

# Infrastructure Western Australia Bill 2019

## Contents

<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Act binds Crown	5
<b>Part 2 — Infrastructure WA</b>		
5.	Infrastructure WA established	6
6.	Agent of Crown	6
7.	Principal objects	6
8.	Functions	6
9.	Advice and reports may be made publicly available	9
10.	Annual work programme	9
11.	Powers	9
12.	Delegation	10
<b>Part 3 — Infrastructure strategy and planning</b>		
<b>Division 1 — State Infrastructure Strategy</b>		
13.	Preparation and submission to Premier	11
14.	Content and preparation	11
15.	Acceptance, tabling and publication	12
16.	Government response	13
17.	Amendment	14
<b>Division 2 — State Infrastructure Programmes</b>		
18.	State Infrastructure Programmes	14
<b>Division 3 — Major infrastructure proposals</b>		
19.	Infrastructure WA to assess major infrastructure proposals prior to investment decision	15

Contents

---

20.	Timing of assessment of major infrastructure proposals	16
21.	Guidelines and summary reports	16
	<b>Division 4 — Obligations of State agencies</b>	
22.	State agencies to provide information to Infrastructure WA	17
23.	Obligations of State agencies	18
	<b>Division 5 — Implementation of State Infrastructure Strategy</b>	
24.	Report on implementation of State Infrastructure Strategy	19
	<b>Part 4 — Governance and administration</b>	
	<b>Division 1 — The Board</b>	
	<b>Subdivision 1 — Board constituted</b>	
25.	Board is governing body of Infrastructure WA	20
26.	Board membership	20
27.	Chairperson and deputy chairperson	21
28.	Terms and conditions of appointment	21
29.	Remuneration and expenses	22
30.	Casual vacancies	22
31.	Extension of term of office	23
32.	Leave of absence	24
33.	Alternate members	24
	<b>Subdivision 2 — Board procedures</b>	
34.	Holding meetings	25
35.	Quorum	25
36.	Balance of members at meetings	25
37.	Presiding members	25
38.	Procedure at meetings	25
39.	Holding meetings remotely	26
40.	Voting	26
41.	Resolution without meeting	26
42.	Minutes to be kept	26
43.	Committees	26
	<b>Subdivision 3 — Disclosure of interests</b>	
44.	Financial interest in a matter	27
45.	Disclosure of material personal interests	27

---

46.	Participation by interested members	28
47.	Section 46 may be declared inapplicable	29
48.	Quorum where section 46 applies	29
	<b>Division 2 — Staff</b>	
	<b>Subdivision 1 — CEO</b>	
49.	CEO	30
50.	Appointment of CEO	30
51.	Terms and conditions of appointment	31
52.	Remuneration	31
53.	Casual vacancies	31
54.	Disclosure of material personal interests	33
55.	Entitlements of public service officer as CEO	33
56.	No outside employment	34
57.	Acting CEO	34
	<b>Subdivision 2 — Other staff</b>	
58.	Other staff	34
59.	Use of government staff and facilities	35
	<b>Division 3 — Accountability and financial provisions</b>	
60.	Premier may give directions	35
61.	Premier to have access to information	36
62.	Application of <i>Financial Management Act 2006</i> and <i>Auditor General Act 2006</i>	37
63.	Infrastructure WA’s funds	37
64.	Protection for disclosure or compliance with directions	37
	<b>Part 5 — General</b>	
	<b>Division 1 — Protection of information</b>	
65.	Confidentiality	38
66.	Authorised use or disclosure of information	38
67.	Restrictions on disclosure of sensitive information	39
	<b>Division 2 — Miscellaneous</b>	
68.	Execution of documents	40
69.	Protection from liability for wrongdoing	41
70.	Making certain things publicly available	41
71.	Laying documents before Parliament not sitting	42
72.	Regulations	42
73.	Review of Act	43

**Part 6 — Consequential amendments  
to other Acts**

74.	<i>Constitution Acts Amendment Act 1899</i> amended	44
75.	<i>Financial Management Act 2006</i> amended	44
76.	<i>Planning and Development Act 2005</i> amended	44
77.	<i>Public Sector Management Act 1994</i> amended	44

**Defined terms**

Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during Committee of the whole)*

**Infrastructure Western Australia Bill 2019**

**A Bill for**

**An Act —**

- **to establish Infrastructure WA for the principal purpose of providing advice and assistance to the Government on matters relating to infrastructure; and**
- **to amend certain other Acts consequentially; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## Part 1 — Preliminary

### 1. Short title

This is the *Infrastructure Western Australia Act 2019*.

### 2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 8(1)(b) and Part 3 Divisions 2 and 3 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) the rest of the Act — on the day after the period of 1 month beginning on assent day.

### 3. Terms used

In this Act —

*appointed Board member* means a Board member appointed under section 26(2);

*Board* means Infrastructure WA’s Board referred to in section 25;

*Board member* means a member of the Board;

*CEO* has the meaning given in section 49;

*committee* means a committee appointed under section 43;

*Department of the Premier and Cabinet* means the department of the Public Service principally assisting the Premier;

*employing authority* has the meaning given in the *Public Sector Management Act 1994* section 3(1);

*ex-officio Board member* means a person who is a Board member under section 26(3);

- 1           **government employee** means any of the following —
- 2           (a) a person employed in the Public Sector by or under an
- 3           employing authority;
- 4           (b) a person who is an employee of a public authority;
- 5           **Government response** means a response to the State
- 6           Infrastructure Strategy prepared by the Premier under
- 7           section 16;
- 8           **government trading enterprise** means any of the following —
- 9           (a) a body established by the *Electricity Corporations*
- 10           *Act 2005* section 4(1);
- 11           (b) a port authority established by the *Port Authorities*
- 12           *Act 1999* section 4(1);
- 13           (c) a body established by or under the *Water Corporations*
- 14           *Act 1995* section 4;
- 15           (d) the body established by the *Western Australian Land*
- 16           *Authority Act 1992* section 5(1);
- 17           (e) a body prescribed for the purposes of this definition;
- 18           (f) a subsidiary of a body referred to in one of
- 19           paragraphs (a) to (e);
- 20           **infrastructure** includes infrastructure that has, or is intended to
- 21           have, economic, social or environmental value;
- 22           **Infrastructure Australia** means the body established by the
- 23           *Infrastructure Australia Act 2008* (Commonwealth) section 4;
- 24           **major infrastructure proposal** means a proposal, for an
- 25           infrastructure project or for a programme of infrastructure
- 26           projects, if —
- 27           (a) the project has or the projects have an estimated capital
- 28           cost of \$100 million or more, or another amount
- 29           prescribed for the purposes of this paragraph; or
- 30           (b) the proposal is nominated by the Premier for the
- 31           purposes of this definition; or

s. 3

---

- 1 (c) the project is or the projects are prescribed, or in a class  
2 of infrastructure project prescribed, for the purposes of  
3 this definition;
- 4 **misconduct**, in relation to an office holder, includes conduct  
5 that renders the office holder unfit to hold office even though  
6 the conduct does not relate to a duty of the office;
- 7 **public authority** means any of the following —
- 8 (a) a Minister of the Crown;
- 9 (b) an agency or an organisation as those terms are defined  
10 in the *Public Sector Management Act 1994* section 3(1);
- 11 (c) a body, whether incorporated or not, or the holder of an  
12 office, that is established or continued for a public  
13 purpose under a written law and that, under the authority  
14 of a written law, performs a statutory function on behalf  
15 of the Crown;
- 16 **Public Sector** has the meaning given in the *Public Sector*  
17 *Management Act 1994* section 3(1);
- 18 **remuneration** has the meaning given in the *Salaries and*  
19 *Allowances Act 1975* section 4(1);
- 20 **staff member** means the CEO or a person referred to in  
21 section 57, 58 or 59;
- 22 **State agency** means any of the following —
- 23 (a) an agency as defined in the *Financial Management*  
24 *Act 2006* section 3;
- 25 (b) a government trading enterprise;
- 26 **State Infrastructure Programme** means the State Infrastructure  
27 Programme in effect under Part 3 Division 2 for the time being;
- 28 **State Infrastructure Strategy** means the State Infrastructure  
29 Strategy in effect under Part 3 Division 1 for the time being;
- 30 **unable to act**, in relation to an office holder, includes, without  
31 limitation, that the office holder is on leave, whether extended  
32 or not and whether for illness or not.



