

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSLINK (NATIONAL LAND TRANSPORT) BILL 2004

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable John Anderson, MP)

AUSLINK (NATIONAL LAND TRANSPORT) BILL 2004

OUTLINE

The purpose of the Bill is to assist national and regional economic and social development by the provision of Commonwealth funding aimed at improving the performance of land transport infrastructure.

The Bill gives effect to the Australian Government's national land transport policy set out in the White Paper—*AusLink: Building our National Transport Future*. The Bill establishes a new framework for Australian Government funding of land transport infrastructure. The arrangements for which the Bill provides will replace over time those contained in the *Australian Land Transport Development Act 1988* and the *Roads to Recovery Act 2000*.

The Bill requires that a National Land Transport Network, consisting of nationally significant road and rail links, be determined.

It provides for funding of six categories of projects or activities:

- AusLink National Projects (i.e. projects on the National Land Transport Network);
- AusLink Transport Development and Innovation Projects (related to the National Land Transport Network);
- Land Transport Research Entities;
- AusLink Strategic Regional Projects;
- AusLink Black Spot Projects; and
- the AusLink Roads to Recovery Program.

The Bill sets out eligibility criteria for the different categories of assistance and matters which may be considered in deciding whether projects or activities are to be approved or funding provided. The Bill also provides for conditions to be applied to funding.

The Roads to Recovery Program, providing funds for construction and maintenance of local roads, is extended for a further four years until 30 June 2009.

Financial impact statement

This Bill does not contain appropriation provisions.

An appropriation for the purposes covered by this Bill for the balance of 2004-05 is included in the AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004. From 2005-06, funding will be provided through annual Budget appropriations.

AUSLINK (NATIONAL LAND TRANSPORT) BILL 2004

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1: Short Title

This clause is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

The Bill provides for a staged commencement process. On Royal Assent, the power to determine the National Land Transport Network (Part 2) takes effect, as do the preliminary provisions (Part 1) and the miscellaneous provisions (Part 9). The balance of the Bill comes into effect on a day fixed by Proclamation which must be within six months of the date of Royal Assent. The staged commencement allows time for detailed arrangements necessary for implementation of the Bill to be put in place.

Clause 3: Object of the Act

Clause 3 sets out the objective of improving the performance of land transport infrastructure.

Clause 4: Definitions

Various terms used in the Bill are defined in Clause 4. Of particular note are:

- “appropriate auditor” is defined so that the particular categories of bodies which can receive funds, including States, local government authorities and other bodies and persons, are clear about who must audit the expenditure of those funds;
- “authority of a State” is defined so it is clear that it can include a company in which a State has a majority shareholding;
- “construction” has one meaning when applied to a road or railway, and a different meaning when applied to an inter-modal transfer facility. This is because of the different works and activities involved in each case. In both cases, construction does not include maintenance which is separately defined;
- “Corridor Strategy” is defined because the Australian Government intends to work cooperatively with States and Territories and other infrastructure managers, for example with rail track managers, to develop long-term plans for improvement of land transport corridors which are part of the National Land Transport Network. As a strategy for each corridor is developed, it will be a matter the Minister may consider when deciding whether to approve AusLink national projects;

- “eligible funding recipient” identifies the range of bodies which can be funded to undertake land transport infrastructure projects and related activities. The term is defined broadly to enable the Australian Government to provide funding to States and Territories, an authority of a State or Territory, a local government authority, and any body corporate which can, for example, include the Australian Rail Track Corporation;
- “local government authority” is defined in such a way as to include the local shires in the Indian Ocean Territories because projects in those Territories are eligible for funding under the AusLink strategic regional funding stream and for funding under the AusLink Roads to Recovery Program;
- “National Land Transport Plan” is defined because the Plan as determined by the Minister is a matter to which the Minister may have regard when considering which AusLink national projects to approve for funding. The initial Plan, contained in the Government’s AusLink White Paper, sets out the strategic directions for land transport investment in the period 2004–05 to 2008–09; and
- “project” is defined to include a program because some activities likely to be funded will consist of a composite program of works, for example a maintenance program, the individual parts of which will not require approval.

Other definitions are self-explanatory.

Part 2—The National Land Transport Network

Clause 5: Determination of the National Land Transport Network

This clause requires the Minister to determine a National Land Transport Network. The Network can include road and/or rail connections between two capital cities, between a capital city and a major centre of commercial activity, between two major centres of commercial activity, between a capital city or a major centre of commercial activity and an inter-modal transfer facility, as well as connections within a capital city or major centre, and connections from other links on the Network to inter-modal transfer facilities.

