

The Senate

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Rural and Regional  
Affairs and Transport  
Legislation Committee

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Nation Building Program (National Land  
Transport) Amendment Bill 2009 [Provisions]

June 2009

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# Members of the Committee

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Senator Fiona Nash	NAT, New South Wales	Deputy Chair
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Senator Steve Hutchins	ALP, New South Wales	
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\* Senator Ludlam, AG, Western Australia, replaced Senator Rachel Siewert for this inquiry.

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# Chapter 1

## Conduct of the inquiry

1.1 The Nation Building Program (National Land Transport) Amendment Bill 2009 (the bill) was referred to the Rural and Regional Affairs and Transport Legislation Committee on 14 May 2009.

1.2 The committee advertised this inquiry in *The Australian* on 20 May 2009 and on its website. In addition to relevant government agencies and departments, the committee invited a number of key stakeholder groups and individuals to provide a submission. The committee continued to accept submissions throughout the inquiry.

1.5 The committee received 5 submissions, listed in Appendix 1. The committee held a public hearing in Canberra on 11 June 2009. For a full list of witness please refer to Appendix 2.

1.6 All relevant submissions for the inquiry and the Hansard transcripts of the committee's hearings are available on the Australian Parliament's homepage at <http://www.aph.gov.au>.

## The bill

1.3 The bill amends the *Auslink (National Land Transport) Act 2005* (the Principal Act) in the following ways:

- references to AusLink are replaced with references to the 'Nation Building Program', including changing the name of the Principal Act to the *Nation Building Program (National Land Transport) Act 2009*.
- modifies Part 6 of the Principal Act (currently titled 'Auslink Strategic Regional Projects') to make it clear that this Part 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);
- allows the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) to incorporate into any funding conditions set for projects funded under the Principal Act, the terms of a particular matter contained in an instrument or other writing as in force or existing from time to time;
- allows for a Regulation to be made to set a prescribed threshold amount which may provide 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 Act;

- extends coverage of Nation Building Program Black Spots Projects to allow the Minister to approve funding under Part 7 of the Principal Act for projects on the National Land Transport Network; and
- permits the Minister to increase amounts of money payable to a person or body that is specified in the Nation Building Program Roads to Recovery List.

### **Acknowledgements**

1.4 In view of the brevity of the inquiry, the committee appreciates the time and work of those who provided oral and written evidence to the inquiry. Their work has assisted the committee's deliberations on this bill.

### **A note on references**

1.5 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.



# 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.<sup>1</sup>

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

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

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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).<sup>2</sup>

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.<sup>3</sup>

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'.<sup>4</sup>

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.<sup>5</sup>

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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.

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## 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

### *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.<sup>12</sup>

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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.

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## **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**



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## Additional Comments by Senator Fiona Nash

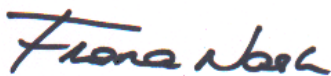
1.1 I note the recommendation of the Rural and Regional Affairs and Transport Legislation Committee inquiry into the above bill.

1.2 In paragraph 2.3 the report observes that Part 6 of the Principal Act the *AusLink (National Land Transport) Act 2005* emphasises that when considering funding under what was known as the AusLink Strategic Regional Projects program, the Minister should have regard to the regional benefit of the proposed project. These conditions are cited in *section 55* of the Principal Act under the heading “Is it appropriate to approve a project?” The report then notes, in paragraph 2.7, that the preceding section of the Principal Act – *section 54* – gives a theoretical right to the Minister to grant such an approval for a project in a non-regional area. Without disputing the legality of this assertion, the intent of the Strategic Regional Program to be non-urban in focus is made quite clear by its name and by the clauses contained in *section 55*. This is why, in order to remove this focus, the Government has proposed the *Nation Building Program (National Land Transport) Amendment Bill 2009*. This amendment will change the program’s name to “Nation Building Off-Network Projects” and delete from the Principal Act any references to regional so that this renamed program can apply to urban Australia.

1.3 Given that the Government has removed any doubt as to whether this program may apply to non-regional Australia, I express my concern as to what this means for a transport infrastructure program that totals \$633.3 million over four years from 2009-10. Prior to these amendments, disregarding any technical doubts, this amount of money was to be spent in regional Australia. This is no longer the case. The Government is now free to spend this money in urban areas – a focus that is against the original intent of the Principal Act. I am concerned that the Government’s amendments to the Principal Act represent a significant loss of transport infrastructure funding for Australians who live outside the capital cities and demonstrate the Government’s anti-regional bias.

1.4 I also express concern that the funds set aside for the former Strategic Regional Program over the planning period from 2009-10, as tabled by the Government on 28 May 2009, are overwhelming directed to Labor seats. Specifically, 81 percent of the funds under what is now to be termed the Nation Building Program Off Network Projects, or \$531.4 million, are now to be spent in Labor-held electorates. I question the use by the Government of this program as a vehicle to fund Labor election promises in Labor areas.

1.5 Secondly, as noted in paragraph 2.8 of the report, the Government amendments will modify *section 71* of the Principal Act to extend the coverage of the Black Spots Project to the National Land Transport Network. I express concern that these amendments mean that this key safety initiative that formerly applied only to dangerous local roads, may now be swallowed up in a more general spend on Australia's national highways. I express concern that these legislative changes paves the way for the Government to use funds dedicated to local roads and streets to use as maintenance funds for the national highway system that is already subject to larger and separate appropriations.



**Senator Fiona Nash**

**Senator for New South Wales**



# **Appendix 1**

## **List of Submissions**

- 1. Australian Airports Association Ltd**
- 2. Municipal Association of Victoria**
- 3. ARRB Group Ltd**
- 4. Australian Automobile Association**
- 5. Assoc Professor Philip Laird**



## **Appendix 2**

### **Witnesses who appeared before the Committee at Public Hearings**

*Thursday 11 June 2009*  
*Parliament House*  
*CANBERRA*

**Department of Infrastructure, Transport, Regional Development and Local  
Government**

Mr Richard Farmer, General Manager, Policy Planning and Development Branch,  
Nation Building – Infrastructure Investment Division

Ms Lyn O'Connell, Deputy Secretary.



## Appendix 3

### Additional information

Type of information	Lodged by	Date received
Correspondence	Mr Andrew Tongue, Department of Infrastructure, Transport, Regional Development and Local Government.	29 May 2009
Correspondence	Mr Peter Conran, Director General, Government of Western Australia, Department of the Premier and Cabinet.	29 May 2009
Correspondence	The Hon. Jon Stanhope MLA, ACT Chief Minister.	3 June 2009
Correspondence	The Hon. Mike Rann, Premier of South Australia.	5 June 2009
Correspondence	Mr Andrew Tongue, Department of Infrastructure, Transport, Regional Development and Local Government.	9 June 2009
Answers to Questions on Notice	Mr Andrew Tongue, Department of Infrastructure, Transport, Regional Development and Local Government.	12 June 2009

