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21 February 2014

Attn: Tim Watling
Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Watling,

Re: Submission to the Inquiry into the *Infrastructure Australia Amendment Bill 2013*

Introduction

Infrastructure Australia has a fundamental role in enabling and prioritising efficient infrastructure investment; and importantly, in identifying and leading complex reforms to enhance the overall economic efficiency of national infrastructure markets.

Industry considers that *Infrastructure Australia* could achieve more, through a structure that allows the Board to oversight the direction, strategy and outputs of the organisation, and hold accountable the senior executive who administer its functions.

The most substantive and welcome change contemplated in the Bill will see the abolition of the *Infrastructure Australia Council* and the Infrastructure Coordinator's position, which will be replaced by a Board and Chief Executive Officer (CEO) respectively.

This marks a substantial improvement on the extant structure, because it introduces a normal reporting relationship between the Board and the agency's professional public service staff. Under current arrangements, the Infrastructure Coordinator is appointed and directed by the Minister for Infrastructure and Regional Development.

The reformed structure therefore serves to provide additional accountabilities and transparency, because the execution of the prioritisation and policy functions of the agency will be better insulated from the priorities of executive government.

Therefore, this change reduces opportunities for inconsistent priorities between political government and *Infrastructure Australia's* work programme and prioritisation of projects.

Beyond the changes to create an appropriate governance relationship between the Board and staff, the balance of the Bill's changes largely serve to give effect to the Government's stated policy objectives; including the refreshed audit and reforms to the agency's Infrastructure Priority List.

Doubtless, reforms beyond those contained in the subject Bill will be required, or desirable, over time. Indeed, this submission contemplates a range of such measures that we believe would each serve to improve the functionality or independence of the agency.

However, the infrastructure sector submits that, on balance, the subject Bill represents a material improvement on the status quo and should be supported on that basis.

A range of other submissions to the inquiry (see Tourism and Transport Forum, Business Council of Australia and others) have outlined a range of worthy considerations, largely focussed on the utility and desirability of section 5A of the Bill.

IPA agrees with the principles expressed in these submissions, and suggests that the Bill would be further strengthened if this section was either omitted or redrafted to provide a positive power to request additional inquiry *into* particular classes of infrastructure (for instance, a freight market assessment or urban transport projects), rather than the current drafting which provides a negative power to exclude particular classes of infrastructure.

However, on balance, we respectfully submit that any delay in the passage of the Bill will mean consequential delays in the restructure of *Infrastructure Australia* and appointment of key staff, meaning further delay in reforming infrastructure regulation and the acceleration of project delivery to the benefit of the economy and taxpayers.

Indeed, IPA draws the committee's attention to the fact that further delay in the passage of this Bill delays the execution or finalisation of the following tasks:

1. The selection and appointment of the *Infrastructure Australia* Board;
2. The Board's selection and appointment of a new CEO to lead the organisation;
3. The CEO's selection and appointment of additional skilled personnel to oversight new functions - including the infrastructure audit, the refinement of project assessments, skills to assess social infrastructure investments (not formerly within *Infrastructure Australia's* remit), the articulation of the project pipeline, and other functions;
4. The selection and appointment of personnel for the proposed funding and financing unit;
5. The development of an appropriate methodology to undertake the national infrastructure audit; and
6. The development of a more sophisticated toolkit of project prioritisation and assessment tools.

Achieving these tasks will each take time, and in many cases, cannot be commenced in advance of the appointment of the skills required to lead, or appoint, these functions.

For example, until the Board is constituted, a new CEO cannot be appointed (because the position is appointed by the Board, not the Minister directly as is the case under the existing Act).

This in turn means that there can be no progress on the (lengthy) process of the national infrastructure audit; because there is no approved methodology from the to-be-appointed Board; no approval from the to-be-appointed CEO for the allocation of resources; and no process to appoint the skilled staff needed to execute it.

In short, this Bill represents a material improvement on the status quo and we therefore contend that further delay in its passage risks unnecessary delay in the reform and acceleration of Australia's infrastructure market.

Infrastructure Partnerships Australia is therefore pleased to provide the following submission, to assist the Committee in its deliberations on the *Infrastructure Australia Amendment Bill 2013* (the Bill).

General comments: Infrastructure Australia Amendment Bill 2013

This submission supports the proposed Bill, because it offers an improvement to the existing structure and will enhance the functionality and accountabilities within *Infrastructure Australia*.

However, it is also our view that over time, further reforms will be needed to drive continuous improvement in the agency's execution of its functions and to ensure the ongoing engagement and support of the states and territories.