Before including a road, rail or inter-modal transfer facility on the National Network, the Minister must be satisfied it is, or will be, important for either or both the:

- development of international, inter-State or inter-regional trade and commerce; or
- facilitation of international, inter-State or inter-regional travel.

It is intended that the National Land Transport Network published in the AusLink White Paper will make up the initial Network determined by the Minister under Clause 6.

The Minister’s determination of the National Land Transport Network will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunset provisions of that Act will not apply.

Ministerial determination of the composition of the National Land Transport Network is an essential prerequisite for the administration of the AusLink programme. Projects to be funded under this Bill as AusLink National Projects must be on the National Land Transport Network. The composition of the Network to be covered by the initial determination has been the subject of inter-governmental consultation, and subsequent policy consideration and wide dissemination by the Government. For these reasons, and to provide certainty and continuity, the Bill does not subject the determination of the Network to the disallowance provisions of the *Legislative Instruments Act 2003*.

Application of the sunseting provisions of the *Legislative Instruments Act 2003* to the ministerial determination of the National Land Transport Network would run counter to the need for certainty in the development of long-term planning and investment strategies for the Network.

Clause 6: Variation of the National Land Transport Network

This clause enables the Minister to vary the Network providing the requirements of Clause 5 continue to be met. The Government expects to review the Network periodically and to consult with States and Territories and other key stakeholders before doing so, as was the case with the Network published in the AusLink White Paper.

Variations to the Network will also be legislative instruments but not subject to the disallowance provisions and the sunseting provisions of the *Legislative Instruments Act 2003*.

Clause 7: Publication

The National Land Transport Network must be published, as must any variation of the Network. It is intended that the Network will be published on the web site of the Department of Transport and Regional Services.

Part 3—Auslink National Projects

Division 1—Approval of projects as AusLink National Projects

Clause 8: What is an AusLink National Project?

A project approved by the Minister under this Part is an AusLink National Project.

Clause 9: Approval of AusLink National Projects

An AusLink National Project may only be approved by the Minister if the Minister is satisfied that the project is eligible (clause 10) and appropriate (clause 11). The Minister's approval must be in writing. The approval instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 10: What projects are eligible for approval?

To be eligible for approval as an AusLink National Project, the project may consist of construction or maintenance of an existing or proposed road or railway, or construction of an existing or proposed inter-modal transfer facility that is part of the National Land Transport Network. It can also be an acquisition or application of technology contributing to improved transport operations on the Network.

Clause 11: Is it appropriate to approve a project?

This clause lists matters to which the Minister may have regard in deciding whether to approve an AusLink National Project. The considerations include:

- the National Land Transport Plan;
- any relevant Corridor Strategy;
- the extent to which the project will improve transport operations on the Network;
- the results of any assessment of the economic, environmental and social costs and benefits of the project;
- other relevant transport or land use plans; and
- the extent of funding contributions to the project other than from the Commonwealth.

The Government intends that for some AusLink National Projects responsibility for funding will be shared with States, as is currently the case for certain roads of national importance. It is intended that arrangements covering funding contributions by States and Territories, the development of corridor strategies, future transport and land use planning, and assessment of projects will be set out in bilateral agreements to be negotiated between the Australian Government and each State and Territory.

Clause 12: Submission of particulars of projects

The Minister may invite persons or bodies to submit projects and supporting particulars for consideration as AusLink National Projects.

The Minister is not limited to approving projects for which particulars have been submitted in response to an invitation.

If project particulars required by the Minister are not submitted, the Minister is not obliged to consider the project.

Clause 13: Matters specified in project approval instrument

Any project approval instrument issued by the Minister must identify the project and eligible funding recipient, set out the maximum Commonwealth funding contribution and, if a funding agreement is to be required for the project, specify that requirement.

A funding agreement must be specified as a requirement when the funding recipient is not a State or local government authority or a body in which the Commonwealth and/or one or more States has a controlling interest.

The Minister may specify in the project approval instrument particular purposes to which Commonwealth funding may not be applied.

Clause 14: Requirements with which funding agreements must comply

If a funding agreement is required, the total funding provided under the agreement must not exceed the maximum amount specified in the project approval instrument. In addition, the agreement must comply with any other requirements, such as the inclusion of particular conditions, specified in the project approval instrument.

Clause 15: Variation or revocation of project approval instrument

The Minister may vary or revoke a project approval instrument but, where there is a funding agreement in place, this power must be exercised in accordance with the terms of that agreement. A variation or revocation instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 2—Provision of Commonwealth funding

Clause 16: Commonwealth funding for AusLink National Projects

This clause provides that Commonwealth funding for AusLink National Projects may be in accordance with the next clause or, where a funding agreement is required, in accordance with an agreement that satisfies clause 14. Payments are to be from funds appropriated by the Parliament.

