



**Australian Government**  
**Office of the Infrastructure Coordinator**

20 January 2014

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

cc. Secretary, Parliamentary Standing Committee on Public Works

Dear Mr Watling

**Inquiry into the Infrastructure Australia Amendment Bill 2013**

Thank you for your letter dated 6 December 2013 inviting me to make a submission on the *Infrastructure Australia Amendment Bill 2013*.

The Committee's inquiry provides an opportunity to identify the most effective means of redressing a loss of public trust in our national infrastructure planning and decision-making processes. These processes need to work better if our nation's infrastructure is to deliver the important economic and social benefits expected by the community.

**Background**

With rising infrastructure expectations and limited budgets, there is an air of unreality about our infrastructure planning. As Infrastructure Australia has noted in its reports to the Council of Australian Governments (COAG), there is a profound mismatch between our need for improved infrastructure and our willingness to pay.

Promises are made with only limited regard for funding these commitments. This is a particular problem during election periods where commitments are often made although robust business cases have not been prepared, let alone independently reviewed. Recent examples include the WestConnex road project in Sydney and the East West Road link in Melbourne. Both major political parties are guilty.

The consequence is cynicism about the justification for such big-ticket projects, combined with little perspective on the overall infrastructure backlog and little appreciation of its scale – or the cost of overcoming that backlog.

Although the processes instituted by Infrastructure Australia have sought to improve infrastructure decision-making, and have resulted in some improvements, any hard-nosed assessment would conclude that government decision-making processes have not changed much in the last five years. In substantial measure, this is a result of the following factors:

- ignorance of Australia's first comprehensive national infrastructure plan prepared and released by Infrastructure Australia in 2013;
- limited efforts at strategic planning, including jurisdictional resistance to following through on national strategies led by Infrastructure Australia and subsequently endorsed by COAG such as the *National Ports Strategy* and the *National Land Freight Strategy*, the Commonwealth's *National Urban Policy*, and Infrastructure Australia's recently released *Urban Transport Strategy*;
- State and Territory Governments resisting efforts to rigorously document their infrastructure plans and project proposals, and the Australian Government agreeing to fund proposals without adequate information about the projects and what they might deliver; and
- the failure of governments to increase the transparency of their infrastructure planning and project decision-making processes.

### **The Armit Review – and the analogy with Australia**

In October 2012 the UK commissioned Sir John Armit, the Chairman of the Olympic Delivery Authority for the London 2012 Olympic Games, to undertake an independent Review of long-term infrastructure planning in the UK.

The report of the Armit Review in the United Kingdom is relevant for the Committee's consideration of the Bill. A copy of the Review's report is Attachment 1, and extracts from public comment on it are Attachment 2.

The following quotations from section 4 of the Armit Report need only "the UK" to be changed to "Australia" to be valid for this country:

**"Lack of long term strategic planning:** Successive Governments have failed to set strategic priorities around infrastructure investment based on clear projections of the UK's future needs. As a consequence, decisions around major projects are not always driven by an evidence based assessment of all of the policy alternatives. This absence of an evidence base also contributes to a lack of public understanding of the condition of the UK's infrastructure and the importance of investing in assets to maintain our national quality of life.

**Policy uncertainty:** Major infrastructure projects are often controversial and politicians are rarely in office long enough to see the electoral dividends of major investment programmes. As a result, the lack of clarity around the UK's long-term infrastructure needs makes it difficult to build and sustain cross-party political consensus when difficult decisions need to be taken.



**Lack of transparency around funding:** Much of the policy debate on infrastructure fails to address the fundamental question of “Who Pays?” Whilst the private sector can provide some resources on a speculative basis in the early stages of project development, over the long term this funding of infrastructure can only come from three sources - national taxation, local taxation and user charging. Politicians are often wary of making decisions that will result in commitments to increase either public expenditure or user charges over the long term.”

The Armit Report was published in September 2013. It recommends the establishment of an independent National Infrastructure Commission, established by statute, to identify the UK’s long-term infrastructure needs and monitor the plans developed by governments to meet them.

Every 10 years the Commission would produce a National Infrastructure Assessment based on wide consultation with public and private sectors, and looking at the country’s needs over a 25-30 year time horizon. The assessment would include commentary on how needs might be most effectively met within the sectors it would address. The assessment would also consider the type, scale and priority of investment needed in the shorter term – 5-10 years, and 20 years – in the sectors examined.

