

INFRASTRUCTURE WESTERN AUSTRALIA BILL 2019

EXPLANATORY MEMORANDUM

OVERVIEW

The purpose of this Bill is to establish Infrastructure Western Australia as a statutory authority that will provide advice and assistance to the Premier and the Government on matters relating to infrastructure, including Western Australia's infrastructure needs and priorities.

The Bill supports a more coordinated approach to infrastructure planning and prioritisation than that currently in place in Western Australia.

Infrastructure WA's principal objects are:

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

It is intended that the legislation apply to all State Government agencies, including all departments, sub-departments, statutory authorities and government trading enterprises.

The Bill provides for the establishment of a Board consisting of both government and non-government members (with the independent Chairperson having a casting vote in cases where there is an equality in the number of government members and non-government members). Once established, the Board will report to the Premier and will be responsible for the efficient and effective performance of Infrastructure WA's functions. Further, the Board will be responsible for the recommendation of the appointment of the CEO in addition to the ongoing performance of the CEO.

There are a number of key interrelated documents which are associated with Infrastructure WA's functions, including:

- State Infrastructure Strategy (prepared by Infrastructure WA);
- Response to the State Infrastructure Strategy (prepared by the Government);
- Annual report on implementation of the State Infrastructure Strategy (prepared by Infrastructure WA);
- Annual State Infrastructure Programme (prepared by the Government);
- Reports on the assessment of major infrastructure proposals (prepared by Infrastructure WA); and
- Annual work programme (prepared by Infrastructure WA).

State Infrastructure Strategy

The Bill states that Infrastructure WA is responsible for preparing a State Infrastructure Strategy (the Strategy) which addresses a minimum timeframe of 20 years. The Strategy will be the first priority of the Infrastructure WA as it will underpin its remaining functions and form the basis of the other work it will carry out. The development of the Strategy is also part of Government's commitment to addressing the *Special Inquiry into Government Programs and Projects* finding of a lack of whole-of-State plan(s) detailing the Government's highest priorities. The purpose of the Strategy is to assess the current state of infrastructure in WA and identify the State's infrastructure needs and priorities over the long term. The Strategy is required to include recommendations for significant projects, policies or other initiatives to address any significant deficiencies (current and expected) identified in the State's infrastructure and where appropriate, the funding and financing options to address the recommended projects, policies or other initiatives. This Strategy will provide a solid

evidence base for Government to make informed decisions regarding infrastructure planning. The Strategy is required to be submitted to the Premier and tabled in Parliament. The Bill details a requirement for the Strategy to be revised every five years (or at an earlier time at the request of the Premier).

Response to State Infrastructure Strategy and Annual Report on Implementation of the State Infrastructure Strategy

Following the consideration of the Strategy, the Premier is required to prepare a response to it. The Government's response is required to detail the level of support (or non-support) for each of the Strategy's recommendations. For any recommendations that are not fully supported, the response will need to detail reasons. For each of the recommendations that have been supported by the Government (in full or in part), the relevant State Government agencies will be required to align their strategies and policies and implement the relevant recommendations accordingly.

Infrastructure WA will monitor and report annually on the Government's progress in implementing the Strategy's recommendations.

State Infrastructure Programme

The Bill requires the Premier to prepare an annual State Infrastructure Programme which covers a timeframe of 10 years. The State Infrastructure Programme is required to include an overview of the Government's proposed significant infrastructure investments over the budget and forward estimate years. It is to take into account the recommendations of the Strategy, to the extent that they have been supported by the Government. The Programme is also required to identify the State's expected infrastructure needs and challenges for the remaining years through to 10 years and possible options to address those. It is intended that the Programme will provide a pipeline of infrastructure projects over a short term horizon and an indication of other projects, options or initiatives over a medium term horizon.

Reports on major infrastructure proposals

The Bill requires Infrastructure WA to assess major infrastructure proposals (as defined) that have been submitted to it in accordance with its assessment guidelines and provide a report to the Premier prior to the Government (or State agency) making a decision to implement the proposal. This is intended to help ensure that investment decisions are informed by Infrastructure WA's expert advice. To provide transparency, Infrastructure WA is required to prepare a high-level summary of the report, which will be made publicly available within six months.

Annual work programme

The Bill requires Infrastructure WA to prepare an annual work programme. The work programme is required to be submitted to the Premier prior to the financial year that it relates to and will detail the key activities and work that Infrastructure WA intends to undertake in the following financial year. The work programme is required to be prepared in consultation with the Premier. If there are activities that are not detailed in the annual work programme which Infrastructure WA wishes to undertake, Infrastructure WA must advise the Premier.

SECTION NOTES

Long title

This sets out the long title of the Bill.

Part 1 – Preliminary

Part 1 of the Bill outlines the commencement provisions and the terms used for the purposes of the Bill.

Clause 1: Short title

Clause 1 sets out the name of the Bill.

Clause 2: Commencement

Clause 2 states that there will be varying commencement dates associated with Infrastructure WA's operations:

- Part 1 commences on the day of assent;
- The provisions for the assessment of major infrastructure proposals and the development of the State Infrastructure Programme (clause 8(1)(b) and Part 3 Division 2 and 3) will commence on a date fixed by proclamation (these are delayed functions to allow for Infrastructure WA to firstly develop the State Infrastructure Strategy which will underpin much of the remaining work of Infrastructure WA); and
- The remainder of the Bill will commence one month after the day of assent.

Clause 3: Terms used

This clause contains definitions of various terms used within the Bill. The definitions are to be used when interpreting the legislation. Further information on specific definitions is provided below:

Government employee – For the purpose of the Bill, the definition of a government employee is intended to capture those who are employed within the public sector, however it is not intended to capture those individuals who are a member of a State Government board or committee (but are not otherwise employed by the State Government). Further, for the purposes of this definition, it is intended that this definition picks up employees of government trading enterprises.

Government trading enterprise (GTE) – It is intended that this definition covers all GTEs. Where there are GTEs not listed in the definition, the regulations will be able to list additional GTEs.

Infrastructure – This term is intended to include a very broad definition of infrastructure and includes infrastructure that has, or is intended to have, economic, social or environmental value. The types of infrastructure that this definition intends to capture includes, but is not limited to, infrastructure that relates to the following purposes:

- transport (including public transport, rail, roads, freight, active transport and gateways such as airports and seaports);
- cultural, recreational and tourism;
- education and training;
- water, wastewater and drainage;
- solid waste management;
- energy;
- justice, corrections and emergency services;
- health and human services (including housing);
- information, technology and communications; and

- environmental infrastructure.

Major infrastructure proposal - This term should be read in conjunction with clauses 19 and 20. The intent of this definition is to detail the thresholds for where an infrastructure proposal is subject to an assessment by Infrastructure WA. This definition can apply to a proposal for a single infrastructure project (e.g. the delivery of a single hospital) or a program of infrastructure projects (e.g. a package of upgrades to various schools) where any of the listed thresholds are met.

