

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INFRASTRUCTURE AUSTRALIA BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport,
Regional Development and Local Government
the Honourable Anthony Albanese, MP)

INFRASTRUCTURE AUSTRALIA BILL 2008

OUTLINE

The purpose of the Bill is to establish Infrastructure Australia to advise governments on Australia's future infrastructure needs and other related infrastructure issues.

The role of Infrastructure Australia will be to advise governments, investors and owners of infrastructure concerning:

- nationally significant infrastructure priorities;
- policy and regulatory reforms desirable to improve the efficient utilisation of national infrastructure networks;
- options to address impediments to the development and provision of efficient national infrastructure;
- infrastructure policy issues arising from climate change;
- the needs of users; and
- mechanisms for financing investment in infrastructure.

The functions include audit, review, evaluation, research and promotion of infrastructure.

Infrastructure Australia will be made up of 12 members. The members will have knowledge or experience in fields relevant to Infrastructure Australia's functions and at least 5 will come from a private sector background. The Minister for Infrastructure, Transport, Regional Development and Local Government will appoint the members, with 3 members being people nominated by agreement among the States and Territories.

The Council will be supported by an Infrastructure Coordinator who will assist Infrastructure Australia in the performance of its functions.

The Minister may give written directions to Infrastructure Australia about the performance of its functions and in doing so, may have regard to relevant decisions by the Council of Australian Governments.

Staff assisting the Infrastructure Coordinator will be employees of the Department of Infrastructure, Transport, Regional Development and Local Government.

Financial impact statement

The Government has committed \$20 million over 4 years to the establishment and work program of Infrastructure Australia.

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NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. The Bill will commence on the day after it receives Royal Assent.

Clause 3: Definitions

3. Clause 3 provides full definitions of a number of terms used extensively in the Bill. One term that is used, *nationally significant infrastructure*, has been defined to include transport, energy, communications and water sectors specifically. This term, used in the functions section of the legislation, directs Infrastructure Australia to issues related to infrastructure investment that are likely to have a significant impact on the Australian economy.

Part 2-Infrastructure Australia

Division 1-Establishment and functions of Infrastructure Australia

Clause 4: Establishment

4. Clause 4 is a formal provision establishing Infrastructure Australia.

Clause 5: Functions

5. This clause provides a detailed description of the functions of Infrastructure Australia. Functions (2) (c), (d), (g) and (h) are only to be performed at the Minister's request to ensure Infrastructure Australia can concentrate its resources in these discretionary areas on issues that will support decision making at all levels of Government. The promotion function listed under 2 (f) is included so that Infrastructure Australia can release publications, participate in conferences and share information where necessary to support its primary functions. There is also capacity for the Minister to add functions over time.

Clause 6: Minister may give directions to Infrastructure Australia

6. Clause 6 outlines the circumstances in which the Minister may direct Infrastructure Australia to perform its functions. This might take the form of the Minister providing Infrastructure Australia with a "statement of expectations" and seeking a "statement of intent" in response from Infrastructure Australia. The Minister's statement might have regard to the views of the Council of Australian Governments (COAG) and appropriate COAG subcommittees. In order to ensure the independence of advice, the Minister cannot give directions to Infrastructure Australia on the content of any advice given by Infrastructure Australia.

Division 2-Constitution and membership of Infrastructure Australia

Clause 7: Constitution

7. Clause 7 provides that Infrastructure Australia will have 12 members including a chair.

Clause 8: Appointment of members

8. Members of Infrastructure Australia will be appointed by the Minister from nominations received from the Commonwealth and the States and Territories. Members will be required to have relevant expertise so that they can contribute to the functions of Infrastructure Australia. Appointments are made on a part time basis although provision is made for the chair to be appointed full time. The nominations under (2) (e) will be developed through COAG mechanisms.

Clause 9: Term of appointment

9. The term of appointment is up to three years. The period reflects Infrastructure Australia's advisory status and to ensure it has sufficient flexibility in its composition to continue to fulfil its functions as infrastructure issues evolve.

Clause 10: Acting appointments

10. A member may act as the chair should the chair become unavailable for any reason to ensure that the functions of Infrastructure Australia can be progressed in the chair's absence. A breadth of contributions to Infrastructure Australia can also be maintained by allowing the appointment of acting members when there are temporary or permanent vacancies.

Clause 11: Remuneration

11. This clause provides that a member is to be paid remuneration determined by the Remuneration Tribunal, including any allowances. The Remuneration Tribunal is required to determine remuneration for offices that meet the definition of 'public office' in s3(4) of the *Remuneration Tribunal Act 1973*. This definition includes all offices established under statute.

Clause 12: Leave of absence

12. Clause 12 outlines the leave provisions for members and the chair.

Clause 13: Disclosure of interests to the Minister

13. This clause outlines the requirements for members to declare interests. Given the large private sector membership of Infrastructure Australia, it is important that members make the Minister fully aware of any interests, pecuniary or otherwise.

Clause 14: Disclosure of interests to Infrastructure Australia

14. Members must disclose their interests in matters under discussion so that Infrastructure Australia can manage any potential conflicts. Given the large private sector membership of Infrastructure Australia it is expected that from time to time the interests of individual members might conflict with their responsibilities to Infrastructure Australia. This clause ensures that members are required to disclose any such interests to a meeting and to not take part in any discussion or decision on any matter where a conflict or potential conflict exists. This model of conflict management maximises the breadth of contributions to Infrastructure Australia while maintaining appropriate safeguards.

