Land Transport Infrastructure Amendment Bill 2014

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Date introduced: 27 February 2014
House: House of Representatives
Portfolio: Infrastructure and Regional Development
Commencement: The operative provisions commence on the earlier of a day to be fixed by Proclamation or six months after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill

The Land Transport Infrastructure Amendment Bill 2014 (the Bill) amends the Nation Building Program (National Land Transport) Act 2009 (NBPNLT Act). 1

The Bill also repeals the Australian Land Transport Development Act 1988, 2 the Roads to Recovery Act 2000 3 and the Railway Standardization (New South Wales and Victoria) Agreement Act 1958. 4

The Bill renames the NBPNLT Act as the National Land Transport Act 2014. Until 2009, the NBPNLT Act was named the AusLink (National Land Transport) Act 2005 (AusLink Act). 5

The main purposes of the Bill are:

• to enable the continuation of the Roads to Recovery Program after 30 June 2014
• to unify the schemes for funding National Land Transport Network projects, in Part 3 of the NBPNLT Act, and ‘Off-Network’ projects, in Part 6 of that Act and
• to enlarge the scope of the power to fund research, investigations, studies and analysis by, first, expanding the types of organisations that can be funded to include partnerships and non-corporate Commonwealth entities in certain circumstances and, secondly, by allowing funding for the additional purpose of researching and investigating projects funded, or submitted for consideration for funding, under the Act.

Structure of the Bill

The Bill has two Schedules. Schedule 1 amends the NBPNLT Act. Schedule 2 repeals the three Acts listed in the second paragraph above and makes minor consequential amendments to the Income Tax Assessment Act 1997 6 and the Telstra Corporation Act 1991. 7

Commencement

Sections 1–3 will commence on Royal Assent.

Schedules 1 and 2 will commence on either: a day fixed by proclamation, or, if they have not commenced six months after this Bill receives Royal Assent, then they will commence one day after the six month period.

Background

This policy area is characterised by changes in the names of funding programs under different governments which give the exaggerated impression of major shifts in policy but conceal a large degree of common purpose. For instance, the Howard Government’s AusLink Act lost all references to ‘AusLink’ when it was amended by the Rudd Government to become the NBPNLT Act and now that Act, under amendments made by this Bill, loses all references to Labor’s ‘Nation Building Program’. The Bill nevertheless makes some substantive amendments.

The Commonwealth has a major role in road funding along with the states and territories and local government. The Commonwealth’s role has changed from time to time with shifts in the focus of funding programs and adjustments in funding responsibilities between the tiers of government.

For a history of the funding of road transport in Australia from 1990 to 2004, see Commonwealth Road Funding Since 1990 by the Parliamentary Library. 8 More recent histories of the funding of road and rail transport are found in the Bills Digests for the AusLink (National Land Transport) Bill 2004 9 and the Nation Building Program (National Land Transport) Amendment Bill 2009.10

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In the 2013 election campaign, the Coalition said that, if elected, it would be an infrastructure-focused government ‘led by Australia’s first infrastructure Prime Minister’. The Coalition’s campaign included commitments to a number of particular projects including the upgrading of the Great Ocean Road in Victoria, and the building of the East West Link in Melbourne and the F2 to M3 Link in Sydney, among others. In addition to the specific project commitments, the Coalition also committed to finding ways to encourage the private sector to become more involved in the financing of economic infrastructure. In line with this commitment they also promised to create a Funding and Financing Advisory Unit within Infrastructure Australia.

In November 2013 the Treasurer, Joe Hockey, asked the Productivity Commission to conduct a public inquiry into infrastructure costs. Amongst other things, the inquiry would analyse and report on how infrastructure is currently funded and financed in Australia, including by the Commonwealth, the states and the private sector. It would also address the rationale, role and objectives of alternative funding and financing mechanisms and would consider the disincentives for the private sector and ways to create revenue streams to attract private sector finance.

The Productivity Commission draft report on Public Infrastructure was released on 13 March 2014. A Bill to amend the Infrastructure Australia Act 2008 has been passed by the House of Representatives and was referred to the Senate Rural and Regional Affairs and Transport Committee. The Committee tabled its report on 17 March 2014.

Changes made by the Bill

Roads to Recovery

The Roads to Recovery program funds local governments for road maintenance and state and territory governments in those areas where there are no local councils.

