



AusLink (National Land Transport) Amendment Bill 2008

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AusLink (National Land Transport) Amendment Bill 2008

Date introduced: 28 August 2009

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: The day after Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purposes

The Bill has two main purposes. The first is to change the definition of a road in the [AusLink \(National Land Transport\) Act 2005](#) to allow funding of heavy vehicle facilities such as off-road rest stops. The second purpose is to allow the Roads to Recovery program—which is funded under the *AusLink (National Land Transport) Act 2005*—to be extended for another five years.

Background

AusLink

AusLink is the government's national land transport program. AusLink's elements are:

- National projects (on the defined National Network)
- Strategic Regional projects
- Black Spot projects
- Roads to Recovery, and
- research and technology projects.

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The National Network is a network of road and rail transport corridors, which includes urban areas and links to ports and airports. In 2006-07, AusLink funding was \$2.241 billion. Of this, \$304 million was for Roads to Recovery.¹

Heavy Vehicle Safety and Productivity Package

The proposal to fund facilities such as rest stops forms part of the government's Heavy Vehicle Safety and Productivity Package. In his [second reading speech](#) for the [Interstate Road Transport Charge Amendment Bill 2008](#) and the [Road Transport Charges \(Australian Capital Territory\) Repeal Bill 2008](#), the Parliamentary Secretary for Regional Development and Northern Australia, the Hon. Gary Gray stated:

We have decided to supplement the implementation of the new charges [for heavy vehicles] with a \$70 million, four-year heavy vehicle safety and productivity package that will fund areas such as trials of technologies that electronically monitor a truck driver's work hours and vehicle speed; the construction of more heavy vehicle rest stops and decoupling areas along our highways and on the outskirts of our major cities to assist truck drivers' rest; and bridge-strengthening projects and upgrades to linkages between existing AusLink freight routes, enabling access to those roads to more productive heavy vehicles. The government will consult with industry and state and territory governments to determine the best combination of projects for expenditure of the \$70 million package.

The Heavy Vehicle Safety and Productivity Package is one of several measures aimed at reducing fatigue including [new Heavy Vehicle Driver Fatigue laws](#) which are due to come into effect on 29 September 2008.

Heavy vehicle charges

The charges referred to in the above speech are the heavy vehicles road user charges. The charges are designed to recover the cost of damage that heavy vehicles—those with a gross vehicle mass exceeding 4.5 tonnes—cause to roads. The charges have two components. The first is a fixed annual registration fee. The second is a notional part of the excise on fuel (mainly diesel). The latter—19.633 cents per litre—is the difference between the excise—38.143 cents per litre—and the excise credit—18.51 cents per litre.

The National Transport Commission—which is responsible for calculating the charges—recommended that both the registration fee and the fuel excise notional rate be increased in its [2007 Heavy Vehicle Charges Determination](#). However, the two Bills referred to above, that would have enabled the increase in registration fees, failed to pass in the Senate on 19 March 2008. On 14 May 2008, a disallowance motion on the fuel excise

1. Department of Infrastructure, Transport, Regional Development and Local Government, *AusLink Annual Report 2006-07*, p. 27.

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notional rate was successfully debated in the Senate.² In his [second reading speech](#) introducing the AusLink (National Land Transport) Amendment Bill 2008 (the Bill), the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon. Anthony Albanese stated:

Funding for the [Heavy Vehicle Safety and Productivity] Package is contingent on the passage of the enabling legislation for the 2007 Heavy Vehicles Charges Determination, which was unanimously endorsed by the Australian Transport Council of Commonwealth, State and Territory transport ministers in February this year.

Roads to Recovery

The *Roads to Recovery Act* 2000 established the [Roads to Recovery program](#). From 1 July 2005, the program became part of AusLink. The first phase—which was pre-AusLink—ran from 2000-01 to 2004-05. The program is now in its second phase, which is from 2005-06 to 2008-09. [Features](#) of the program include:

- grants are paid directly to councils (if there is a council for the relevant area)
- all councils receive funds
- the money is intended to supplement—not substitute for—council road spending
- councils nominate the projects to be funded, and
- it also applies to ‘unincorporated’ areas, that is, where there is no local council.

Position of significant interest groups

The [Australian Trucking Association](#)—the industry body which represents the road freight industry—welcomed the announcement of the \$70 million for the Heavy Vehicle Safety and Productivity Package and has [identified](#) 18 priority rest areas for funding. On the other hand, the Australian Trucking Association [welcomed](#) the Senate’s rejection of the increased heavy vehicle registration fees on 19 March 2008.³

The Australian Local Government Association, the parent body representing councils Australia-wide, has [welcomed](#) the extension to the Roads to Recovery program, seeing it as ‘an essential element in local government’s ability to maintain and upgrade the local roads network’.

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2. Senate Hansard, Road User Charge Determination 2008 (No. 1), 14 May 2008, p. 1818.
 3. Senate Hansard, Division: Interstate Road Transport Charge Amendment Bill, 19 March 2008, p. 1338.

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Financial implications

As noted, the government has made the funding of rest stops etc. contingent on the passage of the legislation to increase road user charges. Should that happen, the government proposes to spend \$70 million on the Heavy Vehicle Safety and Productivity Program over four years as shown in the following table.

\$ million

2008-09	2009-10	2010-11	2011-12
10	20	20	20

Proposed funding for the Roads to Recovery is shown below.

