

Chapter 2

Provisions of the bill

2.1 As indicated above, the bill proposes a series of amendments to the *Nation Building Program (National Land Transport) Act 2009* – amendments which, it is argued, are necessary to facilitate the Government's land transport infrastructure agenda.¹

2.2 The following is a summary of the major amendments proposed to the current legislation, which are contained in Part 1 of Schedule 1 of the bill.²

2.3 **Item 1** would change the name of the Act from *Nation Building Program (National Land Transport) Act 2009* to *National Land Transport Act 2014*.

2.4 **Item 2** would repeal the definition of *approved funding recipient* in subsection 4(1). It is proposed that the definition of *approved funding recipient* will now mean the eligible funding recipient identified in the project approval instrument in relation to the following projects:

- (a) a Black Spot Project;
- (b) an Investment Project; or
- (c) a Transport Development and Innovation Project.

2.5 **Item 3** would repeal the definition of *approved purposes* in subsection 4(1). It is proposed that *approved purposes* in relation to a Black Spot Project, an Investment Project or a Transport Development and Innovation Project will mean 'the purposes forming part of the project, other than any purposes that are excluded by the project approval instrument from being purposes on which funding may be expended'.

2.6 **Item 4** would insert a definition of *Black Spot Project* into subsection 4(1).

2.7 **Item 5** would repeal the definition of *Corridor Strategy* from subsection 4(1). This definition is being repealed because the term is no longer being used in the Act.

2.8 **Item 6** would repeal the definition of *eligible funding recipient* in subsection 4(1) and replace it with a new definition. It is proposed that *eligible funding recipient* will mean:

- (a) a State; or
- (b) an authority of a State; or

1 *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 3.

2 This section is based on information contained in the *Explanatory Memorandum*, Land Transport Infrastructure Amendment Bill 2014 and the Land Transport Infrastructure Amendment Bill 2014.

- (c) a local government authority; or
 - (d) any other body corporate;
- [and, when used in Parts 4 and 5, include a partnership].

2.9 **Item 7** would omit '6' from the definition of *funding agreement* in subsection 4(1).

2.10 **Item** would insert a definition of *Investment Project* into subsection 4(1).

2.11 **Item 9** would repeal the following definitions:

- (a) *National Land Transport Plan*;
- (b) *Nation Building Program Black Spot Project*;
- (c) *Nation Building Program National Project*;
- (d) *Nation Building Program Off-Network Project*;
- (e) *Nation Building Program Roads to Recovery funding period*;
- (f) *Nation Building Program Roads to Recovery List*; and
- (g) *Nation Building Program Transport Development and Innovation Project*.

2.12 **Item 10** would insert a new definition of *non-corporate Commonwealth entity* into subsection 4(1). It is proposed that *non-corporate Commonwealth entity* will mean:

- (a) a Department within the meaning of the *Public Service Act 1999*; or
- (b) an Executive Agency within the meaning of the *Public Service Act 1999*;
or
- (c) any other Agency (except a body corporate) to which the *Financial Management and Accountability Act 1997* applies.

2.13 **Item 11** would repeal the definition of *project approval instrument* in subsection 4(1). It is proposed that *project approval instrument* will mean:

- (a) in relation to a Black Spot Project – the instrument approving the project under subsection 70(1); and
- (b) in relation to an Investment Project – the instrument approving the project under subsection 9(1); and
- (c) in relation to a Transport Development and Innovation Project – the instrument approving the project under subsection 29(1).

2.14 **Item 12** would insert definitions for:

- *Roads to Recovery funding period* – proposed to mean the period specified in the Roads to Recovery List under subsection 87(1); and

- *Roads to Recovery List* – proposed to mean the list in force under subsection 87(1) of this Act.

2.15 **Item 13** would insert a definition of *Transport Development and Innovation Project* into subsection 4(1).

2.16 **Item 14** would insert a new section 4A into the Act. Section 4A details the constitutional bases upon which the Act relies.

2.17 **Item 15** would repeal the heading 'Part 3-Nation Building Program National Projects' and substitute it with 'Division 1-Approval of Investment Projects'.

