

Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 No 1

[2009-1]



New South Wales

Status Information

Currency of version

Historical version for 13 March 2009 to 13 March 2009 (accessed 23 November 2024 at 7:09)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Proposed repeal**
The Act is to be repealed by proclamation under sec 31 (3) of this Act.
- **Note**
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 March 2009

Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 No 1



New South Wales

Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Object of Act	4
4 Definitions	4
5 Infrastructure projects to which Act applies	5
Part 2 Infrastructure Co-ordinator General	6
6 The NSW Infrastructure Co-ordinator General	6
7 Advisory Taskforces	6
8 Delegation of Co-ordinator General's functions	7
Part 3 Co-ordination of State government agencies in delivering infrastructure projects	7
9 Obligations of government agencies	7
10 Powers of government agencies	8
11 Minister may direct government agencies to co-operate	8
12 Councils and other local authorities excluded from this Part	8
Part 4 Carrying out infrastructure projects on behalf of State government agencies	

.....	8
13 Definitions—Part 4	8
14 Project authorisation orders	9
15 Authorisation to carry out projects	9
16 Authorisation to take over projects.....	9
17 Transfer of assets, rights and liabilities.....	10
18 Acquisition of land	10
19 Transfer of Co-ordinator General managed projects to government agencies—project divesting orders	10
20 Application of orders	11
21 Projects of councils and other local authorities excluded from this Part.....	11
Part 5 Authorisation of infrastructure projects.....	11
22 Meaning of development control legislation	11
23 Approval requirements under other Acts.....	11
24 Authorisation of Co-ordinator General to carry out infrastructure project	12
25 Application of Environmental Planning and Assessment Act 1979	13
26 Notification of exemptions and authorisations	14
Part 6 Miscellaneous	14
27 Protection of exercise of certain functions.....	14
28 Personal liability	15
29 Regulations.....	15
30 Review of exercise of Co-ordinator General’s functions.....	16
31 Repeal of Act	17
Schedule 1 Transfer of assets, rights and liabilities	17
Schedule 2 Amendment of other legislation.....	19

Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 No 1



New South Wales

An Act to enable New South Wales to deliver the infrastructure projects funded under the Nation Building and Jobs Plan of the Commonwealth in accordance with its obligations under the February 2009 COAG partnership agreement.

Part 1 Preliminary

1 Name of Act

This Act is the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Object of Act

The object of this Act is to ensure the timely delivery in New South Wales of the infrastructure projects funded by the Commonwealth under the Nation Building and Jobs Plan to implement the COAG partnership agreement of 5 February 2009 to reduce the impact on Australia of the global economic recession.

4 Definitions

(1) In this Act:

Commonwealth Funding Acts means the *Appropriation (Nation Building and Jobs) Act (No. 1) 2008-2009* and the *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-2009* of the Commonwealth.

Co-ordinator General means the NSW Infrastructure Co-ordinator General under section 6.

development means development within the meaning of the *Environmental Planning and Assessment Act 1979*, and includes an activity within the meaning of Part 5 of that Act.

exercise a function includes perform a duty.

function includes power, authority or 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 State owned corporation,

but does not include the NSW Police Force, the Independent Commission Against Corruption or the Ombudsman's Office.

infrastructure project means an infrastructure project to which this Act applies under section 5.

Taskforce means a Taskforce established under section 7.

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

5 Infrastructure projects to which Act applies

- (1) An infrastructure project to which this Act applies is any development funded under the Nation Building and Jobs Plan.
- (2) Development is taken to be funded under the Nation Building and Jobs Plan if the Coordinator General certifies, by order in writing, that the Commonwealth has determined that money appropriated under the Commonwealth Funding Acts will be allocated for the erection of buildings or the carrying out of works in connection with the development. Development cannot be certified after the erection of those buildings or the carrying out of those works is completed.
- (3) Examples of development that is to be funded under the Nation Building and Jobs Plan include development for the purposes of the following:
 - (a) multi-purpose halls and libraries, science and language centres and maintenance and minor building works for government and non-government schools,
 - (b) social housing,
 - (c) community infrastructure provided by local councils (such as halls, community centres and sport and recreation facilities),

(d) land transport infrastructure (such as the repair of roads, the installation of railway boomgates and road safety “black spots” projects).

