



Australian Government

National Land Transport Act 2014

ROADS TO RECOVERY FUNDING CONDITIONS 2019

I, **MICHAEL MCCORMACK**, Minister for Infrastructure, Transport and Regional Development, determine the following conditions under section 90(1) of the *National Land Transport Act 2014*.

Dated: 19 March 2019

Michael McCormack
Minister for Infrastructure, Transport and Regional Development

Part 1:Preliminary

Name of Determination

- 1.1 This Determination is the *Roads to Recovery Funding Conditions 2019*.

Commencement

- 1.2 This Determination commences on the day after registration.

Application

- 1.3 The conditions in this Determination apply to payments under Part 8 of the Act for the Roads to Recovery funding period.

Note: The term 'Roads to Recovery funding period' in this Determination refers to the period commencing on 1 July 2019 and ending on 30 June 2024.

Definitions

- 1.4 In this Determination, unless the contrary intention appears:

Chief Executive Officer, in relation to a funding recipient, means the Chief Executive Officer or equivalent office holder of the funding recipient;

funded project means a project in respect of which a Roads to Recovery payment has been received;

funding recipient means a person or body that is to receive or has received a Roads to Recovery payment;

old conditions means the conditions determined under section 90(1) of the Act that apply to payments under Part 8 of the Act for the funding period starting on 1 July 2014 and ending on 30 June 2019;

own source funds, in respect of a funding recipient, means funds available to the funding recipient other than funds provided by the Commonwealth, a State or Territory government or by the private sector for specific projects;

own source expenditure means the amount spent from a funding recipient's own source funds;

relevant documents means, in relation to a funding recipient, documents relating to Roads to Recovery payments received by the funding recipient, including documents relating to projects in respect of which Roads to Recovery payments were spent and documents relating to expenditure by the funding recipient on the construction and/or maintenance of roads, whether out of Roads to Recovery payments or otherwise;

reference amount applicable to a funding recipient means the reference amount applicable to the funding recipient on 30 June 2019 under the old conditions;

Roads to Recovery funding period means the Roads to Recovery funding period specified in the *Roads to Recovery List 2019*;

Note: The Roads to Recovery funding period specified in the *Roads to Recovery List 2019* is the period commencing on 1 July 2019 and ending on 30 June 2024.

Roads to Recovery List means the *Roads to Recovery List 2019* determined under subsection 87(1) of the Act on 31 October 2018;

Roads to Recovery payment means a payment of Commonwealth funds provided under Part 8 of the Act for the Roads to Recovery funding period;

Signage Guidelines means the document entitled ‘Signage Guidelines’, which has been made available to funding recipients by the Department, and any later amendment or replacement of that document by the Department;

small funded project means a project relating to the construction and/or maintenance of roads, the total cost of which is, or is expected to be, less than \$10,000;

the Act means the *National Land Transport Act 2014*.

- 1.5 Terms that are defined in the Act have the same meaning in this Determination.

Part 2: Conditions relating to expenditure of payments

- 2.1 A funding recipient must ensure that Roads to Recovery payments are:
- (a) spent only on the construction and/or maintenance of roads; and
 - (b) spent only on projects which are identified in the works schedule submitted by the funding recipient in accordance with Part 5; and
 - (c) spent only on work on projects which are in progress on or after 1 July 2019 and for which payment is required on or after 1 July 2019; and
 - (d) not spent on meeting any part of a price paid by the funding recipient for a supply acquired by the funding recipient where:
 - (i) the supply is a supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (ii) the part of the price represents the amount of GST payable on the supply by the entity which is making or which made, the supply.

Note: The terms 'road', 'construction' and 'maintenance' are defined in section 4 of the Act. The Department has issued Guidelines which give a more detailed explanation of these terms.

- 2.2 If:
- (a) the Commonwealth has specified that a Roads to Recovery payment is to be spent in relation to:
 - (i) a particular project in Western Australia involving the construction and/or maintenance of bridges; or
 - (ii) a particular project in Western Australia involving the construction and/or maintenance of Aboriginal access roads; and
 - (b) the project does not proceed or the project costs the funding recipient less than the amount of the Roads to Recovery payment; and
 - (c) the funding recipient wishes to spend the unspent amount of the Roads to Recovery payment on another project relating to the construction and/or maintenance of roads;

then the funding recipient must first obtain the approval of the Department for the expenditure of the unspent amount on the other project, and the other project must be included in the funding recipient's works schedule.