2.18 **Item 16** would repeal the heading 'Division 1-Approval of projects as Nation Building Program Nation Projects' and substitute it with 'Division 1-Approval of Investment Projects'.

2.19 **Item 17** would repeal existing section 8 and substitute a new section 8. The new section 8 provides that an Investment Project is a project for which an approval by the Minister under subsection 9(1) is in force. This amendment is a result of the change of heading of Part 3 in Item 15.

2.20 **Item 18** would repeal the heading of section 9 'Approval of Nation Building Program National Projects' and substitute a new heading 'Approval of Investment Projects'. This amendment is a result of the change of heading of Part 3 in Item 15.

2.21 **Item 19** would omit 'Nation Building Program National' from subsection 9(1) and substitute 'an Investment'. This amendment is a result of the change of heading of Part 3 in Item 15.

2.22 **Item 20** would repeal sections 10 and 11.

2.23 New section 10 would set out the types of projects that are eligible for approval as an Investment Project. It is proposed that a project will be eligible for approval as an Investment Project if the project is for one or more of the following:

- (a) the construction of an existing or proposed road that is in a State or Indian Ocean Territory;
- (b) the maintenance of an existing or proposed road that is included in the National Land Transport Network;
- (c) the construction of an existing or proposed railway that is in a State or Indian Ocean Territory;
- (d) the maintenance of an existing or proposed railway that is included in the National Land Transport Network;
- (e) the construction of an inter-modal transfer facility in a State or Indian Ocean Territory;

- (f) the acquisition or application of technology that will, or may, contribute to the efficiency, security or safety of transport operations in a State or Indian Ocean Territory.

2.24 New section 11 would provide for the matters which the Minister may have regard to in deciding whether it is appropriate to approve a project as an Investment Project. It is proposed that these matters may include, but not be limited to:

- (a) the extent to which the project is likely to improve the ability of industries and communities to compete in international, inter-State or inter-regional trade and commerce;
- (b) the extent to which the project will improve the efficiency, security or safety of transport operations;
- (c) the results of any assessment of the economic, environmental or social costs or benefits of the project;
- (d) the extent to which the project is likely to improve access for communities to services and employment;
- (e) any transport or land use plans that might be relevant to the project;
- (f) the extent to which persons other than the Commonwealth propose to contribute funding to the project.

2.25 **Items 21-25** relate to the omission of the term 'Nation Building Program National'. It is proposed to substitute the term with the words 'an Investment' in subsections 12(1), 12(3), 12(4), 13(1), 13(2), 13(3), section 14 and subsection 15(1).

2.26 **Item 26** would repeal the heading of section 16 – 'Commonwealth funding for Nation Building Program National Projects' – it is proposed to substitute the new heading 'Commonwealth funding for Investment Projects'.

2.27 **Item 27** would omit 'Nation Building Program National' from subsections 16(1), 17(1) and 18(1) and proposes to substitute 'an Investment'.

2.28 **Item 28** would omit 'prescribed by the regulations' from subparagraph 24(1)(c)(vi) and proposes to substitute 'determined by the Minister by legislative instrument under subsection (4)'. This amendment would remove the requirement to prescribe an amount below which work can be exempt from the public tender requirements in regulations and replaces it with a requirement that the amount determined by the Minister by legislative instrument. It is argued that this amendment will reduce regulation and time in delivering the outcome.

2.29 **Item 29** would insert new subsection 24(4) which provides that the Minister may, by legislative instrument, determine an amount for the purposes of subparagraph (1)(c)(vi).

2.30 **Item 30** would insert new subsection 25(1A). Under new subsection 25(1A) it is proposed that a funding recipient must, as soon as practicable after selling or

disposing of an interest in land that was acquired using all or part of a funding payment, notify the Minister of the sale or disposal.

2.31 **Item 31** would omit 'Nation Building Program National' from subsections 25(2) and (4) and proposes the substitute 'Investment'.

2.32 **Item 32** would omit 'either or both' from section 30 and proposes the substitute 'any'.

2.33 **Item 33** would insert the following new paragraph (c) into section 30:

- (c) research, investigations, studies or analysis of:
 - (i) projects for which Commonwealth funding has been provided under Part 3 or 7; or
 - (ii) projects for which Commonwealth funding was provided under Part 6 as in force immediately before its repeal; or
 - (iii) projects for which particulars have been submitted for approval under Part 3 or 7; or
 - (iv) the construction or maintenance of roads that have been funded (in whole or in part) under Part 8.

