

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Infrastructure Australia Amendment (Cost
Benefit Analysis and Other Measures) Bill
2014 [Provisions]

November 2014

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List of recommendations

Recommendation 1

2.24 The committee recommends the bill be passed in its current form.

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).

Chapter 2

Issues

2.1 The committee received evidence from academics, state and territory government representatives, industry representatives and the Commonwealth Department of Infrastructure and Regional Development. All were broadly supportive of the measures proposed in the bill, approving of measures designed to increase the transparency and rigour of IA's assessment of project proposals,¹ and its ability to effectively operate as an independent advisory body.²

2.2 Professionals Australia considered the bill 'a firm step in the right direction' towards ensuring 'proper independent assessment' of infrastructure proposals.³ The South Australian Department of Planning, Transport and Infrastructure agreed with the general principles underpinning the bill.⁴ Similarly, representatives of the Queensland government endorsed the bill, noting that it 'aligns strongly' with the state's commitment to infrastructure management.⁵

2.3 However, while broadly supportive of the policy intent, there was some confusion about the details and practical effect of the amendments to the cost benefit analysis requirements.⁶ Submitters also offered suggestions to improve implementation of the proposed amendments,⁷ and held strong views about IA's cost benefit analysis methodology.⁸

A cost benefit analysis for every project proposal?

2.4 There is strong support throughout the submissions for cost benefit analyses to be conducted for nationally significant infrastructure project proposals that would entail Commonwealth funding of at least \$100 million. This support was shared by representatives of state governments,⁹ industry representatives,¹⁰ and academia.¹¹

1 See, for example, ASBEC, *Submission 8*, p. 1.

2 See, for example, Bus Industry Confederation, *Submission 4*, p. 1.

3 Professionals Australia, *Submission 6*, p. 3.

4 South Australian Department of Planning, Transport and Infrastructure, *Submission 7*, p. 1.

5 Queensland Department of State Development, Infrastructure and Planning, *Submission 2*, p. 1.

6 See, for example, Bus Industry Confederation, *Submission 4*, p. 2.

7 Professionals Australia, *Submission 6*, pp 3—4.

8 See, for example, Northern Territory Government, *Submission 9*, p. 2.

9 See, for example, Queensland Department of State Development, Infrastructure and Planning, *Submission 2*, p. 1.

10 Professionals Australia, *Submission 6*, p. 3.

2.5 The South Australian Department of Planning, Transport and Infrastructure 'acknowledge[d] the important role played by cost-benefit analysis in deciding whether to proceed with the proposed investment'.¹² Professor Peter Newman AO and Mr James McIntosh argued that cost benefit analyses would 'lead to better decision-making', and noted, with approval, that the proposed amendments would expand the range of project proposals for which a cost benefit analysis would be required.¹³

2.6 However, submitters questioned whether the proposed amendments would make it compulsory for cost benefit analyses to be conducted for all nationally significant infrastructure project proposals involving funding of at least \$100 million. While broadly supportive of the legislation, Professionals Australia called for further amendments to ensure that Infrastructure Australia '[b]e empowered to require cost benefit analysis for all Federal government infrastructure capital expenditure over \$100 million'.¹⁴

2.7 Submitters also questioned whether the bill would require IA to evaluate and undertake a cost benefit analysis of project proposals before the Commonwealth could commit to fund an infrastructure proposal.¹⁵ A number of submitters strongly argued that the efficient administration of Australia's infrastructure resources requires IA to conduct cost benefit analyses before any Commonwealth funds are committed to infrastructure projects.¹⁶ Professionals Australia called for amendments to the bill to ensure that IA would:

[b]e in a position where cost benefit analyses are conducted and reviewed prior to funding decisions being made and have their infrastructure project list held up as the primary pathway for project selection.¹⁷

2.8 These issues were the subject of debate during the bill's consideration before the House of Representatives. Non-government amendments were put forward, but not adopted, to introduce a 'uniform process' across all project proposals that would involve at least \$100 million of Commonwealth funding.¹⁸ Specifically, the amendment contemplated that IA be required to publish cost benefit analyses for *all* proposals involving capital expenditure of \$100 million or more.¹⁹ In opposing the

