



# **Infrastructure Investment (Asset Restructuring and Disposal) Act 2009**

**Reprinted as in force on 22 June 2009**

**Reprint No. 1**

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This Act is reprinted as at 22 June 2009.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

## Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).

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If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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Queensland

# Infrastructure Investment (Asset Restructuring and Disposal) Act 2009

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# Infrastructure Investment (Asset Restructuring and Disposal) Act 2009

[reprinted as in force on 22 June 2009]

**An Act to facilitate the restructure and disposal of particular businesses, assets and liabilities of government entities and for a particular purpose**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

### **2 Main purpose of Act**

The main purpose of this Act is to facilitate the restructure and disposal of particular businesses, assets and liabilities of government entities.

### **3 Extraterritorial application of Act**

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

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## Part 2 Interpretation

### 4 Dictionary

The dictionary in the schedule defines particular words used in this Act.

### 5 Declared projects

- (1) Each of the following is a *declared project*—
- (a) the disposal of all or part of the businesses, assets and liabilities of Queensland Motorways;
  - (b) the disposal of all or part of the businesses, assets and liabilities of Port of Brisbane Corporation;
  - (c) the disposal of all or part of the above rail businesses, assets and liabilities of Queensland Rail other than a passenger services business, asset or liability;
  - (d) the disposal of all or part of the below rail businesses, assets and liabilities of Queensland Rail;
  - (e) the disposal of all or part of the Abbot Point Coal Terminal held by Ports Corporation of Queensland and associated businesses, assets and liabilities;
  - (f) the disposal of all or part of the businesses, assets and liabilities of Forestry Plantations Queensland;
  - (g) the taking of steps to facilitate a disposal mentioned in paragraphs (a) to (f), including by—
    - (i) restructuring an entity mentioned in the paragraph or another declared entity; or
    - (ii) restructuring a business, asset or liability of the entity mentioned in the paragraph or another declared entity;
  - (h) a thing declared to be part of a declared project under subsection (2).

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- (2) The Minister may, by gazette notice, declare a thing to be part of a declared project for this Act if the Minister is satisfied it is appropriate to include the thing as part of a disposal mentioned in subsection (1)(a) to (f) or otherwise necessary to do so for the proper completion of the declared project.

*Example—*

A declared project comprises disposing of a particular rail line of Queensland Rail used in a coal business. Another declared entity holds land and equipment associated with the operation of the rail line. The Minister may be satisfied it is appropriate to include disposal of the land and equipment as part of the disposal of the rail line.

## 6 Declared entities

- (1) Each of the following is a *declared entity*—
- (a) Forestry Plantations Queensland;
  - (b) Port of Brisbane Corporation;
  - (c) Ports Corporation of Queensland;
  - (d) Queensland Motorways;
  - (e) Queensland Rail;
  - (f) Queensland Treasury Holdings;
  - (g) a company of which an entity mentioned in paragraphs (a) to (e) is the ultimate holding company;
  - (h) a government company established for a declared project;
  - (i) a company that was a declared entity under paragraph (g), all of whose shares have been transferred to the State, to Queensland Treasury Holdings or to a government company mentioned in paragraph (h);
  - (j) a government entity declared under subsection (2).
- (2) The Minister may, by gazette notice, declare a stated government entity to be a declared entity for this Act if the Minister is satisfied it is necessary to do so in order to do a thing relating to the government entity for a declared project.

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*Example—*

The Minister may be satisfied it is necessary to declare a government entity to be a declared entity so that a project direction may be given to the entity to enable a declared project to be appropriately carried out.

## **7 References to functions**

In this Act—

- (a) a reference to a function includes a power; and
- (b) a reference to performing a function includes exercising a power.

# **Part 3 Particular Ministerial powers and activities relating to declared projects**

## **8 Associated activities**

For the purpose of a declared project, the Minister may do any of the following—

- (a) examine a business, asset or liability of a declared entity, including a record relating to a business, asset or liability;
- (b) decide the most appropriate way of restructuring a business, asset or liability of a declared entity, including by deciding whether or not a business, asset or liability of a declared entity is to be transferred to another declared entity;
- (c) decide the most appropriate way of disposing of a declared entity or of a business, asset or liability of a declared entity;
- (d) anything else necessary or incidental to facilitate the disposal of a declared entity or of a business, asset or liability of a declared entity or the continuing operation of a declared entity.