The assessment would consider energy, transport, water supply and wastewater, communications and strategic flood defences. The first four sectors match those in the *Infrastructure Australia Act 2008*. The fifth refers to a likely impact of climate change in the UK that is different in scale from likely climate change impacts in Australia (although I acknowledge that climate change is likely to have an impact on flooding in some parts of Australia).

Each year the Commission would audit progress made and publish a report. Its Minister (the Chancellor) could also require a review of the Assessment from time to time.

### **Independence and Transparency**

The Armit Report emphasises the need for independence for the Commission. All its arguments apply to Infrastructure Australia in its current roles, and with at least as much force if Infrastructure Australia is to prepare infrastructure plans, as the Bill proposes.

The importance of independence also underlies the process recommended for the National Infrastructure Assessment in the UK. The National Infrastructure Assessment would be delivered to the Chancellor, who would be obliged to table it in Parliament within six months together with any amendments the Government proposes – on which the Parliament would vote.

Transparency, as the Armit Report emphasises, is also important to give both weight and credibility to infrastructure planning. Infrastructure Australia has sought to make its processes transparent by publishing:

- lists of submissions made to Infrastructure Australia, and copies of submissions where proponents have agreed to this (which Infrastructure Australia encourages);



- its assessment of projects assessed as at 'threshold' or 'ready to proceed' status in its Infrastructure Priority List; and
- publishing an annual report and a large number of reports on infrastructure policy issues.

Before Infrastructure Australia started publishing its assessments, little if anything was published in relation to the strategic and economic case for Commonwealth investment in projects, notwithstanding that they often involve billions of dollars.

Public and media interest in infrastructure decision-making is increasing. Ongoing public expectations for projects to be properly justified can be expected.

### **The Infrastructure Australia Amendment Bill**

I understand that the *Infrastructure Australia Amendment Bill* went through more than 20 drafts before it was presented to the House of Representatives. My office was not consulted during development of the Bill. This lack of consultation is both disappointing and disturbing. Those preparing the Bill could usefully have sought comment on:

- what has worked;
- what has not been so effective; and
- in consequence and most importantly, how Infrastructure Australia can be strengthened as an independent, transparent and robust adviser to governments and the Australian community.

### **The Infrastructure Priority List**

It is unfortunate that the second reading speech, and some public commentary on the Bill, shows a misunderstanding of Infrastructure Australia's processes for assessment of project proposals. There is a view, reflected in the following quote from the second reading speech, that "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 improve national productivity."

For a project proposal to be included on and then progress along Infrastructure Australia's Infrastructure Priority List, a proponent needs to:

- first, demonstrate that the proposal is addressing a nationally significant issue such as productivity, and contributes to the achievement of national goals;
- second, provide sufficient rigorous analysis for Infrastructure Australia to be confident that the project is a cost-effective means of addressing those issues – we need to be assured that projects are not 'gold plated', and that potentially more cost-effective options, including demand management measures, are properly considered; and
- third, demonstrate that the proposed delivery arrangements - e.g. contracting structure, risk management and the like - provide a reasonable assurance that not only can the project be delivered on time, on cost and to the requisite standard, but also that over time the project will actually deliver the benefits claimed by the proponent.



In line with recommendations from the Australian National Audit Office, Infrastructure Australia then provides a suggested prioritisation of 'ready to proceed' projects, having regard to the various proposals' strategic significance and benefit cost ratio. A copy of the most recent Infrastructure Priority List is Attachment 3.

It is important for proponents to be able to substantiate their claims about a project. This is why the priority list is structured as it is, with projects listed at Early Stage, Real Potential, Threshold and Ready to Proceed. It is also why some projects have not moved on the list over some time, as proponents have either:

- not provided further information to Infrastructure Australia for its review; or
- not been able to provide a robust business case.

Infrastructure Australia has been criticised by various state governments and others for being too demanding. The reluctance of proponents to open their proposals to reasonable enquiry smacks of a 'just trust us' approach. Infrastructure Australia's appropriate response is to insist on transparency.

### **Infrastructure Plans**

Sections 5(d) and 5B will require Infrastructure Australia to prepare infrastructure plans every 5 years (or at some other interval determined by the Minister). For the same reasons as the Armit Report recommends in relation to the UK, I recommend that the Committee support giving Infrastructure Australia this new function.