- 2.3 A funding recipient must ensure that each Roads to Recovery payment is spent within six months of receipt of the payment.

Note: The Minister has the power under section 91 of the Act to exempt a funding recipient from a condition.

- 2.4 A funding recipient must spend all Roads to Recovery payments it receives by 31 December 2024.

- 2.5 If a funding recipient receives an amount as interest in respect of a Roads to Recovery payment in one financial year, the recipient must spend an amount equal to that amount on the construction and/or maintenance of roads in the next financial year and must be able to demonstrate that it has done so. This condition does not apply to funding recipients which are to

receive total funding of less than \$1.25 million according to the Roads to Recovery List.

Note: Interest earned in respect of a Roads to Recovery payment is own source funds for the purposes of Part 3.

- 2.6 If a funding recipient distributes Roads to Recovery payments which it receives to local government authorities for expenditure by those authorities on the construction and/or maintenance of roads, the funding recipient must ensure that the authorities are subject to the same obligations in respect of those payments as those to which the funding recipient is subject under clause 5.8 and Part 6.

Part 3: Own source roads expenditure obligation

- 3.1 Subject to clause 3.2, for each financial year in which a funding recipient receives, spends or retains any amount of a Roads to Recovery payment, the funding recipient must spend on the construction and/or maintenance of roads an amount of own source funds equal to or greater than the reference amount applicable to the funding recipient.
- 3.2 If a funding recipient does not fulfil the condition in clause 3.1 for a financial year, but the average expenditure of its own source funds in that year and the previous financial year, or in that year and the two previous financial years, exceeds the reference amount applicable to the funding recipient, the funding recipient is taken to have fulfilled the condition in clause 3.1 in respect of the first-mentioned financial year.

Part 4: Public information conditions

- 4.1 In all formal public statements, media releases or statements, displays, publications and advertising generated by a funding recipient relating to a funded project, the funding recipient must acknowledge and give appropriate recognition to the contribution of the Australian Government to that project.
- 4.2 If a funding recipient proposes to issue any media release relating to a funded project, the funding recipient must consult with and obtain approval of the proposed release from the Department.
- 4.3 Subject to clause 4.4, a funding recipient must ensure that signs are erected for each funded project, other than small funded projects, at the time work on the project commences, as follows:
- (a) except where the funded project relates to a cul-de-sac or a one-way road, one sign must be erected at the place where the funded project starts, and one sign must be erected at the place where the funded project ends. Where the funded project relates to a cul-de-sac, one sign must be erected at the entrance to the cul-de-sac. Where the funded project relates to a one-way road, one sign must be erected at the place where the project begins.
 - (b) all signs must be erected in a prominent but safe position facing oncoming traffic, in any event so that they are plainly visible to passing motorists;
 - (c) signs erected as required by this clause must have greater prominence, in size and frequency and visibility, than any other

signs which relate to the funded project or which are erected in the immediate vicinity of the funded project.

- 4.4 The signs erected for a funded project must be in the form (including size and content) specified in the Signage Guidelines.
- 4.5 A funding recipient must ensure that all signs erected as required by these conditions remain in place for the duration of the project to which they relate and for a minimum period of one year commencing on the day on which the project is completed.
- 4.6 If a funding recipient proposes to hold an opening ceremony in relation to a funded project, the funding recipient must inform the Department of the proposed ceremony at least two weeks before the proposed ceremony is to be held, and provide details of the proposed ceremony, including proposed invitees and order of proceedings. If requested by the Department, the funding recipient must arrange a joint Australian Government/funding recipient opening ceremony.
- 4.7 If requested by the Minister, a member of the Minister's staff or the Department, a funding recipient must invite and, if the invitation is accepted, arrange for an Australian Government representative (nominated by the Minister or a member of the Minister's staff) to participate in any opening ceremony which the funding recipient proposes to hold in relation to a funded project.