The definition details the criteria that must be met for a proposal to be considered a major infrastructure proposal, that is where:

- The project, or the program of projects, has an estimated capital cost of \$100 million or more, or another amount prescribed in the regulations in relation to this definition;
- The proposal is nominated by the Premier (i.e. the proposal is 'called in' by the Premier for assessment); or
- The proposal falls within a class of projects prescribed for the purpose of the definition. The regulations can provide further detail around a particular type of project that fall under this definition.

Related to this definition is clause 71(2)(b) which allows for the regulations to detail Infrastructure WA's capacity to exempt major infrastructure proposals from the assessment process, including by providing for the circumstances in which an exemption may be given and for conditions to be imposed on exemptions.

Remuneration – Note that this term is defined as the meaning given to it in the *Salaries and Allowances Act 1975* section 4. However, this term is used generally in the context of the Bill, in both the State Administrative Tribunal (SAT) context (e.g. clause 51) and in a non-SAT context (e.g. clause 29).

Clause 4: Act bind Crown

This clause provides that the Bill, when enacted, will bind the Crown.

Part 2 – Infrastructure WA

Part 2 of the Bill outlines the objects, powers, functions and delegation arrangements for Infrastructure WA. This Part also addresses publication of Infrastructure WA's advice and reports, and preparation of an annual work programme.

Clause 5: Infrastructure WA established

Clause 5 provides for the establishment of Infrastructure WA and sets the legal status of Infrastructure WA as a body corporate that has perpetual succession, has a common seal and as a body that can sue or be sued.

Clause 6: Agent of Crown

Clause 6 states that Infrastructure WA is an agent of the Crown and has the status, immunity and privileges of the Crown.

Clause 7: Principal objects

Clause 7 states the objects of Infrastructure WA which guide the functions detailed in clause 8. The objects should be read along with the Long Title.

Infrastructure WA's principal objects are:

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

Clause 8: Functions

Clause 8 provides that Infrastructure WA has a number of functions. It is intended that Infrastructure WA will provide expert advice and assistance to Government on infrastructure matters through:

- a) preparing and submitting State Infrastructure Strategies to the Premier;
- b) assessing and reporting to the Premier on major infrastructure proposals;
- c) providing advice and assistance to State agencies in the preparation of infrastructure strategies, plans and policies (including preparing strategies, plans and policies on behalf of agencies at the request of the Premier);
- d) providing advice to State agencies on the preparation of infrastructure proposals;
- e) reviewing and reporting to the Premier on infrastructure proposals prior to their submission to Infrastructure Australia. It is intended that this apply to all State Government proposals that are to be submitted to Infrastructure Australia;
- f) coordinating the provision of information and submissions to Infrastructure Australia (under the direction of the Premier). It is intended that this apply to all information and submissions from the State Government to Infrastructure Australia;
- g) monitoring and reporting upon the progress of the Government in implementing the State Infrastructure Strategy;
- h) providing advice to the Premier on infrastructure priorities, funding and financing of infrastructure and any other matter relating to infrastructure;
- i) reviewing and reporting to the Premier on completed infrastructure projects;
- j) promoting public awareness on matters relating to infrastructure;
- k) performing other functions conferred to Infrastructure WA under the Act; and
- l) performing any other function relating to infrastructure at the request of the Premier.

There is a distinct difference between 8(1)(b) and 8(1)(e), with 8(1)(b) relating to a full assessment by Infrastructure WA (subject to Part 3 Division 3), and 8(1)(e) relating to a higher level review of infrastructure proposals prior to their submission to Infrastructure Australia to deliver a consistently high standard of submissions.

Note that this clause includes a power for Infrastructure WA to perform any function related to infrastructure, if requested to do so by the Premier. This is a deliberately broad power to account for instances which may arise where Infrastructure WA is tasked with performing additional functions, such as project delivery, project assurance and reporting, provision of advice to non-State Government entities, or any other function related to infrastructure.

This clause also provides for a number of principles that Infrastructure WA must consider when performing its functions and these include considering the economic, financial, social and environmental factors relating to infrastructure, the complete lifecycle of infrastructure, the needs of a broad range of users and improvements and trends associated with infrastructure.

This clause requires Infrastructure WA to consult with relevant stakeholders, where it considers it to be appropriate and practicable. There are some functions in the Bill where Infrastructure WA is required to undertake appropriate consultation (e.g. the State Infrastructure Strategy) and there are other functions where Infrastructure WA may choose to undertake consultation.

Clause 9: Advice and reports may be made publicly available

Clause 9 provides that Infrastructure WA, with the approval of the Premier, has the ability to make advice that it has prepared through the performance of its functions publicly available. This clause should be read in conjunction with restrictions outlined in clauses 64, 65 and 66. This clause does not prevail over other clauses of the Bill which require or allow Infrastructure WA to make certain documents publicly available (e.g. draft State Infrastructure Strategy under clause 13(4) and annual work programme under clause 10(5)).

Clause 10: Annual work programme

This clause requires Infrastructure WA to prepare an annual work programme in consultation with the Premier. This clause states that the annual work programme must identify the key activities that Infrastructure WA intends to undertake within the year that it relates to. It is intended that Infrastructure WA be a budget-funded entity (except to the extent that it recovers costs) and therefore its annual work programme would reflect appropriations within the State Budget and any expected cost recovery. It is intended that Infrastructure WA be adequately resourced in order to perform its functions effectively.

This clause requires that the work programme be submitted to the Premier before the financial year which it relates to. For any key activities that are not documented in the work programme, this clause requires Infrastructure WA to inform the Premier in writing, but the Premier's approval is not required. This clause ensures that the Premier is aware of the key activities being undertaken by Infrastructure WA, including any work that Infrastructure WA prepares on its own initiative. This clause also provides the ability for Infrastructure WA to make its annual work programme publicly available.

Clause 11: Powers

Clause 11 provides the necessary powers for Infrastructure WA to enable it to perform its functions effectively. This clause clarifies that Infrastructure WA may exercise its powers for the purposes of performing any of its functions (as detailed in clause 8).

Clause 12: Delegation

This clause allows for Infrastructure WA to delegate to any Board member, staff member or government employee any power or duty that it holds, except the ability to execute documents.

Under section 59 of the *Interpretation Act 1984*, where Infrastructure WA delegates to a person, the delegation of the power or duty is to that office holder, regardless of the individual occupying the position.

This clause states that the delegation is to be provided in writing and executed by Infrastructure WA. Further, clause 12 states that where a person has been delegated a power or duty, that person (or body) is unable to delegate that power further.