In 2008, the Roads to Recovery program, which was initially established and funded through the Roads to Recovery Act 2000, was incorporated into the Nation Building Program through the AusLink (National Land Transport) Amendment Act 2008. At the time, the program was in its second phase, which ran from 2005–06 to 2008–09. The 2008 amendments required that the Roads to Recovery List be determined as soon as practicable (that is, early 2009–10). The list was to specify the funding amounts, the name of the recipient and, if the Minister is yet to decide who the recipients will be, the amount the state (or an area in a state) will receive.

The current list is defined in the NBPNLT Act to end on 30 June 2014 and the Act must be amended to allow a new list to be created for the period beyond June 2014.

Unifying funding schemes for the National Land Transport Network and Off-Network projects

Currently Part 3 of the NBPNLT Act deals with the funding of roads, rail and ‘inter-modal’ transport facilities that are part of the National Land Transport Network. Inter-modal facilities are those for the transfer of cargo or passengers from one mode of transport to another. The National Land Transport Network is a set of major roads infrastructure facilities including roads managed by the states and territories and those for which the Commonwealth has responsibility. Such facilities are currently funded and financed in Australia’s states and territories.

13. Ibid.
14. Ibid.
16. Ibid.
20. The current definition of ‘Nation Building Program Roads to Recovery funding period’ in subsection 4(1) of the NBPNLT Act provides that that funding period runs from 1 July 2009 to 30 June 2014.
typically joining capital cities and major centres of commercial activity, as determined by the Minister.21 Maps and links to the Minister’s Determination are on the Department’s website.22

Part 6 of the Act currently deals with the funding of roads, rail and ‘inter-modal facilities’ that are not part of the National Land Transport Network (Off-Network).

Parts 3 and 6 are drafted in substantially the same way. The amendments made by this Bill amend Part 3 with the effect of bringing the two schemes together in one Part dealing with ‘Investment Projects’.

**Widening the power to fund research**

Part 4 of the Act is concerned with the funding of ‘development and innovation projects’. Such projects are for either or both of the following purposes:

- for ‘planning, research, investigations, studies or analysis of matters related to the present or future development or usage of the National Land Transport Network’
- for ‘research or development related to technology or practices that will, or may, be used in connection with transport operations on the National Land Transport Network’.23

The Bill makes two material changes: first, by allowing partnerships to be funded by adding them to the definition of ‘eligible funding recipient’ for the purposes of Parts 4 and 5 only, and secondly, by allowing funding for the further purpose of researching and investigating projects funded, or submitted for consideration for funding, under the Act.24

Part 5 of the Act is concerned with the funding of ‘land transport research entities’. The Bill amends the Act by allowing partnerships and non-corporate Commonwealth entities to be funded.25 This would allow public private partnerships, for instance, to be funded.

**Committee consideration**

**Senate Standing Committee on Rural and Regional Affairs and Transport**

On 6 March 2014, the Bill was referred to the Senate Standing Committee on Rural and Regional Affairs and Transport, chaired by Senator Bill Heffernan, for reporting by 24 March 2014. The report was tabled 24 March 2014. The report, submissions and other details of the inquiry are at the inquiry’s webpage.26

The committee recommended the Senate pass the Bill, stating:

The committee notes the non-controversial nature of the bill. It also notes that it has received no evidence raising significant objections to the changes proposed by the bill.27

Additional comments were raised by opposition senators however. Senator Sterle stated that ‘Labor will be seeking to amend this Bill in two important respects’.28 These are strengthened governance and inserting the Heavy Vehicle Safety and Productivity Program as a separate program for funding under the Act.

In relation to strengthened governance, Senator Sterle goes on to state:

Labor will move to strengthen governance around project selection by elevating the role of Infrastructure Australia in advising on project benefits ... This amendment makes the logical link between Infrastructure Australia’s role to

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24. Partnerships are added as ‘eligible funding recipients’ by item 6 of the Bill. Item 33 allows more types of research to be funded.
25. Item 36 adds ‘non-corporate Commonwealth entity’ to the definition of ‘land transport research entity’.
28. Ibid., p. 15.
provide advice on infrastructure and national priorities, and the Minister’s role to decide how to allocate scarce Commonwealth funds.  

In relation to the Heavy Vehicle Safety and Productivity Program, the Senator stated:

The Heavy Vehicle Safety and Productivity Program is an Australian initiative ... to improve safety and productivity outcomes of heavy vehicle operations across Australia.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills indicated that it had no comment to make on this Bill.

**Financial implications**

The Bill has no net financial impact on the Australian Government. The second reading speech, however, outlines a number of projects which total $35.5 billion over six years. These projects are not part of the Bill and will be appropriated for separately.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

The Parliamentary Joint Committee on Human Rights considers that the Bill is unlikely to raise human rights concerns.

