

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 73 2000–01

Roads to Recovery Bill 2000

ISSN 1328-8091

© Copyright Commonwealth of Australia 2000

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2000

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 73 2000–01

Roads to Recovery Bill 2000

Richard Webb, Economics, Commerce & Industrial Relations Group
Angus Martyn, Law and Bills Digest Group
6 December 2000

Contents

Purpose	1
Background	1
Commonwealth road funding.	1
The 'Roads to Recovery' funding package	2
Main Provisions	4
Concluding Comments	6
Does the Bill allow the Commonwealth to influence the choice of roadworks to be funded?	6
Endnotes.	7

Roads to Recovery Bill 2000

Date Introduced: 30 November 2000

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: On Royal Assent

Purpose

To appropriate \$1.2 billion for roads expenditure by local government over four years to 1 July 2005.

Background

Commonwealth road funding¹

At the beginning of the 1990s, the Commonwealth funded as grants to the States four categories of road: national highways, national arterials, state arterials, and local roads. In the case of State arterials and local roads, the Commonwealth provided assistance to the States and local governments to 'top up' funding provided by those governments. For the three years over 1990-93, the Commonwealth also funded three other initiatives: the Black Spot, Provincial Cities and Rural Highways, and Urban Public Transport programs.

The Commonwealth has since rationalised its road funding. It continues to solely fund the National Highway System. From 1996, it has jointly funded with the States the Roads of National Importance program and the Black Spot program has also been reintroduced. In addition, the States can spend GST on roadworks.

In relation to local government, Commonwealth funding for local roads has historically come through two sources. First, the Commonwealth provides, 'through' the States, financial assistant grants (FAGs). The amount each State receives is calculated on a per capita basis. Once these FAGs are distributed to local governments, they can be used for roads or any other purpose at the discretion of the relevant local government. The second source of funding is identified road grants. These are distributed among the States on the basis of historical shares. Theoretically, identified road grants can be used for any purpose but, in practice, are spent on roads. The indexation of grants (both FAGs and road grants)

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

for inflation and population growth means that the overall level of funds has been maintained in real per capita terms, but has fallen as a proportion of GDP.

State Grants Commissions determine the intrastate distribution of both FAGs and road funds on the basis of the National Principles which are required by the *Local Government (Financial Assistance) Act 1995*. The distribution of FAGs is governed by five general principles. A separate National Principle, which applies to identified road grants, is that

the grants should be allocated to local governing bodies as far as practicable on the basis of the relative needs of each local governing body for roads expenditure and to preserve its road assets. In assessing road needs, relevant considerations include length, type and usage of roads in each local governing area.²

The State Grants Commissions, guided by this principle, apply their own methodologies to determine the amount of road grant each local government receives.

The 'Roads to Recovery' funding package

On 27 November 2000, the Government announced a four-year road funding package worth \$1.6 billion. Of this, \$1.2 billion will be spend on the 'Roads to Recovery' program.³ According to the Government, the remaining \$400 million is to be allocated to the existing National Highway and Roads of National Importance programs for 'key arterial link roads in outer metropolitan areas'.⁴ The projects to be funded with the \$400 million will not be announced until 2001. The Roads to Recovery Bill appropriates \$1.2 billion.

The announcement of the package came shortly after the release of the 2000-2001 Mid-Year Economic and Fiscal Outlook by the Treasurer on 15 November 2000. In commenting on the package, the Government said:

This major investment in our roads is possible because our budget position is better than anticipated...The Government believes this is the best investment of these funds for the long term benefit of the nation.⁵

The rationale for the package was explained further in the second reading speech:

For too long local roads have been Australia's forgotten roads...This bill demonstrates that the government is serious about the renewal of local roads and recognises they are an essential element of the economic and social infrastructure of Australia's communities—rural, regional and metropolitan...The government is aware that councils, particularly those in rural and regional Australia, are faced with significant problems of maintaining local roads from within existing funding. ...The economic and social importance of local roads is increasing with the expansion and emergence of new rural industries—with higher transport demands, including higher mass limits—and with frequent lack of transport alternatives. Local roads are an essential feeder to other parts of the transport system and between rural, regional and urban areas. They are vital to the sustainability and recovery of rural and regional Australia.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Access to education, health care, shops and amenities, as well as markets, overwhelmingly depends on local roads.⁶

The issue of how the \$1.2 billion is to be distributed, both in terms of among the states and among individual local governments has attracted considerable attention in Parliament.

