



Note: This Digest replaces an earlier version dated 27 May 2009.

Nation Building Program (National Land Transport) Amendment Bill 2009

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Nation Building Program (National Land Transport) Amendment Bill 2009

Date introduced: 13 May 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/>.

Purpose

The main purposes of the Nation Building Program (National Land Transport) Amendment Bill 2009 are to rename the *AusLink (National Land Transport) Act 2005* as the Nation Building Program (National Land Transport) Act 2009, and to replace references to AusLink with Nation Building Program in the *AusLink (National Land Transport) Act 2005*

Background

The Commonwealth government has a long history of financing state road expenditure as well as changing the names of the Acts under which it has provided finance. The Commonwealth first provided funding under the *Loan Act 1922* although legislation specifically designated for road funding began with the *Main Roads Development Act 1923*.¹

Since 1980, legislation affecting road funding has included the *Roads Grants Act 1980*, the *Roads Grants Act 1981*, the *Australian Bicentennial Road Development Trust Fund Act 1982*, the *Australian Land Transport (Financial Assistance) Act 1985*, the *Australian Centennial Roads Development Act 1988*, the *Australian Land Transport Development Act 1988*, and the *AusLink (National Land Transport) Act 2005*. The Commonwealth pays or

1. For a brief history of Commonwealth road funding, see D James, 'Commonwealth Road Funding Since 1980', *Background Paper* No. 35, Parliamentary Library, Canberra, 1993, viewed 21 May 2009, <http://www.aph.gov.au/library/pubs/bp/1993/93bp35.pdf>

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has paid road grants to local governments under the *Local Government (Financial Assistance) Act 1995* and the *Roads to Recovery Act 2000*.

Between 1 January 1989 and 30 June 2005, Commonwealth funding for road construction and maintenance, mainline rail upgrading, urban public transport projects, road accident 'black spots', and transport research and road safety activities was provided under the Australian Land Transport Development Program (ALTD). The *Australian Centennial Roads Development Act 1988* (ACRD) established the ALTD. The *Australian Centennial Roads Development Amendment Act 1990* changed the title of the legislation governing the ALTD from the ACRD to the *Australian Land Transport Development Act 1988*. The latter Act was the predecessor of AusLink.²

Most road funding is now provided under the [AusLink \(National Land Transport\) Act 2005](#) (Cth) and, to a much lesser extent, the *Local Government (Financial Assistance) Act 1995* (Cth). There has also been some funding through the Federation Fund.³

The Rudd Government dropped the term AusLink for its land transport infrastructure funding program and replaced it with the term Nation Building Program. The name change was announced at the Special Council of Australian Governments meeting on 5 February 2009.⁴

In addition to renaming the *AusLink (National Land Transport) Act 2005* (Cth) (the Act) and replacing references to AusLink with Nation Building Program, the Nation Building Program (National Land Transport) Amendment Bill 2009 (the Bill) makes several substantive changes to the Act that are discussed below.

Table 3 in the Appendix at the end of this Bills Digest shows Commonwealth road funding in constant 2004-05 prices from 1985-86 to 2003-04.

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2. For a review of Commonwealth road funding in the 1990s, see R Webb, 'Commonwealth Road Funding Since 1990', Research Paper, no. 7, 2003-04, Parliamentary Library, Canberra, 2004, viewed 21 May 2009, <http://www.aph.gov.au/library/pubs/rp/2003-04/04rp07.pdf>
 3. In the 2009-10 budget, the Government announced that it would close the Federation Fund special account, which was created in 1998 to fund projects celebrating the centenary of federation. See Australian Government, 'Part 2: expense measures', *Budget measures: budget paper no. 2: 2009-10*, Commonwealth of Australia, Canberra, 2009, p. 346, viewed 21 May 2009, http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Consolidated.pdf
 4. Council of Australian Governments, *Communiqué*, 5 February 2009, viewed 22 May 2009, http://www.coag.gov.au/coag_meeting_outcomes/2009-02-05/index.cfm

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Auslink

The Howard Government introduced AusLink, which came into effect in the financial year 2004-05. AusLink 1 was intended to run for the five years 2004-05 to 2008-09 and AusLink 2 for the following five years. The main features of Auslink are contained in the AusLink White Paper.⁵ Several features are noteworthy.

