



**Australian Government**

**Department of Infrastructure and Regional Development**

**Senate Rural and Regional Affairs and Transport  
Legislation Committee**

**Inquiry into the Infrastructure Australia Amendment  
(Cost Benefit Analysis and Other Measures) Bill 2014**

**Submission by the Department of Infrastructure and Regional  
Development**

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## **Introduction**

The purpose of the Infrastructure Australia Amendment (Cost Benefit Analysis and Other Measures) Bill 2014 (the Bill) is to amend the *Infrastructure Australia Act 2008* (the Act) to clarify the legislative and administrative arrangements for Infrastructure Australia following on from recent amendments made to the Act in the Infrastructure Australia Amendment Act 2014.

### **Amendments to the *Infrastructure Australia Act 2008***

The Bill will rectify the currently incorrect placement of provisions pertaining to cost benefit analyses of infrastructure proposals in the Infrastructure Australia Act 2008. This will ensure that the Infrastructure Priority List will only include those proposals that have been informed by a cost benefit analysis.

The Bill will also amend the Act to include in the functions provision, the requirement that Infrastructure Australia undertakes evaluations of proposals that involve Commonwealth funding of at least \$100 million. This figure is to be established as a benchmark based on 2014 dollars and indexed at least every five years to ensure relativity is maintained in future years.

The amendments to the Act are all technical in nature and there will be no impact on Commonwealth funding from these amendments.

#### **a) Including a definition of 'proposal'**

The Bill inserts a definition of 'proposal' into section 3 of the Act. Under this definition proposal will mean a proposal made by a person other than Infrastructure Australia.

This provision makes it clear that infrastructure proposals are developed by entities other than Infrastructure Australia.

#### **b) Clarifying functions**

A further provision is added to section 5A which outlines the function of evaluating proposals for investment in, or enhancement to, infrastructure, by outlining another circumstance when Infrastructure Australia has the power to evaluate an infrastructure proposal. This circumstance is in addition to and does not limit those already listed in section 5A which relate to nationally significant infrastructure and other infrastructure determined by the Minister.

This amendment includes a new additional function of evaluating proposals for investment in, or enhancements to, nationally significant infrastructure that involve Commonwealth funding of at least \$100 million.

There are a number of reasons why this provision has been drafted using these specific terms. The reasons are:

1. The use of the term 'proposal' is consistent with the other provisions in section 5A and makes it clear that these are bids or submissions yet to be finalised or put forward for final consideration – such as being put forward for a funding decision.
2. The reference to nationally significant infrastructure in this amendment is important as it ensures that evaluations conducted under this provision will include those infrastructure proposals in which the Commonwealth clearly has an interest. Such proposals will be in relation to transport, energy, communication and water infrastructure in which investment of further investment by the Commonwealth will improve national productivity.
3. The other requirement in this provision, namely that the proposals will be those involving Commonwealth funding of at least \$100 million, is also important as it makes it clear that these are proposals in which the Commonwealth may have a role. This ensures that Infrastructure Australia's evaluation of such proposals will then feed into Commonwealth consideration of those proposals seeking Commonwealth funding. The outcome will be that Commonwealth funding decisions are informed by proper evaluation of infrastructure proposals, consistently with other Commonwealth legal requirements relating to accountability and value for money (such as those imposed under the *Public Governance, Performance and Accountability Act 2013*).
4. This linkage to Commonwealth funding is consistent with Infrastructure Australia's role as a Commonwealth agency. If this additional function did not make the linkage to Commonwealth funding or to nationally significant infrastructure, it would be unclear why Infrastructure Australia as a Commonwealth body had this additional function.
5. The requirement that the proposal involve Commonwealth funding means that the proponent must bring the proposal to Infrastructure Australia. Should this requirement be removed the proponent would be under no obligation to bring the proposal to Infrastructure Australia for evaluation. If, for example, the proposed section 5A(2) referred to infrastructure proposals involving a particular amount of capital expenditure there would be no obligation on or reason why the proponent would choose to approach Infrastructure Australia, as such proposals may not involve Commonwealth funding and may not relate to nationally significant infrastructure. In addition any linkage to capital expenditure rather than Commonwealth funding may cause confusion as to what is included in the term capital expenditure and when in the development of the proposal the capital expenditure should be calculated.

**c) Rectifying incorrect placement of provisions in the Act relating to Cost Benefit Analysis**

The Bill creates a new section 5AA which moves the provisions relating to Cost Benefit Analysis that previously were in section 5B. This change is to correct an anomaly that occurred in the recent amendments to the Act and had the potential to cause confusion as

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to the purpose of a Cost Benefit Analysis.

By moving these provisions to a new section 5AA it is made clear that a Cost Benefit Analysis informs the evaluation of a proposal for possible inclusion in an Infrastructure Priority List, rather than the development of a 15 year Infrastructure Plan as was previously provided. The amendments properly align Infrastructure Australia's functions in a coherent manner by having provisions relating to Cost Benefit Analysis in a separate provision.

Likewise the provisions relating to the approval of a method for preparing Cost Benefit Analyses of proposals has also been relocated by the amendments in the Bill.

As a consequential change, the Bill also updates section 39C(d) to refer to the new section 5AA(2).

**d) Repeal of provisions that are no longer necessary**

The Bill repeals those provisions relating to Cost Benefit Analysis that were incorrectly placed in the Act and are now covered by the new section 5AA. The repealed provisions are section 5B(1)(ba), 5B(3), (6), (7) and (8).

**e) Indexation of Amounts**

A new section 39E is inserted into the Act by this Bill to provide a method of indexation for the amount of \$100 million referred to in the new section 5A(2). This is to ensure that this amount remains relevant in future years. The amount is to be indexed in accordance with the method determined by legislative instrument. The method must provide for the amount to be indexed at least every five years, the first time to be in 2019.

As the determination is by legislative instrument it will be subject to parliamentary scrutiny.