\$ million

2009-10	2010-11	2011-12	2012-13	2013-14
350	350	350	350	350

Main provisions

Schedule 1—AusLink (National Land Transport) Act 2005

Section 4 of the *AusLink (National Land Transport) Act 2005* (the Act) contains definitions. **Item 1** inserts into subsection 4(1) a definition of the ‘AusLink Roads to Recovery funding period’. This covers either of two periods: the one starting on 1 July 2005 and ending on 30 June 2009 or the one starting on 1 July 2009 and ending on 30 June 2014. This amendment recognises that the current program ceases on 30 June 2009 and the government proposes to extend it for another five years.

Item 2 expands the existing definition of a road, by including ‘a facility off the road used by heavy vehicles in connection with travel on the road (or example, a rest area or weigh station)’. The Explanatory Memorandum notes that that this definition is not intended to cover any commercial developments such as food or fuel outlets.⁴

Section 87 of the Act deals with the Roads to Recovery program. **Item 3** repeals existing section 87 and substitutes **new section 87**. This has several elements. **New subsection 87(1)** provides that the Minister must, by legislative instrument, publish a list—the

4. Explanatory Memorandum, AusLink (National Land Transport) Amendment Bill 2008, p. 3.

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AusLink Roads to Recovery List—for both the 2005-09 and 2009-2014 funding periods. The Minister must do this before or as soon as practicable after the relevant funding period begins. The list must specify the funding amounts [**new paragraph 87(2)(a)**], the name of the recipient (the person or body who is to receive the amount)[**new subparagraph 87(2)(b)(i)**], and—when the Minister is yet to decide who the recipients will be—the amount that a State (or an area in a State) will receive [**new paragraph 87(2)(b)(ii)**]. According to the Explanatory Memorandum, the reference to an area in a State is necessary to allow spending in unincorporated areas.⁵ **Proposed subsection 87(3)** provides that the disallowance provisions of the *Legislative Instruments Act 2003* do not apply to the determination referred to in **proposed subsection 87(1)**.

Item 4 preserves the validity of any AusLink Roads to Recovery List that was made under existing section 87, provided that List was still in effect immediately before the Bill comes into force. The Explanatory Memorandum comments that **item 4**:

... is a technical provision designed to remove any doubt about the continued eligibility of entities listed on the AusLink Roads to Recovery List made prior to the repeal and substitution of section 87 of the Act.⁶

Existing section 88 of the Act deals with variations to an AusLink Roads to Recovery List. Section 88 allows the Minister to redirect funds from designated recipients to other recipients under certain circumstances. An example is where a council is abolished under an amalgamation. The Minister may redirect funds from the abolished council to the successor council.

Item 6 inserts a **new subsection 88(2A)**. This relates to the situation where the Minister is yet to decide who fund recipients will be [see **new subparagraph 87(2)(b)(ii)** above]. The effect of **new subsection 88(2A)** is to allow the Minister to subsequently direct some or all of the unassigned funds (the Explanatory Memorandum uses the word ‘preserved’ to refer to such funds) to recipients once the Minister has decided who the recipients will be. **New paragraph 88(2A)(a)** provides that if an AusLink Roads to Recovery List includes a statement with undesignated recipients, and the Minister subsequently considers that recipients can be designated [**new paragraph 88(2A)(b)**], then the Minister may, by legislative instrument, change the List to direct funds to the designated recipients. As is the case for the relevant amendment in **item 3**, the disallowance provisions of the *Legislative Instruments Act 2003* do not apply to the Minister’s actions.

Items 9 and **item 10** permit payments under the Roads to Recovery program to be made until 30 June 2014, rather than only to 30 June 2009 as is the case now.

5. Explanatory Memorandum, AusLink (National Land Transport) Amendment Bill 2008, p. 2.

6. Explanatory Memorandum, AusLink (National Land Transport) Amendment Bill 2008, p. 4.

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Concluding comments

Driver fatigue is a major concern affecting all categories of road user. Whilst the [trend](#) in the number of deaths associated with articulated trucks has been falling for some time, the number has risen recently. Motoring organisations such as the [NRMA](#) in NSW and the [Australian Trucking Association](#) have advocated more rest stops for some time. The proposed Vehicle Safety and Productivity Package should contribute to a reduction in driver fatigue and hence accidents involving heavy vehicles.

Not charging heavy vehicles for the full cost of the damage they cause to roads is inimical to an efficient freight industry. The consequence of not recovering costs in full is that heavy truck operators—especially of B-doubles—are being subsidised. The National Transport Commission estimated the value of this subsidy to be around [\\$168 million](#) annually. This may adversely affect the rail freight industry because heavy trucks, notably B-doubles, compete most directly with rail freight. While the Productivity Commission in its report titled [Road and Rail Freight Infrastructure Pricing](#) concluded that the claim that road is subsidised relative to rail is not compelling, and shortcomings exist in the way road cost recovery is calculated, the general principle on which transport charges and taxes are based, remains. This principle holds that the service user should pay the full cost to society of providing the service. An efficient freight industry requires that this principle apply to road and rail alike.

Although the Minister for Infrastructure, Transport, Regional Development and Local Government said that the funding of rest stops etc. is contingent on the passage of the previously defeated bills, this Bill commences after Royal Assent and there is nothing in this Bill reflecting this contingency.

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