Clause 17: Approval of provision of Commonwealth funding if no funding agreement

The Minister is empowered to approve, vary or revoke the provision of Commonwealth funding for an AusLink National Project. The funding is to be to an eligible funding recipient and may be in one or more instalments as determined by the Minister. The total funding must not exceed the maximum specified in the project approval instrument.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*

Division 3—Conditions that apply to Commonwealth funding

Subdivision A—Sources of conditions

Clause 18: Sources of conditions

Conditions applying to funding for an AusLink National Project are:

- the mandatory conditions set out in clauses 20 to 26; and
- either any conditions specified in a funding agreement,
- or, if there is no funding agreement, any conditions determined by the Minister as provided by clause 27.

Subdivision B—The mandatory conditions

Clause 19: This subdivision sets out the mandatory conditions

This clause provides that the mandatory conditions are as set out in this subdivision.

Clause 20: Funding payment must be expended on the funded project

This clause requires that the Commonwealth funding provided for an approved project must only be spent on approved purposes in relation to the project.

Clause 21: Funding recipient must give the Minister audited financial statements

For each financial year in which a funding recipient has received, or remains in receipt of, Commonwealth funding, the funding recipient must provide the Minister with a written statement as to the amounts of Commonwealth funding spent and retained, and a written report signed by an appropriate auditor.

Clause 22: Funding recipient must allow inspections by authorised persons

Persons authorised by the Minister are entitled to inspect work and documents relating to a funded project. An authorised person may be a public servant or a consultant engaged by the Commonwealth to investigate, for example, the financial, construction or environmental aspects of a project.

Clause 23: Funding recipient must provide information on request

This clause provides that, when requested, a funding recipient must provide the Minister with information about the operation and condition of the National Land Transport Network or the progress of the funded project.

The intention is that information about the condition of the National Land Transport Network would be sought only from States and Territories and rail track managers. This information will be particularly relevant in assessing the effectiveness of expenditure on the Network.

Clause 24: State or State authority must call for public tenders for certain work

This clause requires a State which is a funding recipient to use a public tender process for AusLink National Projects and makes provision for certain exceptions. Road and rail maintenance and work carried out by a public utility (such as relocating a sewer or cables) are automatically exempted. Other work may be exempted by the Minister if one or more of the specified grounds, such as an emergency or the minor nature of the work, can be demonstrated. An exemption may be varied or revoked.

An instrument approving, varying or revoking an exemption is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 25: State or State authority using funding payment to acquire interest in land - obligation if the interest is sold or disposed of

This clause deals with the situation where a State uses Commonwealth funds to acquire land associated with an AusLink National Project and then disposes of some or all of the land. It enables proceeds of the sale to be returned to the Commonwealth according to a formula.

Alternatively, the amount repayable to the Commonwealth may, with the written approval of the Minister, be re-allocated to another AusLink National Project in which case the funds will constitute a Commonwealth contribution to that project. Such an approval can be varied or revoked. An instrument granting, varying or revoking an approval is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

This clause also applies to circumstances where a State has used Commonwealth funds to pay compensation for land which has been compulsorily acquired.

The clause repeats similar provisions in previous Commonwealth road funding legislation.

Clause 26: Amount repayable on breach of condition

If the Minister considers that a funding recipient has breached a condition applying to a funding payment, the Minister may notify the funding recipient of the breach and specify the amount of funds to be repaid. The Minister may vary or revoke a notice. If a funding agreement is in place, the power to require repayment of funds must be exercised in accordance with any relevant terms of the agreement.

A notice given by the Minister under this clause, or an instrument varying or revoking a notice, is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Subdivision C—Determination of other conditions if no funding agreement

Clause 27: Determination of other conditions if no funding agreement

This clause enables the Minister to determine other conditions applying to funding for a project and to vary or revoke such conditions. Conditions determined by the Minister can differ between classes of situations. This clause cannot be used to vary a funding agreement.

The Minister's determination, and any subsequent variation or revocation, of conditions will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunseting provisions of the *Legislative Instruments Act 2003* is considered appropriate.

Part 4—AusLink Transport Development and Innovation Projects

Division 1—Approval of projects as AusLink Transport Development and Innovation Projects

Clause 28: What is an AusLink Transport Development and Innovation Project?

An AusLink Transport Development and Innovation Project is one approved under clause 29.

