance of the project,
 - (g) other matters relating to the delivery of the project.
- (2) A project implementation plan may relate to more than one project and involve more than one government agency.

Part 5 Step-in powers for delivery of major infrastructure projects

28 Definitions

In this Part and Schedule 2:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

carry out a project means carry out development (within the meaning of the *Environmental Planning and Assessment Act 1979*) for the purposes of the project.

government agency does not include a council (within the meaning of the *Local Government Act 1993*) or other local authority.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent and whether personal or assignable).

project authorisation order means an order under section 30.

project divesting order means an order under section 35.

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent and whether personal or assignable).

29 Step-in functions of Infrastructure NSW

Infrastructure NSW has the following functions:

- (a) to carry out a major infrastructure project if authorised to do so by a project authorisation order,
- (b) to be responsible, in accordance with a project authorisation order, for a major infrastructure project that is carried out by, or that involves, another government agency.

30 Project authorisation orders

- (1) The Premier may make orders for the purposes of this Part (**project authorisation orders**).
- (2) A project authorisation order must be published in the Gazette.
- (3) A project authorisation order may be made on such terms and conditions as the Premier determines and as are specified or referred to in the order.

31 Authorisation to carry out projects

A project authorisation order may authorise Infrastructure NSW to carry out a major infrastructure project specified in the order.

32 Authorisation to take over projects

- (1) A project authorisation order may, in the case of a major infrastructure project that is carried out by (or that involves) another government agency, declare Infrastructure NSW to be responsible for the government agency's functions in relation to the carrying out of the project.
- (2) The following provisions have effect on the making of a project authorisation order as referred to in this section:
 - (a) Infrastructure NSW has and may exercise all of the functions of the government agency in relation to the project,
 - (b) the government agency may not exercise any functions in relation to the project except with the consent of Infrastructure NSW,
 - (c) Infrastructure NSW may, with the concurrence of the Premier and after consulting with the government agency, give directions to the government agency in relation to the project,
 - (d) the government agency must comply with any such directions given to it by Infrastructure NSW.

This subsection does not limit the terms and conditions of a project authorisation order that the Premier may determine under this Part.

- (3) A project authorisation order may relate to the exercise of the functions of a number of government agencies.
- (4) Before making a project authorisation order that declares Infrastructure NSW to be responsible for a major infrastructure project that is carried out by (or that involves) a SOC, the Premier is to consult with the following:
 - (a) the portfolio Minister of the SOC,
 - (b) the voting shareholders of the SOC,
 - (c) the chairperson of the board of directors of the SOC.
- (5) Failure to comply with subsection (4) does not affect the validity of the order.

33 Transfer of assets, rights and liabilities

- (1) If a project authorisation order declares Infrastructure NSW to be responsible for another government agency's functions in relation to the carrying out of a major infrastructure project, the order may provide for

the transfer to Infrastructure NSW of such assets, rights and liabilities of the government agency (or classes of such assets, rights and liabilities) as are relevant to the project and are specified in the order.

- (2) Schedule 2 applies to a project authorisation order that provides for the transfer of any such assets, rights and liabilities.

34 Acquisition of land

- (1) Infrastructure NSW may, for the purposes of exercising its functions in relation to a major infrastructure project as authorised by a project authorisation order, acquire land by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be an authorised work, and Infrastructure NSW is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34–37 of the *Public Works Act 1912* do not apply to or in respect of a major infrastructure project to which a project authorisation order relates.

35 Transfer of Infrastructure NSW managed projects to government agency

- (1) The Premier may, by order published in the Gazette (a ***project divesting order***), direct that the assets, rights and liabilities of Infrastructure NSW in relation to a major infrastructure project specified in the order (including any assets, rights and liabilities that have been transferred to Infrastructure NSW by a project authorisation order) be transferred to another government agency specified in the order.
- (2) The assets, rights and liabilities to be transferred by a project divesting order may consist of a specified class of assets, rights and liabilities. An order may transfer assets, rights and liabilities in relation to a project to a number of government agencies.
- (3) A project divesting order may be made on such terms and conditions as the Premier determines and as are specified or referred to in the order.
- (4) Schedule 2 applies to a project divesting order.
- (5) Before making a project divesting order that transfers any assets, rights or liabilities to a SOC, the Premier is to consult with the following:
- (a) the portfolio Minister of the SOC,
 - (b) the voting shareholders of the SOC,
 - (c) the chairperson of the board of directors of the SOC.
- (6) Failure to comply with subsection (5) does not affect the validity of the order.

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Part 5 Step-in powers for delivery of major infrastructure projects

36 Application of orders

A project authorisation order or a project divesting order may apply to the whole of a major infrastructure project or to a specified part of such a project only. Accordingly, a reference in this Part to a major infrastructure project includes a reference to any part of a project that is the subject of a project authorisation order or a project divesting order.

Part 6 Miscellaneous

37 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

38 Disclosure of pecuniary interests

(1) In this section:

Board member means the Chairperson or other member of the Board.