1 **4. Act binds Crown**

2 This Act binds the Crown in right of Western Australia and, so  
3 far as the legislative power of the Parliament permits, the Crown  
4 in all its other capacities.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## **Part 2 — Infrastructure WA**

### **5. Infrastructure WA established**

- (1) Infrastructure WA is established.
- (2) Infrastructure WA —
  - (a) is a body corporate; and
  - (b) has perpetual succession; and
  - (c) has a common seal; and
  - (d) may sue and be sued in its corporate name.

### **6. Agent of Crown**

Infrastructure WA is an agent of the Crown and has the status, immunity and privileges of the Crown.

### **7. Principal objects**

Infrastructure WA's principal objects are —

- (a) to provide advice and assistance to the Government on matters relating to infrastructure;
- (b) to assist in enhancing the efficiency and effectiveness of infrastructure planning and coordination;
- (c) to promote the adoption and use of policies, practices, information and analysis to support sound decision-making in relation to infrastructure.

### **8. Functions**

- (1) Infrastructure WA's functions are —
  - (a) to prepare and submit to the Premier State Infrastructure Strategies, in accordance with Part 3 Division 1;
  - (b) to assess and report to the Premier on major infrastructure proposals, in accordance with Part 3 Division 3;

- 1           (c) to provide advice and assistance to State agencies in the
- 2           preparation of infrastructure strategies, plans and
- 3           policies, including by preparing, at the request of the
- 4           Premier, strategies, plans and policies on behalf of State
- 5           agencies;
- 6           (d) to provide advice to State agencies on the preparation of
- 7           infrastructure proposals;
- 8           (e) to review and report to the Premier on infrastructure
- 9           proposals prior to their submission to Infrastructure
- 10          Australia;
- 11          (f) under the direction of the Premier, to coordinate the
- 12          provision of information and submissions to
- 13          Infrastructure Australia;
- 14          (g) to monitor and report on progress in implementing the
- 15          State Infrastructure Strategy, in accordance with Part 3
- 16          Division 5;
- 17          (h) to provide advice to the Premier on —
- 18              (i) infrastructure priorities;
- 19              (ii) funding and financing of infrastructure;
- 20              (iii) any other matter relating to infrastructure;
- 21          (i) to review and report to the Premier on completed
- 22          infrastructure projects;
- 23          (j) to promote public awareness of matters relating to
- 24          infrastructure;
- 25          (k) to perform the other functions conferred on
- 26          Infrastructure WA under this Act;
- 27          (l) to perform, at the request of the Premier, any other
- 28          function relating to infrastructure.

**s. 8**

---

- 1 (2) When performing its functions, Infrastructure WA must  
2 consider the following —
- 3 (a) current relevant Government strategies, plans, policies,  
4 priorities and forecasts, including —
- 5 (i) population, economic, financial and  
6 environmental forecasts;
- 7 (ii) land use plans;
- 8 (iii) strategies, plans and policies relating to the  
9 various infrastructure sectors;
- 10 (iv) any other social, economic or environmental  
11 policies;
- 12 (b) the economic, social and environmental value of  
13 infrastructure;
- 14 (c) the infrastructure needs of the non-metropolitan regions;
- 15 (d) the needs of a broad range of users of infrastructure;
- 16 (e) the complete lifecycle of infrastructure;
- 17 (f) how existing infrastructure can be used more efficiently  
18 and effectively;
- 19 (g) technological advances and trends;
- 20 (h) social and demographic trends;
- 21 (i) the financial implications for the Crown (if any) of its  
22 advice and recommendations;
- 23 (j) any other relevant matter.
- 24 (3) When performing its functions Infrastructure WA is, where  
25 relevant, appropriate and practicable, to consult with interested  
26 persons, including (without limitation) the Regional  
27 Development Commissions, established under the *Regional*  
28 *Development Commissions Act 1993*, and other persons with  
29 knowledge of or an interest in the infrastructure needs of the  
30 non-metropolitan regions.

1     **9.       Advice and reports may be made publicly available**

2       (1) Infrastructure WA may, with the approval of the Premier, make  
3       advice or a report prepared in the performance of a function  
4       under this Act publicly available.

5       (2) This section does not apply to a report or other thing that must  
6       or may be made publicly available under another provision of  
7       this Act.

8     **10.      Annual work programme**

9       (1) Infrastructure WA must, in consultation with the Premier,  
10      prepare an annual work programme.

11      (2) Each programme must be submitted to the Premier before the  
12      beginning of the financial year to which it relates.

13      (3) Each programme must cover the key activities that  
14      Infrastructure WA proposes to undertake in the year to which it  
15      relates.

16      (4) Infrastructure WA must inform the Premier, in writing, of any  
17      key activity that it proposes to undertake in a year that is not  
18      covered by the work programme for the year.

19      (5) Infrastructure WA must make its annual work programme  
20      publicly available.

21      (6) Infrastructure WA may remove from an annual work  
22      programme any information that it considers to be confidential  
23      or otherwise not suitable to be made publicly available, prior to  
24      making the programme publicly available.

25     **11.      Powers**

26      (1) Infrastructure WA has all the powers it needs to perform its  
27      functions.

**s. 12**

---

- 1 (2) Without limiting subsection (1), Infrastructure WA may, for the  
2 purpose of performing any of its functions, but subject to any  
3 limitation imposed by this Act —
- 4 (a) enter into a contract or other arrangement, including a  
5 contract or arrangement for the provision of services to  
6 Infrastructure WA;
- 7 (b) develop and turn to account any technology, software or  
8 other intellectual property that relates to its functions  
9 and, for that purpose, apply for, hold, exploit and  
10 dispose of any intellectual property;
- 11 (c) acquire, dispose of and otherwise deal with real or  
12 personal property.

13 **12. Delegation**

- 14 (1) Infrastructure WA may delegate to a Board member, staff  
15 member or government employee any power or duty of  
16 Infrastructure WA under another provision of this Act.
- 17 (2) The delegation must be in writing executed by Infrastructure  
18 WA.
- 19 (3) A person to whom a power or duty is delegated under this  
20 section cannot delegate that power or duty.
- 21 (4) A person exercising or performing a power or duty that has been  
22 delegated to the person under this section is taken to do so in  
23 accordance with the terms of the delegation unless the contrary  
24 is shown.
- 25 (5) Nothing in this section limits Infrastructure WA's ability to  
26 perform a function through an officer or agent.
- 27 (6) This section does not apply to the execution of documents.

28 Note for this subsection:

29 Authority to execute documents on Infrastructure WA's behalf can be  
30 given under section 68.

1                    **Part 3 — Infrastructure strategy and planning**

2                    **Division 1 — State Infrastructure Strategy**

3      **13.      Preparation and submission to Premier**

4            (1)      Infrastructure WA must, from time to time, prepare and submit  
5            to the Premier a State Infrastructure Strategy.