Clause 29: Approval of AusLink Transport and Innovation Projects

An AusLink Transport Development and Innovation Project may only be approved by the Minister if the Minister is satisfied that the project is eligible (clause 30) and appropriate (clause 31). The Minister's approval must be in writing. The approval instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 30: What projects are eligible for approval?

Eligible projects are those which are:

- planning, research, investigations, studies or analysis related to the development or use of the National Land Transport Network, and/or
- research or development related to technology or practices in connection with transport operations on the Network.

Clause 31: Is it appropriate to approve a project?

This clause lists matters the Minister may consider in deciding whether to approve a project. They include the extent to which the project is likely to:

- improve the efficiency, safety or security of transport operations on the Network;
- improve the economic, environmental or social impact or performance of the Network, or of transport operations on the Network;
- assist better-informed decision-making in relation to future AusLink projects.

Clause 32: Submission of particulars of projects

The Minister may invite persons or bodies to submit projects and supporting particulars for consideration as AusLink Transport Development and Innovation Projects.

The Minister is not limited to approving projects for which particulars have been submitted in response to an invitation.

If project particulars required by the Minister are not submitted, the Minister is not obliged to consider the project.

Clause 33: Matters specified in project approval instrument

Any project approval instrument issued by the Minister must identify the project and eligible funding recipient, set out the maximum Commonwealth funding contribution and, if a funding agreement is to be required for the project, specify that requirement.

A funding agreement must be specified as a requirement when the funding recipient is not a State or local government authority or a body in which the Commonwealth and/or one or more States has a controlling interest.

The Minister may specify in the project approval instrument particular purposes to which Commonwealth funding may not be applied.

Clause 34: Requirements with which funding agreements must comply

If a funding agreement is required, the total funding provided under the agreement must not exceed the maximum amount specified in the project approval instrument. In addition, the agreement must comply with any other requirements, such as the inclusion of particular conditions, specified in the project approval instrument.

Clause 35: Variation or revocation of project approval instrument

The Minister may vary or revoke a project approval instrument but, where there is a funding agreement in place, this power must be exercised in accordance with the terms of that agreement. A variation or revocation instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 2—Provision of Commonwealth funding

Clause 36: Commonwealth funding for AusLink Transport Development and Innovation Projects

This clause provides that Commonwealth funding for AusLink Transport Development and Innovation Projects may be provided to an approved funding recipient in accordance with the next clause, or where a funding agreement is required, in accordance with an agreement that complies with clause 34. Payments are to be from funds appropriated by the Parliament.

Clause 37: Approval of provision of Commonwealth funding if no funding agreement

The Minister is empowered to approve, vary or revoke the provision of Commonwealth funding for an AusLink Transport Development and Innovation Project. The funding is to be to an eligible funding recipient and may be in one or more instalments as determined by the Minister. The total funding must not exceed the maximum specified in the project approval instrument.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 3—Conditions that apply to Commonwealth funding

Subdivision A—Sources of conditions

Clause 38: Sources of conditions

Conditions applying to an AusLink Transport Development and Innovation Project are:

- the mandatory conditions set out in clauses 40 to 43; and
- either any conditions specified in a funding agreement;
- or, if there is no funding agreement, any conditions applying to a project or class of situations determined by the Minister under clause 44.

Subdivision B—The mandatory conditions

Clause 39: This Subdivision sets out the mandatory conditions

This provides that the mandatory conditions are as set out in this subdivision. The mandatory conditions applying to AusLink Transport Development and Innovation projects are along similar lines to those in Part 3 applying to AusLink National Projects. However, the mandatory conditions in Part 3 relating to the calling of tenders, provision of information, and the proceeds of the sale of land are not relevant to AusLink Transport Development and Innovation projects. Therefore, there are fewer mandatory conditions in this Part.

Clause 40: Funding payment must be expended on the funded project

This clause requires that the Commonwealth funding provided for an approved project must only be spent on approved purposes in relation to the project.

Clause 41: Funding recipient must give Minister audited financial statements

For each financial year in which a funding recipient has received, or remains in receipt of, Commonwealth funding, the funding recipient must provide the Minister with a written statement as to the amounts of Commonwealth funding spent and retained, and a written report signed by an appropriate auditor.

Clause 42: Funding recipient must allow inspections by authorised persons

Persons authorised by the Minister are entitled to inspect work and documents relating to a funded project.

Clause 43: Amount payable on breach of condition

If the Minister considers that a funding recipient has breached a condition applying to a funding payment, the Minister may notify the funding recipient of the breach and specify the amount of funds to be repaid. The Minister may vary or revoke a notice. If a funding agreement is in place, the power to require repayment of funds must be exercised in accordance with any relevant terms of the agreement.

