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UDIA Submission to the Inquiry into the Infrastructure Australia Amendment Bill 2013

The Urban Development institute of Australia (UDIA) welcomes the opportunity to provide this submission to the Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Infrastructure Australia Amendment Bill 2013. UDIA is the peak body representing the interests of the development industry around Australia, acting on behalf of thousands of members across the country from a wide variety of fields.

Effective and efficient infrastructure provides the fundamental framework that allows modern economies to operate. The timely provision of sufficient major infrastructure such as transport and utilities infrastructure is a crucial aspect of the development process, and is an area of ongoing concern for the urban development industry.

Infrastructure Australia was established by the Australian Government to provide objective and independent advice on Australia's future infrastructure needs, and the best way to fund, finance and deliver that infrastructure. UDIA has been very supportive of the work of Infrastructure Australia, and believes that the existence of a strong, independent organisation to provide expert advice to Governments is absolutely essential.

UDIA is concerned that some of the changes proposed in the Infrastructure Australia Amendment Bill 2013 may reduce Infrastructure Australia's capacity to provide independent and objective advice. In particular, UDIA objects to the substitution of subsections 5, 5A, and 5D, and subsection 6(3), which give the Minister greater influence over Infrastructure Australia's activities. These concerns are outlined in greater detail below.

Item 8 – Repeal and substitution of Section 5, Substitution of subsections 5A and 5D

5 Functions - general

Item eight repeals Section 5 of Part 2 of the Infrastructure Australia Act 2008, which defines Infrastructure Australia's functions, and substitutes a new section. This considerably changes the role of Infrastructure Australia by removing existing functions. UDIA questions the removal of these

functions, as it is unclear how doing so strengthens and improves the functioning of Infrastructure Australia. Removed functions include:

Providing advice to the Minister, Commonwealth, State, Territory and local governments, investors in infrastructure, and owners of infrastructure on matters relating to infrastructure.

UDIA Comment: This is a core function of Infrastructure Australia that is central to its role as an independent and expert advisor.

To review and provide advice on proposals to facilitate the harmonisation of policies, and laws, relating to development of, and investment in, infrastructure.

UDIA Comment: Whilst harmonisation for its own sake can lead to the adoption of a 'lowest common denominator' type approach and poor outcomes, when done well, it has the potential to remove existing barriers to investment faced by the private sector, as well as reduce complexity and make government spending on infrastructure more effective. This function has been moved to subsection 5D, where it may only be carried out by Infrastructure Australia if directed to by the Minister. UDIA believes Infrastructure Australia should have the freedom to perform this function as it sees fit, with a focus on achieving the goals of reduced complexity, lowered barriers to private investment, and more effective government spending on infrastructure.

To provide advice on infrastructure policy issues arising from climate change.

UDIA Comment: UDIA believes that climate change is a legal and policy reality, a view that has long been supported by both sides of Australian politics. Climate change policy is likely to have a significant impact on both Australia's existing infrastructure assets and future infrastructure needs. UDIA believes providing advice on infrastructure issues arising from climate change policy should be a function of Infrastructure Australia.

To review commonwealth infrastructure funding programs to ensure they align with any infrastructure priority lists.

UDIA Comment: The reviewing of Commonwealth infrastructure funding programs by Infrastructure Australia improves transparency and accountability when it comes to Government infrastructure investment decisions. Removing this function reduces the transparency of government infrastructure spending.

Subsection 5A

Item eight also introduces subsection 5A, which defines Infrastructure Australia's role in evaluating proposals for investment in infrastructure. Its second subsection reads:

(2) However, Infrastructure Australia must not evaluate a proposal under subsection (1) if the proposal is in a class of proposals determined by the Minister.

This essentially allows the minister to freely restrict the range of infrastructure investment proposals that Infrastructure Australia may evaluate.