6            (2)      Each strategy, other than the first, must be prepared and  
7            submitted within 5 years of the previous one having been laid  
8            before Parliament under section 15.

9            (3)      The Premier may direct that a strategy be prepared and  
10           submitted within a lesser period.

11           (4)      Prior to submitting a State Infrastructure Strategy to the  
12           Premier, Infrastructure WA must make a draft of the proposed  
13           strategy publicly available, and undertake public consultation on  
14           the proposed strategy.

15      **14.      Content and preparation**

16           (1)      Infrastructure WA must include in the State Infrastructure  
17           Strategy —

18                    (a)      the identification of Western Australia’s significant  
19                    infrastructure needs and priorities over at least the next  
20                    20 years; and

21                    (b)      the economic, social and environmental objectives  
22                    against which Western Australia’s infrastructure needs  
23                    were assessed; and

24                    (c)      recommendations about —

25                                    (i)      significant projects or programmes, or other  
26                                    options, intended to meet those infrastructure  
27                                    needs and priorities; and

28                                    (ii)     funding and financing options, when appropriate,  
29                                    for the projects, programmes and options;

30                    and

- 1 (d) the relative priority of the recommendations.
- 2 (2) When preparing a State Infrastructure Strategy, Infrastructure  
3 WA must do the following —
- 4 (a) assess the current state of infrastructure in Western  
5 Australia;
- 6 (b) identify significant current, and expected future,  
7 deficiencies in Western Australia’s infrastructure;
- 8 (c) identify the areas in which those deficiencies are  
9 contributing to, or may contribute to, significant  
10 economic, social or environmental costs;
- 11 (d) assess the short, medium and long-term options  
12 available to meet Western Australia’s infrastructure  
13 needs and priorities, including reform of policy, pricing,  
14 regulation and technology;
- 15 (e) consider both investing in new infrastructure and  
16 making better use of existing infrastructure;
- 17 (f) consider the affordability of the recommendations in  
18 subsection (1)(c), including by reference to the financial  
19 targets set out in the most recently released Government  
20 Financial Strategy Statement under the *Government*  
21 *Financial Responsibility Act 2000*.

22 **15. Acceptance, tabling and publication**

- 23 (1) If a State Infrastructure Strategy is submitted to the Premier, the  
24 Premier must consider the strategy and, within 60 days of  
25 receipt of it, either accept it or return it to Infrastructure WA for  
26 further consideration and re-submission to the Premier.
- 27 (2) The Premier cannot return a strategy to Infrastructure WA more  
28 than once.
- 29 (3) If the Premier returns a strategy to Infrastructure WA —  
30 (a) the Premier must provide in writing the Premier’s  
31 feedback on the strategy; and



1                    (b) Infrastructure WA must respond to the feedback, either  
2                    in the re-submitted strategy or in a separate document.

3                    (4) The Premier must, within 28 days of acceptance or  
4                    re-submission of a strategy, cause the strategy to be —

5                    (a) laid before each House of Parliament; and

6                    (b) made publicly available.

7                    **16. Government response**

8                    (1) The Premier must prepare a response to each State  
9                    Infrastructure Strategy laid before Parliament.

10                    (2) The response must include —

11                    (a) an indication of the extent to which each  
12                    recommendation in the strategy is supported by the  
13                    Government; and

14                    (b) for each recommendation that is not fully supported —  
15                    reasons why it is not fully supported.

16                    (3) The Premier must, within 6 months after the day on which the  
17                    strategy is laid before Parliament, cause the response to be —

18                    (a) laid before each House of Parliament; and

19                    (b) made publicly available.

20                    (4) For the purposes of subsection (3), the day on which the  
21                    strategy is laid before Parliament is —

22                    (a) the day on which it is laid before both Houses; or

23                    (b) if it is laid before the Houses on different days — the 2<sup>nd</sup>  
24                    of those days.

25                    (5) The Premier may amend the response at any time after it is laid  
26                    before Parliament.

27                    (6) An amendment cannot have effect until the amended response  
28                    is —

29                    (a) laid before each House of Parliament; and

1 (b) made publicly available.

2 **17. Amendment**

3 (1) Infrastructure WA may, from time to time, prepare and submit  
4 to the Premier amendments to the State Infrastructure Strategy.

5 (2) Sections 13(4), 15 and 16 apply with the necessary  
6 modifications.

7 **Division 2 — State Infrastructure Programmes**

8 **18. State Infrastructure Programmes**

9 (1) The Premier must, in consultation with the Treasurer, prepare  
10 annual State Infrastructure Programmes and make them publicly  
11 available.

12 (2) Each State Infrastructure Programme must be made publicly  
13 available within 3 months after the day on which the State  
14 Budget, for the first of the years to which the programme  
15 relates, is presented in the Legislative Assembly.

16 (3) A State Infrastructure Programme must cover a 10-year period  
17 and must include —

18 (a) an overview of the Government's proposed significant  
19 infrastructure investments for the year to which the  
20 Budget relates and the years covered by the forward  
21 estimates; and

22 (b) an overview of Western Australia's expected significant  
23 infrastructure needs and challenges over the remaining  
24 years and, where relevant, options to address them.

25 (4) When preparing a State Infrastructure Programme, the Premier  
26 must —

27 (a) take into account the recommendations in the State  
28 Infrastructure Strategy, to the extent to which the  
29 recommendations are supported by the current  
30 Government response; and

- 1                      (b) seek Infrastructure WA’s advice.
- 2                      (5) The Premier may amend the State Infrastructure Programme  
3                      and subsections (1) and (4) apply with the necessary  
4                      modifications.
- 5                      (6) The regulations may provide for the detail of the content of  
6                      State Infrastructure Programmes.

7                      **Division 3 — Major infrastructure proposals**

8                      **19. Infrastructure WA to assess major infrastructure proposals**  
9                      **prior to investment decision**

- 10                      (1) This section applies to a major infrastructure proposal of a State  
11                      agency, whether or not —
- 12                      (a) funding for the proposal is or will be sought from the  
13                      Crown or is to be provided by a State agency; or
- 14                      (b) the proposal is intended to result in the infrastructure  
15                      being held by the Crown or a State agency; or
- 16                      (c) the proposal is a joint proposal.
- 17                      (2) The major infrastructure proposal must be submitted to  
18                      Infrastructure WA, and Infrastructure WA’s report on the  
19                      proposal must be received by the Premier, prior to the  
20                      investment decision for the proposal.
- 21                      (3) In subsection (2) —  
22                      **investment decision**, in relation to a proposal of a State agency,  
23                      means the decision by the Government or the State agency to  
24                      implement the proposal.
- 25                      (4) Infrastructure WA must assess each proposal submitted to it in  
26                      accordance with its assessment guidelines, and prepare, and  
27                      give to the Premier, a report on the proposal and a high-level  
28                      summary of the report.
- 29                      (5) This section has effect despite any other written law.

1 (6) However, a failure to comply with this section does not affect  
2 the validity of any decision made or other thing done in relation  
3 to a proposal.

4 (7) Infrastructure WA may exempt a proposal from the application  
5 of this section.

6 **20. Timing of assessment of major infrastructure proposals**

7 (1) In relation to a major infrastructure proposal to which section 19  
8 applies, Infrastructure WA and the State agency must negotiate  
9 as to the timeframe for reporting on the proposal.

