



Infrastructure Australia Act 2008

No. 17, 2008

**An Act to establish Infrastructure Australia and
the Infrastructure Coordinator, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Definitions	2
Part 2—Infrastructure Australia	3
Division 1—Establishment and functions of Infrastructure Australia	
Australia	3
4 Establishment	3
5 Functions	3
6 Minister may give directions to Infrastructure Australia	5
Division 2—Constitution and membership of Infrastructure Australia	
Australia	6
7 Constitution	6
8 Appointment of members	6
9 Term of appointment	7
10 Acting appointments	7
11 Remuneration	7
12 Leave of absence	8
13 Disclosure of interests to the Minister	8
14 Disclosure of interests to Infrastructure Australia	8
15 Outside employment	9
16 Other terms and conditions	9
17 Resignation of members	9
18 Termination of appointment	10
Division 3—Meetings of Infrastructure Australia	11
19 Convening meetings	11
20 Presiding at meetings	11
21 Quorum	11
22 Voting at meetings	12
23 Conduct of meetings	12
24 Minutes	12
25 Decisions without meetings	12
Division 4—Reports	14
26 Annual reports	14

Part 3—The Infrastructure Coordinator	15
Division 1—Establishment and functions of the Infrastructure Coordinator	15
27 Establishment	15
28 Functions	15
Division 2—Terms and conditions of appointment	16
29 Appointment	16
30 Term of appointment	16
31 Acting Infrastructure Coordinator	16
32 Remuneration	17
33 Leave of absence	17
34 Disclosure of interests to the Minister	17
35 Outside employment.....	17
36 Other terms and conditions.....	18
37 Resignation.....	18
38 Termination of appointment	18
Division 3—Staff assisting the Infrastructure Coordinator	19
39 Staff assisting the Infrastructure Coordinator	19
Part 4—Miscellaneous	20
40 Delegation	20
41 Regulations.....	20



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No. 17, 2008

An Act to establish Infrastructure Australia and the Infrastructure Coordinator, and for related purposes

[Assented to 8 April 2008]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

2 Commencement

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

3 Definitions

In this Act:

Chair means the Chair of Infrastructure Australia.

COAG means the Council of Australian Governments.

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

Infrastructure Australia means the body established by section 4.

Infrastructure Coordinator means the Infrastructure Coordinator established by section 27.

member means a member of Infrastructure Australia and includes the Chair.

nationally significant infrastructure includes:

- (a) transport infrastructure; and
- (b) energy infrastructure; and
- (c) communications infrastructure; and
- (d) water infrastructure;

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

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

Part 2—Infrastructure Australia

Division 1—Establishment and functions of Infrastructure Australia

4 Establishment

Infrastructure Australia is established by this section.

5 Functions

Primary function—providing advice

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

Additional functions

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

Section 5

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

Performance of functions

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

Direction is not a legislative instrument

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

6 Minister may give directions to Infrastructure Australia

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

Division 2—Constitution and membership of Infrastructure Australia

7 Constitution

Infrastructure Australia consists of:

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

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

8 Appointment of members

- (1) Members (including the Chair) are to be appointed by the Minister by written instrument.
- (2) In making appointments, the Minister must ensure that:
 - (a) he or she is satisfied that each member has knowledge of, or experience in, a field relevant to Infrastructure Australia's functions; and
 - (b) 9 members (of whom one is the Chair) are people nominated by the Commonwealth; and
 - (c) 5 of the members (of whom one is the Chair) covered by paragraph (b) have acquired the knowledge or experience referred to in paragraph (a) in the private sector; and
 - (d) one of the members covered by paragraph (b) has acquired the knowledge or experience referred to in paragraph (a) in local government; and
 - (e) 3 members are people nominated by agreement between the States, the Australian Capital Territory and the Northern Territory.
- (3) The Chair may be appointed on a full-time or part-time basis.
- (4) A member, other than the Chair, must be appointed on a part-time basis.