This clause clarifies that any power of delegation does not limit Infrastructure WA performing any of its functions through an officer or agent. It is noted that this clause does not apply to the execution of documents which is covered under clause 67 (Execution of documents).

Part 3 – Infrastructure strategy and planning

Part 3 of the Bill provides detail relating to key functions such as preparation of the State Infrastructure Strategy (and Government's response), the State Infrastructure Programme, and Infrastructure WA's assessment of major infrastructure proposals. This Part also outlines the obligations of State agencies.

Division 1 – State Infrastructure Strategy

Clause 13: Preparation and submission to Premier

The preparation of the State Infrastructure Strategy is a key function of Infrastructure WA. This clause provides a requirement for Infrastructure WA to prepare and submit a State Infrastructure Strategy every five years (from when the previous strategy was tabled in Parliament), or within a lesser timeframe that the Premier requests.

This clause requires Infrastructure WA to make a draft strategy publicly available and to undertake public consultation on a draft of the strategy prior to the final State Infrastructure Strategy being provided to the Premier.

Clause 14: Content and preparation

Clause 14 outlines the content that must be included within the State Infrastructure Strategy. The Strategy must identify the State's significant infrastructure needs and priorities over at least the next 20 years, and give recommendations on how to address these. The Strategy is to also include the economic, social and environmental objectives against which Western Australia's infrastructure needs have been assessed.

The clause requires that the Strategy must include recommendations about:

- the significant projects or programmes, or other options proposed to meet the needs and priorities identified;
- funding and financing options for the recommended projects or programmes, or other options, when Infrastructure WA considers it appropriate; and
- the relative priority of the recommendations.

The clause states that when preparing the State Infrastructure Strategy, Infrastructure WA must assess the current state of Western Australia's infrastructure, identify the significant current and expected future deficiencies in the State's infrastructure, and identify where these deficiencies are contributing to (or may contribute to) significant economic, social and environmental costs. Further, the clause requires Infrastructure WA to assess the short, medium and long term options available to meet Western Australia's infrastructure needs and priorities. This could include building new infrastructure or alternatively non-asset solutions such as policy, pricing, regulatory reforms or technology. Infrastructure WA is to consider both investing in new infrastructure, as well as making better use of existing infrastructure.

This clause also requires Infrastructure WA to consider the affordability of the recommendations made, including by reference to the most recent financial targets set out in the Government's Financial Strategy Statement under the *Government Financial Responsibility Act 2000*.

Clause 15: Acceptance, tabling and publication

Clause 15 sets out the timeframes for the Premier's consideration, acceptance, tabling and publication of the State Infrastructure Strategy. The clause provides the Premier 60 days, from receipt of the Strategy, to consider and then either accept the Strategy or return it to Infrastructure WA for resubmission. Accepting the Strategy is not intended to indicate whether or not the Premier supports the Strategy or its recommendations.

The clause clarifies that the Premier cannot return a strategy back to Infrastructure WA more than once. This is intended to provide the Premier with a reasonable opportunity to provide any feedback on the Strategy for Infrastructure WA to consider, while providing a safeguard against the acceptance of the Strategy being indefinitely delayed by it being repeatedly returned to Infrastructure WA. This clause requires that the Premier would clearly state (in writing) the reasons for returning the strategy back to Infrastructure WA so that Infrastructure WA has an adequate understanding of the issues being raised by the Premier. The clause also requires Infrastructure WA to respond to the feedback received, either through amending and resubmitting the Strategy or through responding to the feedback in a separate document (or a combination of both).

Subsequent to acceptance (whether the first time or upon resubmission), this clause requires the Premier to table the Strategy before each House of Parliament within 28 days and make the Strategy publicly available (e.g. by publishing it on the website of Infrastructure WA and/or the website of the Department of the Premier and Cabinet).

Clause 16: Government response

This clause requires the Premier to provide a response to the State Infrastructure Strategy including the extent to which the Government supports each recommendation within the Strategy.

For any recommendation that is not fully supported, the response must also provide reasons why it is not fully supported (e.g. where the Government provides in-principle support, partial support or does not support a recommendation).

This clause requires the Government response be tabled in Parliament and be made publicly available within 6 months of the day that the Strategy is laid before the Parliament. This clause also allows for the Premier to amend the response at any time, and if this occurs, the revised response is required to be laid before the Parliament and made publicly available. An amendment to the Government response does not take effect until the amendment is tabled in Parliament and made publicly available.

Clause 17: Amendment

Clause 17 allows for Infrastructure WA to amend the Strategy, which could occur, for example, on Infrastructure WA's own initiative or at the request of the Premier. Clauses 13(4), 15 and 16 apply to an amendment to the Strategy, including the requirements for Infrastructure WA to undertake public consultation prior to submitting the amendment to the Premier, the provisions regarding the Premier's acceptance, tabling and publication of the amendment, and the Government's response to the amendment.

Division 2 – State Infrastructure Programmes

Clause 18: State Infrastructure Programmes

Clause 18 requires the Premier, in consultation with the Treasurer, to prepare a State Infrastructure Programme annually and make it publicly available. The clause states that the Programme must be published within three months after the day on which the State Budget is presented within the Legislative Assembly. It is intended that the Programme will provide a pipeline of infrastructure projects over a short-term horizon and an indication of other projects, options or initiatives over a medium-term horizon out to 10 years.

Clause 18 also states the required content of the Programme and notes that it must cover a period of 10 years. For the 10-year period, the clause states that the Programme must include an overview of the Government's proposed significant infrastructure investments over the period covered by the Budget and the forward estimates (currently four years) and then, where known, the expected needs and challenges over the remainder of the years (currently the subsequent six years) and possible

options for addressing the identified needs. This clause allows for the reporting of years in line with the Budget and forward estimate years and the remaining reporting years out to 10 years, noting that budgetary forecasts could change over time.

This clause requires the Premier, in preparing the Programme, to take into account the recommendations of the Strategy, to the extent that they have been supported by the Government. The Premier must also seek Infrastructure WA's advice when preparing the Programme. This clause makes provision for the regulations to elaborate upon the content of the State Infrastructure Programme, which will provide flexibility for the content requirements of the Programme to be refined over time if necessary.

Division 3 – Major infrastructure proposals

Note that Part 3 Division 3 applies only to Infrastructure WA's function to assess and report to the Premier on major infrastructure proposals (clause 8(1)(b)), and does not apply to Infrastructure WA's function to review and report to the Premier on infrastructure proposals prior to their submission to Infrastructure Australia (clause 8(1)(e)).