10 (2) The regulations may deal with timeframes for reporting on  
11 major infrastructure proposals under section 19, including by —

12 (a) providing for and in relation to negotiated timeframes;  
13 and

14 (b) setting default timeframes.

15 **21. Guidelines and summary reports**

16 (1) Infrastructure WA must, in consultation with the Premier,  
17 prepare guidelines indicating how it will assess major  
18 infrastructure proposals.

19 (2) Infrastructure WA must make the guidelines, as they have effect  
20 from time to time, publicly available.

21 (3) For each report given to the Premier under section 19, the  
22 Premier must make the summary of the report publicly available  
23 within 6 months after the day on which the report is given to the  
24 Premier.

25 (4) If the Premier does not make the summary publicly available  
26 within the 6 months, Infrastructure WA must make the  
27 summary publicly available.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**Division 4 — Obligations of State agencies**

**22. State agencies to provide information to Infrastructure WA**

- (1) Infrastructure WA may request a State agency to give it any information it requires for the purposes of performing its functions under this Act.
- (2) A request must be in writing if the agency requests that.
- (3) When giving information to Infrastructure WA, a State agency may identify information that, in the opinion of the agency, is the subject of a duty of confidentiality or secrecy or is of a commercially sensitive nature.
- (4) When identifying information for the purposes of subsection (3), a State agency must —
  - (a) do so in writing; and
  - (b) be as specific as practicable; and
  - (c) give reasons.
- (5) A State agency is not required to give information if, in the opinion of the agency —
  - (a) the information relates to an investigative, law enforcement or complaints handling function of the agency; or
  - (b) the information is subject to legal professional privilege; or
  - (c) giving the information would be in contempt of court or contravene an order or direction of a person or body acting judicially.
- (6) A State agency that does not give information in reliance on subsection (5), must give written reasons.
- (7) If a State agency that is a department of the Public Service has a function or may form an opinion under this section the chief

1 executive officer of the department has the function or may  
2 form the opinion.

3 **23. Obligations of State agencies**

4 (1) A State agency has the following obligations —

5 (a) to cooperate with Infrastructure WA in the performance  
6 of Infrastructure WA's functions;

7 (b) to comply in a timely manner with —

8 (i) requests for information under section 22,  
9 subject to section 22(5); and

10 (ii) the requirements of section 22(4) and (6), when  
11 relevant;

12 (c) to align its strategies, plans and policies with, and  
13 implement —

14 (i) the recommendations in the State Infrastructure  
15 Strategy that are relevant to the agency, to the  
16 extent to which the recommendations are  
17 supported by the current Government response;  
18 and

19 (ii) the relevant aspects of the State Infrastructure  
20 Programme.

21 (2) To the extent to which there is inconsistency between the  
22 Government response and the State Infrastructure Programme,  
23 the more recent prevails for the purposes of subsection (1)(c).

24 (3) If an obligation that a State agency has under this section  
25 conflicts or is inconsistent with an obligation that it has under  
26 the Act under which it is established or continued, the obligation  
27 under this section prevails to the extent to which the obligations  
28 conflict or are inconsistent.

29 (4) If a State agency that is a department of the Public Service has  
30 an obligation under this section the chief executive officer of the  
31 department has the obligation.

- 1       (5) No civil or criminal liability attaches to a State agency or any  
2           other person, and no invalidity arises, only because the agency  
3           or person has not complied with an obligation under this  
4           section.

5       **Division 5 — Implementation of State Infrastructure Strategy**

6       **24. Report on implementation of State Infrastructure Strategy**

- 7       (1) Infrastructure WA must, in consultation with relevant State  
8           agencies, prepare annual reports on the Government's progress  
9           in implementing the recommendations in the State Infrastructure  
10          Strategy, taking into account the current Government response  
11          and the State Infrastructure Programme.
- 12       (2) Infrastructure WA must make the reports publicly available.

1 **Part 4 — Governance and administration**

2 **Division 1 — The Board**

3 **Subdivision 1 — Board constituted**

4 **25. Board is governing body of Infrastructure WA**

- 5 (1) Infrastructure WA is to have a board.
- 6 (2) The Board is Infrastructure WA's governing body and, in the  
7 name of Infrastructure WA, is to perform its functions.

8 **26. Board membership**

- 9 (1) The Board consists of up to 10 members.
- 10 (2) The Governor may, on the Premier's recommendation, appoint  
11 up to 7 members.
- 12 (3) The following are members of the Board —
- 13 (a) the chief executive officer of the Department of the  
14 Premier and Cabinet;
- 15 (b) the Under Treasurer (that is, the chief executive officer  
16 of the department of the Public Service principally  
17 assisting in the administration of the *Financial*  
18 *Management Act 2006*);
- 19 (c) the chief executive officer of the department of the  
20 Public Service principally assisting in the administration  
21 of the *Planning and Development Act 2005*.
- 22 (4) The Premier must ensure that the number of Board members  
23 who are government employees does not exceed the number of  
24 Board members who are not government employees.
- 25 (5) The Premier must ensure that the Board members have, between  
26 them, expertise across a broad range of infrastructure sectors.
- 27 (6) Before recommending a person who is not a government  
28 employee, the Premier must be satisfied that the person has



1 appropriate expertise in the areas of infrastructure policy,  
2 planning, strategy, funding, financing or delivery.

3 (7) A person who is a staff member cannot be appointed as a Board  
4 member.

5 (8) A person who is or has been within the preceding 3 years a  
6 member of the Parliament of the Commonwealth or any State or  
7 Territory cannot be appointed as a Board member.

8 **27. Chairperson and deputy chairperson**

9 (1) The Governor, on the Premier's recommendation, must  
10 designate a Board member to be the chairperson of the Board  
11 and another to be the deputy chairperson of the Board.

12 (2) Neither the chairperson nor the deputy chairperson can be a  
13 government employee.

14 (3) If the chairperson is unable to act or the position of chairperson  
15 is vacant, the deputy chairperson is to act in the chairperson's  
16 place.

17 (4) An act or omission of the deputy chairperson acting in the  
18 chairperson's place cannot be questioned on the ground that the  
19 occasion for acting had not arisen or had ceased.

20 **28. Terms and conditions of appointment**

21 (1) The chairperson may be appointed on a full-time or part-time  
22 basis.

23 (2) An appointed Board member, other than the chairperson, is to  
24 be appointed on a part-time basis.

25 (3) An appointed Board member —

26 (a) holds office for the period, not exceeding 5 years,  
27 specified in the instrument of appointment; and

28 (b) is eligible for reappointment but cannot hold office for  
29 more than 10 consecutive years.

1 (4) Subject to this Subdivision, an appointed Board member holds  
2 office on the terms and conditions of appointment determined  
3 by the Premier.

4 **29. Remuneration and expenses**

5 (1) A Board member who is not a government employee is entitled  
6 to the remuneration determined by the Premier from time to  
7 time on the recommendation of the Public Sector  
8 Commissioner.

9 (2) A Board member may be reimbursed expenses reasonably  
10 incurred in the performance of their functions as a Board  
11 member, as determined by the Premier from time to time on the  
12 recommendation of the Public Sector Commissioner.

13 **30. Casual vacancies**

14 (1) The office of a Board member becomes vacant if the member —  
15 (a) dies, resigns under this section or is removed from office  
16 under this section; or

17 (b) is, according to the *Interpretation Act 1984* section 13D,  
18 a bankrupt or a person whose affairs are under  
19 insolvency laws; or

20 (c) is convicted of an offence punishable by imprisonment  
21 for more than 12 months; or

22 (d) is convicted of an offence under section 45(1) or (2).

