

Labor Senators' Dissenting Report

1.1 Labor Senators will move amendments to this Bill.

1.2 Some elements are supported, and the general intent – to require, via legislation, Infrastructure Australia to undertake cost-benefit analysis on projects over \$100 million in value – is a worthy one.

1.3 Indeed, calls for greater rigour around project selection was a key theme of the recent Productivity Commission inquiry into Public Infrastructure. Note in particular Recommendation 2.3.

1.4 Furthermore, an extensive range of infrastructure stakeholders, including the Business Council of Australia, Infrastructure Partnerships Australia and the Urban Development Institute have called repeatedly for the electoral and infrastructure cycles to be more decoupled – so that the shorter term business of electoral politics does not unreasonably upset the longer term certainty that is an important element in infrastructure planning, delivery and operation.

1.5 When Labor formed Infrastructure Australia in 2008, this is what the objective was.

1.6 The Coalition Government has talked a big game on infrastructure, but it has not walked the talk. On the large projects it decided to fund in its first Budget (May 2014), using recycled funds from cuts to public transport and some roads projects, none have been subject to the proper sequencing that surrounds well considered and planned infrastructure.

1.7 At recent Senate hearings, Infrastructure Australia has confirmed that major Coalition projects have been committed to – and funded upfront – but with some or all of the following applying:

- IA not having seen a full (or in some cases any) project business case;
- IA not having properly assessed the benefits and costs claimed for the project;
- alternatives not having been considered;
- the route not finalised;
- community consultation not having begun;
- tenders still nowhere near being called; and,
- State Governments not having committed funds in Budgets despite joint funding.

1.8 Indeed, in the cases of the two mega-projects – the \$17 billion East West road tunnel, and the \$15 billion Westconnex road, advance payments totalling \$2 billion have been made well in advance of the money being required, and without signed Project Proposal Reports.

1.9 Other projects include the Perth Freight Link, South Road (Darlington Interchange) and Toowoomba Second Range Crossing.

1.10 It's actually possible that these projects or variations thereof may have some merit when all options are considered – the fact is that we don't know because there has been no transparency about how these projects came to be selected. In recent hearings the Department has simply fallen back to saying these mega-projects were “decisions of Government”.

1.11 Indeed, it often seems that the Department knows much more about these projects than IA does.

1.12 Resorting to refusing to release business cases and other project information under the guise of commercial-in-confidence has become widespread despite stakeholder clamour for greater transparency in project information at earlier stages. In effect, the States and Territories are asking the Federal Government to hand over taxpayer funds without allowing taxpayers to see the justifications for these large expenditures.

1.13 It is clear that there is a problem.

1.14 Labor's Senate amendments to the earlier Infrastructure Australia Amendment Bill 2013 partly addressed these matters, and the Government's decision to accept these amendments in full shows that there is an ability to work constructively to improve legislation across the Parliament.

1.15 Labor also sought to amend the Land Transport Infrastructure Amendment Bill earlier this year, to further the evolution of Infrastructure Australia into an essential part of the Government's land transport funding arrangements. While the Government would have retained the ability to choose which projects it would fund, the “menu” of major projects (over \$100 million in capital value) from which it could choose would have been subject to prior evaluation by Infrastructure Australia, with transparent assessments available publicly.

1.16 This is consistent with Labor's legislated arrangements for the Building Australia Fund, and not in fact a new concept.

1.17 However, at that time, the Senate chose not to support this amendment.

Main problems with the Bill as it stands

1.18 This new Bill seeks to add the \$100 million commitment into the Infrastructure Australia Act. It follows a commitment the Government gave to the Senate crossbench during debate on the Land Transport Infrastructure Bill earlier this year.

1.19 As it is currently drafted the amendment adds little meaning to the legislation and entrenches one of the current process' central failings – it links assessment to projects already earmarked for Commonwealth funding of \$100 million or more.

1.20 The Department, in its convoluted submission, seems very confused in its defence of the Bill as it is worded. It calls it an “addition to” the section but by the

section's very wording – “that [existing] function includes” - makes it clear it adds nothing.