Clause 19: Infrastructure WA to assess major infrastructure proposals prior to investment decision

Clause 19 requires all infrastructure proposals of a State agency which meet the definition of 'major infrastructure proposal' detailed in clause 3 to be the subject of an assessment by Infrastructure WA. This includes all proposals seeking funding from the Government or a State agency. It also includes any proposal of a State agency (e.g. a public private partnership) which may not seek Government funding but may (or may not) result in the infrastructure being held by the Government or the agency at some point in the asset lifecycle (e.g. where a State agency engages with the private sector on an infrastructure project which, during construction and over a set period of operation do not result in a cost to the State, however become a State asset at a later date).

The intention of this clause is also to pick up 'joint proposals' (e.g. where a State agency enters into an arrangement with a non-State Government entity for the provision of infrastructure or related services). An example of this is where the private sector delivers an infrastructure service to the State and the State enters into an agreement for use of the infrastructure over a fixed period. It is intended that these types of proposals would be subject to assessment by Infrastructure WA under this clause where they fall within the definition of 'major infrastructure proposal'.

This clause provides for occurrences where the infrastructure proposal meets the thresholds and proceeds through the Infrastructure WA assessment process, an investment decision must not be made by the Government or any Minister or State agency prior to Infrastructure WA's report on the proposal being received by the Premier. For clarity, this clause provides a definition of investment decision. Further, for all infrastructure proposals assessed by Infrastructure WA, the clause requires Infrastructure WA to assess the proposal in accordance with its assessment guidelines and prepare, and submit to the Premier, a report on the assessment of the proposal in addition to a high-level summary of the report provided. Under clause 21, the high level summary report is to be made publicly available.

This clause applies even if another law allows an investment decision to be made without Infrastructure WA's assessment (e.g. an investment decision under GTE legislation or under Royalties for Regions legislation).

This clause notes that a failure to comply with this clause does not affect the validity of any decision made in relation to a proposal. Further, this clause also provides the ability for Infrastructure WA to exempt a proposal from assessment, with the ability to prescribe the circumstances in which an exemption may be given and any conditions to be imposed, in regulations.

Clause 20: Timing of assessment of major infrastructure proposals

For all major infrastructure proposals submitted to, and assessed by Infrastructure WA (in accordance with clause 19), this clause states that Infrastructure WA and the State agency are to negotiate a timeframe for reporting upon the proposal. Further, this clause allows for the regulations to deal with timeframes for Infrastructure WA's reporting upon major infrastructure proposals, including the ability to prescribe default timeframes for assessment.

Clause 21: Guidelines and summary reports

This clause requires Infrastructure WA to prepare and publish guidelines on how it will assess major infrastructure proposals. The clause requires Infrastructure WA to prepare the guidelines on how it will assess major infrastructure proposals in consultation with the Premier.

Clause 21 also requires the Premier to make summary reports on the assessment of major infrastructure proposals (prepared by Infrastructure WA under clause 19) publicly available within six months after the day on which the report is provided to the Premier. If the Premier has not made the summary reports publicly available within six months, this clause provides the ability for Infrastructure WA to make the summary report publicly available.

Division 4 – Obligations of State agencies

Clause 22: State agencies to provide information to Infrastructure WA

Clause 22 provides that Infrastructure WA may request that a State agency provide it with any existing information that the State agency holds that Infrastructure WA requires for the performance of its functions. It is intended that Infrastructure WA could specify a reasonable timeframe for an agency to provide the information. This clause requires Infrastructure WA to provide the request in writing, if the agency requests that. This is intended to ensure that relevant information held by other State agencies is shared with Infrastructure WA to enable it to perform its functions.

This clause allows for agencies to identify information that is provided to Infrastructure WA as being subject to a duty of confidentiality or secrecy or as being of a commercially sensitive nature (in the agency's reasonable opinion). There must be a legal duty of confidentiality or secrecy for the criteria to apply, and it is intended that the commercial sensitivity provisions will only apply where there is a legal requirement for commercial confidentiality. In these cases, the agency must identify the information to Infrastructure WA in writing, be as specific as practicable and give detailed reasons. It is intended that the identification of confidential, secret or commercially sensitive information will be limited to the minimum extent required to fulfil a legal obligation regarding a duty of confidentiality or secrecy or a legal requirement for commercial confidentiality. If an agency provides an unreasonable statement (e.g. that an entire document is confidential, when only parts of it in fact are), it is intended that Infrastructure WA could ask the agency to review their reasons and reconsider the identification of the confidential, secret or commercially sensitive information.

In addition, the clause provides for a State agency not being required to give information to Infrastructure WA if, in the reasonable opinion of the agency, the information is exempt as a matter listed under clause 22(5). In these cases, the agency must give detailed reasons in writing. It is intended that the withholding of information under a clause 22(5) exemption be limited to the minimum extent necessary. If an agency provides unreasonable reasons (e.g. that an entire document is withheld, when only parts of it in fact meet the exemption criteria of clause 22(5)), it is intended that Infrastructure WA could ask the agency to review their reasons and reconsider the withholding of the information.

Clause 23: Obligations of State agencies

This clause states the obligations of State agencies. Clause 23 requires that agencies must cooperate with Infrastructure WA in the performance of its functions, including complying in a timely manner to any request for information made by Infrastructure WA.

Further, this clause requires that State agencies have an obligation to align their strategies, plans and policies with, and implement the recommendations of the State Infrastructure Strategy that are relevant to that agency, to the extent that they are supported by Government's response to the Strategy. Agencies are also required to align their strategies, plans and policies with the relevant aspects of the State Infrastructure Programme. This is intended to ensure that the agency strategies, plans, policies and operations of individual State agencies is aligned with the whole-of-Government position relating to the Government's response and the State Infrastructure Programme.

Clause 23 clarifies that, where any inconsistency arises between the Government response to the State Infrastructure Strategy and the State Infrastructure Programme, the most recent prevails for the purposes of this clause. This may occur where the Government has a change in policy position and which may therefore result in an inconsistency.

Clause 23 prevails in cases where it is inconsistent with a State agency's obligation under an Act that establishes or continues the agency (e.g. GTE legislation).

Further, this clause provides that where an agency or body has not complied with this section, no civil or criminal liabilities arises, and no invalidity occurs due to the non-compliance with this section.

Division 5 – Implementation of State Infrastructure Strategy

Clause 24: Report on implementation of State Infrastructure Strategy

Clause 24 requires Infrastructure WA, in consultation with relevant State agencies, to prepare annual reports on the Government's progress in implementing the recommendations in the State Infrastructure Strategy. In preparing the report on implementation, Infrastructure WA is to take into account the current Government response to the Strategy and the State Infrastructure Programme. It is expected that these documents will outline the ways in which the Government is implementing the supported recommendations within the Strategy. Clause 24 also includes a requirement for Infrastructure WA to make the reports on implementation publicly available.