Part 5: Conditions relating to planning and reporting

Works schedule

- 5.1 A funding recipient must prepare and submit, as soon as practical after 1 July 2019, but in any event prior to the time the recipient submits its first quarterly report under clause 5.7 or clause 5.8, a works schedule to the Department in the manner and form specified by the Department.
- 5.2 Subject to clause 5.3, a funding recipient must ensure that its works schedule:
 - (a) specifies each project on which the funding recipient proposes to spend, on or after 1 July 2019, Roads to Recovery payments received by the funding recipient;
 - (b) specifies each project which has been completed and for which Roads to Recovery payments were received;
 - (c) specifies the location of each project (other than small funded projects) specified in the works schedule by means including data for use in a Geographical Information System in the manner and form required by the Department;
 - (d) includes a description of each project specified in the works schedule and the funding recipient's reason for undertaking the project;
 - (e) specifies the estimated start and completion date for each project specified in the works schedule;
 - (f) specifies the estimated total amount of Roads to Recovery payments to be spent on each project specified in the works schedule;

- (g) in relation to projects specified in the works schedule not funded wholly from Roads to Recovery payments or other Australian Government payments, specifies the estimated total cost of the project, excluding GST;
 - (h) specifies the main expected outcome from each project; and
 - (i) for a completed project, specifies whether or not the expected outcome was achieved.
- 5.3 Funding recipients may group a series of small funded projects of the same or similar nature in their works schedules as one 'group project'. In these circumstances, the funding recipient must ensure that its works schedule includes the following details:
 - (a) a general description of each group project;
 - (b) the location and cost (excluding GST) of each small funded project in each group;
 - (c) the amount of Roads to Recovery payments to be expended on each group project;
 - (d) in relation to each group project, the estimated start date of the first of the small funded projects in the group project to begin and the scheduled completion date of the small funded project in the group expected to be completed last;
 - (e) specifies the main expected outcome from each group project; and
 - (f) for a completed group project, specifies whether or not the expected outcome was achieved.
- 5.4 Only projects in respect of which the funding recipient proposes to expend Roads to Recovery payments on or after 1 July 2019 may be included in the works schedule.
- 5.5 If the Department provides details of, and access to, the Department's secure Roads to Recovery website, a funding recipient must submit its works schedule to the Department electronically by using that website. However, if a funding recipient is not able to access the website, it may submit its works schedule in some other form agreed by the Department.
- 5.6 A funding recipient must keep its works schedule current and submit an updated works schedule to the Department immediately prior to preparing each quarterly report.

Quarterly reports

- 5.7 A funding recipient may, for each project in its works schedule, submit a report by 31 July 2019, in the form specified by the Department, which specifies the amount of Roads to Recovery payments which the funding recipient intends to spend on the project in the quarter 1 July 2019 to 30 September 2019.
- 5.8 Where a funding recipient wishes to receive a Roads to Recovery payment in a particular quarter (other than the first quarter in the Roads to Recovery funding period), it must submit a quarterly report in the form specified by the Department:
 - (a) in respect of the quarter 1 January to 31 March: by the following 30 April;

- (b) in respect of the quarter 1 April to 30 June: by the following 31 July;
- (c) in respect of the quarter 1 July to 30 September: by the following 31 October;
- (d) in respect of the quarter 1 October to 31 December : by the following 15 February.

Example: Where a funding recipient wants to receive a Roads to Recovery payment in the quarter 1 October to 31 December 2019, it must submit a quarterly report in respect of the previous quarter (1 July to 30 September 2019) and that report must be submitted by 31 October 2019.

Note: Where a funding recipient does not wish to receive a Roads to Recovery payment during a particular quarter, it is not required to provide a quarterly report in respect of the previous quarter. However, it is strongly encouraged to do so, to enable the Department to monitor progress on individual projects.

5.9 The funding recipient must in each quarterly report submitted specify in respect of each project:

- (a) the amount of Roads to Recovery payments spent during the period commencing on 1 July 2019 and ending on the last day of the quarter to which the quarterly report relates; and
- (b) the amount of Roads to Recovery payments which the funding recipient intends to spend on that project in the following quarter.

Note: The figures in the quarterly reports should be prepared on an accrual basis.