First, Auslink established what was called the Auslink national network. This consisted of corridors (for example, Sydney-Brisbane) with links in each corridor (for example, the Pacific Highway between Newcastle and Brisbane). The corridors consisted of rail as well as road links for example, the Sydney-Brisbane (Acacia Ridge) railway. The national network extended:

... the sphere of national interest from the former national highway system to focus on the transport links (road, rail and intermodal) to major capital city ports and airports and to many important regional ports. It did not, however, include ports — the final link in the export chain.⁶

Second, pre-existing programs such as the roads to recovery and black spot programs were incorporated into AusLink. Third, new programs were added to Auslink, for example, the strategic regional program. Finally, Auslink established a long-term multimodal planning framework—the National Land Transport Plan—which was the basis for investment in the national network. Table 1 shows funding under AusLink from 2004-05 to 2007-08.

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5. Department of Transport and Regional Services, *AusLink White Paper: Auslink, building our national transport future*, 2004, viewed 21 May 2009, <http://www.infrastructure.gov.au/transport/publications/files/whitepaper.pdf>
 6. B Fisher, *Australia's Export infrastructure: report to the Prime Minister by the Exports and Infrastructure Taskforce*, May 2005, p.24, viewed 21 May 2009, <http://www.abareconomics.com/infrastructure/pdf/Report.pdf>

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Table 1: AusLink funding 2004-05 to 2007-08 (\$ '000)

	2004-05	2005-06	2006-07	2007-08
Investment		1,228,903	1,603,031	1,847,336
National network	1,296,989			
Improving the national network		2,510	180,905	536,677
Roads to recovery	253,081	307,500	304,421	262,500
Improving local roads				98,710
Strategic regional		14,500	40,041	75,700
Strategic regional: supplementary				46,041
Black spots	44,500	44,446	41,562	37,264
Road projects other than under the AusLink (National Land Transport) Act 2005				570
Tackling urban congestion and planning				75,000
Total	1,594,570	1,597,859	2,169,960	2,979,798

Sources: DITRDLG annual reports and portfolio additional estimates statements.

Nation Building Program

The Rudd Government subsumed Auslink into its Nation Building Program and expanded it to include boom gates for rail crossings and rest areas for heavy vehicles. Still, it seems that in 2009-10, land transport infrastructure funding will be lower than in 2008-09 by about \$2 billion (\$6 436 million less \$ 4 427 million) as shown in Table 2. This seems to be at odds with providing fiscal stimulus to the economy during the recession.

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Table 2: Land transport funding 2008-09 and 2009-10 (\$ million)

Nation Building Program	DITRDLG	2008-09		2009-10	
		Treasury	Total	Total	
Investment ^a	2553.3	450.3	3003.6	2951.4	
Roads to recovery	355.6		355.6	350.0	
Strategic regional	99.7		99.7		
Strategic regional: supplementary ^b	79.1		79.1	125.1	
Black spots	144.7		144.7	119.5	
Boom gates for rail crossings	50.0		50.0	100.0	
Heavy vehicle safety	10.0		10.0	20.0	
Improving local roads ^b	83.8		83.8	0.0	
Improving the national network ^b	834.5		834.5	265.5	
Off-network roads	0.2		0.2	281.9	
Building Australia Fund special account ^c	1005.0	32.0	1037.0	1055.0	
ARTC equity injection	422.0		422.0	678.0	
<i>Subtotal</i>	5637.9	482.3	6120.2	5946.4	
Other					
Untied local road grants	722.7		722.7	442.3	
Additional funding to SA	14.3		14.3	14.8	
Federation Fund		1.0	1.0	0.0	
<i>Subtotal other</i>	737.0	1.0	738.0	457.1	
Total	6374.9	483.3	6858.2	6403.5	

a Treasury payment in 2008-09 is a bring forward of funding from 2009-10 for a number of key projects

b Accrual expenses relating to prepayments made in 2006 and 2007.