Part 4 – Governance and administration

Part 4 of the Bill provides detail on Infrastructure WA's board and its procedures. This Part also outlines information relating to Infrastructure WA's chief executive officer and other staffing arrangements, as well as Infrastructure WA's accountability and financial provisions.

Division 1 – The Board

Subdivision 1 – Board constituted

Clause 25: Board is governing body of Infrastructure WA

This clause states that Infrastructure WA is to have a Board, which is the governing body of Infrastructure WA, and that the Board is to perform the functions of Infrastructure WA.

Clause 26: Board membership

Clause 26 identifies the membership requirements and composition of the Board. The constitution of the Board allows for up to 10 members, of which up to 7 members may be appointed by the Governor, on the recommendation of the Premier. Up to two of these appointed members may be government employees (aside from ex-officio members detailed below).

Detailed in this clause are the ex-officio members of the Board, which are the chief executive officer of the Department of the Premier and Cabinet, the Under Treasurer (i.e. the chief executive officer of the department administering the *Financial Management Act 2006*), and the chief executive officer of the department administering the *Planning and Development Act* (currently the Department of Planning, Lands and Heritage).

To ensure the independence of Infrastructure WA, this clause requires that the number of government employees must not to exceed the number of non-government employees. To provide an appropriate balance of expertise, this clause requires that collectively, the Board have expertise across a broad range of infrastructure sectors (i.e. across a range of economic, social and environmental infrastructure). To ensure appropriate skills, before recommending a person that is not a government employee, the Premier must be satisfied that they have expertise in the areas of infrastructure policy, planning, strategy, funding, financing and delivery.

Clause 26 specifies that staff members of Infrastructure WA (including the Infrastructure WA CEO) or individuals who have held positions as members of Parliament of the Commonwealth or a State or Territory within 3 years, cannot be a board member.

Clause 27: Chairperson and deputy chairperson

This clause requires the Governor, on the Premier's recommendation, to appoint a Board member to each of the roles of Chairperson and Deputy Chairperson. To ensure Infrastructure WA's independence, only Board members who are not government employees are eligible to hold the position of Chairperson or Deputy Chairperson.

Further, clause 27 states that if the Chairperson is unable to act, the Deputy Chairperson is to act in the Chairperson's place. For avoidance of doubt, the clause states that an act or omission of the Deputy Chairperson acting in the Chairperson's place cannot be questioned on the grounds that the acting had not arisen or had ceased.

Clause 28: Terms and conditions of appointment

This clause relates to the terms of appointment by which the chairperson and members may be appointed. The chairperson may be appointed on a full-time or a part-time basis and the other appointed board members are to be appointed on a part-time basis only. An appointed member can hold a term of office for up to 5 years and is eligible for reappointment. It is intended that Board

members can be appointed for different terms so that the expiry of the various appointed Board member's terms can occur in a staggered manner rather than all at the same time. This will enable a degree of corporate knowledge to be retained within the Board. To provide an appropriate level of turnover on the Board, an appointed board member cannot hold office for more than 10 consecutive years. Further, this clause states that an appointed member holds office on the terms and conditions of appointment which are determined by the Premier.

The terms and conditions of appointment are applicable to appointed members only on the basis that the terms and conditions for ex-officio members are expected to be covered by virtue of their primary position, and therefore further terms and conditions should not be required to be placed upon those members.

Clause 29: Remuneration and expenses

This clause entitles Board members who are not government employees to be remunerated in addition to being reimbursed for any costs reasonably incurred related to the performance of their functions. Government members, whilst ineligible to be remunerated for their position as a Board member, are entitled to reimbursement of costs incurred related to their duties as a Board member. All entitlements are determined by the Premier on the recommendation of the Public Sector Commissioner.

Clause 30: Casual vacancies

Clause 30 allows for where there are vacancies in Board positions. The circumstance of when the office of a Board member becomes vacant are set out. This clause also allows an appointed Board member to resign at any time and sets out the process for this. Ex-officio members are unable to resign from the Board.

Clause 30 allows for the Governor, on the Premier's recommendation, to suspend or remove an appointed member on certain grounds or causes. In these circumstances, the Premier must lay a statement before each House of Parliament within 14 days of the suspension or removal, detailing the grounds for suspension or removal.

For government employees (other than ex-officio members), this clause grants the Premier the ability to remove a Board member on certain grounds. For example, this could occur in instances where a government employee who is a Board member accepts a new position within Government that is incompatible with their functions as a Board member.

Clause 31: Extension of term of office

This clause allows for the extension of a Board member's term of office where the term of office expires by effluxion of time (i.e. expiration of the set term). In these circumstances, the term of office is able to be extended up until the earliest of the following:

- the end of the 6 months following the expiry term of the member;
- the filling of the vacancy;
- the resignation of the member; or
- removal of the member from office under clause 30.

This clause applies despite the 10-year limit imposed in clause 28(3)(b).

Clause 32: Leave of absence

This clause allows for the granting of a leave of absence for the Chairperson or a Board member. In the case of the Chairperson, the Premier is authorised to grant the leave of absence and in the case of Board members, the Chairperson is authorised to grant a leave of absence.

Clause 33: Alternate members

Clause 33 allows for the appointment of alternate members for instances where a Board member is unable to act in their position (e.g. due to leave, illness or suspension). It is intended that an alternate member would only be appointed to act temporarily for the shortest period necessary. This clause does not apply where the office of a Board member is vacant. In those cases a standard appointment process under clause 26 would apply.

In the instances where Board members are unable to act, this clause grants the Premier the ability to appoint another person to act temporarily in the position of a Board member. However, this clause does not apply to the Chairperson or an ex-officio Board member. Where the Chairperson is unable to act, the Deputy Chairperson assumes the role of chairperson and the Premier may appoint an individual to act temporarily in the role of the Deputy Chairperson. Where an ex-officio member is unable to act, an individual acting in that person's primary role is considered to be the member for the purposes of Infrastructure WA responsibilities and entitlements.

When appointing an alternate member to act temporarily, clauses 26(4) to (8) continue to apply.

Clause 33 allows for where an alternate member is appointed, the member is eligible to any equivalent entitlements to the position for which they are acting. Further, the clause states that the act or omission of an alternate member cannot be questioned on the grounds of the appointment or acting having arisen or ceased.

Subdivision 2 – Board procedures

Clause 34: Holding meetings

This clause specifies the minimum number of Board meetings to be held per year, and allows for special meetings to be convened by the Chairperson at any time, or if requested by three or more Board members. The first meeting is to be convened by the Chairperson, and subsequent meetings to be held at times and places determined by the Board.

Clause 35: Quorum

This clause provides that quorum is one half of the number of members of the Board. It is intended that where there is an odd number of Board members, the quorum is half the number of members rounded up to the greater whole number (e.g. where there are nine board members, the quorum would be five).