(4) For the purposes of this section, words and expressions have the same meanings as they have in the *Environmental Planning and Assessment Act 1979* (except as otherwise provided in this Act).

Part 2 Infrastructure Co-ordinator General

6 The NSW Infrastructure Co-ordinator General

(1) There is to be a NSW Infrastructure Co-ordinator General (the ***Co-ordinator General***).

(2) The Co-ordinator General is:

- (a) the person holding office as the Co-ordinator General under Chapter 1A of the *Public Sector Employment and Management Act 2002*, or
- (b) during any vacancy in that office, the Director-General of the Department of Premier and Cabinet.

(3) The Co-ordinator General has the following functions:

- (a) to plan and oversee a program for the delivery of infrastructure projects within the timeframes required for Commonwealth funding,
- (b) to advise on appropriate tendering and procurement procedures for the delivery of infrastructure projects within those timeframes,
- (c) the functions under Part 3 relating to the co-ordination of State government agencies in delivering infrastructure projects,
- (d) the functions under Part 4 of carrying out infrastructure projects on behalf of State government agencies,
- (e) the functions under Part 5 of authorising the carrying out of infrastructure projects,
- (f) such other functions as are conferred on the Co-ordinator General by or under this or any other Act or law.

(4) The Co-ordinator General must have regard to the project delivery timeframes required for Commonwealth funding of infrastructure projects when exercising his or her functions under this Act.

7 Advisory Taskforces

(1) The Minister is to establish a Taskforce to advise on the exercise of functions under

this Act in relation to infrastructure projects. Separate Taskforces may be established for different projects or different classes of projects.

- (2) A Taskforce is to comprise:
 - (a) the Co-ordinator General, who is to be the presiding member, and
 - (b) a nominee of each government agency that the Minister determines is to be represented on the Taskforce, and
 - (c) such other persons with relevant private sector business or other expertise as are appointed by the Minister.
- (3) The members of a Taskforce (other than the Co-ordinator General and nominees of a government agency) are entitled to be paid such remuneration as the Minister determines (including re-imbusement for travelling, accommodation and other expenses incurred in exercising their functions).
- (4) Subject to the regulations, the term of office of appointed members of a Taskforce, the procedure for calling meetings of a Taskforce and the conduct of business at those meetings are to be determined by the Minister.

8 Delegation of Co-ordinator General's functions

- (1) The Co-ordinator General may delegate to an authorised person any of his or her functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Co-ordinator General if the delegate is authorised in writing to do so by the Co-ordinator General.
- (3) In this section, **authorised person** means a government agency or member of staff of a government agency.

Part 3 Co-ordination of State government agencies in delivering infrastructure projects

9 Obligations of government agencies

A government agency has the following obligations in respect of infrastructure projects:

- (a) to co-operate with the Co-ordinator General in the exercise of his or her functions, including complying with any reasonable request of the Co-ordinator General for information to enable the Co-ordinator General to exercise his or her functions,
- (b) to provide resources and assistance in accordance with any request of the Co-ordinator General that is authorised by or under this Act,
- (c) to notify the Co-ordinator General of any proposed exercise of the agency's functions

that may impact adversely on the exercise of the Co-ordinator General's functions,

- (d) to comply with any reasonable request of the Co-ordinator General for the agency to exercise its functions in a timely manner.

10 Powers of government agencies

Despite the provisions of any other Act or law, a government agency:

- (a) is authorised to exercise any of its functions in order to comply with a request, direction or decision of the Co-ordinator General made or given under this Act, and
- (b) is authorised and empowered to enter into agreements with the Co-ordinator General for the purposes of this Act and may do or suffer anything necessary or expedient for carrying any such agreement into effect.

11 Minister may direct government agencies to co-operate

- (1) This section applies to any government agency:
- (a) that is responsible for the delivery of an infrastructure project, or
- (b) that exercises functions affecting the delivery of an infrastructure project, or
- (c) that is declared by the regulations to be an agency to which this section applies.
- (2) The Minister may, by notice in writing given to any such government agency, direct the agency to comply with a request, direction or decision made by the Co-ordinator General for the purposes of his or her functions under this Act.