A notice given by the Minister under this clause, or an instrument varying or revoking a notice, is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Subdivision C—Determination of other conditions if no funding agreement

Clause 44: Determination of other conditions if no funding agreement

This clause enables the Minister to determine other conditions applying to funding for a project and to vary or revoke such conditions. Conditions determined by the Minister can differ between classes of situations. This clause cannot be used to vary a funding agreement.

The Minister's determination, and any subsequent variation or revocation, of conditions will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunseting provisions of the *Legislative Instruments Act 2003* is considered appropriate.

Part 5—AusLink funding for land transport research entities

Clause 45: Definitions

A number of terms are defined expressly for this Part dealing with AusLink funding for land transport research entities. The definitions are self-explanatory.

Clause 46: Approval of funding for land transport research entities

This clause enables the Minister to approve funding for a research entity for a particular period. In doing so, the Minister may consider the extent to which the body's activities are likely to improve land transport operations in Australia.

The clause is designed to enable the Commonwealth to contribute funds to the important land transport research work of bodies such as ARRB TR Ltd (formerly the Australian Road Research Board) and Austroads. These are bodies which are currently jointly funded by the Commonwealth, States and Territories.

The Minister's funding approval instrument must specify the entity, the period, and the maximum amount to be provided, and require that a funding agreement be entered into with the entity.

The Minister may vary or revoke the funding approval instrument consistent with any relevant terms in a funding agreement.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*

Clause 47: Submission of particulars to get funding

The Minister may invite submissions from research entities seeking funding and may require supporting particulars, including the entity's proposed activities, to assist in assessment of the submission.

Clause 48: Commonwealth funding for land transport research entities

This clause allows funding to be provided according to the terms of the funding agreement.

Clause 49: Requirements with which funding agreement must comply

Total funding provided under a funding agreement must not exceed the maximum amount specified in the funding approval instrument. In addition, the agreement must comply with any other requirements, such as the inclusion of particular conditions, specified in the funding approval instrument.

Clause 50: Conditions of funding

The conditions applying to the provision of funding to a land transport research entity are those set out in the funding agreement.

Clause 51: Relationship with Part 4

This clause makes it clear that this Part does not limit, and is not limited by, Part 4 of the Bill which enables funding to be provided for research and analysis projects in relation to the National Land Transport Network.

Part 6—AusLink Strategic Regional Projects

Division 1—Approval of projects as AusLink Strategic Regional Projects

Clause 52: What is an AusLink Strategic Regional Project?

AusLink Strategic Regional Projects are projects approved under the next clause.

Clause 53: Approval of AusLink Strategic Regional Projects

An AusLink Strategic Regional Project may only be approved by the Minister if the Minister is satisfied that the project is eligible (clause 54) and appropriate (clause 55). The Minister's approval must be in writing. The approval instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 54: What projects are eligible for approval?

A project is eligible if it consists of:

- construction of an existing or proposed road or railway that is not on the National Land Transport Network;
- maintenance of an existing or proposed road that is not on the National Land Transport Network and is in an area for which no local government authority has responsibility;
- construction of an existing or proposed inter-modal transfer facility that is not included in the National Land Transport Network; or
- the acquisition or application of technology contributing to efficient, secure or safe transport operations.

Projects relating to an existing road, railway or inter-modal transfer facility are included because the definition of construction allows for matters such as reconstruction or enhancing the standard of an existing route or facility.

It is intended that funding for projects involving construction and maintenance of roads in unincorporated areas will be provided under this part of the Bill.

Projects in the Indian Ocean Territories, which have two local government authorities, are eligible for AusLink Strategic Regional Project funding.

Clause 55: Is it appropriate to approve a project?

This clause lists matters the Minister may consider in deciding whether to approve a project. They include:

- the extent to which a project might improve the trade and commercial competitiveness of regional industries and communities;
- the extent to which a project might improve a regionally significant road, railway or inter-modal facility;
- the results of any cost-benefit assessment;
- the extent to which the project will enhance safety of transport operations;
- the extent to which the project will improve access to services and employment;
- the extent to which the project will improve or maintain the serviceability of roads in unincorporated areas (i.e. areas for which there is no responsible local government authority);
- the extent of other funding contributions for the project.

AusLink Strategic Regional Projects are likely to involve regional roads, railways or inter-modal facilities that are usually the responsibility of the owner to develop, upgrade or construct. As a result, the Government expects that the relevant local government authority, or group of local government authorities, and other interested parties which might benefit from investment in the project will often contribute to the project.

Clause 56: Submission of particulars of projects

The Minister may invite persons or bodies to submit projects and supporting particulars for consideration as AusLink Strategic Regional Projects.