Clause 36: Balance of members at meetings

Despite clause 35, clause 36 states that a meeting of the Board cannot proceed if the number of members present who are government employees exceeds the number of members who are not government employees, even if there is a quorum. This is intended to ensure the independence of the Board. A meeting cannot proceed if the number of members who are government employees outweigh the number of members who are not government employees, but could proceed where the numbers of each are equal.

This clause should also be read in conjunction with clause 47, but where quorum is reduced due to disclosure of interests, the meeting is unable to proceed if the requirements of clause 36 are not met. The provisions of clause 47 are not intended to override clause 36.

Clause 37: Presiding members

This clause specifies who is to preside at Board meetings. If the Chairperson is present, they are to preside. In the absence of the Chairperson, the Deputy Chairperson (acting as the Chairperson) is to preside. In instances where both the Chairperson and the Deputy Chairperson are both absent, the Board members present are to elect a member who is not a government employee to preside.

Clause 38: Procedure at meetings

This clause provides the ability for the Board to determine its own procedures, to the extent that they are not prescribed under this Act.

Clause 39: Holding meetings remotely

Clause 39 gives the ability for Board members to not attend a meeting in person, but rather through telephone (i.e. dialling-in) or some other means of instantaneous communication.

Clause 40: Voting

This clause specifies the voting powers of each Board member. It provides for each member present at a meeting to hold a deliberative vote (unless a member is ineligible to vote under disclosure of interest provisions). Further, this clause allows for instances where there are equal votes, for the presiding member, who cannot be a government employee (detailed in clause 37), to have a casting vote. This clause confirms that an item considered is resolved by a majority of votes cast. Board members have the ability to abstain from voting and in these cases clause 42 requires, among other specified matters, a record of members abstaining from voting to be detailed in the minutes.

Clause 41: Resolution without meeting

This clause allows for Board decisions to be made, where required, outside of a meeting. Where resolutions are made out-of-session, the resolution has the same effect as to a resolution made at a Board meeting. A resolution made in this way must be recorded in the minutes of the Board's next meeting.

Clause 42: Minutes to be kept

Clause 42 requires accurate minutes to be kept of each Board meeting. It allows members to request that the minutes record whether they abstained or voted for or against a resolution. The minutes must also record meeting attendance.

Clause 43: Committees

Clause 43 gives the Board the ability to appoint, alter and dissolve committees to assist in the performance of its functions. Note there are no limitations on who can be appointed to the committees (e.g. the CEO of Infrastructure WA may be a member of a committee). Subject to the direction of the Board, each committee may determine its own procedures. This clause also provides for the remuneration of Committee members who are not government employees (determined by the Premier on the recommendation of the Public Sector Commissioner). Any committee member may also be reimbursed expenses reasonably incurred in the performance of their functions, as determined by the Premier on the recommendation of the Public Sector Commissioner.

Subdivision 3 – Disclosure of interests

Clause 44: Disclosure of material personal interests

This clause relates to transparency and accountability for Board and Committee members in their decision-making. It requires all Board and Committee members to disclose the nature and extent of any material personal interests they hold as soon as they become aware of the relevant facts. A material personal interest may relate to a financial or non-financial matter. Further, this clause allows for the Chairperson or the member presiding at the Board or Committee meeting, to call on a member to disclose the nature and extent of a material personal interest, if they are of the opinion that the member holds such an interest. In default of any such disclosure, the member presiding may determine that the member has the interest. This clause also prescribes penalties for failure to disclose interests. Further, the clause requires any disclosure made by a member or by the presiding member to be recorded in the minutes of the meeting.

Clause 45: Participation by interested members

Where a member has disclosed a material personal interest under clause 44, or has been determined to have that interest, this clause specifies that the member must not vote and must not be present while the matter is being considered.

Section 57(d) of the *Interpretation Act 1984*, allows for no invalidity of powers made by the Board due to the participation of an interested member. Therefore, if a member with interests participated in decision-making in relation to a matter and a disclosure was made subsequent to a decision being made, the Board or Committee's decision would not be invalidated.

Clause 46: Section 45 may be declared inapplicable

This clause applies in instances where a member has disclosed a material personal interest in a matter, or the member presiding at the meeting has determined the member has an interest. This clause provides the ability for the Board or Committee to determine whether the member's interest is not significant enough to be likely to unduly influence the member's decision-making on the matter, and therefore allow the member having the interest to vote and be present when the matter is discussed. A resolution must be passed and be recorded in the minutes.

This clause confirms that a resolution cannot be passed that allows a member to continue considering a matter where a material personal interest has been declared if the interest is considered to be a direct or indirect financial interest in the matter. For the purposes of clause 46, a matter needs to be first considered a material personal interest prior to it being determined as to whether the material personal interest is of a direct or indirect financial nature. The clause states that a member has a direct or indirect financial interest in a matter if the member, or a person closely associated with the member, is reasonably expected to make a financial gain, loss, or benefit in any way from participating in the decision-making. Clause 71(2)(d) provides the ability for the regulations to prescribe what is or is not a material personal interest, and who is or is not a person closely associated with a member. The regulations could therefore provide further detail in regards to financial interests.

Clause 47: Quorum where section 45 applies

Clause 47 provides that where a member has an interest in a matter that makes them ineligible to vote or be present during the consideration of that matter, the quorum is one less than the total quorum. Further the clause allows for, where there are multiple members who have disclosed an interest, a quorum cannot be less than 3.

This clause should also be read in conjunction with clause 36. Where quorum is reduced under clause 47 due to disclosure of interests, the meeting is unable to proceed if the requirements of clause 36 are not met. The provisions of clause 47 are not intended to override clause 36.

Division 2 – Staff

Subdivision 1 – CEO

Clause 48: CEO

This clause requires that Infrastructure WA has a chief executive officer (CEO). The CEO is to administer Infrastructure WA's day-to-day operations, subject to the control of the Board. The clause confirms that the CEO of Infrastructure WA is not a Senior Executive Service (SES) position and is not to become an SES position. This clause notes that the Board is the employing authority of the CEO.

While the CEO is appointed by the Governor, the Board is the CEO's employing authority, for the purposes of the *Public Sector Management Act 1994*. This is consistent with the language used in the *Public Sector Management Act 1994* in relation to the definition of employing authority.

Clause 49: Appointment of CEO

This clause outlines the process of how the CEO is appointed and the process that must be followed when appointing a CEO. The CEO is appointed by the Governor on the recommendation of the Premier. This clause requires the Premier to consult with the Board and request that the Board nominate one or more individuals for appointment to the position of CEO. It is anticipated that the Board would undertake a recruitment process prior to providing the nomination/s to the Premier.