2.34 It is proposed that the amendment at Item 33 would allow the funding of investigations and studies of projects currently, or previously, funded under the Act to enhance the management of projects and/or the Programme. The amendment would also allow the funding of analysis for projects seeking funding under the Act. It is proposed that the analyses would inform advice to Government.

2.35 **Item 34** would omit 'on Nation Building Program National Projects' from paragraph 31(c) and proposes the substitute 'under the Act'.

2.36 **Item 35** would repeal the heading 'Part5-Nation Building Program funding for land transport research entities' and proposes the substitute 'Part 5-Funding for land transport research entities'.

2.37 **Item 36** would insert 'or a non-corporate Commonwealth entity' after 'eligible funding recipient' in the definition of land transport research entity in section 45. It is proposed that this amendment will allow non-corporate Commonwealth entities whose functions include carrying out, arranging or assisting planning, research, investigations, studies or analysis of matters related to land transport operations to receive funding under Part 5 of the Act.

2.38 **Item 37** would insert new section 51A. Under Section 51A, the Minister may enter into an arrangement with a non-corporate Commonwealth entity in writing for the purposes of Part 5. It also provides that if the Minister does enter into an arrangement, it would be treated as if it were a funding agreement entered into under Part 5. It is argued that this amendment is required to provide clarity in relation to the provision of funding to a non-corporate Commonwealth entity.

2.39 **Item 38** would repeal Part 6 of the Act. Part 6 is being repealed as it is proposed that the approval and funding conditions for Off-Network Projects and National Projects are being combined in Part 3 – with the new name of Investment Projects.

2.40 **Item 39** would omit 'The Nation Building Program Roads to Recovery List must' from section 87 and substitute a new subsection 87(1). Subsection 87(1) provides that the Minister must, by legislative instrument, determine a list (the Roads to Recovery List) that must contain the details specified in paragraphs 87 (a) and (b) and new paragraph (aa) being inserted at Item 40.

2.41 **Item 40** would insert new paragraph (aa) into section 87. The paragraph provides that the Roads to Recovery List must specify a funding period in relation to the Roads to Recovery Program. Under this amendment (together with the new Roads to Recovery funding period definition in Item 12) it is proposed to remove the specification of a funding period in the Act and place it in the Roads to Recovery List. It is argued that this would remove the need to amend the Act every time the funding period changes.

2.42 **Item 41** would omit 'Nation Building Program Roads to Recovery during the' from paragraph 87(a) and proposes the substitute 'Roads to Recovery Program during the specified'.

2.43 **Item 42** would insert new subsection 42(2). The new subsection provides that section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the Roads to Recovery List (the List).

2.44 **Item 43** would omit '1' from subsection 92(1). The amendment is necessary for drafting purposes because subsection 92(2) is being repealed at Item 44.

2.45 **Item 44** would repeal subsection 92(2) of the Act. The *Australian Land Transport Development Act 1988* and the *Roads to Recovery Act 2000* are being repealed by Items 1 and 3 of Schedule 2 respectively because they are spent legislation. Subsection 92(2) is therefore no longer required.

2.46 **Item 45** would insert new section 92A. Section 92A provides clarity in relation to how it is proposed the new legislation would treat partnerships.

2.47 **Item 46** would omit '6' from section 94. This amendment reflects the repeal of Part 6 of the Act in Item 38.

2.48 **Item 47** sets out proposed amendments to provisions to reflect the change of title of the Act in Item 1.