23 (2) An appointed Board member may at any time resign from office  
24 by writing signed and given to the Premier.

25 (3) The resignation takes effect on the later of —

26 (a) receipt by the Premier;

27 (b) the day specified in the resignation.

28 (4) The Governor, on the Premier's recommendation, may suspend  
29 or remove an appointed Board member from office —

30 (a) on the grounds of —

31 (i) neglect of duty; or

- 1                                      (ii) misconduct or incompetence; or  
2                                      (iii) mental or physical incapacity, other than  
3    temporary illness, impairing the performance of  
4    the member's duties; or  
5                                      (iv) absence, without leave, from 3 consecutive  
6    meetings of the Board of which the member has  
7    had notice;  
8                                      or  
9                                      (b) for any other reasonable cause.
- 10                      (5) The Premier may remove an appointed Board member who is a  
11                                      government employee on the grounds of —  
12                                      (a) the member ceasing to be a government employee; or  
13                                      (b) the member commencing to perform functions that are  
14    not, in the Premier's opinion, compatible with their  
15    functions as a Board member.
- 16                      (6) If a Board member is suspended or removed from office under  
17                                      subsection (4), the Premier must cause a statement of the  
18    grounds for suspension or removal to be laid before each House  
19    of Parliament within 14 days after the day on which the member  
20    was suspended or removed.

21                      **31. Extension of term of office**

- 22                      (1) If the office of a Board member becomes vacant because the  
23                                      member's term of office expires by effluxion of time, the  
24                                      member continues to be a Board member during that vacancy  
25                                      until the earlier of —  
26                                      (a) the end of the period of 6 months immediately following  
27    the expiry of the term of office;  
28                                      (b) the vacancy being filled;  
29                                      (c) the member resigning;  
30                                      (d) the member being removed from office under  
31    section 30.

1 (2) This section has effect despite the limit in section 28(3)(b).

2 **32. Leave of absence**

3 (1) The Premier may, on any terms and conditions the Premier  
4 considers appropriate, grant the chairperson leave to be absent  
5 from office.

6 (2) The chairperson may, on any terms and conditions the  
7 chairperson considers appropriate, grant a Board member leave  
8 to be absent from office.

9 **33. Alternate members**

10 (1) If a Board member is unable to act, the Premier may appoint  
11 another person as an alternate member to act temporarily in the  
12 member's place.

13 (2) Section 26(4) to (8) apply, with the necessary modifications, to  
14 the appointment of an alternate member under subsection (1).

15 (3) Subsection (1) does not apply in relation to the chairperson or  
16 an ex-officio Board member.

17 (4) If the deputy chairperson is acting in the chairperson's place, the  
18 Premier may, under subsection (1), appoint another person as an  
19 alternate member to act temporarily in the deputy chairperson's  
20 place.

21 (5) While acting in accordance with their appointment, an alternate  
22 member is taken to be a Board member and to have the  
23 equivalent entitlements (if any) of the Board member in whose  
24 place they are acting.

25 (6) An act or omission of an alternate member cannot be questioned  
26 on the ground that the occasion for the appointment or acting  
27 had not arisen or had ceased.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Subdivision 2 — Board procedures**

**34. Holding meetings**

- (1) The first Board meeting is to be convened by the chairperson, and subsequent meetings are to be held at times and places determined by the Board.
- (2) The Board is to meet at least 4 times a year.
- (3) A special Board meeting —
  - (a) may be convened by the chairperson at any time; and
  - (b) must be convened by the chairperson if 3 or more Board members request the chairperson to do so.

**35. Quorum**

The quorum for a Board meeting is one half of the number of Board members.

**36. Balance of members at meetings**

A Board meeting cannot proceed if the number of members present who are government employees exceeds the number of members present who are not government employees.

**37. Presiding members**

- (1) The chairperson, if present, must preside at a Board meeting.
- (2) If neither the chairperson, nor the deputy chairperson acting as the chairperson, is presiding under subsection (1), the members present at the meeting are to elect one of their number who is not a government employee to preside.

**38. Procedure at meetings**

The Board is to determine its own meeting procedures to the extent that they are not fixed under this Act.

1 **39. Holding meetings remotely**

2 The presence of a person at a meeting of the Board need not be  
3 by attendance in person but may be by that person and each  
4 other person at the meeting being simultaneously in contact by  
5 telephone or other means of instantaneous communication.

6 **40. Voting**

7 (1) Each member present at a Board meeting has a deliberative vote  
8 unless section 46 prevents the member from voting.

9 (2) In the case of an equality of votes, the member presiding has a  
10 casting vote in addition to a deliberative vote.

11 (3) A question is resolved by a majority of the votes cast.

12 **41. Resolution without meeting**

13 A resolution in writing signed or otherwise assented to by each  
14 Board member has the same effect as if it had been passed at a  
15 Board meeting, and must be recorded in the minutes of the  
16 Board's next meeting.

17 **42. Minutes to be kept**

18 (1) The Board must cause accurate minutes to be kept of the  
19 proceedings at each of its meetings.

20 (2) Without limiting subsection (1), the minutes are to —

21 (a) record that a member abstained from voting on or voted  
22 for or against a resolution if the member so requests; and

23 (b) include a record of attendance.

24 **43. Committees**

25 (1) The Board may appoint committees to assist it in the  
26 performance of its functions, and may alter or discharge any  
27 committee so appointed.

28 (2) Subject to the direction of the Board, a committee may  
29 determine its own procedures.

1 (3) A member of a committee who is not a government employee is  
2 entitled to the remuneration determined by the Premier from  
3 time to time on the recommendation of the Public Sector  
4 Commissioner.

5 (4) A member of a committee may be reimbursed expenses  
6 reasonably incurred in the performance of their functions as a  
7 member of the committee, as determined by the Premier from  
8 time to time on the recommendation of the Public Sector  
9 Commissioner.

10 **Subdivision 3 — Disclosure of interests**

11 **44. Financial interest in a matter**

12 For the purposes of this Subdivision, a member of the Board or  
13 of a committee has a direct or indirect financial interest in a  
14 matter if it is reasonable to expect that the matter may, if dealt  
15 with by the Board or committee in a particular way, result in a  
16 financial gain, loss, benefit or detriment for the member or a  
17 person closely associated with the member.

18 **45. Disclosure of material personal interests**

19 (1) A Board member who has a material personal interest in a  
20 matter being considered or about to be considered by the Board  
21 must, as soon as possible after the relevant facts have come to  
22 the member's knowledge, disclose the nature and extent of the  
23 interest at a Board meeting.

24 Penalty for this subsection: a fine of \$10 000.

25 (2) A member of a committee who has a material personal interest  
26 in a matter being considered or about to be considered by the  
27 committee must, as soon as possible after the relevant facts have  
28 come to the member's knowledge, disclose the nature and  
29 extent of the interest at a committee meeting.

30 Penalty for this subsection: a fine of \$10 000.

- 1 (3) Both subsections (1) and (2) apply to a person who is a member  
2 of a committee and also a Board member.
- 3 (4) If a member of the Board or of a committee has, in the opinion  
4 of the person presiding at a meeting of the Board or committee,  
5 a material personal interest in a matter being considered or  
6 about to be considered by the Board or the committee, the  
7 person presiding may call on the member to disclose the nature  
8 and extent of the interest and, in default of any such disclosure,  
9 may determine that the member has the interest.
- 10 (5) A disclosure under subsection (1) or (2) or a determination  
11 under subsection (4) must be recorded in the minutes of the  
12 meeting.
- 13 (6) Infrastructure WA must keep a record of each disclosure or  
14 determination under this section that relates to a direct or  
15 indirect financial interest in a matter, and make a summary of  
16 the record available, on request, for inspection.
- 17 (7) Without limiting section 72, the regulations may provide for  
18 how the record is to be made available.