The Bill proposes that infrastructure plans specify priorities for nationally significant infrastructure for Commonwealth, State, Territory and local governments for the period covered by the plan.

Clearly the Government contemplates that preparation of an infrastructure plan will be a significant process. Substantial consultation will be necessary, as the Bill recognises. Further, without substantial agreement with most States and Territories on the broad thrust of its recommendations any national infrastructure plan will have no credibility and no chance of any meaningful effect.

A process to respond to an infrastructure plan, to approve it after any amendment found necessary, and then to encourage action consistent with it, needs to be part of the national infrastructure plan structure.

In this country the fact that key economic infrastructure is in large part provided and maintained by, or under arrangements the responsibility of, State and Territory governments adds to the fragmentation and underlines the need for a process of consultation, response, approval and compliance.

Infrastructure Australia released the first comprehensive national infrastructure plan in June 2013. The plan addressed economic infrastructure sectors and provided a range of recommendations both in relation to policy issues and specific projects.



The provisions of the Bill will strengthen Infrastructure Australia's ability to provide a truly national, medium to long-term national infrastructure plan that is focused on meeting national needs. It is a nice but unfortunate compliment for Infrastructure Australia that the Government apparently contemplates that the responsibility for preparation of a national infrastructure plan will require no addition to Infrastructure Australia's ten person team.

The Deputy Prime Minister in his second reading speech reflected on the 'short termism' in most infrastructure planning in Australia, and the need for a long-term perspective. Infrastructure Australia's reports to the COAG have also commented on weaknesses in the planning of our infrastructure networks.

Section 5B(2) provides that, unless Infrastructure Australia is directed otherwise by the Minister, the infrastructure plans are to have a 15 year horizon.

By its nature, infrastructure is long term in nature. Projects typically have a long gestation and a long delivery timeframe. More importantly, the decisions we make now will have profound implications for the future economic, social and environmental well-being of our nation.

Population projections released by the Australian Bureau of Statistics in November 2013 suggest that, on medium level assumptions, Australia's population will grow from 22.7 million in 2012 to 41.5 million in 2061 (almost a doubling of our population). The scale of this projected growth, and its implications for the development of our cities and regions, demand that we take a truly long term approach to infrastructure planning.

The COAG has agreed that strategies for the nation's capital cities should have a truly long-term horizon. This accords with overseas practice. Most jurisdictions now have or are developing metropolitan strategies with a 20-40 year outlook.

The *National Ports Strategy* agreed by COAG also commits governments to preparing 50-year plans for our major ports and the infrastructure networks that support each port.

Therefore I recommend that the horizon for the national infrastructure plan be extended to at least 30 years, with a particular focus on the first 15 years.

### **Concerns about Infrastructure Plans**

While the requirement for Infrastructure Australia to prepare national infrastructure plans is welcome, other provisions in the Bill run counter to the objective of producing national infrastructure plans that have a long life and a significant impact on infrastructure decisions, and are as far as possible accepted both on a bipartisan basis and by States and Territories as well as the national government.

My concerns are:

- lack of independence for Infrastructure Australia (section 6);
- an inadequate process to obtain bipartisan support (sections 5B and 6(3)(c));



- the proposed entitlement for the Minister to intervene to the detriment of transparency in Infrastructure Australia's processes and in any national infrastructure plan (section 6(3)(c)).

### ***Need for an independent Infrastructure Australia***

The Deputy Prime Minister's second reading speech states that the government's intention is for Infrastructure Australia to remain as an advisory body and be legally independent of the Commonwealth.

But several provisions in the Bill considerably broaden the power of a Minister to give specific directions to Infrastructure Australia in areas that are at the core of the organisation's responsibilities, so independence is not in fact conferred.

This is a failure that will inevitably compromise the perceived independence of any national infrastructure plan.

The Bill also establishes Infrastructure Australia under the *Commonwealth Authorities and Companies Act (CAC Act)*, not an appropriate structure for advisory bodies. The Committee may want to call witnesses and seek advice as to why the *CAC Act* structure has been proposed in the Bill.

At present, although Infrastructure Australia is created by statute and the position of Infrastructure Coordinator is a statutory office, an administrative arm of the Department of Infrastructure and Regional Development supports my work and that of Infrastructure Australia.