Issues

2.49 The bill's Second Reading Speech indicated that the proposed amendments would enable the continuation of the Roads to Recovery Programme (which provides

funding to local governments for the maintenance of Australia's local road infrastructure) beyond 30 June 2014. It was argued that this change is necessary because the Act currently specifies the Roads to Recovery funding period as ending on 30 June 2014.³

2.50 The bill proposes to remove the specification of the funding period from the Act and place it in the Roads to Recovery List. It is argued that this is designed to remove the need to amend the Act every time the Roads to Recovery funding period changes and ensure the continuation of the programme.⁴

2.51 The new legislation includes a power for the Minister to determine a Roads to Recovery List. It was argued that this amendment is necessary for the Programme to be able to function effectively. It is proposed that the Roads to Recovery List (the List) be exempt from disallowance under the *Legislative Instruments Act 2003*. It was argued that exemption from disallowance for the list is appropriate given the administrative nature of the List and that 'certainty for funding recipients would be undermined if the List were subject to disallowance'. It was also noted that in previous versions of the Act, the List has been exempt from disallowance and variations to the List are also exempt from disallowance.⁵

2.52 Under the bill, the new Part 3 for Investment Projects would also include a new requirement for states and territories to notify the Minister as soon as possible after the sale or disposal of land acquired using Australian Government funding. It was argued that this amendment would ensure a timely response from both the states and the Commonwealth to the sale or disposal of land acquired using Commonwealth funding. It was also argued that the proceeds of land sales or disposal could then be allocated to new infrastructure projects.⁶

2.53 In its submission to the inquiry, the Australasian Railway Association (ARA) indicated that, in the main, it had 'no significant issues with the proposed changes' contained in the bill. However, the ARA did note that comments made (in the Second Reading Speech) regarding the re-allocation of funding require clarification:

It is unclear as to how the proceeds will be spent i.e. whether the proceeds will be allocated to projects that have been identified as 'nationally significant projects' by IA [Infrastructure Australia] or only to projects that the Minister deems appropriate (outside of IA's consideration). It is also unclear whether the proceeds will be allocated to road project only and not

3 *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 4.

4 *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 4.

5 *Explanatory Memorandum*, Land Transport Infrastructure Amendment Bill 2014, p. 10 and *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 4.

6 *Explanatory Memorandum*, Land Transport Infrastructure Amendment Bill 2014, p. 8 and *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 4.

to public transport or rail projects. Clarifications on how the proceeds will be used are required.⁷

2.54 The bill also proposes the introduction of a new type of project, Transport Development and Innovation Projects. It is noted that projects which involve research, investigations, studies or analysis of Investment or Black Spot projects, previously funded Off-Network projects, and works funded under the Roads to Recovery Programme, would be eligible for Part 4 funding. Part 4 funding could also be used for analysis of projects submitted for funding consideration as Investment or Black Spot projects, to help inform advice to Government. It is argued that these amendments would enhance the management of projects and the Infrastructure Investment Programme.⁸

2.55 The ARA acknowledged the bill's intention to introduce an additional category of project that is eligible for funding. The ARA offered no objection to this proposal, but indicated that there was a need for clarity about whether 'the funding will be limited to only road-related research and investigations or whether it will expand to other modes of transport'.⁹

2.56 In addition, the ARA also suggested that, with regard to the proposed continuation of the Government's Black Spot Program:

...funding for the current program could be extended to include road-rail crossings upgrades and maintenance. Given it is the ARA's understanding of State's black spots programs are only used to fund road black-spots so there is a significant opportunity for the Commonwealth to step in and address the national issue of level crossing safety.¹⁰

2.57 The bill would also add two new types of eligible funding recipient into the Act. Partnerships have been added as an eligible funding recipient for Parts 4 and 5 of the Act. It is argued that this will simplify funding arrangements for firms without a body corporate structure.

2.58 Non-corporate Commonwealth entities whose functions include research related to land transport research operations would also be able to receive funding under Part 5.

2.59 The ARA indicated that it was supportive of this change as:

...this amendment is expected to allow for different types of funding mechanisms and an increase in private capital investment. It also allows the

7 Australasian Railway Association, *Submission 1*, p. 3.

8 *Second Reading Speech*, Land Transport Infrastructure Amendment Bill 2014, p. 5.

9 Australasian Railway Association, *Submission 1*, p. 4.

10 Australasian Railway Association, *Submission 1*, p. 4.

line Department or other Executive Agencies to receive further funding through this mechanism.¹¹

Committee comment

2.60 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.

Recommendation 1

2.61 The committee recommends that the Senate pass the bill.

**Senator the Hon. Bill Heffernan
Chair**

11 Australasian Railway Association, *Submission 1*, p. 4.