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## 9 Transfer notice

- (1) For the purpose of a declared project, the Minister may, by gazette notice (a *transfer notice*), do any of the following—
  - (a) transfer shares in a declared entity to another declared entity or the State;
  - (b) transfer a business, asset or liability of a declared entity to another declared entity or the State;
  - (c) make provision about the consideration for shares or a business, asset or liability transferred under paragraph (a) or (b);
  - (d) grant a lease, easement or other right to a declared entity;
  - (e) vary or extinguish a lease, easement or other right held by a declared entity;
  - (f) in relation to a lease held under the *Land Act 1994*—
    - (i) transfer the lease; or
    - (ii) change a purpose for which the lease is issued; or
    - (iii) change a condition imposed on the lease; or
    - (iv) grant a sublease;
  - (g) in relation to a reserve under the *Land Act 1994*—
    - (i) change a community purpose for which the reserve is dedicated; or
    - (ii) remove a trustee of the reserve; or
    - (iii) appoint a trustee of the reserve, subject to conditions or without conditions;
  - (h) provide whether and, if so, the extent to which a declared entity is the successor in law of another declared entity or the State is the successor in law of a declared entity;
  - (i) make provision for a legal proceeding that is being, or may be, taken by or against a declared entity to be

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- continued or taken by or against another declared entity or the State;
- (j) make provision for or about the issue, transfer or application of an instrument to a declared entity, including—
    - (i) whether a declared entity holds, or is a party to, an instrument; and
    - (ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of a declared entity; and
    - (iii) whether a reference to an entity in an instrument is a reference to a declared entity; and
    - (iv) whether, under an instrument, an amount is or may become payable to or by a declared entity or other property is, or may be, transferred to or by a declared entity; and
    - (v) whether a right or entitlement under an instrument is held by a declared entity;
  - (k) make provision for the transfer or secondment of an employee of a declared entity to another declared entity;
  - (l) make provision about the employees of a declared entity and their rights;
  - (m) make provision about the records of a declared entity;
  - (n) make provision about an incidental, consequential or supplemental matter the Minister considers necessary or convenient for effectively carrying out the declared project.
- (2) A transfer notice may include conditions applying to something done or to be done under the notice.
- (3) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—

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- (a) signed by the Minister; and
  - (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
- (4) The transfer of a liability of a declared entity under a transfer notice discharges the entity from the liability, except to the extent stated in the notice.
- (5) A transfer notice has effect despite any other law or instrument.
- (6) A transfer notice has effect on the day it is published in the gazette or a later day stated in it.
- (7) If a transfer notice makes provision for a matter under subsection (1)(j) in relation to an instrument, the responsible entity for the instrument must take the action necessary to register or record the effect of the transfer notice, including—
- (a) updating a register or other record; and
  - (b) amending, cancelling or issuing an instrument.
- (8) In this section—

*authority* includes accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.

*employee*, of a declared entity, does not include a director of the entity.

*instrument* includes an application or authority under an Act.

*lease* includes sublease.

*responsible entity*, for an instrument, means the entity required or authorised by law to register or record matters in relation to the instrument.

## 10 Limitation on power to second employees of a declared entity

- (1) The secondment of an employee under a transfer notice must not, without the employee's consent, involve—

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- (a) a reduction in the employee's status; or
  - (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, abilities and experience.
- (2) An employee's status is not reduced for the purposes of subsection (1)(a) by—
- (a) a reduction in the scope of the business operations for which the employee is responsible; or
  - (b) a reduction in the number of employees under the employee's supervision or management;
- if the employee's functions in their general nature remain the same as, or similar to, the employee's functions before secondment.

## 11 Project direction

- (1) The Minister may give a direction (a *project direction*) to a declared entity or its board requiring the entity or board to do something the Minister considers necessary or convenient for effectively carrying out a declared project.
- (2) Without limiting subsection (1), a project direction may be about—
  - (a) forming a company for the purpose of transferring a business, asset or liability to the company; or
  - (b) winding up or deregistering a company; or
  - (c) making or executing an instrument; or
  - (d) making a particular decision about disposing of an interest held in a declared entity or a business, asset or liability; or
  - (e) making a particular decision for the purpose of returning the proceeds of a disposal mentioned in paragraph (d) to the State; or

*Example—*

a decision about a dividend or return of capital

- (f) disclosing information.
- (3) A project direction must be in writing, signed by the Minister.
- (4) A declared entity must comply with a project direction given to it.
- (5) A declared entity's board must—
  - (a) if a project direction is given to the board—comply with the direction; or
  - (b) if a project direction is given to the entity—take the action necessary to ensure the entity complies with the direction.
- (6) A declared entity's employees must help the entity or board to comply with a project direction given to the entity or board.

## **Part 4                      Application of other laws and instruments**

### **12      Act applies despite other laws and instruments**

A thing may be done under this Act despite any other law or instrument.