Part 6: Accountability

6.1 A funding recipient must properly account for Roads to Recovery payments.

Annual report

6.2 For each financial year in the Roads to Recovery funding period, the Chief Executive Officer of the funding recipient must give to the Department by 31 October after the end of the financial year:

- (a) a written financial statement of the Chief Executive Officer in the form specified by the Department as to:
 - (i) the amount of Roads to Recovery payments which remained unspent from the previous financial year;
- Note: This amount is to be shown in column 1 of the Chief Executive Officer's financial statement as 'Amount brought forward from previous financial year'.
- (ii) the amount of Roads to Recovery payments received by the funding recipient in the financial year to which the statement relates;
 - (iii) the amount of Roads to Recovery payments available for expenditure by the funding recipient on the construction and/or maintenance of roads in that year;

- (iv) the amount spent by the funding recipient during that year out of Roads to Recovery payments available for expenditure by the funding recipient during that year;
- (v) the amount (if any) retained at the end of that year by the funding recipient out of Roads to Recovery payments available for expenditure by the funding recipient during that year and which remained unspent at the end of that year; and

Note: This amount is to be shown in column 5 of the Chief Executive Officer's financial statement as 'Amount carried forward to next financial year'.

- (vi) the amount of own source expenditure on roads expended by the funding recipient during the year to which the statement relates.

Note: The figures in the Chief Executive Officer's financial statement should be calculated on an accrual basis.

- (b) a report in writing and signed by an appropriate auditor stating whether, in the auditor's opinion:
 - (i) the Chief Executive Officer's financial statement is based on proper accounts and records; and
 - (ii) the Chief Executive Officer's financial statement is in agreement with the accounts and records; and
 - (iii) the expenditure referred to in subparagraph (a)(iv) has been on the construction and/or maintenance of roads; and
 - (iv) the amount certified by the Chief Executive Officer in the Chief Executive Officer's financial statement as the funding recipient's own source expenditure is based on, and in agreement with, proper accounts and records.

Note: The term 'appropriate auditor' is defined in the Act.

Other annual report requirements

6.3 For each financial year in which a funding recipient receives, spends or retains any Roads to Recovery payment, the Chief Executive Officer of the funding recipient must give to the Department by 31 October after the end of the financial year a report in the form specified by the Department which includes a statement as to whether:

- (a) Roads to Recovery payments received during the financial year which have been spent by the funding recipient have been spent on the construction and/or maintenance of roads;
- (b) the funding recipient has fulfilled its obligation under Part 3 for the financial year (the own source roads expenditure obligation);
- (c) the funding recipient has fulfilled its obligations under Part 4 during the financial year (the public information conditions);
- (d) the funding recipient has otherwise fulfilled the conditions in this Determination during the financial year; and
- (e) summarises and describes the outcomes achieved during the financial year with those Roads to Recovery payments received during the financial year.

Note: Where a funding recipient does not receive, spend or retain any Roads to Recovery payments in a financial year, the funding recipient must still provide a report in the form set out in Part 1 of the annual report.

- 6.4 Despite paragraphs (b), (c) and (d) of clause 6.3, the report referred to in that clause is not required to state whether the funding recipient complied with a condition in this Determination from which the funding recipient was exempt during the financial year.

Note: The Minister has the power under section 91 of the Act to exempt a funding recipient from a condition and, if considered appropriate, to impose a replacement condition on the funding recipient.

- 6.5 If the funding recipient was exempt from a condition in this Determination during the financial year, the report referred to in clause 6.3 must:
- (a) identify the condition from which the funding recipient was exempt;
 - (b) set out any replacement condition that the funding recipient was required to fulfil during the financial year; and
 - (c) state whether the funding recipient fulfilled the replacement condition.

Part 7: Other accountability requirements

- 7.1 A funding recipient must create and keep accurate and comprehensive records relating to Roads to Recovery payments it has received after 1 July 2019 and retain those records for a minimum of seven years.
- 7.2 A funding recipient must allow Australian Public Service employees or persons nominated by the Commonwealth to inspect, on request:
- (a) work on projects being undertaken by the funding recipient which are funded by Roads to Recovery payments; and
 - (b) any or all of the records referred to in clause 7.1.
- 7.3 A funding recipient must, when requested to do so by the Department, provide, in the manner and form requested by the Department:
- (a) copies of any or all of the records referred to in clause 7.1; and
 - (b) photographs of projects completed using Roads to Recovery payments.