The Minister is not limited to approving projects for which particulars have been submitted in response to an invitation.

If project particulars required by the Minister are not submitted, the Minister is not obliged to consider the project.

Clause 57: Matters specified in project approval instrument

Any project approval instrument must identify the project and eligible funding recipient, set out the maximum Commonwealth funding contribution and, if a funding agreement is to be required for the project, specify that requirement.

A funding agreement must be specified as a requirement when the funding recipient is not a State or local government authority or a body in which the Commonwealth and/or one or more States has a controlling interest.

The Minister may specify in the project approval instrument particular purposes to which Commonwealth funding may not be applied.

Clause 58: Requirements with which funding agreements must comply

If a funding agreement is required, the total funding provided under the agreement must not exceed the maximum amount specified in the project approval instrument. In addition, the agreement must comply with any other requirements, such as the inclusion of particular conditions, specified in the project approval instrument.

Clause 59: Variation or revocation of project approval instrument

The Minister may vary or revoke a project approval instrument but, where there is a funding agreement in place, this power must be exercised in accordance with the terms of that agreement. A variation or revocation instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 2—Provision of Commonwealth funding

Clause 60: Commonwealth funding for AusLink Strategic Regional Projects

This clause provides that Commonwealth funding for AusLink Strategic Regional Projects may be in accordance with the next clause, or where a funding agreement is required, in accordance with an agreement satisfying clause 58. Payments are to be from funds appropriated by the Parliament.

Clause 61: Approval of provision of Commonwealth funding if no funding agreement

The Minister is empowered to approve, vary or revoke the provision of Commonwealth funding for an AusLink Strategic Regional Project. The funding is to be to an eligible funding recipient and may be in one or more instalments as determined by the Minister. The total funding must not exceed the maximum specified in the project approval instrument.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*

Division 3—Conditions that apply to Commonwealth funding

Subdivision A—Sources of conditions

Clause 62: Sources of conditions

The clause sets out the sources of conditions which apply to funding for an AusLink Strategic Regional Project. They are:

- the mandatory conditions set out in clauses 64 to 67; and
- any conditions specified in a funding agreement; or
- if there is no funding agreement, any conditions applying to a project or class of situations determined by the Minister as provided by clause 68.

In addition, the clause requires a funding agreement with a local government authority to include a condition to the effect that the local government authority must maintain the level of its own expenditure on roads. This is directed at ensuring that local government bodies do not substitute Commonwealth AusLink funding for their own-source funding and, in effect, engage in cost-shifting to the Commonwealth.

Subdivision B—The mandatory conditions

Clause 63: This subdivision sets out the mandatory conditions

This provides that the mandatory conditions are set out in this subdivision. The mandatory conditions applying to AusLink Strategic Regional Projects are similar to those in Part 4 applying to AusLink Transport Development and Innovation Projects.

Clause 64: Funding payment must be expended on the funded project

This clause requires that the Commonwealth funding provided for an approved project must only be spent on approved purposes in relation to the project.

Clause 65: Funding recipient must give Minister audited financial statements

For each financial year in which a funding recipient has received, or remains in receipt of, Commonwealth funding, the funding recipient must provide the Minister with a written statement as to the amounts of Commonwealth funding spent and retained, and a written report signed by an appropriate auditor.

Clause 66: Funding recipient must allow inspections by authorised persons

Persons authorised by the Minister are entitled to inspect work and documents relating to a funded project.

Clause 67: Amount repayable on breach of condition

If the Minister considers that a funding recipient has breached a condition applying to a funding payment, the Minister may notify the funding recipient of the breach and specify the amount of funds to be repaid. The Minister may vary or revoke a notice. If a funding agreement is in place, the power to require repayment of funds must be exercised in accordance with any relevant terms of the agreement.

A notice given by the Minister under this clause, or an instrument varying or revoking a notice, is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Subdivision C—Determination of other conditions if no funding agreement

Clause 68: Determination of other conditions if no funding agreement

This clause enables the Minister to determine other conditions applying to funding for a project and to vary or revoke such conditions. Conditions determined by the Minister can differ between classes of situations. This clause cannot be used to vary a funding agreement.

The Minister's determination, and any subsequent variation or revocation, of conditions will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunset provisions of that Act will not apply.

Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunset provisions of the *Legislative Instruments Act 2003* is considered appropriate.

Part 7—AusLink Black Spot Projects

Division 1—Approval of projects as AusLink Black Spot Projects

Clause 69: What is an AusLink Black Spot Project?

A project approved by the Minister under the next clause is an AusLink Black Spot Project.

