



Australian Government

Department of Infrastructure and Regional Development

Secretary

File Reference: 13/9458
Contact: Debra Robertson

Mr Tim Watling
Committee Secretary
Senate Rural and Regional Affairs and
Transport Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Watling

Inquiry into the Infrastructure Australia Amendment Bill 2013

Thank you for your letter via e-mail dated 6 December 2013, inviting the Department to provide a submission to the *Senate Rural and Regional Affairs and Transport Legislation Committee* (Committee) led inquiry into the Infrastructure Amendment Bill 2013 (the Bill).

The Bill introduced into the House of Representatives on 20 November 2013 and passed in the House on 10 December 2013, gives effect to the Australian Government's election commitments to strengthen Infrastructure Australia by restructuring its governance, clarifying the scope of its responsibilities and entrenching its role as a key advisor to government.

Attached is the Department's submission to the inquiry. Our submission predominantly responds directly to the issues identified by the *Selection of Bills Committee* (Report No. 10 of 2013) on 4 December 2013.

If the Committee would like further clarification on any of the issues raised in the Department's submission, please contact Ms Jessica Hall, A/g General Manager, Infrastructure Policy Branch, Infrastructure Investment Division

Yours sincerely

Mike Mrdak

20 January 2014



Australian Government

Department of Infrastructure and Regional Development

**Department Submission
to the
Senate inquiry into the
Infrastructure Australia Amendment
Bill 2013.**

JANUARY 2014

Contents

Section 1: Reasons for referral to the Senate Committee	1
Section: 2: Overview	1
Section 3: Department response	1
A) Infrastructure Australia Amendment Bill 2013	2
B) Changes to Infrastructure Australia’s Governance Structure	2
C) Changes to Infrastructure Australia’s Functions	3
D) Ministerial power of direction	4
E) Projects that can be evaluated by Infrastructure Australia	5
F) Consequential changes for tax concessions	6

Section 1: Reasons for referral to the Senate Committee

The Selection of Bills Committee referred the Infrastructure Australia Amendment Bill 2013 (the Bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (Senate Committee) on 4 December 2014.

The Selection of Bills Committee noted the following reasons / principle issues for referring the Bill for consideration to the Senate Committee.

“The Bill restructures Infrastructure Australia (IA), changes its governance and permits the Minister to have greater say on the type of projects that will be assessed, and how they will be assessed. It also changes arrangements for tax concessions for infrastructure projects. It replaces the existing IA members with a Board.

This is seeking to substantially rewrite current arrangements and these provisions need detailed committee consideration.”

Section: 2: Overview

The Government committed to broadening the current infrastructure reform agenda in collaboration with state and territory governments and industry to improve productivity and drive economic growth.

Reforming Infrastructure Australia (IA) was a 2013 Election Commitment, detailed in *“The Coalition’s Policy to Deliver the Infrastructure for the 21st Century”* publication. It identified key priority reforms to IA that will better enable it to deliver independent expert advice on infrastructure project and policy reform priorities.

The Government has stated that Australia’s future growth will be significantly influenced by our capacity to deliver more appropriate, efficient and effective infrastructure and transport. Investment in nationally significant infrastructure is central to growing Australia’s productivity and improving the living standards of Australians now and in the future.

While the Government fully supports IA in its role as a key advisor to governments on infrastructure investment and policy reforms, it committed to strengthening it by restructuring its governance, clarifying the scope of its responsibilities and entrenching its role as a genuinely independent advisor to governments.

Section 3: Department response

Productivity growth has historically been a key driver of income growth in Australia, underpinning Australian’s living standards and its international competitiveness. Australia’s future income growth will be significantly influenced by our capacity to deliver more appropriate, efficient and effective infrastructure and transport.

To maximize productivity improvement through investment, funding must flow to projects that yield the highest benefits. Therefore, it is critical to base project selection on rigorous analysis and sound planning to ensure better value for money. Poor infrastructure investment decisions are economically expensive and undermine private sector confidence and future investment. Furthermore, as governments increasingly look to alternative models as a means to fund infrastructure, it will be essential to improve the rigour and transparency of project development and selection.