Part 8: Non-compliance with conditions

- 8.1 If the Secretary or a delegate of the Secretary notifies a funding recipient in writing that the Secretary is satisfied that the funding recipient has, in relation to a Roads to Recovery payment, failed to comply with the Act or to fulfil any of the conditions in this Determination, the funding recipient must repay to the Commonwealth an amount equal to so much of the payment as the Secretary or delegate specifies in the notice.
- 8.2 Clause 8.1 does not apply in relation to a failure to fulfil a condition during a period when the funding recipient was exempt from the condition.
- Note: The Minister has the power under section 91 of the Act to exempt a funding recipient from a condition and, if considered appropriate, to impose a replacement condition on the funding recipient.
- 8.3 If the Secretary or a delegate of the Secretary notifies a funding recipient in writing that the Secretary is satisfied that the funding recipient has, in

relation to a Roads to Recovery payment, failed to fulfil any replacement condition that the funding recipient was required to fulfil, the funding recipient must repay to the Commonwealth an amount equal to so much of the payment as the Secretary or delegate specifies in the notice.

Part 9: Compliance with other laws

Building Code

- 9.1 A funding recipient that spends a Roads to Recovery Payment on building work described in Schedule 1 to the Building Code must:
- (a) if the building work is carried out by the funding recipient—comply with the Building Code to the extent that the Building Code binds the funding recipient; and
 - (b) if the building work is carried out by a building contractor—take all reasonable measures to ensure that the building contractor complies with the Building Code.

- 9.2 In clause 9.1:

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, as in force from time to time;

building contractor has the same meaning as in the *Building Code*;

building work has the meaning given by section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016*.

- Note: The Building Code applies to construction projects indirectly funded by the Australian Government through grant or other programs where:
- the Australian Government funding contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
 - the Australian Government funding contribution to the project is \$10 million or more.

For further information on the Building Code, refer to:

<https://www.abcc.gov.au/building-code> or contact the Building Code Hotline on 1800 003 338.

Australian Government Building and Construction OHS Accreditation Scheme

- 9.3 A funding recipient that spends a Roads to Recovery Payment on building work to which subsection 43(4) of the *Building and Construction Industry (Improving Productivity) Act 2016* applies must not enter into a contract for the building work with a builder who is not an accredited person.

- 9.4 In clause 9.3:

accredited person has the meaning given by section 5 of the *Building and Construction Industry (Improving Productivity) Act 2016*;

builder has the meaning given by subsection 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016*;

building work has the meaning given by section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016*;

Note: Under the *Building and Construction Industry (Improving Productivity) Act 2016* and the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*, Australian Government agencies can only fund building work when, subject to certain value thresholds, an accredited builder is engaged as the head contractor. This scheme, known as the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme), extends to building work that is indirectly funded by the Australian Government.

For further information on the Scheme, refer to:

<http://www.fsc.gov.au/sites/fsc/needaccredited/accreditationscheme/pages/theaccreditationscheme> or contact the Federal Safety Commissioner Assist Line on 1800 652 500.

9.5 Funding recipients are required to comply with all other relevant laws.

Note: For example, projects on which Roads to Recovery payments are spent must adhere to Australian Government environment and heritage legislation including the *Environment Protection and Biodiversity Conservation Act 1999*. Construction cannot start unless the relevant obligations are met.

The Department strongly recommends that, before starting an environmental study for a project, proponents contact the Australian Government Department of the Environment

(<http://www.environment.gov.au/epbc/index.html>). They can provide advice about Australian Government requirements and ensure that the Australian Government's legislative requirements are properly addressed by the study. This will reduce the likelihood of cost and time delays before construction can commence.

Funding recipients must also meet other statutory requirements where relevant. These may include, but are not limited to:

- Native title legislation;
- State government legislation - for example, environment and heritage; and
- Local government planning approvals.

Part 10: Transitional provisions

10.1 A funding recipient that received a payment under Part 8 of the Act for the funding period starting on 1 July 2014 and ending on 30 June 2019 is not eligible to receive any Roads to Recovery payment after 31 October 2019 if the funding recipient has not given to the Department all of the annual reports that the funding recipient is required to give under the old conditions.