

Passed by both Houses



New South Wales

Infrastructure Implementation Corporation Bill 2005

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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, , 2005*



New South Wales

Infrastructure Implementation Corporation Bill 2005

Act No , 2005

An Act to constitute the Infrastructure Implementation Corporation and to confer on it functions in relation to major infrastructure projects; 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.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Infrastructure Implementation Corporation Act 2005*.

2 Commencement

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

3 Definitions

In this Act:

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

carry out a project has the same meaning as it has for the purposes of Part 3A of the *Environmental Planning and Assessment Act 1979*.

Director-General means the Director-General of the Premier's Department.

exercise a function includes perform a duty.

function includes a power, authority or duty.

Infrastructure Implementation Corporation (or **IIC**) means the Infrastructure Implementation Corporation constituted under this Act.

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

major infrastructure project means a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies.

project authorisation order means an order under section 9.

project divesting order means an order under section 14.

public authority means any of the following:

- (a) a public authority constituted by or under an Act,
- (b) a statutory body representing the Crown,
- (c) a statutory SOC,
- (d) a government Department,

but does not include a council within the meaning of the *Local Government Act 1993*.

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

statutory SOC means a statutory State owned corporation within the meaning of the *State Owned Corporations Act 1989* and includes any of its subsidiaries.

Part 2 Constitution, management and functions of IIC

4 Constitution of Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Infrastructure Implementation Corporation.
- (2) The IIC is a statutory body representing the Crown and has the status, privileges and immunities of the Crown.

5 Director-General to manage affairs of IIC

- (1) The affairs of the IIC are to be managed by the Director-General.
- (2) Any act, matter or thing done in the name of, or on behalf of, the IIC by the Director-General, or with the authority of the Director-General, is taken to have been done by the IIC.

6 Ministerial control

The IIC is subject to the control and direction of the Minister.

7 General functions of IIC

- (1) The IIC 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 public authority,
 - (c) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The IIC may delegate to any person the exercise of any of its functions, other than this power of delegation.

8 Staff of IIC

The IIC may arrange for the use of the services of any staff or facilities of any public authority to enable the IIC to exercise its functions.

Part 3 Functions of IIC in relation to major infrastructure projects

9 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.
- (4) A project authorisation order may not be made except with the written concurrence of the Treasurer.

10 Authorisation to carry out projects

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

11 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 public authority, declare the IIC to be responsible for the public authority's functions in relation to the carrying out of the project.
- (2) Without limiting section 9 (3), the following provisions have effect on the making of a project authorisation order as referred to in this section:
 - (a) the IIC has and may exercise all of the functions of the public authority in relation to the project,
 - (b) the public authority may not exercise any functions in relation to the project except with the consent of the IIC,
 - (c) the IIC may, with the concurrence of the Premier and after consulting with the public authority concerned, give directions to the public authority in relation to the project,
 - (d) the public authority must comply with any such directions given to it by the IIC.
- (3) Before making a project authorisation order that declares the IIC to be responsible for a major infrastructure project that is carried out by (or that involves) a statutory 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 board of directors of the SOC.

- (4) Failure to comply with subsection (3) does not affect the validity of the order.

12 Transfer of assets, rights and liabilities

- (1) If a project authorisation order declares the IIC to be responsible for another public authority's functions in relation to the carrying out of a major infrastructure project, the order may provide for the transfer to the IIC of such assets, rights and liabilities of the public authority (or classes of such assets, rights and liabilities) as are relevant to the project and are specified in the order.
- (2) Schedule 1 applies to a project authorisation order that provides for the transfer of any such assets, rights and liabilities.

13 Acquisition of land

- (1) The IIC 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 the IIC 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.

14 Transfer of IIC managed projects to public authority

- (1) The Premier may, by order published in the *Gazette* (a ***project divesting order***), direct that the assets, rights and liabilities of the IIC in relation to a major infrastructure project specified in the order (including any assets, rights and liabilities that have been transferred to the IIC by a project authorisation order) be transferred to another public authority specified in the order. The assets, rights and liabilities to be transferred by an order may consist of a specified class of assets, rights and liabilities.
- (2) 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.
- (3) A project divesting order may not be made except with the written concurrence of the Treasurer.
- (4) Schedule 1 applies to a project divesting order.

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- (5) Before making a project divesting order that transfers any assets, rights or liabilities to a statutory 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 board of directors of the SOC.
- (6) Failure to comply with subsection (5) does not affect the validity of the order.

15 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 4 Miscellaneous

16 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.

17 Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Premier's Department.

18 Personal liability

A matter or thing done or omitted to be done by:

- (a) the IIC, or
- (b) the Director-General, or
- (c) a person acting under the direction of the IIC or the Director-General,

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 the Director-General or a person so acting personally to any action, liability, claim or demand.

19 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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date. To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

20 Amendment of Public Finance and Audit Act 1983 No 152

Schedule 2 (Statutory bodies) to the *Public Finance and Audit Act 1983* is amended by inserting in alphabetical order the following:

Infrastructure Implementation Corporation

21 Review of Act

- (1) The Minister 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 date of assent to 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 Transfer of assets, rights and liabilities

(Sections 12 (2) and 14 (4))

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 12,
 - (b) a project divesting order.
- (2) For the purposes of this Schedule, the public authority from which any assets, rights or liabilities are transferred by such an order is called the **transferor** and the public authority to which they are being so transferred is called the **transferee**.
- (3) 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) 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,
- (e) 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 Minister 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 Minister for purposes of orders

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

9 Confirmation of vesting

- (1) The Minister 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.