In terms of the interstate allocation of the funds, the Government has departed from the historical shares of the identified road grants. In question time following the presentation of the Bill, the Minister said:

The historical methodology for allocating between states and territories threw up a couple of not major but significant anomalies that we felt needed to be acknowledged. The key one to my way of thinking was that, even on the most superficial glance, South Australia was being done in the eye in terms of what we thought were important - population and road distances.⁷

The following day in Senate additional estimates hearings, the Minister for Regional Services, Territories and Local Government said that the distribution was based on 50 percent road length⁸ and 50 percent population 'adjusted to achieve some equity and fairness'.⁹ When questioned about the adjustment, the Senator replied it was based on 'the judgements people make'.¹⁰

The variation from the historical shares can be seen in the following table. Victoria, Queensland and South Australia gain under the proposed Roads to Recovery allocation relative to the existing allocation from identified road grants.

State	Roads to Recovery (%)	Existing allocation from identified road grants (%)
NSW	28.3	29.0
VIC	20.8	20.6
QLD	20.8	18.7
WA	15.0	15.2
SA	8.3	5.5
TAS	3.3	5.3
NT	1.6	3.2
ACT	1.6	2.3

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

In relation to intrastate distribution, the anticipated funding that each local government authority would receive was tabled by the Minister along with the Bill. The Minister commented that

Allocations between councils within each state are strictly in accordance with formulae adopted by state grants commissions, established and applied under the previous government.¹¹

It is understood that individual figures were calculated by using the 2000-2001 estimated entitlements for identified council road grants under the *Local Government (Financial Assistance) Act 1995*. These entitlements have not yet been published as the 2000 National Report to Parliament on the operation of the *Local Government (Financial Assistance) Act 1995* is still in preparation. As a guide, the entitlements for 1999-2000 are contained in pages 122-127 of the 1999 National Report.

Main Provisions

Clause 3 contains definitions of various terms used in the Bill.

A *road* is defined as including any of the following associated with a road:

- a traffic sign
- traffic control equipment
- street lighting equipment
- a vehicular ferry
- a bridge or tunnel, including a bridge or tunnel for the use of pedestrians, and
- a path for the use of persons riding bicycles.

Roads expenditure is defined as 'expenditure on the construction, upgrade or maintenance of roads'.

Clause 4 contains the object of the Act which is 'to provide \$1,200,000,000 for roads expenditure by local government bodies'.

Clause 5 provides that 'as soon as possible after the commencement of the Act' the Minister must publish in the Gazette the amounts each local government authority is to receive under the Bill (as set out in the list accompanying the explanatory memorandum) and the correct legal names of each authority. The note to **clause 5** contained in the Bill states that the council names in the list accompanying the explanatory memorandum are

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

not necessarily the correct legal names. The list published in the Gazette will contain the correct legal names.

Clause 6 appropriates the \$1.2 billion required for the grants. **Subclause 6(1)** requires that, 'subject to the Act', the amounts listed in the Gazette (see **clause 5**) are payable to the funding recipients listed alongside those amounts. **Subclauses 6(3)-(4)** provide that the funding to each recipient may be done by instalments and that the amounts and timing of the funding instalments are at the discretion of the Minister so long as all funds are paid by 1 July 2005.

Clause 7 requires the Minister to make conditions relating to the payment of funds under the Bill. It is not clear whether the text of these conditions must be published in the Gazette. **Subclause 7(1)** states that the Minister must 'by notice in the Gazette, determine the conditions that apply'. Presumably they are to be published - the explanatory memorandum implies that this is so - but as a matter of drafting this could be spelt out clearly, as for example is the requirement for publishing a funding list under **clause 5**.

Clause 7 conditions *must* include that the funds are to be used for roads expenditure, that the expenditure is to be properly accounted for, and that recipients maintain their level of road expenditure that are funded otherwise than under the Act (ie there must be no cost shifting). Conditions must also provide that signs are to be displayed in relation to projects that are funded under the Bill.

Conditions *may* also include requiring the funding recipient to repay amounts to the Commonwealth in the event of a breach of the conditions and conditions requiring the funding recipient to comply with guidelines determined by the Minister under **clause 11**.

Note that the Minister may also make any other conditions additional to those mentioned above.

Any variation or revocation of the **clause 7** conditions must be notified in the Gazette.

Clause 8 provides that if any funding recipient listed in the **clause 5** Gazette notice ceases to exist before all funds due to it are paid, the Minister must nominate one or more replacement bodies to receive the outstanding funds. A replacement body may include a State as well as a local government authority.

Clause 9 provides how the Commonwealth may recover money from a funding recipient if, as a result of breaching a **clause 7** condition, that recipient is liable to repay the Commonwealth certain amounts. Recovery may be through a court action for debt or by deducting the amount owed from any future instalment due to the recipient.

Clause 10 provides that the Minister must table in Parliament annual reports on the operation of the Bill.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Clause 11 allows the Minister to publish administrative guidelines relating to funding payments or **clause 7** conditions.¹²

Clause 12 allows the Minister to delegate his or her powers and functions prescribed under the Act to a substantive or acting senior executive service officer in their Department. Any delegate must comply with Ministerial directions in exercising these powers or functions.

Clause 13 allows for the making of Regulations.