Clause 70: Approval of AusLink Black Spot Projects

An AusLink Black Spot Project may only be approved by the Minister if the Minister is satisfied that the project is eligible (clause 71) and appropriate (clause 72). The Minister's approval must be in writing. The approval instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 71: What projects are eligible for approval?

To be eligible for approval as an AusLink Black Spot Project the project must improve the road safety characteristics of a site where serious motor vehicle crashes, involving death or personal injury, have occurred, or are likely to occur.

The site can be a particular location or a considerable length of road.

Projects on the National Land Transport Network will not be eligible for funding as AusLink Black Spot projects. Instead, equivalent projects on the Network will be eligible for funding as AusLink National Projects. This is consistent with the situation which applied to projects on the former National Highway which were not eligible for Black Spot funding under the *Australian Land Transport Development Act 1988*.

Clause 72: Is it appropriate to approve a project?

This clause lists matters to which the Minister may have regard in deciding whether to approve an AusLink Black Spot Project. The considerations include:

- the accident history of the site;
- any assessment of the safety benefits and the costs of the project;
- the results of any safety audit of the site; and
- the extent of funding contributions to the project other than from the Commonwealth.

In many cases States and Territories, local governments, and local businesses and organisations contribute to Black Spot projects.

Clause 73: Submission of particulars of projects

The Minister may invite States or State authorities to submit projects and supporting particulars for consideration as AusLink Black Spot Projects.

The Minister is not limited to approving projects for which particulars have been submitted in response to an invitation.

If project particulars required by the Minister are not submitted, the Minister is not obliged to consider the project.

Clause 74: Matters specified in project approval instrument

Any project approval instrument issued by the Minister must identify the project and the funding recipient, which must be a State or State authority, set out the maximum Commonwealth funding contribution, and specify whether a funding agreement is required for the project.

The Minister may specify in the project approval instrument particular purposes to which Commonwealth funding may not be applied.

Clause 75: Requirements with which funding agreements must comply

If a funding agreement is required, the total funding provided under the agreement must not exceed the amount specified in the project approval instrument. In addition, the agreement must comply with any other requirements, such as the inclusion of particular conditions, specified in the project approval instrument.

Clause 76: Variation or revocation of project approval instrument

The Minister may vary or revoke a project approval instrument but, where there is a funding agreement in place, this power must be exercised in accordance with the terms of that agreement. A variation or revocation instrument is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 2—Provision of Commonwealth funding

Clause 77: Commonwealth funding for AusLink Black Spot Projects

This clause provides that Commonwealth funding for AusLink Black Spot Projects may be in accordance with the next clause or, where a funding agreement is required, in accordance with an agreement that satisfies clause 75. Payments are to be from funds appropriated by the Parliament.

Clause 78: Approval of provision of Commonwealth funding if no funding agreement

The Minister is empowered to approve, vary or revoke the provision of Commonwealth funding for an AusLink Black Spot Project. The funding is to be to an eligible funding recipient and may be in one or more instalments as determined by the Minister. The total funding must not exceed the maximum specified in the project approval instrument.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Division 3—Conditions that apply to Commonwealth funding

Subdivision A—Sources of conditions

Clause 79: Sources of conditions

Conditions applying to an AusLink Black Spot Project are:

- the mandatory conditions set out in clauses 81 to 85; and
- any conditions specified in a funding agreement, or
- if there is no funding agreement, any conditions determined by the Minister as provided by clause 86.

Subdivision B—The mandatory conditions

Clause 80: This subdivision sets out the mandatory conditions

This clause provides that the mandatory conditions are as set out in this subdivision.

Clause 81: Funding payment must be expended on the funded project

This clause requires that the Commonwealth funding provided for an approved project must only be spent on approved purposes in relation to the project.

Clause 82: Funding recipient must give the Minister audited financial statements

For each financial year in which a funding recipient has received, or remains in receipt of, Commonwealth funding, the funding recipient must provide the Minister with a written statement as to the amounts of Commonwealth funding spent and retained, and a written report signed by an appropriate auditor.

Clause 83: Funding recipient must allow inspections by authorised persons

Authorised persons are entitled to inspect work and documents relating to the funded project.

Clause 84: Funding recipient must maintain records relating to motor vehicle crashes

This clause requires the funding recipient to maintain records relating to crashes involving death or personal injury at the site of the funded project for a period of five years. A person authorised by the Minister may inspect such records.

These provisions enable the effectiveness of measures taken at Black Spots to be assessed, and various types of measures compared.