UDIA objects to this provision on the grounds that it impairs Infrastructure Australia's ability to objectively evaluate projects based on their merit, and introduces the potential for political bias. UDIA believes that in the interests of independence and impartiality, it should be up to Infrastructure Australia alone to determine what proposals it will evaluate in order to serve its functions under subsection 5.

Subsection 5D

Subsection 5D outlines functions that Infrastructure Australia will only perform when directed to by the minister. Subsection 1 of 5D reads:

- (1) Infrastructure Australia has the following functions which it must only perform when directed by the Minister, in writing, to do so:
- a. To review and provide advice on proposals to facilitate the harmonisation of policies, and laws, relating to development of, and investment in infrastructure;

UDIA Comment: As stated previously, UDIA believes that reviewing and providing advice on proposals to facilitate the harmonisation of policies and laws relating to infrastructure is something that Infrastructure Australia should be able to do as it sees fit in order to reduce complexity, lower barriers to private investment, and make government spending on infrastructure more effective. It should not be up to the discretion of the Minister.

- b. To publish the following material:
 - i. Evaluations conducted under section 5A
 - ii. Evidence relied on in preparing, and reasons for any opinion or conclusion contained in, the audits, lists, evaluations, plans and advice mentioned in paragraphs 5(a) to (e).

UDIA Comment: Paragraph (b) prevents Infrastructure Australia from publishing evaluations conducted under section 5A, as well as the evidence relied on to undertake its functions under subsection 5A, unless directed to by the Minister.

This requirement reduces the independence of Infrastructure Australia, reduces the transparency and scrutiny with which it performs its functions, and increases the opportunity for political bias in the process. UDIA believes that the decision to publish evaluations and the evidence relied upon by

Infrastructure Australia in performing its functions should lie with Infrastructure Australia, not the Minister.

Item 9 – Substitution of subsection 6(3)

Item 9 repeals existing subsection 6(3), which limits the nature of the directions that the Minister can give to Infrastructure Australia. The existing subsection reads:

(3) Directions given by the Minister under subsection (1) must be of a general nature only.

It has been replaced with the following text.

- (3) Without limiting subsection (1), a direction may do any or all of the following:
- a. Specify a time by which infrastructure Australia must perform a particular function;
 - b. Specify a time by which Infrastructure Australia must comply with the direction;
 - c. Require infrastructure Australia to perform a function in accordance with any requirements that are specified in the direction, including requirements relating to:
 - i. The scope of any audit, list, evaluation, plan or advice to be provided by Infrastructure Australia; and
 - ii. Any matters that Infrastructure Australia must or must not consider in performing the function; and
 - iii. The manner in which Infrastructure Australia is to perform the function.

UDIA has strong concerns with paragraph (c) of subsection 6(3). In order for Infrastructure Australia to provide the best, most comprehensive and quality advice, the manner in which it conducts its functions, the scope of those functions, and the matters considered in performing those functions, must not be limited by the Minister.

UDIA believes that Infrastructure Australia should be able to assess a function in its entirety, and then draw on the range of expert knowledge available to it to determine what matters will be considered, its scope, and the manner in which it is conducted. The Minister should not be able to determine these at their discretion.

The powers granted in subsection 6(3) are particularly concerning when considered in conjunction with those granted in subsection 5D. For example, 6(3) allows the minister to provide strong direction on a project's scope, what matters will be considered by the project, and the manner in which the project will be conducted. 5D then allows the Minister to prevent the publication of that project, the publication of the evidence relied upon in preparing it, or the reasons for the conclusions contained in it.

UDIA feels that the Minister's ability to powerfully direct what an audit, list, evaluation or plan will examine, and the ability to prevent the publication of it, what evidence was relied upon, and the reasons for its conclusion, provides for an unacceptably opaque process that is open to subjective influence.

Concluding Comments

UDIA thanks the Rural and Regional Affairs and Transport Legislation Committee for the opportunity to provide this submission to the Inquiry into the Infrastructure Australia Amendment Bill 2013.

UDIA would welcome the opportunity to discuss any aspect of this submission in greater detail. For further information, please contact UDIA National.