19 **46. Participation by interested members**

- 20 (1) A member of the Board or of a committee who has, or has been  
21 determined under section 45(4) to have, a material personal  
22 interest in a matter that is being considered by the Board or  
23 committee —
- 24 (a) must not vote (whether at a meeting or otherwise) on a  
25 resolution on the matter; and
- 26 (b) must not be present (whether in person or remotely)  
27 while the matter is being considered at a meeting.
- 28 (2) A reference in subsection (1)(a) or (b) to a matter includes a  
29 reference to a proposed resolution under section 47(1) in respect  
30 of the matter, whether relating to that member or a different  
31 member.



1     **47.     Section 46 may be declared inapplicable**

2           (1) Section 46 does not apply in relation to a member of the Board  
3           or of a committee if —

4                   (a) the member has disclosed an interest in a matter under  
5                   section 45(1) or (2) or the person presiding at a meeting  
6                   of the Board or committee has determined that the  
7                   member has an interest in a matter under section 45(4);  
8                   and

9                   (b) the Board or committee has at any time passed a  
10                  resolution that —

11                           (i) specifies the member, the interest and the matter;  
12                           and

13                           (ii) states that the members voting for the resolution  
14                           are satisfied that the interest is not significant  
15                           enough to be likely to unduly influence the  
16                           member’s conduct in considering or voting on  
17                           the matter.

18           (2) A resolution cannot be passed under subsection (1)(b) in  
19           relation to a member if the interest of the member is a direct or  
20           indirect financial interest in the matter.

21     **48.     Quorum where section 46 applies**

22           Despite section 35, if a Board member is unable to act in  
23           relation to a matter under section 46, a quorum is present during  
24           the consideration of the matter if the number of members  
25           present, who are entitled to vote on any motion that may be  
26           moved at the meeting in relation to the matter, is —

27                   (a) at least the quorum under section 35, less 1; and

28                   (b) not less than 3.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Division 2 — Staff**

**Subdivision 1 — CEO**

**49. CEO**

- (1) Infrastructure WA is to have a chief executive officer (the *CEO*).
- (2) The CEO is to administer Infrastructure WA’s day-to-day operations, subject to the control of the Board.
- (3) The CEO is Infrastructure WA’s chief employee for the purposes of the *Public Sector Management Act 1994*.
- (4) Subsection (3) has effect despite the *Public Sector Management Act 1994* section 44(1).
- (5) The CEO is not, and is not to become, a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994*.
- (6) The Board is the employer of the CEO for the purposes of paragraph (b) of the definition of *employing authority* in the *Public Sector Management Act 1994* section 5(1).

**50. Appointment of CEO**

- (1) The CEO is to be appointed by the Governor on the Premier’s recommendation.
- (2) Before making a recommendation for the purposes of subsection (1), the Premier must —
  - (a) consult with the Board; and
  - (b) request the Board to nominate one or more persons for the position of CEO.
- (3) Nominations are to be given to the Premier for consideration by Cabinet.

- 1           (4) The Premier may make a recommendation for the purposes of  
2           subsection (1) whether or not the Board has made a nomination,  
3           or a satisfactory nomination, but not before the earlier of —  
4           (a) the Board making a nomination;  
5           (b) the end of the period of 3 months beginning on the day  
6           on which the Premier made the request under  
7           subsection (2).
- 8           (5) The *Public Sector Management Act 1994* section 105 does not  
9           prevent the Premier and the Board consulting under  
10          subsection (2).

11       **51. Terms and conditions of appointment**

- 12          (1) The CEO is to be appointed on a full-time basis.
- 13          (2) The CEO —  
14              (a) holds office for the period, not exceeding 5 years,  
15              specified in the instrument of appointment; and  
16              (b) is eligible for reappointment.
- 17          (3) Subject to this Subdivision, the CEO holds office on the terms  
18          and conditions of appointment determined by the Board.

19       **52. Remuneration**

20           The CEO is entitled to the remuneration determined by the  
21           Salaries and Allowances Tribunal under the *Salaries and*  
22           *Allowances Act 1975* and, for the purposes of that Act and any  
23           other written law, the office of the CEO is taken to be  
24           prescribed under section 6(1)(e) of that Act for the purposes of  
25           that section.

26       **53. Casual vacancies**

- 27          (1) The office of CEO becomes vacant if the CEO —  
28              (a) dies, resigns under this section or is removed from office  
29              under this section; or

- 1 (b) is, according to the *Interpretation Act 1984* section 13D,  
2 a bankrupt or a person whose affairs are under  
3 insolvency laws; or
- 4 (c) is convicted of an offence punishable by imprisonment  
5 for more than 12 months; or
- 6 (d) is convicted of an offence under section 54(1).
- 7 (2) The CEO may at any time resign from office by writing signed  
8 and given to the chairperson of the Board.
- 9 (3) The resignation takes effect on the later of —
- 10 (a) receipt by the chairperson;
- 11 (b) the day specified in the resignation.
- 12 (4) The Governor, on the Premier's recommendation, may suspend  
13 or remove the CEO from office —
- 14 (a) on the grounds of —
- 15 (i) neglect of duty; or
- 16 (ii) misconduct or incompetence; or
- 17 (iii) mental or physical incapacity, other than  
18 temporary illness, impairing the performance of  
19 the CEO's duties;
- 20 or
- 21 (b) for any other reasonable cause.
- 22 (5) Before making a recommendation for the purposes of  
23 subsection (4), the Premier must consult with the chairperson of  
24 the Board.
- 25 (6) If the CEO is suspended or removed from office under  
26 subsection (4), the Premier must cause a statement of the  
27 grounds for suspension or removal to be laid before each House  
28 of Parliament within 14 days after the day on which the CEO  
29 was suspended or removed.

1           (7) The statement in subsection (6) must also include whether the  
2           suspension or removal was supported by the chairperson of the  
3           Board.

4           **54. Disclosure of material personal interests**

5           (1) If the CEO has a material personal interest in a matter that  
6           relates to Infrastructure WA's affairs, the CEO must, as soon as  
7           possible after the relevant facts have come to the CEO's  
8           knowledge —

9                     (a) disclose the nature and extent of the interest to the  
10                    Board; and

11                   (b) not take action or further action in relation to the matter  
12                    unless authorised to do so by the Board.

13           Penalty for this subsection: a fine of \$10 000.

14           (2) The Board's authorisation may be subject to conditions and  
15           restrictions.

16           (3) If the CEO is unable to act in relation to a matter, the Board  
17           may appoint another staff member to act in relation to the  
18           matter.

19           **55. Entitlements of public service officer as CEO**

20           (1) If a person occupied an office in the Public Service immediately  
21           before being appointed to the office of CEO, the person retains  
22           existing and accruing entitlements as if service as the CEO were  
23           a continuation of service in the office in the Public Service.

24           (2) If a person ceases to be the CEO and is appointed to an office in  
25           the Public Service, the person's service as the CEO is to be  
26           regarded as service in the Public Service for the purposes of  
27           determining the person's rights as a public service officer.

1 **56. No outside employment**

2 The CEO must not, without the Board's written approval —

- 3 (a) engage in paid employment outside the duties of the  
4 office of CEO; or
- 5 (b) actively take part in —
- 6 (i) the activities of a business; or
- 7 (ii) the management of a body corporate carrying on  
8 business.

