

# **Inquiry into the Asian Infrastructure Investment Bank Bill 2015 [Provisions]**

## **Referral and conduct of the inquiry**

1.1 On 20 August 2015 the Senate Standing Committee for Selection of Bills referred the provisions of the Asian Infrastructure Investment Bank Bill 2015 (the bill) to the Senate Economics Legislation Committee for inquiry and report by 15 September 2015.<sup>1</sup>

1.2 The bill was introduced by the Treasurer, the Hon Joe Hockey MP, on 13 August 2015. The bill facilitates Australia's founding membership of the Asian Infrastructure Investment Bank (AIIB), by providing authority and an appropriation for the payment of Australia's capital contribution.

1.3 The committee advertised the inquiry on its website and received two submissions. The committee held one public hearing in Canberra on 14 September 2015. A list of the submissions received is at Appendix 1. A list of witnesses who appeared at the public hearing is at Appendix 2. The committee thanks all who contributed to the inquiry.

### ***A note on Hansard***

1.4 Owing to the short timeframe between the committee's public hearing and reporting, the committee did not have the benefit of the published proof *Committee Hansard*. When references are made, they are to the committee's public hearing held on 14 September 2015.

## **Scope and structure of this report**

1.5 The remainder of this chapter sets out background information to the bill and the AIIB, and addresses:

- the background to the bill;
- the purpose of the AIIB, including:
  - Australia's investment, and the expected return on that investment; and
  - the reversal of Australia's decision not to join.

## **Purpose of the bill**

1.6 Australia's intention to join the AIIB as a Founding Member was announced on 24 June 2015, in a joint press release by the Treasurer, the Hon Joe Hockey MP, and the Minister for Foreign Affairs, the Hon Julie Bishop MP.<sup>2</sup>

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1 *Journals of the Senate* No. 110, 20 August 2015, pp 3007-3008.

2 The Hon Joe Hockey, MP, Treasurer of the Commonwealth of Australia, and the Hon Julie Bishop, MP, Minister for Foreign Affairs, 'Australia to join the Asian Infrastructure Investment Bank', Joint media release, 24 June 2015.

1.7 The purpose of the bill is to facilitate Australia's membership of the AIIB and authorise Australia to make a payment to the AIIB through subscription to shares in the AIIB or otherwise required. The bill also provides for the Treasurer to issue promissory notes on standard terms on behalf of Australia and issue them to the AIIB.

1.8 The bill consists of nine clauses. The key provisions include that the bill will authorise payments to the AIIB (Clause 5), allow promissory notes to be issued (Clause 6), authorise the Consolidated Revenue Fund to be appropriated (Clause 7), and will enable regulations to be made for immunities and privileges (Clause 8). Clause 9 authorises the making of regulations that are required, permitted, necessary or convenient for carrying out or giving effect to the Act.

### ***Immunities and privileges***

1.9 The Explanatory Memorandum to the bill sets out that regulations may confer privileges and immunities on the AIIB, its officers and employees, and experts and consultants engaged in services to the AIIB.<sup>3</sup>

1.10 Clause 8 of the bill enables regulations to be made which will 'extend certain privileges that Australia is obligated to provide' to the AIIB under the Articles of Agreement.<sup>4</sup>

1.11 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee), in its Alert Digest, sought clarification on two matters:

- the nature of the proposed immunities and privileges as set out in clause 8 of the bill; and
- why these immunities and privileges are set out in regulations and not in the bill.<sup>5</sup>

1.12 The Scrutiny of Bills Committee also sought advice on whether the 'modifications to the normal operation of the law' may adversely impact on the personal rights or liberties of individuals.<sup>6</sup>

1.13 The Treasurer advised the Scrutiny of Bills Committee that the immunities and privileges conferred by the bill were consistent with those of other multilateral development banks:

The nature of the proposed privileges and immunities are consistent with privileges and immunities afforded to the Asian Development Bank and the European Bank for Reconstruction and Development. Australia is a member of both of these multilateral development banks.<sup>7</sup>

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3 Explanatory Memorandum, pp 2-3.