11 Professor Peter Newman AO and Mr James McIntosh, *Submission 1*, p. 1.

12 South Australian Department of Planning, Transport and Infrastructure, *Submission 7*, p. 1.

13 Professor Newman and Mr McIntosh, *Submission 1*, p. 1.

14 Professionals Australia, *Submission 6*, p. 3.

15 See, for example, Bus Industry Confederation, *Submission 4*, p. 2.

16 See, for example, Andrew Herrington, *Submission 3*, p. 1.

17 Professionals Australia, *Submission 6*, pp 3—4.

18 The Hon. Anthony Albanese MP, *House of Representatives Hansard*, 24 September 2014, p. 10340.

19 The Hon. Anthony Albanese MP, *House of Representatives Hansard*, 24 September 2014, pp 10340—10341.

proposed non-government amendments, the Deputy Prime Minister, the Hon. Warren Truss MP, confirmed advice provided in the explanatory memorandum to the bill, and the Minister's second reading speech, that the amendments were designed to 'ensure that cost benefit analyses inform the evaluation of proposals under the IA Act'.²⁰ The Minister informed the House:

It is certainly the government's intention that all projects for which we are contributing funding of \$100 million or more will be subject to Infrastructure Australia's approval. The exception to this is Defence – we have made that quite clear right through the process – but the intention is that Infrastructure Australia will have the ability to make its own decisions and that every project will be submitted to it...The purpose of the changes is to make sure that Infrastructure Australia can do that in a way that they are ahead of the decision-making process.²¹

Committee view

2.9 Cost benefit analyses are designed to ensure that infrastructure project decisions are made on the basis of the best available evidence. The analyses support the transparent and robust scrutiny of infrastructure proposals. The committee is aware that in developing Infrastructure Plans (IPs) IA takes into account audits, evaluations of project proposals, and the IPL. IPs are the end result of a broader analytical process. It therefore makes sense to relocate the cost benefit analysis provisions to link cost benefit analysis to the IPL rather than Infrastructure Plans. This will not detract from the value of Infrastructure Plans. Rather, it will increase their veracity, as the proposed amendments would allow Infrastructure Plans to benefit from the extensive work undertaken by IA to analyse the cost benefits of all project proposals rather than just the ones that are considered potentially suitable for inclusion on a 15 year plan.

2.10 The committee understands submitters' confusion as to whether the proposed amendments would require cost benefit analysis of every infrastructure proposal of national significance that would require federal investment of at least \$100 million. The drafting of the proposed amendments is circuitous. It creates an implicit, incidental requirement to conduct a cost benefit analysis rather than an express direction for cost benefit analyses to be conducted in every case. The amendments would not expressly confirm that cost benefit analyses are a routine part of project analysis. Rather, the proposed amendments would make cost benefit analyses a threshold requirement for a project to be proceed to the next stage, that is, inclusion on an IPL.

20 The Hon. Truss MP, Deputy Prime Minister, *House of Representatives Hansard*, 4 September 2014, p. 9717; Infrastructure Australia Amendment (Cost Benefit Analysis and Other Measures) Bill 2014, Explanatory Memorandum, p. 1.

21 The Hon. Truss MP, Deputy Prime Minister, *House of Representatives Hansard*, 24 September 2014, p. 10343.

2.11 However, despite the drafting of the proposed amendments, it is clear that the amendments intend to promote robust scrutiny of proposed infrastructure projects. As the Deputy Prime Minister has stated, and as reiterated in the bill's explanatory memorandum, the proposed legislative reforms are intended to ensure that cost benefit analyses inform IA's evaluation of proposals. Furthermore, given Infrastructure Australia's practice of including project proposals that it considers to be nationally significant on the Infrastructure Priority List, it can be assumed that in practice cost benefit analyses would be routinely undertaken. Indeed, as both the Government and submitters to this inquiry have noted, this is currently IA's practice. The proposed amendments would confirm this practice, giving cost benefit analyses a legislative foundation.