While this arrangement has raised a number of administrative and budgetary problems over the five years since Infrastructure Australia was created, those issues could be addressed without changing Infrastructure Australia into a *CAC Act* body.

Infrastructure Australia should be retained as an independent statutory entity, with its independence increased through removal of the power of the Minister to give directions under the present section 6, at least in relation to national infrastructure plans.

Infrastructure Australia has three other broad functions beyond the preparation of infrastructure plans, one of which has been recently conferred and is to be reduced by the Bill:

1. Infrastructure Australia is expected to continue to provide reports to the government, as it does at present. Some apparently restrictive provisions of the Bill are referred to below, but the function is clearly intended to remain.
2. Infrastructure Australia is also expected to continue with the Infrastructure Priority List process, now involving three reviews a year of the List and the projects seeking status on it. Again some provisions of the Bill appear to be restrictive and are referred to below.



3. Through the office of Infrastructure Coordinator, the designation of infrastructure projects occurs under the tax loss incentive introduced in the *Tax Laws Amendment (2013 Measures No. 2) Act 2013*. A prerequisite to designation is a specified status for the project on the Infrastructure Priority List. As the incentive may apply to some private sector projects, and to some projects with Commonwealth funding but no State or Territory funding, the extent of the projects seeking Infrastructure Priority List status is likely to increase. The Bill proposes to move the designation function away from the Infrastructure Coordinator, but the requirement for Infrastructure Priority List status will remain.

Extending independence for Infrastructure Australia to the production of the Infrastructure Priority List is a change whose time has come. In the five years since it was established Infrastructure Australia has developed the Infrastructure Priority List process to become a significant part of infrastructure planning in Australia. Perception of a connection between the Infrastructure Priority List and any national infrastructure plan is inevitable.

It is in the Government's interest for both the Infrastructure Priority List process and the preparation of national infrastructure plans to be independent of Ministerial direction and seen to be so.

#### ***Bipartisan support***

The Bill is silent on what the Minister is to do with the infrastructure plans prepared by Infrastructure Australia. Given their importance (as reflected in the second reading speech), consideration should be given to the Bill requiring the Minister to:

- table any infrastructure plan in Parliament within a specified short period, together with any amendments the Government proposes (including an evidence-based explanation of the proposed amendments); and
- seek the Parliament's approval of the national infrastructure plan.

The reason to seek Parliamentary approval is not to restrict the Government from seeking change to the approved national infrastructure plan. The Minister should be entitled at any time to request Infrastructure Australia to consider a proposed change. But the requirement for Parliamentary approval should reduce 'chopping and changing', the consequences of which include:

1. compromising the ability of both the public and the private sectors to plan and contribute to the development of infrastructure;
2. wasting resources;
3. eroding public confidence and trust in governments' infrastructure planning; and
4. undermining constructive discussion about the infrastructure challenges facing the country and the spending and policy trade-offs involved.



The reason to seek Parliamentary approval is to give a national infrastructure plan the authority and stability throughout its 5-year life – in the complex situation of a federation with extensive private ownership of infrastructure – that a document prepared for a single Minister would inevitably lack. Such plans (and their review every five years) will have implications across several Parliamentary terms.

It is anomalous that Infrastructure Australia's Minister is the Minister for Infrastructure and Regional Development, whose responsibilities extend over only some of the sectors addressed by the Infrastructure Priority List process and any national infrastructure plan. To be taken seriously across a range of portfolios in State and Territory governments as well as the Australian Government, it would be better for these processes to be the responsibility of a Minister with whole-of-government responsibilities, such as the Treasurer.

Similarly, any national infrastructure plan's path to seeking Parliamentary approval could involve the Parliamentary Standing Committee on Public Works.

At present, the Standing Committee does not provide a Parliamentary forum for consideration of strategic infrastructure issues to be carefully considered by a joint committee. Nor does it play a role in considering projects to be funded by the Commonwealth but where States or Territories are the contracting parties.

Infrastructure Australia's audits of progress against a national infrastructure plan could also be presented to the Parliamentary Standing Committee on Public Works.

The structure the Committee and the Government are therefore invited to consider is one where Infrastructure Australia's Minister is the Treasurer and where any national infrastructure plan, and audits of progress against the plan, are presented to the Parliament for approval through the Parliamentary Standing Committee on Public Works.