Developing a priority list based on transparent and rigorous assessment by a body genuinely independent of political and jurisdictional imperatives will assist future national planning and help achieve the best value for money in infrastructure investment.

In its role, IA has contributed to raising the profile of infrastructure investment, including the critical role of infrastructure in an efficiently operating national economy. IA has also identified barriers to an efficient infrastructure market. This advice has led to improvements in planning and regulation.

However, IA has been less successful in fundamentally changing the way projects are identified as national priorities. Whilst it has delivered a project list, projects are largely derived from state and territory government project proposals and the prioritisation is based on the extent to which the project business case is advanced rather than the extent to which the project will contribute to improved national productivity.

The current arrangement of having both the Infrastructure Coordinator and IA reporting to the Minister can be duplicative and time consuming, potentially inhibits the independence of the advice to governments and does not maximise the advisory capacity of IA.

A) Infrastructure Australia Amendment Bill 2013

The Bill gives effect to the Government's election commitment to strengthen the role of IA as an independent, transparent and expert advisory body through a change in its governance structure and through better clarification of its functions.

The Bill will also better enable IA to demonstrate transparency and rigour in its prioritisation of projects and its advice on policy reforms, while facilitating a level of independence from governments.

B) Changes to Infrastructure Australia's Governance Structure

The Bill increases IA's independence by establishing IA as a separate entity under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). This will make IA an entity that is both legally and financially separate from the Commonwealth and with its own powers. While the CAC Act will deliver greater independence to IA, it also provides certain governance requirements such as financial management, Board and audit obligations and accountabilities.

Abolishing the position of Infrastructure Coordinator and replacing the current form of IA – effectively a twelve member advisory council without the responsibility for the organisation’s direction or management – with a separate legal entity governed by its own Board will help deliver this independence, whilst improving reporting arrangements and the delivery of IA’s functions.

The Chief Executive Officer position that will be appointed by and report to the Board, will be responsible for delivering IA’s functions, including managing its statutory responsibilities, resources and the appointment of staff as appropriate. Currently, much of this is undertaken through the Department of Infrastructure and Regional Development.

The proposed governance structure of a Chair, Board members and a Chief Executive Officer is also similar to other advisory bodies such as the National Transport Commission and Infrastructure NSW.

All IA Board appointments will be conducted in accordance with existing Government appointment policy and procedures for significant appointments. The Bill provides for a twelve member Board, including the Chair, comprising:

- nine members, including the Chair, to be solely determined by the Commonwealth. Of these members, at least five will have had experience in the private sector, and one will have had experience in local government;
- three members to be nominated by the states and territories.

This is consistent with the current legislation. Furthermore, there is nothing in the Bill to prohibit the consideration of members of IA for appointment to the new Board, including the current Chair, Sir Rod Eddington.

C) Changes to Infrastructure Australia’s Functions

The Bill does not propose significant change to IA’s current functions, however it does define those functions more clearly to ensure that IA delivers high quality, evidence-based advice that is independent of state government imperatives, but that has considered government priorities.

The current Act sets out IA’s functions in Section 5, subsection (1) – *Primary functions* and subsection (2) – *Additional functions*.

All of the current *Primary functions* will be provided for in a new Section 5C under the Bill. There will be no substantive changes to these functions.

The Bill also includes all of the current *Additional functions* except those in section 5(2)(g), *to provide advice on infrastructure policy issues arising from climate change*; and section 5(2)(h), *to review Commonwealth infrastructure funding programs to ensure they align with any Infrastructure Priority Lists*. Under the current Act, these two functions can only be undertaken by IA on request by the Minister (section 5(4)).

While these provisions are proposed to be removed by the Bill, it is important to note that the Bill still provides the necessary flexibility for these functions to be undertaken by IA through:

- new section 5C (b), *policy, pricing and regulatory issues that may impact on the utilisation of infrastructure*; and
- new section 5D (1)(c), any other functions that the Minister directs infrastructure Australia to perform (which is similar to the current section 5(2)(j)).

The Bill will expand the function of evaluating proposals. Currently, this function can only be undertaken by IA if requested by the Minister (Section 5(2)(d) and (4)) and only relates to “nationally significant infrastructure”. The Bill will provide for IA to undertake this function under new sections 5 (c) and 5A and for an expansion of this function beyond “nationally significant infrastructure” to “other infrastructure determined by the Minister” (new Section 5A(1)(b)).

