

Chapter 1

Conduct of the inquiry

1.1 The inquiry is into the AusLink (National Land Transport) Bill 2004 and the AusLink (National Land Transport - Consequential and Transitional Provisions) Bill 2004. The first is the substantive bill of interest, and references to ‘the bill’ in this report refer to it.

1.2 The inquiry was referred by the Senate on 9 February 2005 on the recommendation of the Selection of Bills Committee. The Selection of Bills Committee noted as issues for consideration:

1. Questions about the changes to the Commonwealth Government’s funding responsibility for construction and maintenance of infrastructure on what was formerly defined as the National Highway Network.
2. The need for a National Infrastructure Advisory Council, involving stakeholder and expert representation and input into planning.
3. Examine the extension of the criteria for Roads to Recovery projects to include public transport, cycling, walking infrastructure and regional airport runways.

1.3 The Committee advertised the inquiry in *The Australian* and invited submissions from State/Territory governments and many peak bodies. The Committee received 29 submissions (see Appendix 1) and held two public hearings (see Appendix 2). The Committee thanks submitters and witnesses for their contribution. Submissions and transcripts of the Committee’s hearings are available on the Parliament’s internet site at www.aph.gov.au

The AusLink White Paper

1.4 The bill implements the Government’s June 2004 AusLink White Paper on Commonwealth land transport infrastructure funding and related matters. The White Paper is the Government’s response to predicted strong growth in transport demand, including a predicted doubling of road freight over the next 20 years. The White Paper ‘sets out \$11.8 billion in [Commonwealth] land transport spending [over five years], including a massive upgrade of Australia’s east coast road and rail systems.’¹

1.5 According to the White Paper, AusLink has the following core components:

1 Hon. J. Anderson, Minister for Transport and Regional Services, *AusLink: building our national transport future*. media release 7 June 2004.

- a defined National Network of important road and rail infrastructure links and their intermodal connections;²
- the National Land Transport Plan which outlines the Government's approach to improving and integrating the National Network and the investments it will make;
- a single funding regime, under a new AusLink programme, for the National Network;
- separately earmarked funding for local and regional transport improvements;
- new legislative, intergovernmental and institutional mechanisms.³

1.6 Other important new policies in AusLink are:

- the proposal for 'shared responsibility' with the States for funding the National Network (as opposed to the Commonwealth's former full funding of construction and maintenance on the National Highway System);
- a commitment to 'corridor strategies' which will plan spending in a corridor in an integrated way with a common project approval regime for road, rail and intermodal projects;
- for the first time, a significant Commonwealth contribution to upgrading the Melbourne-Sydney-Brisbane railway.

1.7 AusLink is not about air or sea transport as such, but is concerned with intermodal facilities and links to ports and airports. The White Paper comments:

The Australian Government will closely monitor prospective trends and developments in air and sea transport. It aims to ensure that nationally significant infrastructure is planned and developed so that the efficiency of intermodal linkages continues to be enhanced.⁴

The bill

Funding categories

1.8 The bill defines six categories of funding:

- AusLink National Projects. These relate to roads, railways or intermodal transfer facilities which are on the National Land Transport Network which the Minister must declare (sections 5,10) (The proposed National Land Transport Network is shown in the AusLink White Paper).

2 'Intermodal terminal': a point at which products or commodities move between transport modes - for example, rail to road.' AusLink White Paper, p.130.

3 Dept of Transport and Regional Services, *AusLink White Paper*, 2004, p.15.

4 AusLink White Paper, p.120.

- AusLink Transport Development and Innovation Projects. These relate to planning and research related to development of the National Land Transport Network (section 30).
- Land transport research entities whose activities are likely to improve land transport operations (section 46).
- AusLink Strategic Regional Projects. These relate to roads, railways or intermodal transfer facilities which are not on the National Land Transport Network. Tests for inclusion include (among other things) whether the facility is ‘regionally significant’; whether it will improve safety; whether it will improve access for regional communities to services and employment (section 55).
- AusLink Black Spot Projects. These relate to sites, not on the National Land Transport Network, which contribute to serious motor vehicle crashes involving death or injury (section 71). This continues the present Black Spot program.
- AusLink Roads to Recovery Program. This continues the present program under the *Roads to Recovery Act 2000*, in which funds are given directly to local councils, according to a formula, for spending on roads (section 87).

1.9 For each of these categories the bill -

- empowers the Minister to approve a project/recipient as falling within the category;
- gives broad criteria to guide the Minister on whether it is appropriate to approve a project/recipient; and
- empowers the Minister to fund an approved project/ recipient.