Of course, the government of the day would make its own decisions about what projects to prioritise and fund. The States and Territories would make their own decisions about their infrastructure priorities. But any national infrastructure plan, and audits of progress against it, would have the stability and authority vital if Australia is to plan its infrastructure investments in any coordinated way.

### **Concerns about restrictions proposed for Infrastructure Australia**

The third concern I listed at the beginning of the previous section is the proposed entitlements for the Minister to intervene to the detriment of transparency in Infrastructure Australia's processes. This applies more widely than in relation to any national infrastructure plan.

The following table summarises my comments on new sections of the *Infrastructure Australia Act 2008* proposed in the Bill which in my view are likely to have an adverse effect on the operations of Infrastructure Australia and on how it and its outputs, in particular the Infrastructure Priority List and any national infrastructure plan, are perceived.



In particular, the proposed new section 5D(1)(b) will completely undermine the credibility of Infrastructure Australia and its value to the nation. Astonishingly, it runs completely counter to the principles of consultation and transparency which any attempt to obtain consensus on a national infrastructure plan must accept.

Provision	Summary of Provision	Recommendation
Section 5	Sets out Infrastructure Australia's general functions.	<ul style="list-style-type: none"> <li>Reinstate provisions equivalent to section 5(2)(c), (g) and (h) of the current Act to maintain functions re provision of advice on harmonisation, climate change and Commonwealth funding programmes.</li> <li>Add a new function dealing with the conduct of post-completion reviews on projects.</li> </ul>
Section 5A(2)	Provides for the exclusion from evaluation of investment proposals in classes determined by the Minister.	<ul style="list-style-type: none"> <li>Delete the provision.</li> </ul>
Section 5D(1)(a)	Infrastructure Australia to address harmonisation issues only at the direction of the Minister.	<ul style="list-style-type: none"> <li>Delete the provision.</li> </ul>
Section 5D(1)(b)	Infrastructure Australia not to publish project evaluations or material used in those evaluations or plans, audits and advice other than at the direction of the Minister.	<ul style="list-style-type: none"> <li>Delete the provision.</li> <li>Alternatively, establish a regime whereby publication of evaluations, audits, plans and advice is the default, and a Ministerial direction is required not to publish.</li> </ul>
Section 6(3) and 6(4)	Provides a broader, and more specific set of matters on which a Minister may direct Infrastructure Australia	<ul style="list-style-type: none"> <li>Retain section 6(3) and (4) from the current Act.</li> <li>If the new section 6(3) is to be pursued, require the Minister to publish the direction (and reasons for it) within a limited period after making the direction.</li> </ul>
Section 39B(7)	Provides that a corporate plan has no effect unless it has been endorsed by the Minister.	<ul style="list-style-type: none"> <li>Remove section 39B.</li> </ul>
Section 39C(a)	Infrastructure Australia annual report to list Ministerial directions, but not directions under section 5D(1)(b).	<ul style="list-style-type: none"> <li>Include a reference to section 5D(1)(b) in section 39C(a).</li> </ul>

*Section 5 - advice on infrastructure policy issues arising from climate change*

The proposed new section 5 would remove Infrastructure Australia's function under the existing paragraph 5(2)(g) of providing advice on infrastructure policy issues arising from climate change.



Removal of this function is inappropriate because:

- a significant proportion of Australia's existing infrastructure assets will be exposed to the impacts of climate change, including through rising sea levels and heat stress;
- a significant proportion of Australia's greenhouse gas emissions inventory is associated with the various infrastructure sectors, notably in the energy and transport sectors; and
- adaptation to climate change will require changes in the scope and mix of infrastructure investment.

A provision equivalent to provision 5(2)(g) of the current Act should in my view be included in the new section 5 proposed in the Bill.

*Section 5 - advice on Commonwealth infrastructure funding programs*

The proposed new section 5 would remove Infrastructure Australia's function under the existing paragraph 5(2)(h) of providing advice on Commonwealth infrastructure funding programs to ensure that they align with Infrastructure Priority Lists.

Leaving Infrastructure Australia without this function would compromise the scope, and more importantly the credibility, of any national infrastructure plan. It would hobble consultation with States and Territories.

The absence of this function perhaps reflects unwillingness on the part of Australian Government agencies to subject their programmes to Infrastructure Australia's scrutiny. A remedy is to change the portfolio responsibility for Infrastructure Australia, as referred to above.