c Includes equity payments in 2009-10

Sources: DITRDLG PBS 2009-10 pp. 20, 24, 34, 89 and 107 and DITRDLG website⁷

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In the 2009-10 budget, the government announced that it would fund nation building infrastructure projects over four years of which roads, rail, and ports funding would amount to \$8 453 million as shown below.⁷

Roads, rail and ports	8,453
Regional Rail Express	3,225
East West Rail Tunnel - preconstruction work	40
Gold Coast light rail	365
Gawler rail line modernisation	294
Noarlunga to Seaford rail extension	291
Northbridge rail link (the Hub)	238
West Metro - preconstruction work	91
Brisbane Inner City Rail feasibility study	20
O-Bahn track extension	61
Hunter Expressway	1,451
Pacific Highway - Kempsey Bypass	618
Ipswich Motorway - additional works	884
Bruce Highway - Cooroy to Curra (section B) duplication	488
Oakajee Port common user facilities	339
Darwin Port expansion	50

Of these projects, all but the Northbridge rail link, the Brisbane inner city rail study, the O-Bahn track extension, and the Cooroy to Curra section of the Bruce highway will be funded from the Building Australia Fund.

A feature of the projects is the emphasis on rail with \$4.6 billion of the \$8.4 billion for rail. Most of this is for public transport, with the regional rail express project in Victoria the single largest project. Two ports are also scheduled to be funded: the Oakajee Port Common User Facilities in Geraldton WA, and the expansion of Darwin Port. This is the first direct Commonwealth funding of ports for a long time. Ports have traditionally been the preserve of state governments and to a lesser extent, the private sector. However, the Commonwealth funds projects that affect road and rail access to ports. An example is access to Port Botany, which will be improved by the completion of the south Sydney dedicated rail freight line.

Committee consideration

The Bill has been referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 15 June 2009. Details of the inquiry are at http://www.aph.gov.au/SEnate/committee/rrat_ctte/nation_building/index.htm

Financial implications

The Bill has no direct financial implications.

7. Australian Government, Budget Paper No. 1 2009-10, p. 1-20, viewed 22 May 2009, http://www.budget.gov.au/2009-10/content/bp1/downloads/bp_1.pdf

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Main provisions

Most of the Bill's provisions are word changes entailing substituting 'Nation Building Program' for 'AusLink'. The following therefore focuses on other changes to the Act.

Schedule 1

Part 1—Amendments

Item 1 changes the title of the Act to the *Nation Building Program (National Land Transport) Act 2009*.

Item 2 changes the definition of an 'approved funding recipient'. The main feature of this clause is that it drops 'Auslink Strategic Regional Project' and creates a new category 'Nation Building Program Off-Network Project'. **Item 3** does likewise with respect to the definition of 'approved purposes'. The following table from the Explanatory Memorandum sets out the proposed changes to program names.⁸

Former Name	New Name
AusLink National Project	Nation Building Program National Project
AusLink Transport Development and Innovation Project	Nation Building Program Transport Development and Innovation Project
AusLink Strategic Regional Project	Nation Building Program Off-Network Project
AusLink Black Spot Project	Nation Building Program Black Spot Project
AusLink Roads to Recovery Program	Nation Building Program Roads to Recovery Program

Item 12 inserts a definition of 'Nation Building Program Off-Network Project' by stating that it has the meaning given in section 52. It replaces the Auslink Strategic Regional Project.

8. Explanatory Memorandum, Nation Building Program (National Land Transport) Amendment Bill 2009, p. 4, viewed 22 May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Title%3Anation%20title%3Abuilding%20title%3aprogram%20title%3Aamendment%20title%3Abill%20title%3A2009%20dataset%3Aems;querytype=:rec=0;resCount=Default>

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Item 17 redefines part of the definition of ‘project approval instrument’ by substituting ‘Nation Building Program Off-Network Project’ for ‘Auslink Strategic Regional Project’.

