



Australian Government

Department of Infrastructure and Regional Development

Secretary

Mr Tim Watling
Committee Secretary
Rural and Regional Affairs and Transport Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr ~~Watling~~ ^{Tim}

Inquiry into the Land Transport Infrastructure Amendment Bill 2014

Thank you for your letter via e-mail dated 11 March 2014, inviting the Department to provide a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee's inquiry into the Land Transport Infrastructure Amendment Bill 2014 (the Bill).

The Bill was introduced into the House of Representatives on 27 February 2014. The purpose of the Bill is to amend to the *Nation Building Program (National Land Transport) Act 2009* and to repeal the *Australian Land Transport Development Act 1988*, *Roads to Recovery Act 2000* and the *Railway Standardization (New South Wales and Victoria) Agreement Act 1958*.

Attached is the Department's submission to the inquiry. Our submission covers the contents of the Bill and responds to the issues identified by the Selection of Bills Committee Report No. 2 of 2014 on 6 March 2014.

Yours sincerely

Mike Mrdak

18 March 2014



Australian Government

Department of Infrastructure and Regional Development

**Senate Rural and Regional Affairs and Transport Legislation
Committee**

**Inquiry into the Land Transport Infrastructure Amendment
Bill 2014**

**Submission by the Department of Infrastructure and Regional
Development**

March 2014

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Introduction

The purpose of the Land Transport Infrastructure Amendment Bill 2014 (the Bill) is to amend the *Nation Building Program (National Land Transport) Act 2009* (the Act) to continue the Roads to Recovery Programme, as currently under the Act it will end on 30 June 2014. The Government is taking this opportunity to make minor administrative changes to the Act to reduce red tape and streamline the operation of the Act. The Bill also repeals the *Australian Land Transport Development Act 1988*, *Roads to Recovery Act 2000* and the *Railway Standardization (New South Wales and Victoria) Agreement Act 1958*.

Amendments to the *Nation Building Program (National Land Transport) Act 2009*

The Land Transport Infrastructure Amendment Bill 2014 (the Bill) contains a number of amendments to the *Nation Building Program (National Land Transport) Act 2009* (the Act). The amendments to the Act are all technical in nature and there will be no impact on Commonwealth funding for road, rail or intermodal terminal projects from the amendments. The amendments will streamline the operation of the Act and make project and programme administration easier for the states and territories and the Commonwealth.

a) Roads to Recovery Programme

The key purpose of the Bill is to continue the Roads to Recovery Programme (the R2R Programme) beyond 30 June 2014. Amendments to the Act are necessary as the Act defines the Roads to Recovery funding period as ending on 30 June 2014 (see section 4(1)). The Bill removes the specification of the funding period from the Act and places it in the Roads to Recovery List. This will allow the R2R Programme to continue and removes the need to amend the Act every time the funding period changes.

The Roads to Recovery List, which specifies the funding recipients eligible to receive funding under the R2R Programme and the amount each funding recipient is entitled to receive, is essential for the R2R Programme to function. The Bill continues the List with the same administrative arrangements as it currently has, including exemption from disallowance.

b) Renaming the Act to the *National Land Transport Act 2014*

The name of the Act is being changed to the *National Land Transport Act 2014* to remove the link between the name of the Act and the name of the Commonwealth's land transport infrastructure funding programme. The Act was first introduced in 2005 as the *AusLink (National Land Transport) Act 2005* and was renamed in 2009 to the *Nation Building Program (National Land Transport) Act 2009*. This amendment will remove the need to change the Act if the name of the land transport infrastructure funding programme changes in the future.

As a result of the name change to the Act, there are small changes in terminology throughout the Act. No costs to the Commonwealth or state and territory governments are expected as a result of the name change. The name change also requires consequential amendments to the *Income Tax Assessment Act 1997* and the *Telstra Corporation Act 1991*.

The Bill also removes some terminology and definitions in the Act that are out of date and no longer used in the Act.

c) Combining Parts 3 and 6 of the Act

The Bill streamlines the Act by combining Parts 3 and 6, into a new Part 3 for Investment Projects. Parts 3 and 6 currently contain a significant number of identical provisions. Combining the two means that there will be one project funding approval process and one set of funding conditions for the majority of projects funded under the Act (excluding Black Spot projects and Roads to Recovery funding). This amendment will simplify project and programme management for both the states and territories and the Commonwealth.

