

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Revenue & Financial Services**

*Income Tax Assessment Act 1997*

*Income Tax Assessment (Infrastructure Project Designation) Amendment Rule 2016*

Section 415-100 of the *Income Tax Assessment Act 1997* (the Act) provides that the Minister may make rules prescribing matters required or permitted by Subdivision 415-C the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Subdivision.

This rule amends the *Income Tax Assessment (Infrastructure Project Designation) Rule 2013* (the 2013 Rule) to update references to statutory positions and extrinsic documents, and to make other minor technical amendments.

Division 415 of the Act provides a tax incentive for entities that carry on a nationally significant infrastructure project that has been designated by the CEO of Infrastructure Australia (the Infrastructure CEO).

The 2013 Rule provides a process for the Infrastructure Coordinator to receive and consider applications for designation. The 2013 Rule incorporated two documents, maintained by Infrastructure Australia: the *Reform and Investment Framework* and the *Infrastructure Priority List*.

In 2014, through separate amendments to the Act and the *Infrastructure Australia Act 2008*, the relevant functions of the Infrastructure Coordinator were transferred to the Infrastructure CEO.

In September 2015, Infrastructure Australia agreed to revise the structure of the Infrastructure Priority List such that it will no longer categorise infrastructure projects using terms referred to in the 2013 Rule. Infrastructure Australia also revised the Reform and Investment Framework, renaming it the *Assessment Framework*.

The amendments made by this rule updated the above references. The amendments made by this rule commenced on the day after it was registered and apply to applications for designation that are made from that time.

The Act does not specify any conditions that need to be met before the power to make the rule may be exercised.

Consultation was not undertaken in relation to these amendments. The amendments were technical in nature and do not affect the rights of any taxpayers dealing with Infrastructure Australia.

### **Details of the *Income Tax Assessment (Infrastructure Project Designation) Amendment Rule 2016***

#### **Section 1 – Name of Rule**

Section 1 provides that the rule is the *Income Tax Assessment (Infrastructure Project Designation) Amendment Rule 2016*.

#### **Section 2 – Commencement**

Section 2 provides that the rule commenced on the day after it was registered.

### Section 3 – Authority

Section 3 provides that this rule is made under the Act.

### Section 4 – Schedules

Section 4 amends the 2013 Rule, as set out in Schedule 1.

#### Schedule 1, Items 1 and 2 – New definitions

Item 1 of Schedule 1 defines two new terms: the definitions define the Assessment Framework, which replaces the Reform and Investment Framework, and the Board of Infrastructure Australia. The Assessment Framework incorporates the document of that name available at [infrastructureaustralia.gov.au](http://infrastructureaustralia.gov.au). Subsection 415-100(2) of the Act permits the Rule to incorporate documents of this kind. Item 2 repeals the definition of the Reform and Investment Framework as this definition is now obsolete.

#### Item 3 – Infrastructure Priority List definition

Item 3 removes an unnecessary legislative reference from the definition of the Infrastructure Priority List.

#### Items 4 and 5 – Infrastructure CEO definition

Items 4 and 5 add a note to the dictionary explaining that the Act's definition of Infrastructure CEO applies to the 2013 Rule.

#### Items 6, 7 and 8 – References to *Legislation Act 2003*

Items 6, 7 and 8 update references to the *Legislation Act 2003*.

#### Items 9 and 10 – Framework references

Items 9 and 10 update references to reflect amendments made by item 1.

#### Items 11, 12, 14, 16 and 17 – Infrastructure Priority List references

Items 11 and 12 amend the conditions imposed for provisional designation to reflect new categories used in the revised Infrastructure Priority List. Old references to “Threshold” and “Ready to Proceed” project categories are replaced with references to the “Project” category. In addition, for provisional designation, a project must be assessed by the Board to be a nationally significant infrastructure project.

Items 14, 16 and 17 similarly amend the conditions imposed for full designation.

#### Item 13 – Correction to statutory reference

Item 13 corrects a reference to the provision of the Act concerning the designations.

#### Item 15 – Consistency of wording

Item 15 makes a minor amendment to one of the designation conditions to align the wording with the wording of the equivalent provisional designation condition.

#### Item 18 – Infrastructure CEO References

Item 18 amends the 2013 Rule to replace obsolete references to the Infrastructure Coordinator with references to the Infrastructure CEO.

#### Item 19 – Application

The amendments apply to applications for designation that are made on or after the day the amendments commenced.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Income Tax Assessment (Infrastructure Project Designation) Amendment Rule 2016* amends the *Income Tax Assessment (Infrastructure Project Designation) Rule 2013* to update references to statutory positions and extrinsic documents, and to make other minor technical amendments.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.