1.10 The criteria to guide the Minister on whether it is appropriate to approve a project/recipient are expressed at a high level of generality. Examples are:

- for National Projects: ‘the extent to which the project will improve the efficiency, security or safety of transport operations...’ (section 11(b));
- for Strategic Regional Projects: ‘the extent to which the project is likely to improve a road, railway or inter-modal facility that is regionally significant...’ (section 55(b))

1.11 These criteria are not mandatory, and the Minister’s discretion to approve projects is wide: provisions are in the form ‘the matters to which the Minister may have regard... include, but are not limited to...’⁵

5 This formula does not apply to the Roads to Recovery provisions.

1.12 Funding may be conditional on there being a funding agreement between the parties. This would enable the Commonwealth to set detailed conditions on funding. There are no constraints on the type of conditions that could be included.

1.13 There are general conditions relating to accountability: recipients must spend the money on the approved project; must provide audited financial statement; must provide information on request, etc.

1.14 The bill does not itself appropriate money. This would be done through annual budget appropriations. Proposed Commonwealth spending is detailed in the White Paper. The AusLink (National Land Transport - Consequential and Transitional Provisions) Bill 2004 contains an appropriation to cover the purposes of the AusLink bill for the balance of 2004-05.

1.15 The *Australian Land Transport Development Act 1988*, which the AusLink bill will replace, contains a provision allowing the Minister to fund urban public transport projects which 'are likely to result in the reduction of the traffic on, or the wear and tear affecting any road' (section 7C). The AusLink bill does not contain any similar provision.

National Land Transport Plan and Corridor Strategies

1.16 The Minister may determine a National Land Transport Plan which 'sets priorities for expenditure on the National Land Transport Network' (section 4). This connects to project approval in that the matters which the Minister may have regard to in deciding whether it is appropriate to approve a project include 'the National Land Transport Plan' (section 11(b)). The bill makes no comment on what sort of things the plan should include.

1.17 The Minister may determine 'corridor strategies'. A corridor strategy 'relates to land transport issues affecting a corridor between two places ... included in the National Land Transport Network.' (section 4). This connects to project approval in that the matters which the Minister may have regard to in deciding whether it is appropriate to approve a project include 'any relevant Corridor Strategy' (section 11(b)). The bill makes no comment on what sort of things a corridor strategy should include. According to the White Paper corridor strategies will allow 'managing the total transport needs of a corridor by the most efficient means available, rather than a modally based approach'.⁶

1.18 The White Paper indicates that the Government intends that the White Paper should be the basis of the first national plan, with a view to its evolutions in future versions:

6 AusLink White Paper, p.22.

Future versions of the plan will be based on priorities identified in corridor strategies, which will be developed progressively for each of the major corridors that make up the AusLink National Network.⁷

Comment of Scrutiny of Bills Committee

1.19 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they ‘insufficiently subject the exercise of legislative power to parliamentary scrutiny’ among other things.

1.20 The Scrutiny of Bills Committee was concerned by a number of provisions which exclude the Minister’s determinations from being subject to disallowance by parliament. These relate to determining the National Land Transport Network (section 5(4)), and various provisions about approving projects and approving Commonwealth funding of projects.

1.21 The Scrutiny of Bills Committee commented:

One difficulty the Committee has found in considering this legislation is that, in a number of areas, there is little provided by way of explanation to justify the exclusion of instruments from the usual tabling and disallowance regime. As a general rule, the Committee would expect the explanatory memorandum accompanying a bill to provide sufficient explanation to enable the Committee and, indeed, the Parliament to assess the need for such an exclusion.⁸

Scope of the report

1.22 The bill, considered narrowly, is essentially a machinery provision. It defines the types of projects which the Minister may fund, and sets accountability conditions (funding recipients must provide audited financial statements etc.).

1.23 The bill does not itself set budgets, or define the National Network, or set the methodology of corridor strategies, or define criteria for project approval at a level of detail useful for prioritising projects.⁹ These are matters for decision pursuant to government policy. Many relevant policies are in the AusLink White Paper. Achieving their good intentions will depend greatly on the detailed implementation.

1.24 Most submissions were mostly concerned about implementation of the policies at the administrative level, rather than the bill considered narrowly. Some also dealt with matters outside the self-declared scope of AusLink (for example, whether

7 AusLink White Paper, p.19.

8 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2005, 9 February 2005.

9 Some clauses do suggest criteria at a high level of generality: for example, clause 11 on approving National Projects: ‘...the extent to which the project will improve the efficiency, security or safety of transport operations on the National Land Transport Network...’

the Commonwealth should be involved in developing urban public transport infrastructure). This report mentions the main issues raised in the hope that the submissions, and the Committee's comments, will help the Government's deliberation on the policy matters, such as the development of the National Land Transport Plan.