

Chapter 2

The Bill

Introduction

2.1 The National Building Program (National Land Transport) Amendment Bill 2009 (the bill) amends the *Auslink (National Land Transport) Act 2005* (the Principal Act). Chapter 1 of the report outlines the amendments proposed by the bill. This chapter sets out the issues that were raised in the course of the inquiry.

Nation Building Program Off-Network Projects

2.2 Part 6 of the Principal Act makes provision for the 'AusLink Strategic Regional Projects' program. Under the amendments proposed in the bill, this program will now become 'Nation Building Program Off-Network Projects'.

2.3 In deciding whether it was appropriate to fund a project under Part 6 of the Principal Act, the matters that the Minister may consider included, but were not limited to:

- (a) the extent to which the project is likely to improve the ability of regional industries and communities to compete in international, inter-State or inter-regional trade and commerce;
- (b) the extent to which the project is likely to improve a road, railway or inter-modal transfer facility that is regionally significant;
- (c) the results of any assessment of the economic, environmental or social costs or benefits of the project;
- (d) the extent to which the project will improve the safety of transport operations;
- (e) the extent to which the project is likely to improve access for regional communities to services and employment;
- (f) for projects that relate to roads in areas for which no local government authority has responsibility—the extent to which the project will improve or maintain the serviceability of a road in such an area;
- (g) the extent to which persons other than the Commonwealth propose to contribute funding to the project.¹

2.4 The bill proposes the following amendments to the above criteria:

- (i) the word 'regional' is removed from subsection 55(a);

1 *Auslink (National Land Transport) Act 2005*, s. 55.

- (ii) subsection 55(b) is deleted entirely; and
- (iii) the word 'regional' is removed from subsection 55(e).²

2.5 The Explanatory Memorandum for the bill states that Part 6 of the Principal Act is being modified to:

...make it clear that this Part of the Principal Act can be used to approve funding for projects which are off the National Land Transport Network (off-network projects) and which are not in regional areas of Australia (as well as off-network projects that are in regional areas).

Off-network projects include those projects involving road, rail, an inter-modal transfer facility, or the application or acquisition of technology that improves transport operations in a state or territory (including an Indian Ocean territory) not on the National Land Transport Network.³

2.6 In evidence before the committee at estimates hearings in 2007, representatives of the former Department of Transport and Regional Services stated that there were no prohibitions on projects from urban areas being funded under the Auslink Strategic Regional Program because '[t]hey are all regions of Australia'.⁴

2.7 The committee clarified this point with officers of the Department of Infrastructure, Transport, Regional Development and Local Government during this inquiry and was advised that:

Mr Farmer— ... Under the current act—the AusLink act—and under section 54, which is what projects are eligible for approval, a project that is not included in the national land transport network can be approved under part 6, which is currently the strategic regional part of the act and which is proposed to be renamed as the Nation Building Program off-network projects.

Senator NASH—I might not have made my question clear. I am trying to ascertain whether, under the current AusLink strategic regional projects, there is capacity for any funding to go into non-regional areas.

Mr Farmer—Yes.

Senator NASH—That is my question. Under what criteria? How does that happen?

Mr Farmer—Well, the project must be off the national land transport network. If it is off the national land transport network, it could be in a regional, rural, urban or metropolitan area.⁵

2 Items 67-69 of the Nation Building Program (National Land Transport) Amendment Bill 2009.

3 Explanatory Memorandum, p. 10.

4 Senate Standing Committee on Rural and Regional Affairs and Transport, *Committee Hansard*, 21 May 2007, pp 52-53.

5 Mr Richard Farmer, *Committee Hansard*, 11 June 2009, p. 6.

Black Spot Funding

2.8 Section 71 of the Principal Act sets out the factors for eligibility for an Auslink Black Spot Project (or Nation Building Program Black Spot Project if the bill is passed). One of the requirements in section 71 is that the project site is not included in the National Land Transport Network. The amendments proposed in the bill would extend the coverage of the Nation Building Program Black Spot Projects to allow the Minister to approve funding under Part 7 of the Principal Act for projects on the National Land Transport Network.⁶

2.9 Currently, work on Black Spot projects which are on the National Land Transport Network could potentially be funded under Part 3 of the Act (Auslink National Projects). An officer of the Department of Infrastructure, Transport, Regional Development and Local Government advised the committee that, until the bill passes, Part 3 of the Principal Act is being used as an interim measure to fund some Black Spot projects on the National Land Transport Network.⁷ However, the officer advised that funding under Part 3 of the Principal Act means that these projects are subject to different funding criteria than if they had been funded under Part 7 of the Principal Act:

Senator NASH—Just in terms of the process—they are obviously ones that are going to be on the network—given that we have not yet had the legislative changes that make it possible for black spots to occur on the national network, how is it that we have already got 81 ready to go?