*Example—*

In accordance with a project direction given to its board, a GOC may form a company that will become a subsidiary without obtaining the approval that would otherwise be required under the *Government Owned Corporations Act 1993*, section 140.

### **13      Excluded matter for Corporations Act**

Anything done by the Minister under this Act is an excluded matter for the Corporations Act, section 5F, in relation to the Corporations Act, chapter 2D.

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*Editor's notes—*

- Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)
- Corporations Act, chapter 2D (Officers and employees)

#### **14 Non-liability for duty**

No duty under the *Duties Act 2001* is payable in relation to anything done under a transfer notice.

#### **15 Non-application of Property Law Act 1974, s 121**

The *Property Law Act 1974*, section 121, does not apply to a lease granted or transferred to a declared entity under a declared project.

#### **16 Disposal of public records**

- (1) This section applies if—
  - (a) a thing is done under a transfer notice or project direction; and
  - (b) the thing is, or involves, a disposal of a public record under the *Public Records Act 2002*.
- (2) To remove any doubt, it is declared that, for the purpose of section 13 of that Act, the public record is disposed of under legal authority, justification or excuse.

#### **17 Decisions not reviewable**

- (1) A decision under this Act—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

- 
- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
- decision*** includes—
- (a) a decision about making a declaration under section 5(2) or 6(2); and
  - (b) a decision to give a transfer notice or project direction; and
  - (c) a decision or conduct leading up to or forming part of the process of making a decision.

## **Part 5 Miscellaneous**

### **18 Time within which Minister may act**

The Minister may not perform a function under this Act on or after 1 July 2014.

### **19 Registering authority to note transfer or other dealing**

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
  - (a) may, without formal application, register or record in the appropriate way a transfer or other dealing affecting an asset or liability under a transfer notice; and
  - (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity.
- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor

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in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.

- (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.
- (4) In this section—

*transferee entity* means the entity to which an asset or liability is transferred under a transfer notice.

*transferor entity* means the entity from which an asset or liability is transferred under a transfer notice.

## **20 Confidentiality agreement with prospective purchasers**

- (1) A prospective purchaser may enter into a confidentiality agreement with the State for the purpose of obtaining access to information in the possession or control of the State or a declared entity.
- (2) The agreement must state—
  - (a) the information to which access may be given; and
  - (b) the employees or agents of the prospective purchaser to whom the access may be given; and
  - (c) any conditions of the agreement.
- (3) Information mentioned in subsection (2)(a) may be identified by description including by a stated category.
- (4) The persons mentioned in subsection (2)(b) may be identified by name, by a stated class, or by being a person approved by the State.
- (5) In this section—
  - (a) a reference to an agreement includes a deed; and



(b) a reference to entering into an agreement with the State includes executing a deed in favour of the State.

(6) In this section—

*prospective purchaser* means a person who has expressed to the State an interest in purchasing a declared entity, shares in a declared entity or part or all of a business or asset of a declared entity.

## 21 Disclosure and use of information for a declared project

(1) A person may disclose information in the possession or control of the State or a declared entity, for the purpose of a declared project, to—

- (a) a person involved in the declared project; or
- (b) a person to whom the information may be given under a confidentiality agreement; or
- (c) a declared entity, or employee or agent of a declared entity.

(2) A declared entity or its board must comply with a request by the Minister for the disclosure of information under subsection (1) to a person.

(3) A person may use information in the possession or control of a declared entity for the purpose of a declared project.

(4) Also, to remove any doubt, it is declared that a person may disclose or use information in compliance with a transfer notice or project direction.

(5) A person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use.

(6) In this section—

*confidentiality agreement* means an agreement mentioned in section 20, whether entered into or executed before or after the commencement of this section.

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## **22 Effect on legal relationships**

- (1) Nothing done under this Act—
  - (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or
    - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
    - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iv) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this Act, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

*Example—*

A contract entered into by a declared entity provides that the entity agrees not to transfer a particular asset without a particular person's consent and that, if the consent is given, it may be subject to particular conditions. If the asset is transferred to another declared entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

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- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under this Act, the notice is taken to have been given.
  - (4) In this section—  
*relevant entity* means—
    - (a) the State or an employee or agent of the State; or
    - (b) a declared entity or an employee or agent of a declared entity.

## 23 Things done under this Act

To remove any doubt, it is declared that a thing is taken to be done under this Act if it is done by, or in compliance with, a transfer notice or project direction, even if the thing includes taking steps under another Act.

*Example—*

A declared entity is a lessee of land under the *Land Act 1994*. In compliance with a project direction, the declared entity grants a sublease of the land. The grant of the sublease is taken to be done under this Act. So, under section 22(2), any approval to the sublease that would otherwise be required under the *Land Act 1994*, section 332, is taken to have been given unconditionally.