The Premier is to consider the Board's nomination/s, but the Premier may recommend to Cabinet an individual other than the nomination/s provided by the Board, if the Premier is not satisfied with the nominations provided. The Premier cannot recommend a CEO appointment to Cabinet until either the Board has provided its nomination/s to the Premier, or three months after the Premier requested the nomination, whichever is the earlier.

Clause 50: Terms and conditions of appointment

Clause 50 requires that the CEO is appointed on a full-time basis, and holds office for a period not exceeding 5 years. The CEO is eligible for reappointment and, subject to the Act, holds office on the terms and conditions of appointment determined by the Board.

Clause 51: Remuneration

Clause 51 notes that the remuneration of the CEO will be determined by the Salaries and Allowances Tribunal.

Clause 52: Casual vacancies

This clause outlines when the office of the CEO becomes vacant. Further, this clause allows for the CEO to resign at any time through writing to the Chairperson, with the resignation taking effect on the later of receipt by the Chairperson or the day specified in the resignation. This clause provides the ability for the Governor (on the recommendation of the Premier) to suspend or remove the CEO from office on certain grounds or causes. The Premier must consult with the Chairperson before making such a recommendation. If suspension or removal occurs, the Premier must cause a statement of the grounds for removal or suspension to be laid before each House of Parliament within 14 days of the suspension or removal.

To enhance transparency, the statement is to include whether the CEO's removal from office was supported by the Chairperson or not.

Clause 53: Disclosure of material personal interests

Clause 53 requires the CEO to disclose any material personal interest that they may have in relation to Infrastructure WA's affairs. A material personal interest may relate to a financial or non-financial matter. The CEO must disclose the nature and extent of the interest to the Board as soon as possible after the CEO becomes aware of the relevant facts. Unless authorised to do so by the Board (which may be subject to conditions and restrictions), the CEO must not take action or further action in relation to the matter. This clause also enables the Board to appoint another Infrastructure WA staff member to act in relation to a matter where the CEO is not authorised to take any action.

Clause 54: Entitlements of public service officer as CEO

If a person is appointed to the position of CEO who held a Public Service position immediately prior to the CEO role, this clause provides that the person is entitled to retain existing and accruing entitlements as if the CEO role were a continuation of the Public Service position (e.g. entitlements

such as annual leave and long service leave). Equally, if a person ceases to be the CEO and moves to a role in the Public Service, their service as CEO will count towards determining their rights in their new role (e.g. annual leave and long service leave).

Clause 55: No outside employment

Clause 55 states that the CEO is not to engage in paid employment outside of the duties of the office of the CEO unless the Board has provided written approval. Further the clause states that the CEO must not actively take part in the activities of a business or the management of a body corporate carrying out business without the Board's written approval.

Clause 56: Acting CEO

Clause 56 provides that in circumstances where the CEO position is vacant, the Board is able to appoint a person to act as the CEO continuously for up to 12 months. The terms and conditions of appointment (including remuneration) are to be determined by the Board, but cannot be at a higher level than the rate determined for the substantive CEO, or the most recent CEO if the role is vacant.

Subdivision 2 – Other staff

Clause 57: Other staff

Clause 57 provides that public services officers may be appointed under the *Public Sector Management Act 1994* to enable Infrastructure WA to perform its functions. Infrastructure WA may also engage or employ other staff otherwise than under section 3 of the *Public Sector Management Act 1994*, subject to certain industrial relations requirements. However, this clause does not limit Infrastructure WA's ability to engage a person under a contract for services or appoint a person on a casual employment basis.

Clause 58: Use of government staff and facilities

This clause provides Infrastructure WA with the ability to make arrangements with employing authorities to access the services of any employee within the service of the State, as well as any facility of a State agency. This clause does not limit Infrastructure WA from entering into arrangements through usual practices with the Commonwealth or local governments for the use of any employee (e.g. secondments) or facility.

Division 3 – Accountability and financial provisions

Clause 59: Premier may give directions

Clause 59 allows for the Premier to give written directions to Infrastructure WA in relation to the performance of its functions. This clause requires Infrastructure WA to give effect any directions from the Premier. However, a direction under this clause cannot be about the particular performance of a function or relate to the content of any strategy, advice, report, guideline or other document prepared by Infrastructure WA. It is therefore intended that any Premier's directions would be administrative or general in nature (rather than particular). Where a direction is given, the clause states that the Premier must table the direction within each House of Parliament within 14 days of the direction being given. The text of a direction is to be included in Infrastructure WA's annual report.

In addition to this clause, other clauses of the Bill allow for the Premier to direct Infrastructure WA on specific matters, such as clause 8(1)(f) regarding information and submission to Infrastructure Australia and clause 13(3) in relation to the timing to prepare a new State Infrastructure Strategy. The requirements of clause 59 do not apply in these cases.

Clause 60: Premier to have access to information

This clause entitles the Premier to have access to information in the possession of Infrastructure WA, and make and retain copies of that document. The Premier may request Infrastructure WA give information to the Premier; request Infrastructure WA give the Premier access to information, and in this case make use of Infrastructure WA's staff to obtain the information and provide it to the Premier. Infrastructure WA is to comply with these requests from the Premier.

Clause 61: Application of *Financial Management Act 2006* and *Auditor General Act 2006*

Clause 61 provides that the *Financial Management Act 2006* and the *Auditor General Act 2006* apply to Infrastructure WA (as a statutory authority) for the purposes of defining Infrastructure WA's financial administration, audit and reporting requirements.

Clause 62: Infrastructure WA's funds

This clause provides for the establishment of a special purpose account for the purposes of Infrastructure WA. This clause requires funds received by, and paid by, Infrastructure WA to be credited and debited to the account.

Clause 63: Protection for disclosure or compliance with directions

This clause provides that Infrastructure WA, or any other person performing a function under the Act, is not liable for a claim relating to disclosure of information or documents under clause 60, the *Financial Management Act 2006*, or the *Auditor General Act 2006*. Infrastructure WA, or a person performing a function is also not liable for having doing, or omitting to do any thing as a result of compliance with a direction given under this Act (i.e. a direction under clause 59 or under another clause).

Part 5 – General

Part 5 of the Bill includes a range of general provisions, including in relation to protection of information, execution of documents, contents of regulations, and review of the Act.

Division 1 – Protection of information

Clause 64: Confidentiality

This clause requires that a person must not, directly or indirectly, use or disclose any information that they obtain through the course of their duties, subject to any disclosures permitted under clause 65(1). This clause also details penalties for failure to comply with this provision.

Clause 65: Authorised use or disclosure of information

This clause provides circumstances where the use or disclosure of information is authorised. Clause 65(1)(c) clarifies the intent that the operation of other laws is not affected, including the *Financial Management Act 2006*, the *Freedom of Information Act 1992*, the *Parliamentary Papers Act 1891*, or the *Parliamentary Privileges Act 1891* (i.e. information otherwise protected under this Act may be authorised to be disclosed under another law).