2.12 Therefore, the committee is satisfied that, as currently drafted, the bill would result in IA undertaking cost benefit analyses as part of the process of evaluating proposals for nationally significant infrastructure projects that would involve significant Commonwealth expenditure.

2.13 The committee also notes the Government's advice that '[i]t is certainly the Government's intention that all projects for which we are contributing funding of \$100 million or more will be subject to Infrastructure Australia's approval'.²² The object of the bill is to improve transparency. To this end, the bill would establish a framework for not only ensuring that cost benefit analyses are undertaken but that the outcomes of these analyses are available to government and the public.

Cost benefit analysis and IA's capacity to providing early feedback

2.14 One submitter raised concerns with the potential impact of the proposed amendments to the cost-benefit analyses framework on projects at an early stage of development. The South Australian government advised that IA may not undertake cost benefit analyses of proposals that it considers to be in the early stage of development. That is, a proposal may be listed on the Infrastructure Priority List as an 'early stage' project without a cost benefit analysis first being conducted. IA's *Guidelines for making submissions to Infrastructure Australia's infrastructure planning process, through Infrastructure Australia's Reform and Investment Framework* do distinguish between projects in the early stages of development and projects that are more advanced. The guidelines make clear that for less-developed projects less detail is required in the accompanying documentation and information statements. The guidelines advise:

[W]here a submission seeks engagement with Infrastructure Australia as a business case is developed – that is, the initiative is at an early stage of planning - Infrastructure Australia welcomes such engagement and the supporting information should be in accordance with the initiative's stage

22 The Hon. Truss MP, Deputy Prime Minister, *House of Representatives Hansard*, 24 September 2014, p. 10343.

of development and need not necessarily cover all the elements described here.²³

2.15 It was submitted that this process 'has been beneficial in allowing jurisdictions to get an early indication from IA of its assessment of the strategic merits of the proposal'. The South Australian government submitted that if the requirement to conduct a cost benefit analysis of a proposal before it is listed on the Infrastructure Priority List proceeds, 'we suggest a mechanism remain for IA to provide early feedback on the strategic merits of proposals, even before CBA work is undertaken'.²⁴

Committee view

2.16 It is of particular note that cost benefit analyses were undertaken prior to the introduction of the bill. The bill seeks to solidify and enhance an existing process, not to detract from it. The committee understands the importance of early engagement with Infrastructure Australia. It is not the purpose of the bill to limit this engagement. Indeed, it is not clear that the proposed amendments would have this effect. While the bill would prevent a proposal from being included on the Infrastructure Priority List without a cost benefit analysis first being conducted, it would not prevent IA from liaising with proposal submitters during the evaluation process. This would allow the IA to provide early feedback on the strategic merits of proposals before a cost benefit analysis was undertaken. It is suggested the government monitor this issue with Infrastructure Australia, and, if needed, issue ministerial directions under section 6 of the *Infrastructure Australia Act 2008* to clarify that the IA may provide early feedback on projects that are at an early stage. The committee will also monitor this issue.

Cost benefit analyses – methodology and uniformity

2.17 The bill as drafted would allow IA to approve the methodology for preparing cost benefit analyses. However, it would not have total autonomy in developing the methodology. The proposed amendments would require IA to choose a methodology that would allow proposals to be compared. In itself, this requirement is not new but reflects existing requirements under section 5B of the *Infrastructure Australia Act 2008* relating to cost benefit analysis requirements for the proposals in Infrastructure Plans. As previously stated, the bill would not fundamentally change the cost benefit analysis process. The amendments would alter the stage at which the cost benefit analysis process would occur. The Senate has therefore previously approved the IA having the flexibility to determine, subject to the requirement to enable comparisons, the cost benefit analysis methodology.

23 Infrastructure Australia, *Guidelines for making submissions to Infrastructure Australia's infrastructure planning process, through Infrastructure Australia's Reform and Investment Framework*, p. 6, http://www.infrastructureaustralia.gov.au/priority_list/files/Reform_and_Investment_Framework_Guidance_August_2014.pdf, (accessed 10 November 2014).