12 Councils and other local authorities excluded from this Part

This Part does not apply to a council (within the meaning of the [Local Government Act 1993](#)) or other local authority.

Part 4 Carrying out infrastructure projects on behalf of State government agencies

13 Definitions—Part 4

In this Part:

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.

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 14.

project divesting order means an order under section 19.

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

14 Project authorisation orders

- (1) **Orders made by Premier** The Premier may make orders for the purposes of this Part in relation to any infrastructure project.
- (2) **Orders made by portfolio Minister** Any other Minister may, with the concurrence of the Co-ordinator General, make orders for the purposes of this Part in relation to any infrastructure projects proposed by the Minister or a government agency responsible to the Minister.
- (3) A project authorisation order must be published in the Gazette.
- (4) A project authorisation order may be made on such terms and conditions as the Minister making the order determines and as are specified or referred to in the order.

15 Authorisation to carry out projects

A project authorisation order may authorise the Co-ordinator General to carry out an infrastructure project specified in the order.

16 Authorisation to take over projects

- (1) A project authorisation order may, in the case of an infrastructure project that is carried out by (or that involves) another government agency, declare the Co-ordinator General to be responsible for the functions of the government agency in relation to the carrying out of the project.
- (2) Without limiting section 14 (4), the following provisions have effect on the making of a project authorisation order as referred to in this section:
 - (a) the Co-ordinator General 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 the Co-ordinator General,
 - (c) the Co-ordinator General may, with the concurrence of the Minister who made the project authorisation order and after consulting with the government agency concerned, 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 the Co-ordinator General.

17 Transfer of assets, rights and liabilities

- (1) If a project authorisation order declares the Co-ordinator General to be responsible for the functions of a government agency in relation to the carrying out of an infrastructure project, the order may provide for the transfer to the State of 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 1 applies to a project authorisation order that provides for the transfer of any such assets, rights and liabilities.
- (3) The Co-ordinator General may act for the State of NSW in relation to any such transferred assets, rights or liabilities.

18 Acquisition of land

- (1) The State of NSW may, for the purposes of the exercise of the functions of the Co-ordinator General in relation to an 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 State of NSW, in relation to that authorised work, is taken to be the Constructing Authority.
- (3) Sections 34–37 of the [Public Works Act 1912](#) do not apply to or in respect of an infrastructure project to which a project authorisation order relates.
- (4) The Co-ordinator General may act for the State of NSW in connection with an acquisition of land under this section and in relation to any such land so acquired or work carried out on any such land.

19 Transfer of Co-ordinator General managed projects to government agencies—project divesting orders

- (1) In this section:

relevant Minister means the Premier or, in relation to an infrastructure project that was the subject of a project authorisation order made by another Minister, that other Minister.

- (2) The relevant Minister may, by order published in the Gazette, direct that the assets, rights and liabilities of the State of NSW in relation to an infrastructure project specified in the order (including any assets, rights and liabilities that have been transferred to the State of NSW by a project authorisation order) be transferred to the government agency specified in the order.
- (3) The assets, rights and liabilities to be transferred by a project divesting order may

consist of a specified class of assets, rights and liabilities.

- (4) A project divesting order may be made on such terms and conditions as the relevant Minister determines and as are specified or referred to in the order.
- (5) Schedule 1 applies to a project divesting order.

20 Application of orders

A project authorisation order or a project divesting order may apply to the whole of an infrastructure project or to a specified part of such a project only. Accordingly, a reference in this Part to an 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.

21 Projects of councils and other local authorities excluded from this Part

This Part does not apply to an infrastructure project carried out or to be carried out by a council (within the meaning of the [Local Government Act 1993](#)) or other local authority.

Part 5 Authorisation of infrastructure projects

22 Meaning of development control legislation

- (1) For the purposes of this Part, **development control legislation** means provisions made by or under the [Environmental Planning and Assessment Act 1979](#) or any other Act that prohibit the carrying out of development or that require the approval of any person or body before development is carried out.
- (2) To avoid doubt, development control legislation extends to the provisions of other Acts referred to in section 75U of the [Environmental Planning and Assessment Act 1979](#) (Approvals etc legislation that does not apply) relating to requirements for authorisations or to the making or giving of orders or notices.
- (3) In subsection (1):

approval includes permit, licence, consent or other authority (however described).

prohibit includes prohibit temporarily or in part, or authorise a person or body to prohibit.