In this regard, we further submit that consideration should be given in subsequent amending legislation, or if appropriate, by regulation, to strengthen the transparency of project prioritisation.

Therefore, Infrastructure Partnerships Australia offers the following considerations on the *Infrastructure Australia Amendment Bill 2013*.

Structural reforms

Infrastructure Australia was established as a statutory body in 2008 to advise “the Minister, Commonwealth, state, territory and local governments, investors in infrastructure and owners of infrastructure on matters relating to infrastructure.”¹

Infrastructure Australia is strongly supported by industry, because of the opportunities it creates to drive national reform to infrastructure markets; more efficiently coordinate the release of projects into the market across jurisdictions; and because of the opportunity to enhance the quantum and efficiency of national infrastructure investment programmes.

The former Commonwealth Government has much to be proud of in terms of the creation of *Infrastructure Australia*; however it is also apparent that the agency requires reform to equip it with both the skill, additional resources and particularly, the institutional independence to properly acquit its role.

The current legislation sees the Infrastructure Coordinator appointed and employed directly by the Minister for Infrastructure, with no formal reporting relationship between the *Infrastructure Australia Council* (Chaired by Sir Rod Eddington), and the Office of the Infrastructure Coordinator.

Moreover, the *Infrastructure Australia Act 2008* provides for the Minister to direct the Infrastructure Coordinator in the execution of his functions.

This reporting relationship between the Minister and the Infrastructure Coordinator does not provide sufficient insulation against the potential for divergent priorities between executive government and an independent agency.

In response to this structural flaw, the Bill seeks to re-establish *Infrastructure Australia* as a separate entity under the *Commonwealth Authorities and Companies Act 1997*, creating an independent body that is both financially and legally distinct from the Commonwealth.

Under the Bill, the *Infrastructure Australia Council* and the position of Infrastructure Coordinator will be abolished, to be replaced by a Board and newly established position of CEO, respectively.

¹ *Infrastructure Australia Act 2008*.

The CEO will have responsibility for delivering the functions of the newly independent *Infrastructure Australia* and will be appointed by and report directly to the Board, making the agency more accountable for advancing projects and reforms.

Moreover, this structure provides a distinct separation between the professional public service staff of *Infrastructure Australia* and executive government.

These structural and organisational changes are therefore strongly supported, because they offer a substantial improvement on the existing structure and offer the opportunity to enhance the quality and transparency of the advice provided by the agency.

In turn, this will better inform the Commonwealth in their investment decisions, ensuring finite public funding is directed to projects that return the greatest national productivity gains and strongest social outcomes.

Functional reforms

The Bill also clarifies and expands the functions of *Infrastructure Australia*. Key among the functions are a renewed audit of the nation's infrastructure and an expanded project prioritisation role.

Infrastructure audit

The Bill specifies the requirement that *Infrastructure Australia* undertake a fresh audit of the "adequacy, capacity and condition of nationally significant infrastructure, taking into account forecast growth."

While a similar exercise was undertaken when *Infrastructure Australia* was established, the depth of analysis that underpinned that work was reduced by the limited time allowed for the audit, and the methodology and approach that was applied.

While not specified in the Bill, the renewed audit will ideally use a more robust methodology than the initial audit (which relied on a desktop assessment of projects put forward by state, territory and local governments, as well as the broader community).

An approach based around economic drivers would allow *Infrastructure Australia* to advise the Commonwealth about where infrastructure is insufficient to support current or forecast economic activity; and to carefully consider how state project priorities serve to address these gaps.

Infrastructure Australia has an important role to play identifying those state projects that best serve the national interest.

The requirement to undertake the audit every five years balances the certainty required to efficiently deliver near-term priorities with the flexibility to allow longer-term infrastructure strategies to shift in line with changing national and global economic and demographic circumstances.

Refining *Infrastructure Australia's* functions, and ensuring transparency and accountability in the delivery of these functions through a reformed structure, will assist in improving infrastructure planning and prioritisation on a national scale, thereby providing a more transparent, robust and evidence-based approach to allocating public funds to projects.

Case Study: aligning priorities

Infrastructure Australia's media release of 7 February 2014 provides a useful case study in the accountability gap that exists between *Infrastructure Australia's* staff and the *Infrastructure Australia Council*, Chaired by Sir Rod Eddington, under the existing legislation.

The subject media release advised that an economic consultant has been appointed to undertake a new national infrastructure audit, to inform the development of the 15 year project pipeline contemplated in the subject Bill.