9 Term of appointment

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

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

10 Acting appointments

- (1) The Minister may appoint a member to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act as a member:
 - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

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

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

11 Remuneration

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

Section 12

- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

12 Leave of absence

Full-time Chair

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

Part-time Chair

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

Other members

- (4) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.
- (5) The Chair must notify the Minister if the Chair grants to a member leave of absence for a period that exceeds 6 months.

13 Disclosure of interests to the Minister

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

14 Disclosure of interests to Infrastructure Australia

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

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

15 Outside employment

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

16 Other terms and conditions

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

17 Resignation of members

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

Section 18

18 Termination of appointment

All members

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

Additional grounds for full-time Chair

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

Additional ground for part-time Chair and other members

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

Division 3—Meetings of Infrastructure Australia

19 Convening meetings

- (1) Infrastructure Australia must hold the meetings that are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places that Infrastructure Australia determines.

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

- (3) The Chair:
 - (a) may convene a meeting; and
 - (b) must convene at least 4 meetings each calendar year; and
 - (c) must convene a meeting if requested in writing by:
 - (i) 3 or more other members; or
 - (ii) the Minister.

20 Presiding at meetings

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the other members present must appoint a member to preside.

21 Quorum

- (1) At a meeting of Infrastructure Australia, 8 members constitute a quorum.
- (2) However, if:
 - (a) section 14 prevents a member from participating in the deliberations or decisions of Infrastructure Australia with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;

Section 22

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

22 Voting at meetings

- (1) A question arising at a meeting is to be determined by a majority of the votes of the members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

23 Conduct of meetings

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

24 Minutes

Infrastructure Australia must keep minutes of its meetings.

25 Decisions without meetings

- (1) Infrastructure Australia is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by Infrastructure Australia under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if Infrastructure Australia:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.

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

Division 4—Reports

26 Annual reports

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

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

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

Part 3—The Infrastructure Coordinator

Division 1—Establishment and functions of the Infrastructure Coordinator

27 Establishment

There is to be an Infrastructure Coordinator.

28 Functions

- (1) The primary function of the Infrastructure Coordinator is to assist Infrastructure Australia in the performance of Infrastructure Australia's functions.
- (2) The Infrastructure Coordinator also has any functions that the Minister, by writing, directs the Infrastructure Coordinator to perform.
- (3) The Minister may have regard to any views of Infrastructure Australia in making directions under subsection (2).
- (4) A direction made under subsection (2) is not a legislative instrument.

Division 2—Terms and conditions of appointment

29 Appointment

- (1) The Infrastructure Coordinator is to be appointed by the Minister by written instrument.
- (2) The Infrastructure Coordinator is to be appointed on a full-time basis.

30 Term of appointment

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

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

31 Acting Infrastructure Coordinator

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

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

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

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

32 Remuneration

- (1) The Infrastructure Coordinator is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Infrastructure Coordinator is to be paid the remuneration that is prescribed.
- (2) The Infrastructure Coordinator is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

33 Leave of absence

- (1) The Infrastructure Coordinator has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Infrastructure Coordinator leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

34 Disclosure of interests to the Minister

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

35 Outside employment

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

Section 36

36 Other terms and conditions

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

37 Resignation

- (1) The Infrastructure Coordinator may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

38 Termination of appointment

- (1) The Minister may terminate the appointment of the Infrastructure Coordinator for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Infrastructure Coordinator if:
 - (a) the Infrastructure Coordinator:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Infrastructure Coordinator is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Infrastructure Coordinator engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 35); or
 - (d) the Infrastructure Coordinator fails, without reasonable excuse, to comply with section 34 (disclosure of interests).

Division 3—Staff assisting the Infrastructure Coordinator

39 Staff assisting the Infrastructure Coordinator

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

Part 4—Miscellaneous

40 Delegation

- (1) The Minister may, by writing, delegate any or all of his or her functions and powers under this Act (other than a function or power under paragraph 5(2)(j), section 6, 8 or 18, subsection 28(2) or section 29 or 38) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising functions or powers delegated under subsection (1), the delegate must comply with any directions of the Minister.

41 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 21 February 2008
Senate on 18 March 2008]*

(39/08)