Ms O’Connell—Senator, the legislative change, as you have mentioned, has not passed through. As basically a work-around measure or a measure of expediency, and in recognition of this being part of the stimulus package, to get funding moving quickly, they have been approved. Those on-network black spots that have been approved—and that is not the whole 81, Senator; the whole 81 refers to, if you like, the plan for approvals for 2008-09 and 2009-10—have been approved under part 3 of the act as a work-around measure and consistent with this being part of the economic stimulus package and a priority to commence work as soon as possible. In the amendment bills, the transitional provisions allow those projects to remain funded. That is how they have been dealt with to date. Clearly, part 3 of the act deals with black spots very differently than the part of the act that deals specifically with black spots. It applies different criteria, different measures and different reporting requirements. There is also an appropriations issue because the funding that has been appropriated has been appropriated for the black spots part of the program.⁸

6 Item 86 of the National Building Program (National Land Transport) Amendment Bill 2009.

7 Ms Lyn O’Connell, *Committee Hansard*, 11 June 2009, p. 5

8 Ms Lyn O’Connell, *Committee Hansard*, 11 June 2009, p. 5.

Other Provisions

Inclusion of conditions in a funding agreements

2.10 The amendments proposed in the bill would also allow that a funding agreement may specify a condition that a funding recipient adheres to the terms of a particular matter contained in an instrument or other document for the purposes of a National Building Program project.⁹

2.11 An example of such a document is the *standard for best practice cost estimation for publicly funded road and rail construction projects* that describes the framework which is to be adopted for cost estimation for specified projects funded under the Nation Building Program.¹⁰

2.12 An officer of the Department explained the rationale for this amendment to the committee:

The amendments in this bill will enable the minister to ensure through a funding condition the requirement for funding recipients to provide more accurate cost estimates with their projects. This will be achieved through an adoption of a standard that has been developed cooperatively with the states and territories.¹¹

Prescribed threshold amounts for tendering processes

2.13 The amendments proposed in the bill also provide that a Regulation can be made to set a prescribed threshold amount, which provides the Minister with an additional criterion by which to grant a funding recipient an exemption from having to call for public tenders on a project approved under section 9 of the Principal Act (Nation Building Program National Projects).

2.14 An officer of the Department explained how this amendment would improve the administration of tendering processes for National Projects:

At present, all projects funded under part 3 of the act are subject to compulsory tendering no matter the value of the project, and this places an administrative burden on the states and a disincentive for small businesses to respond in the form of a full tender for some small projects.¹²

9 See for example Items 33 (National Projects), 57 (Transport Development and Innovation Projects), 78 (Off-Network Projects), and 97 (Black Spot Projects) of the Nation Building Program (National Land Transport) Amendment Bill 2009.

10 Explanatory Memorandum, p. 5.

11 Ms Lyn O'Connell, *Committee Hansard*, 11 June 2009, p. 3.

12 Ms Lyn O'Connell, *Committee Hansard*, 11 June 2009, p. 3.

Committee view

2.15 In the committee's view, the removal of references to 'regional' in the matters that a Minister may have regard to in funding a project under Part 6 of the Principal Act potentially has little impact on shifting funds from regional projects to urban projects. This is because, according to evidence provided to the committee by the Department, Part 6 of the Principal Act is already able to be used for funding of urban off-Network projects.

2.16 The committee believes that the amendments in the bill to provide:

- that a funding agreement may specify a condition that a funding recipient adheres to the terms of a particular matter contained funding conditions, and
- that a Regulation can be made to set a prescribed threshold amount, which provides the Minister with an additional criterion by which to grant a funding recipient an exemption from having to call for public tenders on a project approved under section 9 of the Principal Act,

are practical and reasonable amendments to improve the administration of the Nation Building Program.

2.17 The committee recommends that the Senate pass the bill.

Recommendation 1

2.18 The committee recommends that the Senate pass the bill.

Senator Glenn Sterle

Committee chair