9 **57. Acting CEO**

- 10 (1) If the CEO is unable to act or the position of CEO is vacant, the  
11 Board may appoint a person to act as the CEO.
- 12 (2) A person cannot act in the office of CEO for a continuous  
13 period of more than 12 months.
- 14 (3) Section 49(5) does not limit who may be appointed to act as the  
15 CEO.
- 16 (4) A person acting as the CEO holds office on the terms and  
17 conditions of appointment, including as to remuneration,  
18 determined by the Board.
- 19 (5) The remuneration of a person acting as the CEO cannot exceed  
20 that of the holder of the office or, if the position is vacant, the  
21 most recent holder of the office.
- 22 (6) An act or omission of a person acting as the CEO cannot be  
23 questioned on the ground that the occasion for the appointment  
24 or acting had not arisen or had ceased.

25 **Subdivision 2 — Other staff**

26 **58. Other staff**

- 27 (1) Public service officers may be appointed under the *Public*  
28 *Sector Management Act 1994* Part 3 to enable Infrastructure  
29 WA to perform its functions.

- 1       (2) Infrastructure WA may, subject to any relevant written law or  
2       any binding award, order or industrial agreement under the  
3       *Industrial Relations Act 1979*, employ or engage and manage  
4       staff otherwise than under the *Public Sector Management*  
5       *Act 1994* Part 3.
- 6       (3) This section does not detract from the power that the *Public*  
7       *Sector Management Act 1994* section 100 gives Infrastructure  
8       WA to engage a person under a contract for services or appoint  
9       a person on a casual employment basis.

10   **59. Use of government staff and facilities**

- 11       (1) Infrastructure WA may by arrangement with the relevant  
12       employing authority make use, either full-time or part-time, of  
13       the services of any officer or employee —  
14             (a) in a State agency; or  
15             (b) otherwise in the service of the Crown.
- 16       (2) Infrastructure WA may by arrangement make use of a State  
17       agency's facilities.
- 18       (3) An arrangement under subsection (1) or (2) is to be made on  
19       terms agreed to by the parties.

20             **Division 3 — Accountability and financial provisions**

21   **60. Premier may give directions**

- 22       (1) The Premier may give written directions to Infrastructure WA  
23       about the performance of its functions, and Infrastructure WA  
24       must give effect to the directions.
- 25       (2) A direction under this section cannot be about the particular  
26       performance of a function or relate to the content of any  
27       strategy, advice, report, guideline or other document prepared  
28       by Infrastructure WA.

1 (3) The Premier must cause a direction under this section to be laid  
2 before each House of Parliament within 14 days after the day on  
3 which the direction is given.

4 (4) The text of a direction under this section must be included in  
5 Infrastructure WA's annual report under the *Financial*  
6 *Management Act 2006* Part 5.

7 **61. Premier to have access to information**

8 (1) In this section —

9 *document* includes any tape, disk or other device or medium on  
10 which information is recorded or stored mechanically,  
11 photographically, electronically or otherwise;

12 *information* means information specified, or of a description  
13 specified, by the Premier that relates to Infrastructure WA's  
14 functions.

15 (2) The Premier is entitled —

16 (a) to have information in Infrastructure WA's possession;  
17 and

18 (b) if the information is in or on a document, to have, and  
19 make and retain copies of, that document.

20 (3) For the purposes of subsection (2), the Premier may —

21 (a) request Infrastructure WA to give information to the  
22 Premier; and

23 (b) request Infrastructure WA to give the Premier access to  
24 information; and

25 (c) for the purposes of paragraph (b), make use of  
26 Infrastructure WA's staff to obtain the information and  
27 give it to the Premier.

28 (4) Infrastructure WA must comply with a request under  
29 subsection (3) and make staff and facilities available to the  
30 Premier for obtaining information under subsection (3)(c).



1 **62. Application of *Financial Management Act 2006* and *Auditor***  
2 ***General Act 2006***

3 The provisions of the *Financial Management Act 2006* and the  
4 *Auditor General Act 2006* regulating the financial  
5 administration, audit and reporting of statutory authorities apply  
6 to and in relation to Infrastructure WA and its operations.

7 **63. Infrastructure WA's funds**

8 (1) An account called the Infrastructure WA Account is established  
9 for Infrastructure WA.

10 (2) The account is an agency special purpose account under the  
11 *Financial Management Act 2006* section 16.

12 (3) Money received by Infrastructure WA must be credited to, and  
13 money paid by Infrastructure WA must be debited to, the  
14 account.

15 (4) The funds available for the purpose of enabling Infrastructure  
16 WA to perform its functions consist of money that is lawfully  
17 received by, or made available to, Infrastructure WA.

18 **64. Protection for disclosure or compliance with directions**

19 Infrastructure WA or another person performing a function  
20 under this Act is not liable —

21 (a) in respect of any claim arising as a consequence of the  
22 disclosure of information or documents under section 61  
23 or a duty imposed by the *Financial Management*  
24 *Act 2006* or the *Auditor General Act 2006*; or

25 (b) for the fact of having done or omitted a thing that is  
26 required to be done or omitted by a direction given  
27 under this Act.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Part 5 — General**

**Division 1 — Protection of information**

**65. Confidentiality**

- (1) A person must not, directly or indirectly, use or disclose any information obtained by the person because of —
  - (a) the person’s office, position, employment or engagement under or for the purposes of this Act; or
  - (b) any disclosure made to the person under or for the purposes of this Act.

Penalty for this subsection: a fine of \$10 000.

- (2) Subsection (1) does not apply in relation to the use or disclosure of information that is already in the public domain.
- (3) A person does not commit an offence under subsection (1) if the use or disclosure of the information is authorised under section 66(1).

**66. Authorised use or disclosure of information**

- (1) For the purposes of this Act, the use or disclosure of information is authorised if the information is used or disclosed in good faith in any of the following circumstances —
  - (a) for the purpose of, or in connection with, performing a function under this or any other Act;
  - (b) as otherwise authorised or required under or for the purposes of this Act;
  - (c) under another law;
  - (d) to a court or other person or body acting judicially in the course of proceedings before the court, person or body;
  - (e) under an order of a court or other person or body acting judicially;

- 1 (f) any other circumstances prescribed for the purposes of  
 2 this subsection.
- 3 (2) If the use or disclosure of information is authorised under  
 4 subsection (1) —
- 5 (a) no civil or criminal liability is incurred in respect of the  
 6 use or disclosure; and
- 7 (b) the use or disclosure is not to be regarded as —
- 8 (i) a breach of any duty of confidentiality or secrecy  
 9 imposed by law; or
- 10 (ii) a breach of professional ethics or standards or  
 11 any principles of conduct applicable to a  
 12 person’s employment; or
- 13 (iii) unprofessional conduct.
- 14 **67. Restrictions on disclosure of sensitive information**
- 15 (1) In this section —
- 16 *private sensitive information* means sensitive information  
 17 relating to a person who or that is not a State agency or public  
 18 authority;
- 19 *sensitive information* means information that has been  
 20 identified under section 22(3) as being the subject of a duty of  
 21 confidentiality or secrecy or of a commercially sensitive nature.
- 22 (2) This section qualifies section 66(1)(a) and (b).
- 23 (3) Infrastructure WA must not make sensitive information publicly  
 24 available and, without limitation, must not include sensitive  
 25 information in the following —
- 26 (a) a State Infrastructure Strategy;
- 27 (b) a summary of a report given to the Premier under  
 28 section 19;
- 29 (c) a report under section 24;
- 30 (d) advice or other reports or documents that are to be made  
 31 publicly available.