The Bill also better defines the functions of IA in respect to developing plans which will improve transparency of IA’s evaluations and provide improved market information by requiring IA to specify productivity gains from each proposal evaluated, identify any complementary infrastructure required to maximise such gains and establish project delivery timeframes (refer Section 5B).

D) Ministerial power of direction

There has been some criticism that the Bill will give the Minister excessive direction powers and limit IA’s independence as an advisory body to Government. The Department does not agree.

The current Act requires IA to perform certain functions on request by the Minister (section 5(3)) and enables IA to perform some functions *only* if requested by the Minister (section 5(4)). The Act also provides for the Minister to direct IA to perform a function (section 5(2)(j)).

The Bill will:

- reduce the list of functions that IA can only perform by Ministerial request (new section 5D); and
- expand the function of evaluating proposals so that it can be performed by IA in relation to “nationally significant infrastructure” without a Ministerial request (new section 5A(1)(a)), except in relation to proposals in a class determined by the Minister (new section 5A(2)).

The Bill will also retain provision for the Minister to direct IA to perform a function (new section 5D(1)(c)).

In addition, the Act provides that:

- the Minister may give directions to IA about the performance of its functions (section 6(1));
- directions given under section 6(1) must be of a general nature only (section 6(3));
- the Minister must not give directions about the content of any advice that may be given by IA (section 6(4)).

The Bill will retain the Minister's power to direct IA about the performance of its functions, and provide that such a direction may require IA to perform a function in accordance with requirements as to the scope of any audit, list, evaluation, plan or advice, matters that IA must or must not consider, and the manner in which IA is to perform the function (new section 6(3)(c)).

However, new subsection 6(4) will provide that "the Minister must not give directions about the content of any audit, list, evaluation, plan or advice to be provided by Infrastructure Australia". This ensures that IA will at all times maintain an unfettered capacity in relation to its advice on investment, planning, priorities, projects and other matters to Governments.

E) Projects that can be evaluated by Infrastructure Australia

There has also been some criticism that the Bill will limit the type of project to be evaluated by IA, specifically eliminating IA's ability to assess public transport projects. The Department does not agree.

As already mentioned, the Act currently provides for IA to evaluate proposals for investment in nationally significant infrastructure only by Ministerial request (section 5(2)(c) and (4)). The Bill will enable this function to be performed without a Ministerial request, except in relation to proposals in a class determined by the Minister (new section 5A(1)(a) and (2)). This change will increase IA's independence. The purpose of providing for the Minister to exclude a class of proposals from the function is to facilitate the Government's policy that IA would assess all projects across both economic and social infrastructure (but not Defence projects) seeking Commonwealth funding of over \$100m. Projects which do not meet the definition of "nationally significant infrastructure", including projects involving social infrastructure, could be brought within the evaluation function by a determination of the Minister under new section 5A(1)(b). Projects not seeking Commonwealth funding of over \$100m could be excluded by a determination under new section 5A(2).

In addition, new Section 5C will enable IA to provide advice on, amongst other things, Australia's future needs and priorities relating to nationally significant infrastructure, policy issues impacting on the utilisation of infrastructure, impediments to the efficient utilisation of national infrastructure networks and options and reforms to improve the efficiency of utilisation of such networks. Section 5C will provide IA with a very wide-ranging remit across infrastructure generally.

F) Consequential changes for tax concessions

The Selection of Bills Committee noted some concern that the Bill changes arrangements for tax concessions for infrastructure projects. The proposed consequential changes provided for in the Bill are not intended to have any impact on the assessment of the tax concessions for infrastructure projects currently provided for under the *Income Tax Assessment Act 1997* (ITA Act).

The ITA Act currently identifies the position of the “Infrastructure Coordinator” as responsible for designating infrastructure projects eligible for the tax loss incentive. As the Bill abolishes the role of Infrastructure Coordinator, a consequential legislative amendment will be made to the ITA Act to confer the function of designating infrastructure projects on “a responsible person” (or persons) determined by the Minister after consultation with the Treasurer.