Combining Parts 3 and 6 has resulted in a few changes to the existing provisions in Part 3. The project eligibility criteria in the new Part 3 (section 10) are a combination of the existing eligibility criterion in Parts 3 and 6. However, maintenance of a road in an area with no local government authority has been removed as an eligible project type. This is because this type of project is covered by the Roads to Recovery Programme and, therefore, does not need to be duplicated in the new Part 3. The project appropriateness criteria in the new Part 3 (section 11) are a combination of the existing appropriateness criterion in Parts 3 and 6. The two other changes being made to Part 3 (amendments to the public tender exemption and notification of sale or disposal of an interest in land) are detailed below. No other provisions in the existing Parts 3 or 6 have been removed as part of the combination of the two parts.

d) Amendments to the public tender exemption in section 24

Under section 24 of the Act, states and state authorities must call for public tenders for all work on funded projects other than the maintenance of a road or railway, work to be carried out by a public utility or work exempted by the Minister in writing. This is quite onerous for procurements of a minor nature, for example less than \$80,000. The Bill is amending this provision so that an amount can be determined to exempt low value work, rather than that amount being prescribed by regulation. This will reduce regulation and administration and enable the Government to provide a prompt response to exemption requests for minor procurements, ensuring faster approval times and less cost for funding recipients. The determination will be a legislative instrument and therefore still subject to parliamentary scrutiny.

e) Notification of sale or disposal of interest in land acquired using funding

The Bill amends the sale or disposal of land repayment requirement in section 25 of the Act by inserting new subsection 25(1A). Under section 25, if a funding recipient sells or disposes of land acquired using all or part of a funding payment, they are required to repay to the Commonwealth an amount determined by a formula, or seek the approval of the Minister to spend an equal amount on another approved project (subsections 25(1) and (2)). New subsection 25(1A) provides that a funding recipient must, as soon as practicable after selling or disposing of an interest in land, notify the Minister of the sale or disposal. This amendment will ensure a timely response from both the states and Commonwealth to the sale or disposal of land acquired using Commonwealth funding.

f) Expanding the definition of eligible funding recipient

The definition of eligible funding recipient in the Act is being expanded to include partnerships and non-corporate Commonwealth bodies. Partnerships will be an eligible funding recipient for Part 4 (Transport Development and Innovation Projects) and Part 5 (Funding for land transport research entities). Partnerships are being included to simplify funding arrangements for firms without a body corporate structure. The treatment of partnerships under the Act is set out in new section 92A.

Non-corporate Commonwealth entities whose functions include research related to land transport operations, will be able to receive funding under Part 5 of the Act (Funding for land transport research entities). This amendment has been included to simplify funding arrangements for Commonwealth entities without a body corporate structure. New Section 51A is being inserted into the Act to provide clarity as to how funding can be provided to non-corporate Commonwealth entities.

g) Adding a new Part 4 project type

The Bill inserts a new type of eligible project into Part 4 of the Act – research, investigations, studies or analysis of:

- projects currently or previously funded under Parts 3 and 7 (Investment and Black Spot Projects);
- projects that were funded under Part 6 (Off-Network) before its repeal;
- the construction or maintenance of roads that have been funded using Roads to Recovery funding; and
- projects submitted for consideration for funding under Parts 3 and 7 of the Act.

The results of the research, investigations, studies and analysis will enhance the management of projects funded under the Act.

h) Black Spot Projects and the National Land Transport Network

The Bill makes minor amendments to Part 7 of the Act, under which Black Spot Projects are administered, as a result of the name change of the Act. The Bill makes no amendments to Part 2 of the Act, which establishes the National Land Transport Network. The National Land Transport Network continues to play a role in project funding as the maintenance of a road or railway can only be an eligible project type if the road or railway is included in the National Land Transport Network.

i) Constitutional Basis

The Bill inserts new section 4A into the Act. Section 4A details the constitutional bases the Act relies upon. This section has been inserted as a result of the High Court's decision in *Williams v The Commonwealth of Australia and Others* [2012] HCA 23.

Repeal of spent land transport infrastructure legislation

The Bill also repeals three pieces of spent land transport infrastructure legislation. Land transport infrastructure funding was administered under the *Australian Land Transport Development Act 1988* (the ALTD Act) prior to the *AusLink (National Land Transport) Act 2005* (currently the *Nation Building Program (National Land Transport) Act 2009*). As the ALTD Act is no longer being used to fund land transport infrastructure, and there are no outstanding claims under it, it should be repealed.

The *Roads to Recovery Act 2000* (the R2R Act) established the Roads to Recovery Programme in 2000. In 2005 the Roads to Recovery Programme arrangements were incorporated into the *AusLink (National Land Transport) Act 2005*. As the R2R Act is no longer being used, and there are no outstanding claims under it, it should be repealed.

The *Railway Standardization (New South Wales and Victoria) Agreement Act 1958* (NSW and Victoria Railway Act) incorporates an agreement between the Commonwealth, New South Wales and Victoria to implement gauge standardisation, with the Commonwealth loaning funding to New South Wales

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and Victoria. The works were completed in 1962 and the last repayments against the loan were received in June 2013, and therefore, the NSW and Victoria Railway Act should be repealed.