The Commonwealth attaches conditions to land transport funding in Section 18. Section 18 identifies three categories of conditions. First, some are mandatory. They include, for example, the requirement that, in general, public tenders must be called for the construction of Commonwealth-funded projects. A second category is where there is no funding agreement with the funds recipient. In this case, the minister can approve funding and its terms. A third category is where there is a funding agreement. In this case, payments must accord with the terms of the agreement. **Item 33** adds a **new subsection 18(2)** and relates to category three, that is, where there is a funding agreement. **Subsection 18(2)** proposes a condition may be included in a funding agreement by providing that a funding agreement may specify a condition by including any matter in an instrument or other writing, which is in force or existing from time to time. The Explanatory Memorandum contains an example of such an instrument, namely, the ‘standard for best practice cost estimation for publicly funded road and rail construction projects’.⁹ **Items 57 (Nation Building Program Transport Development and Innovation Project), 61, 78 (Nation Building Program Off-Network Project) and 97 (Nation Program Black Spot Project)** contain similar provisions to **item 33**.

Item 38 amends section 24 which deals with public tenders for projects and when they must be called. In general, tenders must be called. However, Section 24 allows the Minister to forego this requirement in certain circumstances. **Item 38** provides for another circumstance, namely, where the cost of the work is less than an amount prescribed by regulation.

Sections 17 and 27 of the Act deal with the determination of conditions when there is no funding agreement. Broadly, section 17 allows the Minister to approve funding while section 27 determines other conditions if there is no funding agreement, allowing the Minister to set other, different and changed conditions. The instrument containing conditions is a legislative instrument. The Explanatory Memorandum notes:

Section 14 of the *Legislative Instruments Act 2003* permits a legislative instrument to incorporate the terms of instruments or documents in existence at the time the legislative instrument was made, but, unless the contrary intention appears, a

9. Explanatory Memorandum, Nation Building Program (National Land Transport) Amendment Bill 2009, p. 5, viewed 22 May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Title%3ANation%20Title%3Abuilding%20Title%3Aprogram%20Title%3Aamendment%20Title%3Abill%20Title%3A2009%20Dataset%3Aems;querytype=:rec=0;resCount=Default>

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legislative instrument cannot incorporate the terms of instruments or documents as in force or existing from time to time.¹⁰

Item 40 amends section 27 to allow the incorporation into the conditions any matter in an instrument or other writing, which is in force or existing from time to time. Subsection 14(2) of the *Legislative Instruments Act 2003* prohibits the incorporation of other written instruments unless the enabling legislation allows the incorporation of this material. **Item 40** states the intention that such references can be made from other written instruments. Such written instruments “may only be applied, adopted or incorporated in the form in which the instrument exists at the date when the legislative instrument takes effect.”¹¹ **Items 58, 79, 98 and 112** contain identical provisions to **item 40**.

As noted, the Bill abolishes the ‘Auslink Strategic Regional Project’ category and replaces it with ‘Nation Building Program Off-Network Project’. **Item 64** changes both the title of section 52 and section 52 itself, accordingly.

Section 55 of the Act deals with when it is appropriate to approve a Strategic Regional project. In essence, section 55 contains criteria the Minister may consider when deciding whether to fund a project. In particular, the Minister may consider the regional consequences of projects. **Items 67, 68 and 69** change section 55 and are among the more important provisions in the Bill. **Item 67** removes the word ‘regional’ from paragraph 55(a) so that it reads ‘industries’ and not ‘regional industries’. **Item 69** similarly removes the word ‘regional’ from paragraph 55(e) so that it reads ‘communities’ and not ‘regional communities’. **Item 68** deletes paragraph 55(b) which allows the Minister to consider ‘the extent to which the project is likely to improve a road, railway or inter-modal transfer facility that is regionally significant’.