4 See: Articles of Agreement, Chapter IX (Status, Immunities, Privileges and Exemptions).

5 Senate Standing Committee for the Scrutiny of Bills, *Alert 8/15*, 19 August 2015, pp 2-3.

6 Senate Standing Committee for the Scrutiny of Bills, *Alert 8/15*, 19 August 2015, p. 3.

7 Senate Standing Committee for the Scrutiny of Bills, *Ninth Report of 2015*, 9 September 2015, p. 616.

1.14 Further, the Treasurer advised that setting out the immunities and privileges in the regulations rather than the bill was also 'consistent with the existing practice provided to other international financial institutions of which Australia is a member'.<sup>8</sup>

1.15 The Scrutiny of Bills Committee, however, noted that it maintained its concern over the potential negative impact that immunities and privileges may have on individuals:

For example, without further information it seems possible that immunity from judicial proceedings could give rise to detriment to another person, as a person would be prevented by the immunities from bringing legal proceedings against any AIIB officials in Australia, such as for breach of contract or defamation.<sup>9</sup>

1.16 The Scrutiny of Bills Committee also questioned whether setting out the immunities and privileges in delegated legislation was appropriate, but did not form a view on this.<sup>10</sup>

### **Background and purpose of the AIIB**

1.17 The AIIB has been proposed by the Chinese Government as an international financial institution which will 'assist in funding major infrastructure projects throughout Asia'.<sup>11</sup> China is the major shareholder, with a stake of around 30 per cent.<sup>12</sup> Other major shareholders are India, Russia, Germany and Korea, with Australia the sixth-largest shareholder if the bill passes.<sup>13</sup>

1.18 The AIIB has been proposed as part of a solution to an infrastructure financing gap in Asia, which is estimated to be around \$8 trillion over the current decade.<sup>14</sup> Demand for infrastructure investment in the region is concentrated in China,

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8 Senate Standing Committee for the Scrutiny of Bills, *Ninth Report of 2015*, 9 September 2015, p. 617.

9 Senate Standing Committee for the Scrutiny of Bills, *Ninth Report of 2015*, 9 September 2015, p. 617.

10 Senate Standing Committee for the Scrutiny of Bills, *Ninth Report of 2015*, 9 September 2015, p. 617.

11 Explanatory Memorandum, p. 5.

12 'China's Jin Liqun Named President-Elect of Asian Infrastructure Investment Bank', *The Wall Street Journal*, 24 August 2015, <http://www.wsj.com/articles/chinas-jin-liqun-named-president-elect-of-asian-infrastructure-investment-bank-1440421017> (accessed 1 September 2015).

13 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

14 The Hon Joe Hockey, MP, Treasurer of the Commonwealth of Australia, and the Hon Julie Bishop, MP, Minister for Foreign Affairs, 'Australia to join the Asian Infrastructure Investment Bank', Joint media release, 24 June 2015.

India and Indonesia, and exceeds the capacity of the current development bank in the Asia region, the Asian Development Bank.<sup>15</sup>

1.19 At its public hearing, the committee heard that the AIIB represents a significant addition to the multilateral development banks, and will complement existing arrangements.<sup>16</sup>

1.20 The AIIB Articles of Agreement were signed by the Treasurer in Beijing, China, on 29 June 2015.<sup>17</sup> There are currently 50 founding members of the AIIB, and it is expected that the AIIB will be operational by the end of 2015. A list of the Founding Members is at Appendix 3.

### ***International reception***

1.21 International reception of the AIIB has been mixed, with the United States and Japan indicating that they will not join the AIIB.<sup>18</sup> Their concerns have been described as being a lack of a clear gap in the multilateral development banking sector, and whether China will use the AIIB to further its geopolitical goals 'by seeking to undermine and replace the post-World War II international architecture' and by 'challenging U.S. hegemony'.<sup>19</sup>

1.22 At its public hearing, the committee heard that Japan may not have 'closed the door' to membership of the AIIB.<sup>20</sup>

1.23 In March 2015, the United Kingdom agreed to join the AIIB as a Founding Member, followed by other European nations such as Germany, France and Italy.