23 Approval requirements under other Acts

- (1) The Co-ordinator General may, by order in writing, declare that a specified infrastructure project (or an infrastructure project of a specified class):
 - (a) is exempt from all or any specified development control legislation, or
 - (b) is exempt from all or any specified development control legislation if the carrying out of the project is the subject of an authorisation of the Co-ordinator General

under section 24.

Note—

Section 8 enables the Co-ordinator General to delegate the function of giving any such authorisation. The *Interpretation Act 1987* applies to enable an order under this section to be revoked or amended.

- (2) Any such order has effect according to its tenor.
- (3) Without limiting the power to amend or revoke any such order, the order may be amended or revoked if the conditions of an authorisation under section 24 are not complied with.
- (4) Any such order is revoked if the development to which the order applies ceases to be an infrastructure project because of the revocation of a relevant certification of the Co-ordinator General under section 5.
- (5) The revocation of any such order does not affect the continuation of anything validly done before that revocation.

24 Authorisation of Co-ordinator General to carry out infrastructure project

- (1) This section applies if an order under section 23 provides that the carrying out of an infrastructure project requires the authorisation of the Co-ordinator General.
- (2) The person proposing to carry out the infrastructure project (or a person on his or her behalf) may apply to the Co-ordinator General for an authorisation to carry out the project.
- (3) Any such application must be in writing and include the following information:
 - (a) a description of the proposed infrastructure project,
 - (b) a description of the land on which the project is to be carried out,
 - (c) the date when construction for the project is to be commenced and the anticipated date of completion of the project,
 - (d) any other information relating to the project that the regulations, or the Co-ordinator General, require to be included.
- (4) The Co-ordinator General may authorise the carrying out of the infrastructure project subject to any conditions set out or referred to in the authorisation.
- (5) The Co-ordinator General may, by notice in writing to the person carrying out the infrastructure project, amend or revoke the conditions of an authorisation before the project has been carried out.
- (6) The conditions of an authorisation to carry out an infrastructure project may (without limitation) include conditions relating to any of the following:

- (a) public notification requirements in relation to the carrying out of the project,
 - (b) environmental protection,
 - (c) heritage conservation,
 - (d) threatened species, and other flora and fauna, conservation,
 - (e) bush fire protection,
 - (f) hours and other conditions of operation of the project,
 - (g) road safety and traffic management,
 - (h) development contributions by the person carrying out the project for other State, regional or local infrastructure,
 - (i) reporting requirements.
- (7) An authorisation to carry out an infrastructure project is taken to be a development consent under the *Environmental Planning and Assessment Act 1979* for the purposes of:
- (a) Part 8A of the *National Parks and Wildlife Act 1974*, and
 - (b) Part 7A of the *Fisheries Management Act 1994*, and
 - (c) the *Native Vegetation Act 2003*, and
 - (d) any other Act (or provision of any other Act) prescribed by the regulations for the purposes of this subsection.

25 Application of *Environmental Planning and Assessment Act 1979*

- (1) This section applies if an order under section 23 exempts an infrastructure project from the *Environmental Planning and Assessment Act 1979* (subject to the terms of the order).
- (2) An environmental planning instrument under that Act cannot prohibit, require development consent for or otherwise restrict the carrying out of the infrastructure project.

Note—

The exclusion of the need for development consent also excludes any requirement for the payment of development contributions under that Act.

- (3) Part 5 of that Act does not apply in respect of the carrying out of the infrastructure project.
- (4) The infrastructure project is not, and cannot be declared to be, a project under Part 3A

of that Act.

- (5) An order under Division 2A of Part 6 of that Act does not have effect to the extent that it prevents or interferes with the carrying out of the infrastructure project.
- (6) Subsection (2) applies to an environmental planning instrument made before or after the commencement of this section.

Note—

See section 29, which authorises regulations to restore the operation of the *Environmental Planning and Assessment Act 1979* in relation to infrastructure projects carried out under this Act.