Clause 85: Amount repayable on breach of condition

If the Minister considers that a funding recipient has breached a condition applying to a funding payment, the Minister may notify the funding recipient of the breach and specify the amount of funds to be repaid. The Minister may vary or revoke a notice. If a funding agreement is in place, the power to require repayment of funds must be exercised in accordance with any relevant terms of the agreement.

A notice given by the Minister under this clause, or an instrument varying or revoking a notice, is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Subdivision C—Determination of other conditions if no funding agreement

Clause 86: Determination of other conditions if no funding agreement

This clause enables the Minister to determine other conditions applying to funding for a project and to vary or revoke such conditions. Conditions determined by the Minister can differ between classes of situations. This clause cannot be used to vary a funding agreement.

The Minister's determination, and any subsequent variation or revocation, of conditions will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunseting provisions of the *Legislative Instruments Act 2003* is considered appropriate.

Part 8—AusLink Roads to Recovery Program

The current Roads to Recovery Program under the *Roads to Recovery Act 2000* ends on 30 June 2005. After that date, an extended AusLink Roads to Recovery Program will operate under this Act until 30 June 2009. The provisions in this Part closely mirror provisions of the *Roads to Recovery Act 2000*.

Clause 87: Minister to publish AusLink Roads to Recovery List

This clause requires the Minister to publish, by 1 July 2005 or as soon as practicable thereafter, a list of funding recipients under the new Program and the amount each will receive. The list provides a high degree of certainty for local government authorities as to the total funds they can expect under the Program thereby enabling them to plan and schedule works to best effect.

The Minister's determination of the AusLink Roads to Recovery List will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

The list of funding recipients and their funding allocations is central to the administration of the Roads to Recovery Program. Local government authorities will be expecting to continue to receive funding under a relatively seamless transition from the current programme which expires on 30 June 2005. The listing of funding recipients follows existing practice, is well known to local government, and is not subject to disallowance.

The sunseting provisions of the *Legislative Instruments Act 2003* would have no practical consequences for the Roads to Recovery provisions of the Bill which will cease to have effect after 1 July 2009.

Clause 88: Variation of AusLink Roads to Recovery List

This clause enables the AusLink Roads to Recovery List to be varied by the Minister to take account of structural changes in local government, such as boundary changes or amalgamations, or to correct an administrative error. The Minister may not revoke, or otherwise vary, the list.

An instrument varying the list will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

Variations to the List are limited to those necessitated by administrative circumstances. As such they are not considered appropriate for disallowance. The sunseting provisions of the *Legislative Instruments Act 2003* would have no practical effect.

Clause 89: Payments to persons and bodies specified in AusLink Roads to Recovery List

This clause enables payments by instalments, with the amounts and timing of payments determined by the Minister. The provisions apply between 1 July 2005 and 30 June 2009 which is the period of the extended Program. Payments are to be from money appropriated by Parliament.

An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Clause 90: Conditions that apply to payments

This clause requires the Minister to determine conditions applying to Roads to Recovery Program funds. A number of types of conditions which must be included are specified, including that the local government authority maintains its own spending on roads and not engage in cost-shifting to the Commonwealth. Appropriate signage recognising any Commonwealth contribution to Roads to Recovery projects is also a condition to be included.

The Minister may vary or revoke conditions which have been determined.

The Minister's determination, and any subsequent variation or revocation, of conditions will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions and the sunseting provisions of that Act will not apply.

Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunseting provisions of the *Legislative Instruments Act 2003* is considered appropriate.

Clause 91: Minister’s power to waive conditions etc

This clause enables conditions determined under clause 90 to be waived or varied for a particular recipient. This provision would enable the Minister to, for example, waive or relax a condition which was judged to be too onerous in particular circumstances. An instrument made under this clause is not a legislative instrument for purposes of the *Legislative Instruments Act 2003*.

Part 9—Miscellaneous

Clause 92: Recovery of amounts as debt due to Commonwealth

This clause enables the Commonwealth to recover repayable amounts as debts or to deduct such amounts from any future payment that might be made under this Act. The clause extends to allowing any amount that may be repayable under either the *Australian Land Transport Development Act 1988* or the *Roads to Recovery Act 2000* to be deducted from a future payment under this Act.

Clause 93: Delegation

This clause enables the Minister to delegate to an SES employee his powers under this Act, other than the powers relating to the determination or variation of the National Land Transport Network.

Clause 94: Annual report on operation of Act

This clause requires an annual report to Parliament.

Clause 95: Provision of funding otherwise than under this Act

This clause makes it clear that the Commonwealth may provide funding for land transport purposes outside the terms of this Act.

Clause 96: Regulations

This clause enables regulations to be made for the purposes of this Act.