Items 85 and 86 need to be read together. Section 71 contains the criteria for determining whether a site is eligible for black spot funding. In particular, paragraph 71(d) states that the site must not be on the National Land Transport Network. **Items 85 and 86** remove this requirement. The effect is to allow funding of black spots on the Land Transport Network and not just Off-Network sites.

Item 100 repeals subsection 87(1) of the Act, which requires the minister to determine an AusLink Roads to Recovery list for the funding period. The Explanatory Memorandum

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10. Explanatory Memorandum, Nation Building Program (National Land Transport) Amendment Bill 2009, p. 6, viewed 22 May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Title%3Anation%20Title%3Abuilding%20Title%3Aprogram%20Title%3Aamendment%20Title%3Abill%20Title%3A2009%20Dataset%3Aems;querytype=:rec=0;resCount=Default>
 11. Attorney-General’s Department, Office of Legislative Drafting, *Legislative Instruments Handbook: a practical guide for compliance with the Legislative Instruments Act 2003 and related matters*, December 2004, p.6.

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states that this subsection is redundant because the Minister has already determined the list to be used as the Nation Building Program Roads to Recovery List for the funding period, 2009-2014.¹² The transitional provisions in **item 121** refer to the existing Auslink Roads to Recovery List for 2009-2014 which will be the Nation Building Program Roads to Recovery List for the same period.¹³

Section 88 of the Act allows the Minister to vary a Roads to Recovery List. For example, when councils have amalgamated, the Minister can give the funds previously designated for those councils to the merged council. **Item 107** adds subsection 88(2B) which allows the Minister to increase the amount payable to a person or body named on Roads to Recovery List.

Part 2—Application and transitional provisions

Item 113 contains two definitions. The ‘new law’ is the proposed Nation Building Program (National Land Transport) Amendment Act 2009 while the ‘old law’ is the *AusLink (National Land Transport) Act 2005*.

Item 114 relates to **items 34 to 38** which deal with public tenders. **Item 114** provides that **items 34 to 38** apply only to projects approved on or after the commencement date of **items 34 to 38**, that is, the day after this Bill receives the Royal Assent.

Subitem 115(1) provides that an instrument determining a National Land Transport Network that was made under section 5 of the old law, is taken as if it applies to section 5 of the new law. **Subitem 115(2)** provides that **subitem 115(1)** does not mean that the instrument cannot be changed.

Item 116 is a transitional provision dealing with National Projects. **Item 116** provides that AusLink National Projects are to be treated as if they were Nation Building Program National Projects. Further, instruments, funding agreements and funding conditions applying to an AusLink National Project are to be treated as if they were made for a Nation Building Program National Project. **Items 117, 119 and 120** contain identical provisions to **item 116** except that they relate respectively to Transport Development and Innovation Projects, Strategic Regional Projects, and Black Spot Projects, and contain appropriate cross references to the sections of the old law.

12. Explanatory Memorandum, Nation Building Program (National Land Transport) Amendment Bill 2009, p. 13, viewed 25 May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Title%3ANation%20Title%3Abuilding%20Title%3Aprogram%20Title%3Aamendment%20Title%3Abill%20Title%3A2009%20Dataset%3Aems;querytype=:rec=0;resCount=Default>

13. Explanatory Memorandum, p. 17.

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Item 121 contains transitional provisions related to the Roads to Recovery Program and distinguishes between two funding periods: 1 July 2005 to 30 June 2009, and 1 July 2009 to 30 June 2014. **Subitem 121(1)** relates to the first funding period. **Subitem 121(1)** provides that the old law continues to apply with respect to payments made under the AusLink Roads to Recovery Program during the first funding period. **Subitem 121(2)** relates to the second funding period and, in effect, transfers the amounts provided under the old law to the new law. Similarly, **subitem 121(3)** transfers payment conditions made under section 90 the old law to the new law and **subitem 121(5)** provides for notices made under the old law to continue to apply under the new law. However, **subitem 121(4)** provides that **subitem 121(3)** does not mean that payment conditions cannot subsequently be changed and **subitem 121(6)** similarly provides that subitem 121(5) does not prevent the variation or revocation of an exemption or condition after the commencement of **subitem 121(6)** with respect to notices.