## 24 Preservation of rights of seconded employees

- (1) This section applies if an employee of a declared entity (the *employer*) is seconded to another declared entity under a transfer notice.
- (2) The employee is taken to continue to be employed by the employer on the same terms and conditions as applied before the secondment, subject to any subsequent variation of those terms and conditions under any applicable law or contract.
- (3) The secondment does not—
  - (a) affect the employee's benefits, entitlements or remuneration; or

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- (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) constitute a termination of employment by the employer, retrenchment or redundancy.
- (4) The secondment continues, even if the other declared entity stops being a declared entity, until the secondment is ended by the employer or the employee's employment with the employer ends.
- (5) In this section—  
*employee*, of a declared entity, does not include a director of the entity.

## **25 Preservation of rights of transferred employees**

- (1) This section applies to the transfer of an employee of a declared entity (the *former employer*) to another declared entity as part of a declared project.
- (2) The transfer does not—
- (a) affect the employee's benefits, entitlements or remuneration; or
  - (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) constitute a termination of employment by the former employer, retrenchment or redundancy; or

- (e) entitle the employee to a payment or other benefit because he or she is no longer employed by the former employer; or
  - (f) require the former employer to make any payment in relation to the employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the former employer and the employee.
- (3) In this section—  
*employee*, of a declared entity, does not include a director of the entity.

## **26 Evidentiary aids**

- (1) This section applies to a proceeding under this Act.
- (2) A certificate signed by the Minister stating any of the following matters is conclusive evidence of the matter—
  - (a) that a stated thing was, or is being, done for the purpose of a declared project;
  - (b) that a stated person is, or was at a stated time, involved in a declared project;
  - (c) that a stated company was established for a declared project;
  - (d) that a stated direction given by the Minister related to a declared project.
- (3) A document certified by the Minister to be a copy of a project direction is conclusive evidence of the direction.

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**27 Delegations**

The Minister may delegate the Minister's functions under this Act, except section 5, 6 or 9, to the chief executive.

**28 Regulation-making power**

The Governor in Council may make regulations under this Act.

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# Schedule                      Dictionary

## section 4

*agent* includes a financier, insurer or advisor.

*asset* includes a right.

*declared entity* see section 6(1).

*declared project* see section 5(1).

*disposal* includes divestment.

*employee* includes officer.

*Forestry Plantations Queensland* means the corporation established under the *Forestry Plantations Queensland Act 2006*, section 6.

*government company* means a corporation incorporated under the Corporations Act all the stock or shares in the capital of which is or are beneficially owned by the State.

*government entity* means a government company or another entity that is ultimately owned by the State.

*information* includes a document.

*instrument* includes an oral agreement.

*officer* includes a director.

*person involved*, in a declared project, means an employee or agent of the State who is involved in carrying out the project in the course of the employment or agency.

*Port of Brisbane Corporation* means Port of Brisbane Corporation Limited ACN 124 048 522.

*Ports Corporation of Queensland* means Ports Corporation of Queensland Limited ACN 126 302 994.

*project direction* see section 11(1).

*Queensland Motorways* means Queensland Motorways Limited ACN 067 242 513.

***Queensland Rail*** means QR Limited ACN 124 649 967.

***Queensland Treasury Holdings*** means Queensland Treasury Holdings Pty Ltd ACN 011 027 295.

***record*** includes any document.

***right*** includes power, privilege and immunity.

***transfer notice*** see section 9(1).

***ultimate holding company*** has the meaning given by the Corporations Act, section 9, as if section 48(2) and (3) of that Act did not apply.



## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|---|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No. [X]                       |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| num    | = numbered                     | s       | = section                               |
| o in c | = order in council             | sch     | = schedule                              |
| om     | = omitted                      | sdiv    | = subdivision                           |
| orig   | = original                     | SIA     | = Statutory Instruments Act 1992        |
| p      | = page                         | SIR     | = Statutory Instruments Regulation 2002 |
| para   | = paragraph                    | SL      | = subordinate legislation               |
| prec   | = preceding                    | sub     | = substituted                           |
| pres   | = present                      | unnum   | = unnumbered                            |
| prev   | = previous                     |         |   |

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments included | Effective    | Notes |
|-------------|---------------------|--------------|-------|
| 1           | none                | 22 June 2009 |       |

## 5 List of legislation

### **Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 No. 21**

date of assent 22 June 2009

commenced on date of assent

## 6 List of annotations

### **PART 6—AMENDMENT OF RIGHT TO INFORMATION ACT 2009**

**pt 6 (ss 29–30)** om R1 (see RA ss 7(1)(k) and 40)