26 Notification of exemptions and authorisations

- (1) The Co-ordinator General may provide a copy of an exemption under section 23 or an authorisation under section 24 to the council of the area in which any infrastructure project to which the exemption or authorisation relates is to be carried out.
- (2) In that case, a planning certificate under section 149 of the *Environmental Planning and Assessment Act 1979* in relation to any land concerned is to include advice about any such exemption or authorisation.

Part 6 Miscellaneous

27 Protection of exercise of certain functions

- (1) This section applies to any of the following functions (**a protected function**) conferred or imposed on the Co-ordinator General (or his or her delegate) or a Minister (**a protected person**):
 - (a) a certification under section 5 that any development is an infrastructure project to which this Act applies,
 - (b) the giving of a direction to a government agency under section 11,
 - (c) the making of a project authorisation order or project divesting order under Part 4,
 - (d) the declaring of an exemption or giving of an authorisation under Part 5.
- (2) The exercise by any protected person of any protected function may not be:
 - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
 - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a protected person, with the provisions of this Act or the rules of natural justice

(procedural fairness).

- (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.
- (5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).
- (6) In this section:

exercise of functions includes:

- (a) the purported exercise of functions, and
- (b) the non-exercise or improper exercise of functions, and
- (c) the proposed, apprehended or threatened exercise of functions.

proceedings includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the [Supreme Court Act 1970](#),

but does not include any investigation or proceedings under the [Independent Commission Against Corruption Act 1988](#).

28 Personal liability

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

- (a) the Co-ordinator General or a person acting under the direction of the Co-ordinator General, or
- (b) a member of a Taskforce or a person acting under the direction of any such member,

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 Co-ordinator General, a member of a Taskforce or a person so acting personally to any action, liability, claim or demand.

29 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 make provision for or with respect to restoring the operation of the *Environmental Planning and Assessment Act 1979* in relation to an infrastructure project that would otherwise be exempted from that Act by this Act and, in particular, for or with respect to:
- (a) declaring an authorisation of an infrastructure project by the Co-ordinator General to be a development consent or other approval under that Act and applying the provisions of that Act (with any specified modifications) to any such consent or approval, and
 - (b) the operation of provisions relating to existing uses and the continuance of lawful uses in relation to an infrastructure project.

For that purpose, the regulations may also amend that Act to insert provisions into Schedule 6 to that Act in relation to the application of that Act (before or after the repeal of this Act) to infrastructure projects carried out under this Act.

- (3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (4) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (5) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.

30 Review of exercise of Co-ordinator General's functions

The Minister is to ensure that the exercise of the functions of the Co-ordinator General under this Act are, as soon as practicable after the period of 12 months after the commencement of this Act, reviewed by:

- (a) a joint committee of both Houses of Parliament, or
- (b) if there is no joint committee that can undertake the review—such other appropriately qualified person as the Minister appoints for that purpose.

31 Repeal of Act

- (1) The Co-ordinator General is to keep the need for this Act under review having regard to the object of this Act.
- (2) If the Co-ordinator General determines that this Act is no longer required, the Co-ordinator General is to provide a certificate to that effect to the Minister.
- (3) This Act is repealed on a day appointed by proclamation after the Co-ordinator General has provided a certificate that this Act is no longer required.

Schedule 1 Transfer of assets, rights and liabilities

(Sections 17 (2) and 19 (5))

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 17,
 - (b) a project divesting order.
- (2) For the purposes of this Schedule, the NSW government agency from which any assets, rights or liabilities are transferred by such an order is called the **transferor** and the State of NSW or government agency 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) 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,
- (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 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.

Schedule 2 Amendment of other legislation

2.1 Public Sector Management (Goods and Services) Regulation 2000

Clause 5A

Insert after clause 5:

5A Nation Building and Jobs Plan projects—special provision

- (1) This clause applies to infrastructure projects to which the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009* applies.
- (2) The Co-ordinator General under that Act may determine policies and procedures with respect to the procurement of goods and services by a public sector agency for the delivery of any such infrastructure projects, and to any tendering or contracts for those goods and services.
- (3) This clause has effect despite anything to the contrary in the other provisions of

this Regulation.

2.2 Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Insert at the end of the Schedule with appropriate item numbering:

Regulations under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.