In circumstances where the use or disclosure of information is permitted as stated in this clause, no civil or criminal liability is incurred, and the use or disclosure is not to be regarded as a breach of confidentiality, secrecy, ethics or standards or any unprofessional conduct.

Clause 66: Restrictions on disclosure of sensitive information

Clause 66 provides a definition of sensitive information for the purposes of clause 22(3), where a State agency has provided information to Infrastructure WA and has identified the information as subject to a duty of confidentiality, secrecy or is commercially sensitive. Private sensitive information is a subset of sensitive information and is defined as sensitive information relating to a person that is not a State agency or public authority. Under section 5 of the *Interpretation Act 1984* a person includes a public body, company, or association or body of persons, corporate or unincorporate (i.e. a private person or other entities).

Clause 66(2) is intended to clarify that the ability to disclose information under clause 65(1)(a) or (b) does not apply, and the more restrictive requirements of clause 66 apply instead for sensitive information or private sensitive information. However, the ability to disclose information under clause 65(1)(c) to (f) does apply, even for sensitive information or private sensitive information

Clause 66 states the restrictions on Infrastructure WA on disclosing sensitive information. This clause requires Infrastructure WA to not make sensitive information publicly available and not include sensitive information within a State Infrastructure Strategy, a summary report of each major infrastructure proposal assessed, a report on the Government's progress in implementing the recommendations of the State Infrastructure Strategy, or any other document that they make publicly available.

This clause states that the Premier is not to make public any private sensitive information. There are no limitations on the Premier making sensitive information (i.e. that is not private sensitive information) publicly available, for instances in which the Premier believes it is in the public interest to release sensitive information to the public.

Where documents have redacted sensitive information or private sensitive information, this clause does not prevent the Premier or Infrastructure WA publishing a redacted version of the document. In this case, if the Premier is releasing the document, only the private sensitive information would need to be redacted. Further, there are no limitations on any information that is already within the public domain, or if the information is in a statistical form that could not reasonably be expected to

be identifiable, or in instances where the person or entity has consented to the disclosure of the information.

Division 2 - Miscellaneous

Clause 67: Execution of documents

This clause provides for the affixing of the common seal to documents when required. It provides that a document is duly executed if the common seal of Infrastructure WA has been authorised to be fixed to a document and that the common seal has been fixed to a document in the presence of the chairperson and another board member, or the chairperson and the CEO of Infrastructure WA.

This clause allows for Infrastructure WA to authorise a Board member or Board members, or staff members to sign documents on Infrastructure WA's behalf. This clause confirms that where Infrastructure WA has provided this authorisation, that this must be documented and the common seal affixed to it.

This clause states that a document that appears to have an Infrastructure WA common seal, or looks to be executed and authorised by Infrastructure WA (or under the delegation of Infrastructure WA), is to be taken to be a real use of the common seal.

Section 68: Protection from liability for wrongdoing

This clause provides legal protections for individuals, but not for the entity of Infrastructure WA, where an action or claim for damages lies against a person for an action that they have undertaken (or not undertaken) through the performance of their functions under this Act.

This clause confirms that whilst a protection is provided for an individual, the protection does not extend to Infrastructure WA or the State. Accordingly, Infrastructure WA and the State can still be liable for anything done by a person acting on behalf of Infrastructure WA for the performance of its functions which results in a liability arising.

Clause 69: Making certain things publicly available

Clause 69 confirms that where the Act refers to a document being made publicly available, this may occur, but is not limited to, by publishing of the document on a website of the Department of the Premier and Cabinet or the website of Infrastructure WA.

Clause 70: Laying documents before Parliament not sitting

This clause outlines process for situations where there is a requirement under this Act which requires the Premier to lay a document before a House of Parliament within a period, and the House is not sitting, and will not sit before the end of the time period. In these cases, the Premier is able to give the document to the Clerk of the House. Where a document is provided to the Clerk of the House in these circumstances, it is taken to be laid before the House. This clause requires that where a document has been laid before a House, this must be recorded within the Minutes, or Votes and Proceedings, of the House on the first sitting day after the Clerk receives the document.

Clause 71: Regulations

Clause 71 addresses the ability for the Governor to make regulations which prescribe all matters that are required, permitted or necessary to be prescribed for the purposes of this Act. This clause provides the necessary head of power for regulations to be made for Infrastructure WA to recover costs of performing certain functions.

The regulations may also prescribe the circumstances in which Infrastructure WA may exempt a major infrastructure proposal from assessment including any conditions applied to an exempt

proposal. Regulations may also deal with matters relating to consultation undertaken by Infrastructure WA, including the extent of consultation.

Clause 71 provides the ability for regulations to be made in regards to the disclosure of material personal interests including by providing for what is or is not a material personal interest; and who is or is not a person closely associated with a member. It is intended that the ability to prescribe what is or is not a material personal interest also extend to what is or is not a direct or indirect financial interest. Further, for accountability and application of good governance, it is intended that the regulations will require the reporting of Board members' attendance summary within Infrastructure WA's annual report under the *Financial Management Act 2006*.

Clause 72: Review of Act

This clause requires the Premier to review the operation and effectiveness of the Act, and prepare a report based on the review, as soon as practicable after the fifth anniversary of the day on which this section comes into operation. The Premier must table the report within each House of Parliament within 12 months of the fifth anniversary.

Part 6 – Consequential amendments to other Acts

Part 6 of the Bill outlines the required consequential amendments to other Acts.

Clause 73: *Constitution Acts Amendment Act 1899* amended

Clause 73 provides for amendment of the *Constitution Acts Amendment Act 1899*, to enable the listing of the board of Infrastructure WA established under the *Infrastructure Western Australia Act 2019*. This amendment means that if an appointed member becomes an elected member of Parliament, they must resign from their position as appointed member.

Clause 74: *Financial Management Act 2006* amended

Clause 74 provides for an amendment to Schedule 1 of the *Financial Management Act 2006* to allow for the listing of Infrastructure WA within the schedule (list of statutory authorities).

Clause 75: *Planning and Development Act 2005* amended

Clause 75 amends the *Planning and Development Act 2005* by deleting Schedule 2 section 6 which relates to the establishment, compilation and purposes of the Infrastructure Coordinating Committee. This amendment will abolish the Infrastructure Coordinating Committee. The *Planning and Development Act 2005* allows the Western Australian Planning Commission to establish committees, which could include a more fit for purpose governance arrangement than the current Infrastructure Coordinating Committee.

Clause 76: *Public Sector Management Act 1994* amended

Schedule 2 of the *Public Sector Management Act 1994* lists the entities which are SES organisations. This clause provides for the amendment of Schedule 2 of the *Public Sector Management Act 1994* to list Infrastructure WA before item 19A.