### ***Purpose and operation of the AIIB***

1.24 The AIIB is a multilateral development bank which will focus on:

...the development of infrastructure and other productive sectors in Asia, including energy and power, transportation and telecommunications, rural

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15 Export Finance and Insurance Corporation, *AIIB offers new export opportunities*, May 2015, <http://www.efic.gov.au/education-and-tools/export-monitor/2015/export-monitor-may-2015/> (accessed 1 September 2015).

16 Public hearing, 14 September 2015.

17 Explanatory Memorandum, p. 5.

18 Mr Robert Dolamore and Mr Geoffrey Wade, *Asian Infrastructure Investment Bank Bill 2015*, Bills Digest No. 16, 3 September 2015, p. 6.

19 Mr Phillip Lipsy, 'Who's afraid of the AIIB: why the United States should support China's Asian Infrastructure Investment Bank', *Foreign Affairs* (online edition), 7 May 2015, <https://www.foreignaffairs.com/articles/china/2015-05-07/whos-afraid-aiib> (accessed 8 September 2015).

20 Public hearing, 14 September 2015.

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infrastructure and agriculture development, water supply and sanitation, environmental protection, urban development and logistics, etc.<sup>21</sup>

1.25 Under the Articles of Agreement, the purpose of the AIIB is to:

- (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors; and
- (ii) promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.<sup>22</sup>

1.26 The AIIB seeks to draw together private sector investment and capital investment of international governments to promote the development of infrastructure projects across the Asian region.

1.27 The AIIB will have an initial operating capital of around US\$100 billion, and is expected to have an early focus on transport, energy and water infrastructure, before focussing on investing in ports, logistics, environmental protection, information and communications technology, and agriculture.<sup>23</sup>

1.28 The initial operating capital will be divided into one million shares, with a par value of US\$100,000.<sup>24</sup>

1.29 Unlike the Asian Development Bank, the AIIB will use an open procurement policy, which means that AIIB-funded projects can engage non-member countries' goods and services.<sup>25</sup>

#### *Governance structure and voting*

1.30 Published information about the governance structure of the AIIB sets out that there will be a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and other officers and staff as required.<sup>26</sup> The structure largely follows that of other international financial institutions.<sup>27</sup>

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21 AIIB, *What is the Asian Infrastructure Investment Bank?*, <http://www.aiibank.org/html/aboutus/AIIB/> (accessed 1 September 2015).

22 See: Articles of Agreement, Chapter 1 (Articles, functions and membership), Article 1.

23 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

24 See: Articles of Agreement, Chapter 2 (Capital), Article 4(1).

25 Dr Philippa Brant, Research Associate, Lowy Institute for International Policy, 'Four observations about the AIIB's Articles of Agreement', *The Interpreter*, 30 June 2015, <http://www.lowyinterpreter.org/post/2015/06/30/Four-observations-AIIB-Articles-of-Agreement.aspx> (accessed 2 September 2015).

26 AIIB, *Key provisions*, [http://www.aiib.org/html/pagefaq/Key\\_Provisions/](http://www.aiib.org/html/pagefaq/Key_Provisions/) (accessed 1 September 2015).

27 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

1.31 The Board of Governors will be 'the overall policy-making body', meeting annually. The Board of Governors will delegate to the Board of Directors which will represent all member countries in constituencies, and will have operational responsibility for the institution, overseeing policy and operations. Each member will be represented on the Board of Governors.<sup>28</sup>

1.32 The President, who is also the Chair of the Board of Directors, is the most senior manager. The President-Elect of the AIIB was announced on 24 August 2015 as Mr Jin Liqun, the former vice finance minister of China and a former vice president of the Asian Development Bank.

1.33 The Treasury and Department of Foreign Affairs advised that an Australian-led constituency, currently under negotiation, is expected to have a seat on the Board of Directors.<sup>29</sup> The Articles of Agreement set out that the Board of Directors will be made up of 'persons of high competence in economic and financial matters'.<sup>30</sup>

1.34 The Board of Governors and Board of Directors will not be paid, and will not be required to be resident at the headquarters of the AIIB, Beijing. Dr Philippa Brant from the Lowy Institute has argued that this is 'part of China's aim to make the Bank more efficient than its counterparts'.<sup>31</sup> Under the Articles of Agreement, the AIIB may pay the Board of Governors and Board of Directors 'reasonable expenses incurred in attending meetings'.<sup>32</sup>

