

Chapter 1

Introduction

Referral of inquiry

1.1 On 25 September 2014 the Senate referred provisions of the Infrastructure Australia Amendment (Cost Benefit Analysis and Other Measures) Bill 2014 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 26 November 2014.

1.2 The purpose of the Bill is to 'clarify the legislative and administrative arrangements for Infrastructure Australia'.¹ The bill is the corollary of the *Infrastructure Australia Amendment Act 2014*, which received Royal Assent on 17 July 2014.

Background

1.3 Infrastructure Australia (IA) was established as a statutory body under the *Infrastructure Australia Act 2008* (the Infrastructure Act) and came into effect on 9 April 2008. Its purpose is to serve as an independent advisor to government, investors and infrastructure owners on issues including Australia's current and future infrastructure needs, mechanisms for financing infrastructure investments, and policy, pricing and regulation and their impacts on investment.² One of its key functions is to produce the Infrastructure Priority List, which sets out the projects that IA considers to be central to strengthening the economy, dealing with sustainable population growth, export bottlenecks, urban congestion and climate change. Projects are delineated by infrastructure priority, for example 'Transforming our cities', and development status – namely, early stage, real potential, threshold, and ready to proceed.³

1.4 Prior to the federal election on 7 September 2013, the Coalition made public its 'Policy to Deliver the Infrastructure for the 21st Century'. The reforms proposed the re-establishment of IA led by a CEO reporting to a board; development of infrastructure plans based on national, state and local priorities spanning 15 years to be revised every five years; and reviews of all Commonwealth infrastructure expenditure exceeding \$100 million on the basis of financial viability and cost

1 The Hon. Warren Truss MP, Deputy Prime Minister and Minister for Infrastructure and Regional Development, *House of Representatives Hansard*, 4 September 2014, p. 9717.

2 Infrastructure Australia, About Infrastructure Australia, <http://www.infrastructureaustralia.gov.au/about/> (accessed 9 December 2013).

3 Infrastructure Australia, Infrastructure priority list update – December 2013, http://www.infrastructureaustralia.gov.au/priority_list/files/IPL_Web_update-2013.pdf (accessed for November 2014).

effectiveness.⁴ The policy stated that the intention of the proposed reforms was to strengthen IA 'to create a more transparent, accountable and effective advisor on infrastructure projects and policies'.⁵

1.5 To this end, in November 2013, the Government introduced the Infrastructure Australia Amendment Bill 2013 (the 2013 Bill), the purpose of which was to establish Infrastructure Australia as a separate entity under the *Commonwealth Authorities and Companies Act 1997* (now the *Public Governance, Performance and Accountability Act 2013*), and to introduce new functions and responsibilities for IA. The 2013 Bill was passed by both Houses on 26 June 2014, and the *Infrastructure Australia Amendment Act 2013* received Royal Assent on 17 July 2014.

1.6 To achieve greater transparency, IA is now required to publish on its website summaries of its evaluations of nationally significant infrastructure proposals. New functions also include the requirement, under new section 5B, to develop Infrastructure Plans, which specify infrastructure priorities and related proposals. In developing the plans, IA is to have regard to infrastructure audits, its evaluations of infrastructure proposals and IA's Infrastructure Priority List. Senate amendments were moved, and accepted, to require a cost benefit analysis to be conducted for all proposals included on Infrastructure Plans. In opposing the Senate amendments, the Government noted its concern that the amendments 'mix up' the analysis of project proposals with the development of Infrastructure Plans.⁶ The Government further noted that cost benefit analysis of project proposals 'has been in place and working successfully, to some greater or lesser extent, for the past six years'.⁷

1.7 The Infrastructure Australia Amendment Act also changed procedures relating to IA's existing functions. Notably, new subsection 5(b) specifies that Infrastructure Priority Lists are to be based on the audits and research that IA has conducted. Prior to this, the Infrastructure Act did not specify the matters that IA was to consider when developing the Infrastructure Priority List.⁸ However, IA has separately advised that the Infrastructure Priority List details the outcomes of its evaluation of project proposals. A proposal will only be included on the list if it has been assessed as

4 Liberal Party of Australia, *Policy to Deliver the Infrastructure for the 21st Century*, p. 2, <http://www.liberal.org.au/our-policies> (accessed 24 January 2014).