(2) If:

(a) a Board member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the Board member's duties in relation to the consideration of the matter,

the Board member must, as soon as possible after the relevant facts have come to the Board member's knowledge, disclose the nature of the interest at a meeting of the Board.

(3) If:

(a) the Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Chief Executive Officer in connection with his or her functions (otherwise than at a meeting of the Board), and

(b) the interest appears to raise a conflict with the proper performance of the Chief Executive Officer's duties in relation to the consideration of the matter,

the Chief Executive Officer must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Premier.

(4) A disclosure by a Board member at a meeting of the Board that the Board member, or by the Chief Executive Officer to the Premier that the Chief Executive Officer:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

- (c) has some other specified interest relating to a specified company or other body or to a specified person,
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.
- (5) Particulars of any disclosure made under this section must be recorded by Infrastructure NSW in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (6) After a Board member has disclosed the nature of an interest in any matter, the Board member must not, unless the Premier or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (7) For the purposes of the making of a determination by the Board under subsection (6), a Board member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (8) After the Chief Executive Officer has disclosed the nature of an interest in any matter to the Premier, the Chief Executive Officer must not, unless the Premier otherwise determines, exercise his or her functions with respect to the matter.
- (9) A contravention of this section does not invalidate any decision of the Board or the Chief Executive Officer.

39 Personal liability

- (1) A matter or thing done or omitted to be done by:
- (a) Infrastructure NSW, or
 - (b) the Board of Infrastructure NSW, or
 - (c) the Chief Executive Officer, or
 - (d) a person acting under the direction of Infrastructure NSW, the Board of Infrastructure NSW or the Chief Executive Officer,
- does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a member of the Board of Infrastructure NSW, the Chief Executive Officer or a person so acting personally to any action, liability, claim or demand.

- (2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer or impose functions on Infrastructure NSW.

40 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

41 Review of Act

- (1) The Premier is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Members and procedure of Board of Infrastructure NSW

Part 1 Preliminary

1 Definitions

In this Schedule:

appointed member means the Chairperson of the Board or other member of the Board who is appointed by the Premier.

Board means the Board of Infrastructure NSW.

member means an appointed or ex-officio member of the Board.

Part 2 Members

2 Terms of office of appointed members

Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 4 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration of appointed members

- (1) The Chairperson of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as is determined by the Statutory and Other Offices Remuneration Tribunal.
- (2) An appointed member (other than the Chairperson of the Board) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

4 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Premier, or
 - (d) is removed from office by the Premier under this clause, or
 - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Premier or unless the

member is excused by the Premier for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Premier may remove an appointed member from office at any time.

5 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

6 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

7 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

8 Quorum

The quorum for a meeting of the Board is a majority of the members for the time being.

9 Presiding member

- (1) The Chairperson of the Board (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

10 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

11 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

12 First meeting

The Premier may call the first meeting of the Board in such manner as the Premier thinks fit.

Schedule 2 Transfer of assets, rights and liabilities

(Sections 33 and 35)

1 Application and interpretation

- (1) This Schedule applies to the following orders:
 - (a) a project authorisation order that makes provision for the transfer of assets, rights and liabilities as referred to in section 33,
 - (b) a project divesting order.
- (2) On the repeal of the *Infrastructure Implementation Corporation Act 2005* by this Act the Infrastructure Implementation Corporation is dissolved and this Schedule applies as if an order had been made transferring any assets, rights or liabilities of the Corporation to Infrastructure NSW.
- (3) For the purposes of this Schedule, the government agency from which any assets, rights or liabilities are transferred by an order to which this Schedule applies is called the **transferor** and the government agency to which they are being so transferred is called the **transferee**.
- (4) In this Schedule:

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

2 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Schedule applies, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights and liabilities of the transferor become by virtue of this Schedule the rights and liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those

entitlements and obligations were actual or potential at the time the order took effect,

- (e) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the order), to be read as, or as including, a reference to the transferee.

3 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the making of an order to which this Schedule applies.

4 Date of vesting

An order to which this Schedule applies takes effect on the date specified in the order.

5 Consideration for vesting

An order to which this Schedule applies may specify the consideration (if any) on which the order is made and the value or values (if any) at which the assets, rights or liabilities are transferred.

6 Duties

Duty under the *Duties Act 1997* is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a person by an order to which this Schedule applies, or
- (b) anything certified by the Premier as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

7 Transfer of interest in land

- (1) An order to which this Schedule applies may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

8 Determinations of Premier for purposes of orders

For the purposes of any order to which this Schedule applies, a determination by the Premier as to which entity any assets, rights or liabilities relate is conclusive.

9 Confirmation of vesting

- (1) The Premier may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

Schedule 3 Amendment of other Acts

3.1 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit:

Infrastructure Implementation Corporation

Insert in alphabetical order:

Infrastructure NSW

3.2 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2 Public offices

Insert at the end of Part 1:

Chairperson of the Board of Infrastructure NSW

**Schedule 4 Repeal of Infrastructure Implementation
Corporation Act 2005 No 89**

The Infrastructure Implementation Corporation Act 2005 is repealed.