1.35 Voting power will be weighted, and will be made up from three strands: basic votes, share votes, and Founding Member votes (where applicable).<sup>33</sup> All members will receive an equal amount of basic votes, share votes equal to the number of shares held by a member, and, if a Founding Member, 600 Founding Member votes. The effect of the weighted system is that China, the largest shareholder in the AIIB, will have almost 300,000 share votes, and a much smaller shareholder such as the Maldives will have 72 share votes.<sup>34</sup>

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28 See: Articles of Agreement, Chapter V (Governance), Article 22.

29 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

30 See: Articles of Agreement, Chapter V (Governance), Article 25.

31 Dr Philippa Brant, Research Associate, Lowy Institute for International Policy, 'Four observations about the AIIB's Articles of Agreement', *The Interpreter*, 30 June 2015, <http://www.lowyinterpreter.org/post/2015/06/30/Four-observations-AIIB-Articles-of-Agreement.aspx> (accessed 2 September 2015).

32 See: Articles of Agreement, Chapter V (Governance), Article 22, Article 25.

33 See: Articles of Agreement, Chapter V (Governance), Article 28.

34 Mr Robert Dolamore and Mr Geoffrey Wade, *Asian Infrastructure Investment Bank Bill 2015*, Bills Digest No. 16, 3 September 2015, p. 5.

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***Participation in negotiation and operation***

1.36 Australia became a Prospective Founding Member after signing the Memorandum of Understanding on the Establishment of the Asian Infrastructure Investment Bank on 29 March 2015.

1.37 As a Prospective Founding Member, Australia participated in negotiations on the AIIB Articles of Agreement and required that certain conditions be met:

During negotiations to establish the AIIB, Australia argued strongly for a number of important principles – including that the Board of Directors have authority over key investment decisions, and that no one country control the Bank.<sup>35</sup>

1.38 Treasury and the Department of Foreign Affairs and Trade advised that the Articles of Agreement have responded to these conditions.<sup>36</sup> At its public hearing, the committee was advised that Australia had recommended a number of governance-strengthening mechanisms in August 2014, and was provided with information that these provisions had included:

- membership be open to all countries;
- protection of minority shareholders;
- assurance that no one country would dominate;
- investment decisions would be controlled by a board of directors;
- transparent management, open procurement, and fiduciary control and environmental safeguards comparable to other multilateral development banks;
- high lending standards including debt sustainability;
- investment decisions would be similar to other multilateral development banks;
- staff selection would be merit-based and competitive; and
- a technical, language-based issue with the Memorandum of Understanding relating to language in the MOU being treaty-like, and a recommendation from Australia that this language be changed.<sup>37</sup>

1.39 Australia is also seeking to be actively involved in the establishment and early decision-making of the AIIB, and establish accountability and transparency measures.

1.40 Australia is seeking to participate in the drafting of the operational policies through the Chief Negotiator's meetings, which will occur until December 2015.<sup>38</sup>

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35 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

36 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

37 Public hearing, 14 September 2015.

38 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 3.

### *Australia's investment*

1.41 Australia's total shareholding will be \$4.6 billion, which was determined on a case by case basis for Founding Member countries according to economic weight.<sup>39</sup> Australia will commit \$930 million as paid-in capital over five years, making it the sixth-largest stakeholder.<sup>40</sup> Paid-in capital will be paid in five equal annual payments, starting from Australia's ratification of the AIIB Articles of Agreement.

1.42 The remaining \$3.7 billion will be callable capital, which will be called upon 'if the AIIB is unable to meet its financial liabilities', however, the Treasury and Department of Foreign Affairs noted that no multilateral development bank has ever called on its callable capital. Australia's callable capital is a contingent liability against the Commonwealth.