Clause 15: Outside employment

15. This clause allows the Minister to approve outside employment for the Chair.

Clause 16: Other terms and conditions

16. This clause provides for terms and conditions of office, not otherwise provided for in the Act, to be determined by the Minister.

Clause 17: Resignation of members

17. This clause outlines the formal arrangements for the resignation of members.

Clause 18: Termination of appointment

18. This clause sets out the conditions under which the Minister may terminate the appointment of a member.

Division 3-Meetings of Infrastructure Australia

Clause 19: Convening meetings

19. This clause outlines the provisions relating to the number and location of meetings of Infrastructure Australia.

Clause 20: Presiding at meetings

20. This clause outlines the role of the chair to preside at meetings or for members to appoint a member to preside in the chair's absence.

Clause 21: Quorum

21. This clause outlines the number of members needed to form a quorum and the special circumstances when a member leaves the meeting due to a conflict of interest.

Clause 22: Voting at meetings

22. This clause outlines the rules relating to making decisions on matters at meetings.

Clause 23: Conduct of meetings

23. Clause 23 allows Infrastructure Australia to establish rules for the conduct of its meetings including the participation of members by telephone.

Clause 24: Minutes

24. This clause requires Infrastructure Australia to keep minutes of meetings.

Clause 25: Decisions without meetings

25. This clause allows Infrastructure Australia to conduct business out of session should it determine it necessary and outlines the rules for making decisions under these circumstances.

Division 4-Reports

Clause 26: Annual Reports

26. Infrastructure Australia is expected to report to Parliament through the Minister each year on its activities. Infrastructure Australia's reports will be circulated to COAG through the Commonwealth Minister for Infrastructure. This will include regular reports to COAG on:

- progress on the infrastructure audit program and implementation of the Infrastructure Priority List;
- recommendations regarding policy and regulatory reforms to improve infrastructure utilisation and national coordination of infrastructure planning and investment;
- proposals to remove barriers to productive investment in infrastructure; and
- any other reports or research commissioned by COAG.

27. Infrastructure Australia advice to COAG will be considered by COAG sub-committees, where appropriate, prior to consideration to ensure that reports can be accompanied by implementation or other contextual advice agreed by the States, Territories, Local Government and the Commonwealth. Infrastructure Australia's reports to COAG will be made public if this is agreed by COAG.

Part 3-The Infrastructure Coordinator

Division 1- Establishment and functions of the Infrastructure Coordinator

Clause 27: Establishment

28. This clause establishes an office of Infrastructure Coordinator.

Clause 28: Functions

29. This clause details the functions of the Infrastructure Coordinator. The primary function is to provide the support that Infrastructure Australia needs to fulfil its functions. The Infrastructure Coordinator is accountable to the Minister for the successful delivery of the functions. The legislation also provides scope for the Minister to add to the Infrastructure Coordinator's functions, if necessary.

Division 2-Terms and conditions of appointment

Clause 29: Appointment

30. This clause provides for the Minister to appoint a full-time Infrastructure Coordinator.

Clause 30: Term of appointment

31. The Infrastructure Coordinator can be appointed for up to five years.

Clause 31: Acting Infrastructure Coordinator

32. This clause allows for the Minister to appoint an acting Infrastructure Coordinator should the office become vacant for a period or permanently for any reason.

Clause 32: Remuneration

33. This clause provides for the Remuneration Tribunal to determine the remuneration and allowances to be paid to the Infrastructure Coordinator.

Clause 33: Leave of absence

34. This clause outlines the conditions affecting leave entitlements for the Infrastructure Coordinator.

Clause 34: Disclosure of interests to the Minister

35. This clause outlines the requirements for the Infrastructure Coordinator to declare interests to the Minister.

Clause 35: Outside employment

36. This clause allows the Minister to approve outside employment for the Infrastructure Coordinator.

Clause 36: Other terms and conditions

37. This clause provides for terms and conditions of office, not otherwise provided for in the Act, to be determined by the Minister. The Minister would usually consult with Infrastructure Australia prior to exercising his or her powers under this section.

Clause 37: Resignation

38. This clause provides that the Infrastructure Coordinator may resign his or her appointment by writing to the Minister.

Clause 38: Termination of appointment

39. This clause set outs the circumstances under which the Minister may terminate the Infrastructure Coordinator's appointment. The Minister would usually consult with Infrastructure Australia prior to exercising his or her powers under this section.

Clause 39: Staff assisting the Infrastructure Coordinator

40. This clause provides for Staff to assist the Infrastructure Coordinator. These staff will be employees of the Department of Infrastructure, Transport, Regional Development and Local Government and will be engaged under the *Public Service Act 1999*. The Infrastructure Coordinator will receive appropriate delegations from the Secretary of the Department so that he or she can manage the functions of the staff assisting the Infrastructure Coordinator and funds appropriated for the purposes of supporting Infrastructure Australia

Part 4-Miscellaneous

Clause 40: Delegation

41. This clause is a formal provision allowing the Minister to delegate functions under the proposed Act.

Clause 41: Regulations

42. This clause is a formal provision allowing the Governor-General to make regulations for the purposes of the proposed Act.