1.21 The Department claims that the proposed new 5A(2) means that “the proponent must bring the proposal to IA” if Commonwealth funding is sought. In our view there is nothing at all in the legislation that mandates that proposals for nationally significant infrastructure must be evaluated by IA, even before the additional proposed function. What requires all, for instance, land transport proposals to be prior evaluated by IA? Not section 5A, which does not prescribe how proposals get to IA. Section 5A is passive and says what IA will do if a proposal arrives.

1.22 Labor's proposed amendment to the funding Act – the Land Transport Infrastructure Act – would make IA evaluation a prior requirement where Commonwealth funding is involved. This is why that amendment must proceed.

1.23 IA is conceived as a national strategic prioritiser and evaluator of major infrastructure projects. This is what Labor established in 2008, and what we understand the current Government is seeking to add to. The Minister said this in his second reading speech on this Bill:

“Australia's future growth will be significantly influenced by our capacity to deliver more appropriate, efficient and effective infrastructure and transport. Investment in nationally significant infrastructure is central to growing Australia's productivity and improving the living standards of Australians now and in the future.

“To maximise productivity improvement through investment, funding must flow to projects that yield the highest benefits. Therefore, it is critical to base project selection on rigorous analysis and sound planning to avoid wasteful investment. The Government recognises that Australia needs improved planning - coordinated across jurisdictions - to underpin investment and regulatory reforms.

“We are, therefore, focussed on long term planning based on robust, evidence based findings through a greater understanding of the critical issues facing Australia's infrastructure and land transport system.

“Notwithstanding the significant reforms the Government has made to Infrastructure Australia, it remains an advisory body, a key advisory body with an independent view. It will not be the decision-maker in terms of funding allocation. That responsibility will remain with governments.

“The Bill currently before Parliament builds on the IA reforms and corrects anomalies which arose from amendments made to the Bill during the parliamentary debate so as to enable the organisation to operate effectively now the new organisational structure has commenced”.

1.24 Labor expects that the audit, pipeline, Infrastructure Plans and Priority Lists will include a top-down list of gaps across the length and breadth of Australia that may form as nationally-significant infrastructure projects – private and public, city and regional, covering all forms of transport, energy, water and communications projects, and also plans for smarter use and maintenance of existing infrastructure. IA is being positioned to continue to do this, working with States and Territories.

1.25 In this context, Labor does not understand why “involve Commonwealth funding” is anywhere near as appropriate as “involve capital expenditure” as the correct trigger for IA’s project evaluations. Given this Government’s policy to refuse to fund urban passenger rail projects, this clause is perversely and unacceptably impacted and skewed by Government policy. Competing solutions to solving, say, a congestion problem, should be evaluated against one another. The wording of the section carries the risk that this will not happen, at potentially great cost to the taxpayer.

1.26 We would expect the Department – via its Infrastructure Investment Division – would continue to manage risks and processes around Commonwealth funded projects – but that is not IA’s role. IA evaluation precedes any funding decision.

1.27 All projects are commonly scoped by capex – it is a very common metric for projects of any size, quantified by professionals as part of their project routine. It is not at all clear how a project is said to “involve Commonwealth funding of over \$100M” – who decides, under what process is this trigger established?

1.28 Given that evaluations should inform funding decisions – including potentially scale of Commonwealth funding – this puts the cart before the horse. It is sequenced wrong.

1.29 Finally it is not what the Coalition said prior to the election. Its “Policy to Deliver the Infrastructure for the 21st Century” states clearly, at page 11:

“To ensure more rigorous and transparent assessments of taxpayer-funded projects we will require all infrastructure projects worth more than \$100 million to undergo a cost-benefit analysis”.

1.30 That means capex.

1.31 All said, it is hard to take this clause seriously in its current form.

Labor’s amendments

1.32 Labor’s amendments are consistent with our approach in the past, and seek to embed proper sequencing into the Act.

Senator Glenn Sterle
Deputy Chair