# Infrastructure Australia Amendment Bill 2013

*Portfolio: Infrastructure and Regional Development*
*Introduced: House of Representatives, 20 November 2013*

## Summary of committee concerns

1.135   The committee seeks further information on how the power to terminate the appointment of the Chief Executive Officer of Infrastructure Australia is compatible with the right to work.

## Overview

1.136   This bill seeks to amend the *Infrastructure Australia Act 2008* to strengthen the role of Infrastructure Australia. Infrastructure Australia is an advisory body to governments, investors and infrastructure owners on issues such as Australia's current and future infrastructure needs. The bill proposes amendments to Infrastructure Australia's governance structure and amendments to more clearly define its functions. In particular, the bill proposes to:

- re-establish Infrastructure Australia as a separate entity under the *Commonwealth Authorities and Companies Act 1997*, governed by a Board with members appointed by the Minister for Infrastructure and Regional Development;

- improve reporting arrangements with the Board reporting to the Minister; and

- establish a Chief Executive Officer (CEO) position to manage Infrastructure Australia, reporting directly to the Board.

## Compatibility with human rights

### Statement of compatibility

1.137   The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights, and is therefore compatible with human rights.

1.138   The committee, however, notes that the bill may give rise to human rights concerns with regard to the right to work. The committee's concerns are set out below.

### Committee view on compatibility

*Right to work – amendments relating to termination of Chief Executive Officer*

1.139   The bill proposes to replace the existing provision in the Infrastructure Act relating to the termination of the appointment of the Infrastructure Coordinator to

reflect the establishment of the CEO position.[66] The new provision will allow the Board to terminate the appointment of the CEO at any time, by instrument in writing.[67] This is broader than the existing provision,[68] which allows for the termination of the appointment of the Infrastructure Coordinator by the Minister only in circumstances of misbehaviour or physical or mental incapacity. This is also broader than the proposed power in the bill to allow for the termination of the appointment of a Board member by the Minister only in circumstances of misbehaviour or where the member is unable to perform the duties of his or her office because of physical or mental incapacity.[69]

1.140   Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out the right to work, which provides for the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. The UN Human Rights Committee has stated that the right to work includes the right not to be deprived of work unfairly.[70] The committee considers that the proposed new provision engages the right to work in article 6 of the ICESCR, as it is construed broadly and, on its face, could result in unfair deprivations of work. The right to work is not an absolute right and can be limited provided that the limitation is (i) aimed at achieving a purpose which is legitimate, and (ii) is reasonable, necessary and proportionate to that purpose. The statement of compatibility does not address these issues.

**1.141   The committee intends to write to the Minister for Infrastructure and Regional Development to ask why it is necessary to have such a broadly construed termination provision and how this is consistent with the right to work under article 6 of the ICESCR.**

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66   New section 38 proposed in item 37 of the bill will replace current section 38 of the *Infrastructure Australia Act 2008*.

67   New section 38.

68   Current section 38.

69   New section 18(1) proposed in item 15 of the bill.

70   UN Human Rights Committee, *General Comment No. 18: The Right to Work*, 24 November 2005, paras 4 and 6.