**Policy position of non-government parties/independents**

Labor’s position is recorded in the comments of Senator Sterle on the previous page.

To give effect to its position, Labor tabled amendments in the House of Representatives, but these were negatived. The Greens supported this amendment. At the time of writing, the Bill is before the Senate.

**Key issues and provisions**

**Schedule 1**

**Part 1 — amendments to the NBPNLT Act**

**Item 5** removes the definition of *corridor strategy* as the concept is no longer to be used in the legislation. A corridor strategy is a strategy determined by the Minister that relates to land transport issues affecting a corridor between two places joined, or proposed to be joined, by existing or proposed roads or railways that are included in the National Land Transport Network. Currently, under section 11, when the Minister is deciding whether it would be appropriate to fund a project under Part 3 of the *NBPNLT Act*, one of the specific listed factors to which he or she may have regard is any relevant corridor strategy that may exist. The removal of the references to ‘corridor strategy’ does not prevent the Minister from having regard to the existence of relevant corridors, such as the North West Transport Corridor in Queensland.
Item 6 of the Bill amends the definition of an eligible funding recipient to include a partnership when used in Parts 4 and 5 of the Act. This enables partnerships to receive Commonwealth funding as detailed on page 4 of this Digest. If a partnership is funded, proposed section 92A, inserted by item 45, applies.

Item 8 inserts a definition of investment project at new section 8 (inserted by item 17) which points to funding criteria in proposed new sections 10 and 11 (inserted by item 20). The new definition brings together the definitions of ‘National Project’ in existing Part 3 and ‘Off-Network Project’ in existing Part 6 so that both types can be dealt with as Investment Projects under the amended Part 3. Reference to a number of existing transport funding programs, which used Labor’s ‘Nation Building Program’ nomenclature, are removed by item 9 of the Bill.

Item 12 inserts the proposed definitions of Roads to Recovery funding period and Roads to Recovery List. Both definitions relate to the proposed subsection 87(1) which is inserted by items 39–41. Subsection 87(1) of the AusLink Act required the Minister, before, or as soon as practicable after, the start of each funding period, to publish a roads to recovery list. This provision was repealed by the Nation Building Program (National Land Transport) Amendment Act 2009, as the list was already determined for the 2009–2014 funding period. The Bill reinserts the requirement. The proposed paragraph 87(1)(aa) provides that the list must also specify a funding period. The Determination made by the Minister is not disallowable (new subsection 87(2) inserted by item 42).

Currently, the funding period is specified in the definition of ‘Nation Building Program Roads to Recovery Funding period’ at subsection 4(1) of the NBPNLT Act, which defines it to mean the period starting 1 July 2009 and ending 30 June 2014. This change means that the funding period for the project will be able to be extended without amendment of the Act.

Item 14 inserts new section 4A which provides for alternative Constitutional heads of power for the Act. Legislation must be supported by a Constitutional head of power. The High Court has also established that Commonwealth spending must be supported by a valid head of power. Like most Acts, the NBPNLT Act and the amendments to it, can possibly be founded on more than one head of power. This provision has the effect that if the High Court were to find that some of the provisions were not properly founded on a particular power, then the Act would still stand to the extent that another head or heads of power is a valid basis.

A list of matters that the Minister may have regard to when deciding whether to approve an Investment Project is inserted in proposed section 11 (item 20).

Section 30 of the Act is amended by item 32 and 33 to enable research, investigations, studies or analysis of certain projects which were funded, or submitted for approval for funding, under the Act to be approved as Investment Projects.

Item 38 repeals Part 6 of the Act to give effect to the merger of Part 6 into Part 3. According to the Explanatory Memorandum, Part 6 – Nation Building Program Off-Network Projects contains a significant number of identical provisions to Part 3 – Nation Building Program National Projects. The Bill proposes to repeal the definitions for both National Projects and Off-Network Projects (item 9). These projects will be covered under the definition of Investment Projects.

Part 2 – application and transitional provisions

This part inserts a number of provisions which ensure that existing Nation Building Program National Projects, Nation Building Program Transport Development and Innovation Projects, and Nation Building Program Off-Network Projects are all continued but under the funding schemes as amended by this Bill.

The Part also includes provisions which allow the Minister to make transitional rules relating to amendments made by the Bill (item 55).

Schedule 2


According to the Explanatory Memorandum these Acts are all redundant and no longer necessary.\(^{42}\)

\(^{42}\) Ibid., p. 12–13.