While this might on first examination appear to be a reasonable move to advance the stated infrastructure policy agenda, rather it serves to show the disconnection that currently exists between the staff and *Council*.

There has been no formal consultation or input from the existing *Infrastructure Australia Council* in the methodology that underpins this audit; and given that this audit is contemplated as a responsibility of the to-be-appointed Board, it is hard to understand how the commissioning of a consultant can advance the to-be-appointed Board's agenda.

Indeed, the most substantial aspects of the subject Bill seek governance changes that will serve to bring decision making around the methodological approach of the audit and subsequent prioritisation of projects, under the direct authority of the to-be-appointed Board.

For this reason, this media release is a good demonstration of the requirement to evolve the structure, particularly in creating a normal governance relationship between the *Infrastructure Australia Board* and its staff.

The benefit in appointing an eminent Board is obviously limited, when their advice is not sought on either the approach, or finalisation, of *Infrastructure Australia's* functions.

Project prioritisation methodology

Specifically, *Infrastructure Australia* will continue to assess and prioritise projects for inclusion on the agency's pipeline; but will have a new requirement to assess and provide advice on a broader range of projects seeking Commonwealth Government capital investments greater than \$100 million, across the whole of government, except for Defence.

The oversight of social infrastructure investments – for example, in health, justice and education – marks a material change in *Infrastructure Australia's* mandate, which hitherto, has been restricted to consideration of economic infrastructure projects.

Provided *Infrastructure Australia* is adequately resourced for this role, it offers a considerable opportunity to drive efficiency across the Commonwealth's capital expenditure programme.

This may in time prove inconsistent with the Explanatory Memorandum, which said “*there is no net impact on the Australian Government Budget flowing from this amendment. It is proposed that Infrastructure Australia undertake its new functions within existing funding.*”

This should be reconsidered after the passage of the Bill, assessing whether additional funding is required to achieve better results.

The Infrastructure Priority List

It has also become evident over the initial period of *Infrastructure Australia's* operations that the project pipeline (the Infrastructure Priority List) requires substantial reform and articulation.

State jurisdictions consulted in the preparation of this submission and other work have indicated a high degree of frustration, principally arising from the lack of transparency by which project submissions advance through the assessment stages. Several jurisdictions have highlighted the variable application of requirements, a lack of responsiveness in communicating assessment outcomes; the potentially arbitrary nature of the *Infrastructure Australia* assessment methodology; as well as other concerns.

The Infrastructure Priority List process should be enhanced by:

- Providing detailed guidance material to states (or any other proponent) about the assessment criteria that will be used to assess the progression of any given project through each assessment stage;
- This guidance material should be publicly available and clearly specify the information requirements at each assessment gateway in the pipeline, including the relative importance of information in determining a project's relative priority;
- Initial project submissions by the states (or any other proponent) should receive an initial assessment within a defined period;
- *Infrastructure Australia* should routinely publish updates to the Infrastructure Priority List, ideally each quarter, to provide regular updates to the market about the inclusion and progress of projects through the pipeline;
- *Infrastructure Australia* should be tasked to develop more sophisticated project assessment tools, providing a greater depth in *Infrastructure Australia's* assessment and prioritisation functions and providing the Commonwealth with better advice about the productive and social returns of individual project options; and
- A project should not be able to progress to the final stage of the pipeline (currently designated as 'ready to proceed'), without a project proponent (typically a state or territory government, or in rare cases a corporation such as the ARTC or others).

These further reforms over time would lead to a more efficient process and help to prevent potential strategic misalignments over funding priorities between the Commonwealth and other governments.

These reforms would embed ongoing momentum in the pipeline and promote increased coordination and integration of national infrastructure planning, investment and delivery.

Conclusion

In summary, *Infrastructure Australia* is a fundamentally important structure, which done well offers a generational opportunity to enhance the functionality of Australia's national infrastructure markets. However, the initial structure can be materially improved through the reforms contained in the subject Bill, by providing a higher degree of accountability and transparency in *Infrastructure Australia's* functions.

For this reason, Infrastructure Partnerships Australia supports the intent and form of the subject Bill.

We further recognise that over time, the agency will benefit from a subsequent review of its legislative and any regulatory requirements.

Once again, we thank the Committee for the opportunity to submit in this regard, and we would welcome the opportunity to meet with the Committee in due course, should we be able to provide further information to assist with the Committee's deliberations.

Yours sincerely,

BRENDAN LYON
Chief Executive Officer