24 South Australian Department of Planning, Transport and Infrastructure, *Submission 7*, p. 1.

2.18 Submitters held strong views about the evaluation methodology. Several put forward suggestions for what the CBA methodology should include. Transparency, uniformity and stability were key themes explored in submissions.²⁵ The Bus Industry Conference noted that it:

strongly supports the adoption of a single and stable method for evaluation of land transport infrastructure that considers fully the external benefits and costs of infrastructure projects.²⁶

2.19 The organisation advocated for a set methodology to be applied to every proposal, so as to avoid the risk of manipulation²⁷ Other submitters also identified a need for one consistent methodology,²⁸ arguing that consistency across project evaluations is in line with, and is indeed a key feature of, the requirement that the methodology allow projects to be compared.²⁹ While noting the need for uniformity, the Northern Territory Government also maintained that cost benefit analyses must be appropriate for rural and regional Australia as well as urban centres.³⁰

2.20 In addition, submitters called for a whole of government approach, that is, consistency of evaluation methods between Commonwealth organisations and Commonwealth, state and territory bodies.³¹ Representatives of the South Australian Government noted that key aspects of Infrastructure Australia's funding submission requirements differ to those required by the Commonwealth Department of Infrastructure and Regional Development.³² The Bus Industry Conference also submitted that there is a need for a standardised approach to evaluating infrastructure proposals for which Commonwealth funding is sought.³³

2.21 Where mentioned, submitters also shared the view that cross-jurisdictional consistency is required. The Northern Territory Government and the South Australian Government both argued for Infrastructure Australia's methodology to be aligned with guidelines in other jurisdictions.³⁴ Representatives of the Northern Territory Government submitted:

25 See, for example, Mr Andrew Herrington, *Submission 3*, p. 1.

26 Bus Industry Confederation, *Submission 4*, p. 2.

27 Bus Industry Confederation, *Submission 4*, p. 2.

28 See, for example, Northern Territory Government, *Submission 9*, p. 2.

29 Professionals Australia, *Submission 6*, p. 2.

30 Northern Territory Government, *Submission 9*, p. 2.

31 ASBEC, *Submission 8*, p. 1.

32 South Australian Department of Planning, Transport and Infrastructure, *Submission 7*, p. 1.

33 Bus Industry Confederation, *Submission 4*, p. 3.

34 South Australian Department of Planning, Transport and Infrastructure, *Submission 7*, p. 1; Northern Territory Government, *Submission 9*, p. 2.

[i]t would be entirely appropriate for Infrastructure Australia to take the national lead, working with Federal, State and Territory governments, to develop the CBA into a single national project appraisal methodology that is accepted and supported by all jurisdictions.³⁵

2.22 This view was shared by representatives of private industry. The Australian Sustainable Built Environment Council called for a 'whole-of-government approach to project appraisals, supporting consistency and best practice across the states and territories.' The council further submitted that a cross-government cost benefit analysis framework should include 'clear recommendations and next steps...to support its implementation'.³⁶

Committee view

2.23 As noted, the bill would not change the current position that Infrastructure Australia develop, and review, its cost benefit analysis methodology. It is fundamental to IA's transparency and independence that it establishes the method of evaluating the cost-benefits of a proposal. However, the committee recognises the burden that jurisdictional differences can place on private industry. The committee strongly encourages IA to take account of the concerns raised by submitters to this inquiry in determining processes and methodologies to make the project evaluation process more transparent and accessible.

Recommendation 1

2.24 The committee recommends the bill be passed in its current form.

Senator the Hon Bill Heffernan
Chair

35 Northern Territory Government, *Submission 9*, p. 2.

36 Australian Sustainable Built Environment Council, *Submission 8*, p. 1.

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

Appendix 1

Submissions received

Submission Number	Submitter
1	Professor Peter Newman AO and Mr James McIntosh
2	Queensland Department of State Development, Infrastructure and Planning
3	Mr Andrew Herington
4	Bus Industry Confederation
5	Department of Infrastructure and Regional Development
6	Professionals Australia
7	South Australian Department of Planning, Transport and Infrastructure
8	Australian Sustainable Built Environment Council
9	Northern Territory Government