Item 122 Transitional regulations provides that the Governor-General may make regulations prescribing matters of a transitional nature (including saving or application provisions) relating to amendments made by the terms of the Bill.

Concluding comments

As noted, **items 67, 68 and 68** remove the requirement for the Minister to consider the regional consequences of projects. The current provisions are, in essence, a form of ‘protection’ for regional industries. The negative effects of protection on national income and welfare have been well documented. The proposed provisions would create a level playing field by placing regional and non-regional industries on the same footing while still allowing funding of regional industries. It could be argued that **items 67 to 69** would result in less funds being spent in regional areas. But the case for spending on a regional industry—as for all industries—should be based on the merit of its arguments and not on a blanket preference.

Item 85 removes the current requirement that sites eligible for black spot funding must not be on the National Land Transport Network. It could be argued that the current requirement is unduly restrictive because there are black spots both on and off the Network. It can therefore be asked why funding should be confined to non-Network sites. On the other hand, it could be argued that the current requirement ensures that funds are spent on non-Network sites and that the level of spending on non-Network sites will fall as funds are redirected to black spots on Network sites. On the face of it, there does not seem to be a case for restricting black spot funding to non-Network sites. If it could be demonstrated that, overall, accident histories on non-Network sites are worse than on the Network, there could be a prima facie case for continuing the current system. Even then, there may be particular sites on the Network warranting funding over non-Network sites.

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Appendix

Table 3: Commonwealth road expenditure by state/territory 2004-05 prices

Year	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Total
1985-86	733.3	468.1	471.5	218.1	321.4	95.6	83.5	85.8	2 477.0
1986-87	797.2	443.6	464.3	197.3	287.0	87.7	73.2	89.0	2 439.4
1987-88	702.5	428.6	436.2	159.5	264.2	80.3	66.9	0.0	2 138.2
1988-89	634.0	398.9	398.2	145.8	259.8	77.5	63.5	0.0	1 977.7
1989-90	687.4	434.7	420.2	145.1	249.6	77.3	63.4	18.9	2 096.6
1990-91	773.9	476.6	451.7	157.9	250.2	80.4	82.9	18.8	2 292.3
1991-92	846.4	513.6	479.3	164.4	262.7	87.9	74.4	22.1	2 450.7
1992-93	1002.1	635.9	646.6	212.2	310.5	111.0	98.6	26.6	3 043.5
1993-94	770.6	451.5	422.1	144.7	209.5	75.0	55.6	15.9	2 144.8
1994-95	750.1	433.0	400.8	136.4	204.0	76.3	53.5	19.0	2 073.1
1995-96	726.5	435.1	423.4	155.5	231.2	82.2	73.0	23.3	2 150.2
1996-97	724.0	392.8	465.2	156.9	238.6	91.2	71.1	25.5	2 165.3
1997-98	784.3	320.3	451.6	203.1	234.5	84.1	71.8	26.2	2 175.8
1998-99	741.2	376.7	460.3	216.9	247.3	89.5	71.3	41.4	2 244.5
1999-00	703.2	337.9	468.2	165.6	217.5	94.1	73.1	58.1	2 117.8
2000-01	585.8	271.3	458.8	99.0	188.5	69.5	53.0	21.4	1 747.3
2001-02	659.4	488.0	458.1	133.3	242.2	63.2	51.4	39.8	2 135.3
2002-03	644.7	396.5	421.9	111.3	206.8	61.7	47.6	22.7	1 913.3
2003-04	735.4	305.9	438.3	126.8	206.6	53.4	44.5	22.4	1 933.3

Source: BITRE, [Australian Transport Statistics Yearbook 2007](#)

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