1.43 Australia's share subscription, and the redeeming of promissory notes issued to the AIIB, will draw from the Consolidated Revenue Fund.<sup>41</sup> The paid-in capital will not be drawn from the aid budget, and the AIIB has not been deemed to be official development assistance (ODA).<sup>42</sup>

1.44 The Development Policy Centre at the Australian National University has queried why Australia's initial investment is so high:

The question, then, is why Australia bid so high to join the AIIB. We could have become a founding member at far less cost, as many other OECD donors did, yet we have sought to be in the same league as the much larger aid donors like France and Germany, and even to be ahead of a mammoth aid donor in the form of the UK.<sup>43</sup>

1.45 The Development Policy Centre also posited that Australia could have joined the AIIB more cheaply and retained its position, arguing that the AIIB's lending power would have been about the same without the 'generous contribution' of Australia.<sup>44</sup>

1.46 At its public hearing, the Treasury responded to the submission from the Development Policy Centre, and advised that a smaller Australian contribution would have led to Australia having less influence in the shaping and operation of the AIIB.<sup>45</sup>

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39 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

40 The Hon Joe Hockey, MP, Treasurer of the Commonwealth of Australia, and the Hon Julie Bishop, MP, Minister for Foreign Affairs, 'Australia to join the Asian Infrastructure Investment Bank', Joint media release, 24 June 2015.

41 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

42 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 3.

43 Development Policy Centre, Australian National University, *Submission 2*, p. 3.

44 Development Policy Centre, Australian National University, *Submission 2*, p. 3.

45 Public hearing, 14 September 2015.



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### *Potential benefit to Australia*

1.47 According to the Export Finance and Insurance Corporation (EFIC), the AIIB's funding of significant infrastructure and strengthening of trade networks will be of benefit to Australia in three ways:

- opportunity for Australia to tender for providing infrastructure expertise;
- a higher capacity of goods could be exported through improvement and upgrading of logistics in the region; and
- economic performance in the region would be lifted, which would enable higher demand for Australian exports.<sup>46</sup>

1.48 In his second reading speech, the Treasurer stated that the stimulation of infrastructure would strengthen Australia's economy in a practical way:

In plain terms, if we can build new railway lines and ports in the region, that will mean that our product not only goes into those facilities. Our iron ore will go into the railway and port construction. More particularly, that infrastructure will then facilitate our agricultural produce getting to market. The Minister for Agriculture, who is not far away from going to Indonesia, knows that, if we can get better access through new ports, better railways and better transport corridors in Indonesia, we can get more of our agriculture to market. So we will win all ways. We will fund and provide the infrastructure. Our experts in infrastructure are there giving advice on how to build the ports, airports, railways and even the universities—whatever the case might be.<sup>47</sup>

1.49 The Treasury and Department of Foreign Affairs noted that in 2014, more than 75 per cent of Australian merchandise exports were to Asian markets. They argue that better infrastructure, for example, upgraded port infrastructure and logistical networks, would allow Australian exports to 'reach new markets or expand existing ones'.<sup>48</sup>

### *Committee view*

1.50 It is the view of the committee that Australia's economy will benefit from investment in the Asian Infrastructure Investment Bank, and that participation from an early stage has given Australia the opportunity to negotiate a strong focus on transparency and accountability. The committee believes that Australia's active involvement in the AIIB will allow the greater facilitation of trade in the Asian region.

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46 Export Finance and Insurance Corporation, *AIIB offers new export opportunities*, May 2015, <http://www.efic.gov.au/education-and-tools/export-monitor/2015/export-monitor-may-2015/> (accessed 1 September 2015).

47 The Hon Joe Hockey, MP, Treasurer of the Commonwealth of Australia, *House of Representatives Hansard*, 13 August 2015, p. 2.

48 The Treasury and the Department of Foreign Affairs and Trade, *Submission 1*, p. 4.

1.51 Australia will benefit in two main ways: firstly, Australian firms will be able to tender to provide expertise or raw materials for infrastructure projects, and secondly, Australia's capacity to export goods will be increased by the creation or upgrading of ports and transport networks.

1.52 As the economic performance of the region is lifted, Australia will benefit from the greater demand for Australian exports and commodities, and from the infrastructure that enables Australian goods and services to more efficiently connect with Asian markets.

1.53 Australia will also be able to strengthen regional relationships, and build relationships with non-regional member countries.

### **Recommendation 1**

**1.54 The committee recommends that the bill be passed.**

**Senator Sean Edwards**

**Chair**