A provision equivalent to provision 5(2)(h) of the current Act should in my view be included in the new section 5 proposed in the Bill.

*Section 5 – post-completion reviews*

Neither the current Act nor the Bill deal with the conduct of post-completion reviews on infrastructure projects. Infrastructure Australia should have the function of conducting such post-completion reviews.

Undertaking post-completion reviews is important if governments, infrastructure providers and the community are to learn from experience. The reality is that post-completion reviews are rarely undertaken. Any that are undertaken are likely to be conducted by parties who worked on the project. Results are rarely made public.

Infrastructure Australia could provide an independent review of projects following their completion, and over time establish whether the forecast benefits have been realised.

The approach taken by the Australian National Audit Office (ANAO) offers a potential model in this regard.

Reviews would be undertaken on a limited number of projects having regard to their scale or some other attribute – for example complexity, economic significance, or where the project provides lessons that other project proponents can learn from.



A provision providing for Infrastructure Australia to conduct post-completion reviews on projects should in my view be included in the new section 5 proposed in the Bill.

*Section 5A(2) - scope of Infrastructure Australia's project evaluations*

The proposed section 5A(2) empowers the Minister to determine by legislative instrument a class of proposals that Infrastructure Australia must not evaluate.

The rationale and policy intent behind this provision has not been explained. The inclusion of proposed section 5A(2) in the Bill is surprising in light of the statement in the second reading speech that Infrastructure Australia should:

*“review all projects seeking Commonwealth funding worth more than \$100 million (including transport, water, telecommunications, energy, health and education sectors and excluding Defence projects) and publish the reasons for its decisions”.*

Proposed section 5A(2) appears not to recognise that in formulating a national infrastructure plan and the assessment of projects in the context of a national infrastructure plan, independence and transparency are not relative values. Once they are compromised they are lost.

Use of proposed section 5A(2) is likely to be interpreted as minimising scrutiny of the business case for certain projects – or perhaps a wide class of projects such as proposals for the Commonwealth to fund public transport.

Projects with limited or questionable business cases continue to be presented to Infrastructure Australia or are not presented for Infrastructure Australia's review at all. Exercise of the power under section 5A would exacerbate this problem.

The proposed section 5A(2) should in my view be deleted from the Bill.

*Section 5D(1)(a) - harmonisation of policies and laws relating to infrastructure*

The proposed new section 5D(1)(a) provides that Infrastructure Australia may only review and provide advice on harmonisation of policies and laws relating to the development of, and investment in, infrastructure when directed to do so by the Minister. This is little different from section 5(4) of the current Act. It provides that this function is to be exercised “on request by the Minister”.

Much of Infrastructure Australia's work over the last five years has centred on policy and regulatory harmonisation. Examples include work on environmental approvals for major projects, advice on heavy vehicle road charging, and recycling of government infrastructure assets.

Poor policy and regulatory harmonisation remains one of the major impediments to the development of our national infrastructure.

The proposed section 5D(1)(a) should in my view be deleted from the Bill and the 'harmonisation review' function included in the proposed section 5.



*Section 5D(1)(b) – restrictions on publication*

*Section 39C – publication of directions in Infrastructure Australia's annual report*

The proposed new section 5D(1)(b) provides that Infrastructure Australia is not permitted to publish, unless it has a written direction from the Minister:

- its evaluation of project proposals under proposed section 5A,
- any evidence relied on in the preparation of any output, including national infrastructure plans,
- the reasoning by which it reached its conclusions in any evaluation of any proposal, or in deciding the Infrastructure Priority List or preparing a national infrastructure plans, or even
- its conclusions.

It is possible that the Minister will give a *carte blanche* direction to Infrastructure Australia to publish all this material. But even if the Minister does so, the provision makes any claimed independence or transparency an illusion.

The Minister can delay a direction to publish, or alter an existing direction, at any time – before an evaluation begins or when Infrastructure Australia has completed a report not yet published. A Minister could issue a direction subject to conditions, e.g. that nothing is to be published until a copy of the material proposed to be published has been presented to the Minister and/or that Infrastructure Australia has incorporated changes in any draft material.

Directions given under section 5D(1)(b) are not legislative instruments, and therefore cannot be reviewed by the Parliament.