Concluding Comments

Does the Bill allow the Commonwealth to influence the choice of roadworks to be funded?

In announcing the Roads to Recovery package, the Government commented that:

One of the greatest strength of the Roads to Recovery Programme is that the funding will go direct to Local Government¹³ and allow councils to spend the money according to their priorities.¹⁴

In debate following the second reading speech, the Shadow Minister for Regional Development, Infrastructure, Transport, Regional Services and Population said:

I also challenge what the Deputy Prime Minister and Minister for Transport and Regional Services said today that decisions on road funding should be left to local councils. We have evidence of members on the other side already ringing local councils and seeking to intimidate and direct them about what their local road funding priorities should be.¹⁵

Subsequently in Senate additional estimates, the Minister for Regional Services, Territories and Local Government was questioned as to whether the Minister's discretion regarding the time of instalments and setting of conditions could be used to influence individual local governments' priorities for funding under the Road to Recovery package. It appears that the Commonwealth will certainly know ahead of time what roadworks councils are intending to undertake with Road to Recovery funds since, although it is not required by the Bill, the Commonwealth has said that:

Local government bodies must also provide the minister with a proposal for the expenditure of their grant.¹⁶

The Minister's power under the Bill was explained by Departmental officials in Senate additional estimates in the following terms:

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Mr Potter—The bill does not give the minister the power to approve or disallow the proposals that are put up to him. We intended asking the councils to advise us what they were going to spend the money on, but there is no power of approval or disapproval under the bill, as there is for national highway projects, for example.

Senator MACKAY—But where does it say that the minister has no discretion in relation to the proposals—which we have now established is what they are?

Mr Potter—Because the act obliges the minister to pay the money to councils, so he has to do that.

Senator MACKAY—It obliges him to pay the money to councils; it does not say that he cannot say to a council, ‘I don’t accept this proposal.’ Where does it say that?

Mr Potter—Supposing he said, ‘I don’t like this particular road you are going to spend the money on.’ They would say, ‘Well, under section 6 of the act, you are obliged to pay us the grant.’

Senator MACKAY—Eventually.

Mr Potter—Yes, he has discretion as to timing, but not as to the particular project.¹⁷

Thus while the Minister has no legislative power to vary lists of proposed road projects, it is clear that there is no limitation on his or her discretion as to timing and amount of individual instalments, provided that all funds are paid by 1 July 2005. There is no impediment to the Minister taking a position, for example, that on the basis of the list of proposed projects forwarded by council, he or she will not release any funds until 2005. However, this would seem very much contrary to the spirit of the package. The fact that under **clause 7** the Minister is similarly unrestricted in his or her power to make funding conditions,¹⁸ could also in theory give the Minister some influence but since these would presumably apply to all local governments, they would be of general application and not capable of targeting particular projects or proposals.

Endnotes

- 1 General background on Commonwealth road funding can be found in the Parliamentary Library publication, *Commonwealth Road Funding since 1990*, March 2000, at <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp13.htm>. Road funding issues were also reviewed in the 1997 report of the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, *Planning not Patching*, at <http://www.aph.gov.au/house/committee/cta/roading/roadrep/contents.htm>. The Government released a response to the Committee’s report in April 2000.
- 2 See 1999 National Report to Parliament on the operation of the *Local Government (Financial Assistance) Act 1995*, p 74.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 3 *Joint Press Release*, Minister for Transport and Regional Services and Prime Minister 27 November 2000 at http://www.dotrs.gov.au/media/anders/archive/2000/nov_00/a271100.htm.
- 4 *Joint Press Release*, op cit.
- 5 Ibid.
- 6 Second reading speech, Deputy Prime Minister and Minister for Transport and Regional Services, the Hon John Anderson, House of Representatives, *Debates*, 30 November 2000 p. 20304.
- 7 The Hon John Anderson, House of Representatives, *Debates*, 30 November 2000 p. 20318.
- 8 Road length is calculated on local road length - ie excluding national highways or state roads: *Senate additional estimates hearings* 1 December 2000 at RRA&T 155.
- 9 Senator the Hon Ian Macdonald, *Senate additional estimates hearings*, 1 December 2000 at RRA&T 153
- 10 Ibid.
- 11 Second reading speech, op cit, p. 20305.
- 12 The explanatory memorandum states that the guidelines 'will cover such things as forms, timing of payments, specification of signs etc'.
- 13 Unlike identified road grants, Roads to Recovery payments are intended to be made direct to local governments rather than through the States.
- 14 *Joint Press Release*, op cit.
- 15 Mr Martin Ferguson, House of Representatives, *Debates* 30 November 2000 p. 20306.
- 16 Second reading speech, op cit, p. 20304.
- 17 *Senate additional estimates hearings* op cit pp. 161, 164.
- 18 So long as they are notified in the Gazette. However, see comments on subclause 7(1) in the main provisions section of this digest.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.