5 Liberal Party of Australia, *Policy to Deliver the Infrastructure for the 21st Century*.

6 Senator the Hon. David Johnston, Minister for Defence, *Senate Hansard*, 23 June 2014, p. 3637.

7 Senator the Hon. David Johnston, Minister for Defence, *Senate Hansard*, 23 June 2014, p. 3639.

8 Paragraph 5(2)(b) (now repealed), *Infrastructure Australia Act 2008*, version prepared 20 September 2013, available via ComLaw, http://www.comlaw.gov.au/Details/C2013C00551/Html/Text#_Toc367454721 (accessed 4 November 2014).

addressing a nationally significant issue or problem and meeting Infrastructure Australia's strategic priorities.⁹

1.8 Importantly, the Infrastructure Australia Amendment Act does not include specific reference to requiring all Commonwealth infrastructure expenditure exceeding \$100 million to be subject to analysis by Infrastructure Australia, which had been part of the Coalition's election policy.¹⁰ During debate on a subsequent bill, the Land Transport Infrastructure Amendment Bill 2014, the Government undertook to amend the Infrastructure Act to include the \$100 million threshold.¹¹

Provisions

1.9 Item 1 of the amending Schedule to the bill would insert a definition of 'proposal'. The new definition is intended to clarify that IA evaluates proposals brought to it, and does not develop proposals of its own accord.¹² The Department of Infrastructure and Regional Development explained that the term 'proposal' is intended to clarify that IA evaluates project proposals, that is, 'bids or submissions yet to be finalised or put forward for final consideration - such a being put forward for a funding decision'.¹³

1.10 Item 2 would specify the evaluation of proposals for investment in, or enhancements to, nationally significant infrastructure that involve Commonwealth funding of at least \$100 million as being a function of Infrastructure Australia.

1.11 Item 3 would provide that a proposal must not be included in an Infrastructure Priority List unless a cost benefit analysis has been prepared. The Item would also provide for Infrastructure Australia to approve the method for carrying out the analysis, and for the review of that method. Provisions relating to the method and review of cost benefit analysis are modelled on the cost benefit analysis provisions in section 5B of the Act, which were introduced by Senate amendments to the 2013 Bill.

1.12 Item 4 would repeal the current requirement in section 5B to include a cost benefit analysis in Infrastructure Plans. Hence, the primary effect of the bill would be to shift the requirement to provide a cost benefit analysis to projects included in

9 Infrastructure Australia, *Better infrastructure: Decision making*, August 2014, http://www.infrastructureaustralia.gov.au/priority_list/files/Reform_and_Investment_Framework_Guidance_August_2014.pdf p. 9 (accessed 4 November 2014).

10 Background information drawn from this committee's report on the Infrastructure Australia Amendment Bill 2013 (March 2014), and the Infrastructure Australia Amendment (Cost Benefit Analysis and Other Measures) Bill 2014 Bills Digest no 28 2014-15, Parliamentary Library, September 2014.

11 The Hon. Warren Truss MP, Deputy Prime Minister and Minister for Infrastructure and Regional Development, *House of Representatives Hansard*, 4 September 2014, p. 9717.

12 Department of Infrastructure and Regional Development, *Submission 5*, p. 5.

13 Department of Infrastructure and Regional Development, *Submission 5*, p. 4.

Infrastructure Priority Lists from those in Infrastructure Plans. Collectively, Items 3 and 4 would alter the stage at which a cost benefit analysis is conducted. As the Department of Infrastructure and Regional Development explained:

By moving these provisions to a new section 5AA it is made clear that a Cost Benefit Analysis informs the evaluation of a proposal for possible inclusion in an Infrastructure Priority List, rather than the development of a 15 year Infrastructure Plan.¹⁴

1.13 Item 7 would require the \$100 million threshold for projects of national significance to be indexed at least once every five years beginning 2019. This would ensure that the amount remains relevant and maintains relativity in future years.

Consideration by Parliamentary legislative scrutiny committees

1.14 The bill was considered by the Senate Standing Committee for the Scrutiny of Bills¹⁵ and the Parliamentary Joint Committee on Human Rights.¹⁶ Neither committee raised concerns about the proposed amendments.

Conduct of inquiry

1.15 The committee advertised the inquiry on its webpage calling for submissions to be lodged by 16 October 2014. The committee also wrote directly to a range of organisations and individuals likely to have an interest in the matters covered by the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.16 The committee received nine submissions, which are listed at Appendix 1. The submissions were published on the committee's webpage. The committee agreed not to hold a public hearing for the inquiry.

Acknowledgement

1.17 The committee thanks those organisations and individuals who made submissions.

14 Department of Infrastructure and Regional Development, *Submission 5*, p. 5.

15 Senate Standing Committee for the Scrutiny of Bills, *Alert Digests No. 12 of 2014*, September 2014, p. 7, <http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/alerts/2014/pdf/d12.pdf> (accessed 3 November 2014).

16 Parliamentary Joint Committee on Human Rights, *Twelfth report of the 44th Parliament*, October 2014, p. 14, http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2014/12_44/Twelfth%20Report.pdf (accessed 3 November 2014).