If a direction power is to be retained, then the Bill could be drafted so that publication is the default arrangement; in other words a direction would have to be given not to publish.

The proposed new section 5D(1)(a) permitting the Minister to withhold from evaluation a class of proposals determined by the Minister is bad enough. At least a determination under that section is to be a legislative instrument to come before the Parliament. But the proposed new section 5D(1)(b) is far worse. It makes whatever Infrastructure Australia does secret unless the Minister directs otherwise. Any direction should be a legislative instrument.

Directions under section 5D(1)(b) are not required by the proposed new section 39C to be set out in Infrastructure Australia's annual report. In a sense this will not matter: anything published will obviously have had the benefit of a direction. If a direction power is to be retained but publication is the default arrangement, section 39C should require them to be disclosed.

Obviously, the proposed section 5D(1)(b) should in my view be deleted from the Bill. Unless it is, any view that Infrastructure Australia has any independence, that its processes are transparent, or that its outputs reflect a serious attempt at consultative infrastructure planning will be a pretence.



*Sections 6(3) and (4) – width of Ministerial directions*

The Bill proposes the deletion of the existing section 6(3) of the Act and its replacement with a new section 6(3) that would provide the Minister with the power to give directions to Infrastructure Australia as to:

- when a function is to be performed – section 6(3)(a) and (b);
- the scope of any audit, list, evaluation, plan or advice Infrastructure Australia is to provide – section 6(3)(c)(i);
- matters that Infrastructure Australia must or must not consider in performing a function – section 6(3)(c)(ii); and
- the manner in which Infrastructure Australia performs a function - section 6(3)(c)(iii).

Although the new section 6(4) states that the Minister must not give directions about the content of any audit, list, evaluation, plan or advice to be provided by Infrastructure Australia, the scope of the directions-making power – particularly section 6(3)(c) – is as pernicious in its likely effect as the proposed new section 5D(1)(b).

The current section 6(3) also provides the Minister with a power to direct Infrastructure Australia about the performance of its functions, although the existing provision states that any directions “must be of a general nature only”. This provides an appropriate balance between enabling the Minister to direct the organisation while, at the same time, minimising any sense of prescription that might compromise the organisation’s actual and perceived independence.

The proposed amendments to section 6(3) and (4) should in my view be deleted from the Bill.

*Section 39B – Corporate Plan*

Section 39B provides that Infrastructure Australia is to prepare a corporate plan and, amongst other things, that the corporate plan does not take effect unless it has been endorsed by the Minister.

The practical effect of this provision is that Infrastructure Australia would not have authority to undertake actions to pursue any of its legislated functions other than with the Minister’s approval.

No such provision is in the current Act. The proposed provision is perhaps a boilerplate provision for an entity incorporated under the *CAC Act*. There is no need for a corporate plan to be required from an advisory body that undertakes no commercial activities.

The proposed section 39B should in my view be deleted from the Bill.



## **Conclusion**

Like many other countries, Australia needs to improve its infrastructure decision-making processes. Those processes can be a point of competitive advantage or disadvantage for our country.

Infrastructure Australia is well regarded both nationally and internationally and can be structured to assist the Parliament, governments and the community in improving infrastructure decision-making processes.

The Deputy Prime Minister's objectives and principles concerning the organisation's independence and transparency in decision-making deserve wide support.

Some of the provisions in the Bill are consistent with these objectives and principles. Others unfortunately are not – indeed, some proposed new provisions appear diametrically opposed to those objectives and principles.

Increasingly, Parliaments and governments are turning to new, independent or semi-independent structures such as independent central banks and Parliamentary budget advisers, both to ensure the development and application of rigorous public policy and to raise levels of transparency in decision-making. This is especially important in areas such as infrastructure policy, where decisions have such long-term implications.

An approach involving Parliamentary oversight of national infrastructure planning, as recommended above and in the Armit Report, should be considered. The breadth of support from industry and civil society groups for the Armit Report's recommendations, and the wide-ranging calls for improvements in infrastructure planning in Australia, suggest that the establishment of similar structures in Australia would enjoy broad support.

We should adopt an approach that seeks to secure the development of plans and strategies that enjoy bipartisan support and which remain relatively stable over time.

I would be happy to address the Committee and answer any questions.

Yours faithfully

Michael Deegan  
Infrastructure Coordinator