- 1 (4) The Premier must not make private sensitive information  
2 publicly available.
- 3 (5) This section does not prevent Infrastructure WA or the Premier  
4 from making a document from which sensitive information or  
5 private sensitive information has been removed publicly  
6 available.
- 7 (6) This section does not apply to the extent to which —  
8 (a) the information is already in the public domain; or  
9 (b) the information is in a statistical form that could not  
10 reasonably be expected to enable it to be related to the  
11 person in relation to whom or which the duty is owed or  
12 the information is of a commercially sensitive nature; or  
13 (c) the disclosure of the information is with the consent of  
14 each person to whom or which it relates.

15 **Division 2 — Miscellaneous**

16 **68. Execution of documents**

- 17 (1) A document is duly executed by Infrastructure WA if —  
18 (a) Infrastructure WA's common seal is affixed to it in  
19 accordance with subsections (2) and (3); or  
20 (b) it is signed on Infrastructure WA's behalf by a person or  
21 persons authorised to do so under subsection (4).
- 22 (2) Infrastructure WA's common seal is not to be affixed to any  
23 document except as authorised by Infrastructure WA.
- 24 (3) Infrastructure WA's common seal is to be affixed to a document  
25 in the presence of the chairperson of the Board and another  
26 Board member, or the chairperson and the CEO, each of whom  
27 must sign the document to attest that the common seal was so  
28 affixed.
- 29 (4) Infrastructure WA may, by writing under its common seal,  
30 authorise one or more Board members or one or more staff

1 members to sign documents on Infrastructure WA's behalf,  
2 either generally or subject to the conditions or restrictions  
3 specified in the authorisation.

4 (5) A document purporting to be executed in accordance with this  
5 section must be presumed to be duly executed unless the  
6 contrary is shown.

7 (6) When a document is produced bearing a seal purporting to be  
8 Infrastructure WA's common seal, it must be presumed that the  
9 seal is Infrastructure WA's common seal unless the contrary is  
10 shown.

11 **69. Protection from liability for wrongdoing**

12 (1) No action or claim for damages lies against a person other than  
13 Infrastructure WA for anything that the person has done, in  
14 good faith, in the performance or purported performance of a  
15 function under this Act.

16 (2) The protection given by subsection (1) applies even though the  
17 thing done as described in that subsection may have been  
18 capable of being done whether or not this Act had been enacted.

19 (3) Despite subsection (1), neither Infrastructure WA nor the Crown  
20 is relieved of any liability that it might have for another person  
21 having done anything as described in that subsection.

22 (4) In this section, a reference to the doing of anything includes a  
23 reference to the omission to do anything.

24 **70. Making certain things publicly available**

25 A requirement under this Act to make a strategy, response,  
26 programme or other thing publicly available may be satisfied by  
27 publishing it on a website maintained by or on behalf of the  
28 Department of the Premier and Cabinet or Infrastructure WA.

1 **71. Laying documents before Parliament not sitting**

2 (1) If a provision of this Act requires the Premier to cause a  
3 document to be laid before a House of Parliament and the House  
4 is not sitting, the Premier may give the document to the Clerk of  
5 the House.

6 (2) A document given to the Clerk of a House under subsection (1)  
7 is taken to have been laid before the House.

8 (3) The laying of a document before a House that is taken to have  
9 occurred under subsection (2) must be recorded in the Minutes,  
10 or Votes and Proceedings, of the House on the first sitting day  
11 of the House after the Clerk receives the document.

12 **72. Regulations**

13 (1) The Governor may make regulations prescribing all matters that  
14 are required or permitted by this Act to be prescribed, or are  
15 necessary or convenient to be prescribed for giving effect to the  
16 purposes of this Act.

17 (2) The regulations may deal with the following —

- 18 (a) Infrastructure WA recovering from a State agency —
- 19 (i) the costs of it assessing and reporting on a major  
20 infrastructure proposal of a State agency;
- 21 (ii) the costs of it preparing, at the request of the  
22 Premier, a strategy, plan or policy on behalf of a  
23 State agency;
- 24 (iii) the costs of it providing advice to a State agency  
25 on the preparation of an infrastructure proposal;
- 26 (b) Infrastructure WA's capacity to exempt a major  
27 infrastructure proposal from the application of  
28 section 19, including by providing for the circumstances  
29 in which an exemption may be given and for conditions  
30 to be imposed on exemptions;
- 31 (c) matters relating to consultation to be undertaken by  
32 Infrastructure WA, including the extent of consultation;

- 1 (d) the disclosure of material personal interests for the  
2 purposes of Part 4 Division 1 Subdivision 3 or  
3 section 54, including by providing for —  
4 (i) what is or is not a material personal interest;  
5 (ii) who is or is not a person closely associated with  
6 a member;  
7 (e) matters that are to be included in Infrastructure WA's  
8 annual report under the *Financial Management Act 2006*  
9 Part 5 in addition to the requirements under that Act.  
10 (3) Regulations made for the purposes of subsection (2)(a) have  
11 effect despite anything in the written law under which the  
12 agency is established or continued or governed.

13 **73. Review of Act**

- 14 (1) The Premier must review the operation and effectiveness of this  
15 Act, and prepare a report based on the review —  
16 (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day  
17 on which this section comes into operation; and  
18 (b) after that, at intervals of not more than 5 years.  
19 (2) The obligation under subsection (1) is limited to 3 occasions.  
20 (3) The Premier must cause each report to be laid before each  
21 House of Parliament as soon as practicable after the report is  
22 prepared, but not later than 12 months after the 5<sup>th</sup> anniversary  
23 or the expiry of the period of 5 years (whichever is relevant).

1 **Part 6 — Consequential amendments to other Acts**

2 **74. *Constitution Acts Amendment Act 1899* amended**

3 (1) This section amends the *Constitution Acts Amendment Act 1899*.

4 (2) In Schedule V Part 3 before the item for the board of the  
5 Minerals Research Institute of Western Australia insert:

6

7 The board of Infrastructure WA established under the *Infrastructure*  
8 *Western Australia Act 2019*.

9

10 **75. *Financial Management Act 2006* amended**

11 (1) This section amends the *Financial Management Act 2006*.

12 (2) In Schedule 1 after the item for the Housing Authority insert:

13

14 Infrastructure WA

15

16 **76. *Planning and Development Act 2005* amended**

17 (1) This section amends the *Planning and Development Act 2005*.

18 (2) Delete Schedule 2 clause 6.

19 **77. *Public Sector Management Act 1994* amended**

20 (1) This section amends the *Public Sector Management Act 1994*.

21 (2) In Schedule 2 before item 19A insert:

22

19 Infrastructure WA, established under the *Infrastructure Western*  
23 *Australia Act 2019*

23

24

---



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
appointed Board member .....	3
assent day .....	2
Board .....	3
Board member .....	3
CEO .....	3
committee .....	3
Department of the Premier and Cabinet .....	3
document .....	61(1)
employing authority .....	3
ex-officio Board member .....	3
government employee .....	3
Government response .....	3
government trading enterprise .....	3
information .....	61(1)
infrastructure .....	3
Infrastructure Australia .....	3
investment decision .....	19(3)
major infrastructure proposal .....	3
misconduct .....	3
private sensitive information .....	67(1)
public authority .....	3
Public Sector .....	3
remuneration .....	3
sensitive information .....	67(1)
staff member .....	3
State agency .....	3
State Infrastructure Programme .....	3
State Infrastructure Strategy .....	3
unable to act .....	3