



# **National Land Transport Act 2014**

**No. 93, 2005**

## **Compilation No. 4**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *National Land Transport Act 2014* that shows the text of the law as amended and in force on 14 April 2015 (the *compilation date*).

This compilation was prepared on 16 April 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Part 1—Preliminary</b>	1
1	Short title..... 1
2	Commencement..... 1
3	Object of Act..... 2
4	Definitions..... 2
4A	Alternative constitutional basis..... 7
<b>Part 2—The National Land Transport Network</b>	10
5	Determination of the National Land Transport Network..... 10
6	Variation of the National Land Transport Network..... 11
7	Publication..... 12
<b>Part 3—Investment Projects</b>	13
<b>Division 1—Approval of Investment Projects</b>	13
8	What is an Investment Project?..... 13
9	Approval of Investment Projects..... 13
10	What projects are eligible for approval?..... 13
11	Is it appropriate to approve a project?..... 14
12	Submission of particulars of projects..... 14
13	Matters specified in project approval instrument..... 15
14	Requirements with which funding agreements must comply..... 16
15	Variation or revocation of project approval instrument..... 16
<b>Division 2—Provision of Commonwealth funding</b>	17
16	Commonwealth funding for Investment Projects..... 17
17	Approval of provision of Commonwealth funding if no funding agreement..... 17
<b>Division 3—Conditions that apply to Commonwealth funding</b>	19
<b>Subdivision A—Sources of conditions</b>	19
18	Sources of conditions..... 19
<b>Subdivision B—The mandatory conditions</b>	19
19	This Subdivision sets out the mandatory conditions..... 19
20	Funding payment must be expended on the funded project..... 19
21	Funding recipient must give Minister audited financial statements..... 20
22	Funding recipient must allow inspections by authorised persons..... 20

---

23	Funding recipient must provide information on request .....	20
24	State or State authority must call for public tenders for certain work.....	21
25	State or State authority using funding payment to acquire interest in land—obligation if the interest is sold or disposed of .....	22
26	Amount repayable on breach of condition.....	23
<b>Subdivision C—Determination of other conditions if no funding agreement</b>		
27	Determination of other conditions if no funding agreement .....	24
<b>Part 4—Transport Development and Innovation Projects</b>		<b>25</b>
<b>Division 1—Approval of projects as Transport Development and Innovation Projects</b>		
28	What is a Transport Development and Innovation Project?.....	25
29	Approval of Transport Development and Innovation Projects .....	25
30	What projects are eligible for approval?.....	25
31	Is it appropriate to approve a project? .....	26
32	Submission of particulars of projects.....	26
33	Matters specified in project approval instrument.....	27
34	Requirements with which funding agreements must comply .....	28
35	Variation or revocation of project approval instrument .....	28
<b>Division 2—Provision of Commonwealth funding</b>		<b>30</b>
36	Commonwealth funding for Transport Development and Innovation Projects.....	30
37	Approval of provision of Commonwealth funding if no funding agreement .....	30
<b>Division 3—Conditions that apply to Commonwealth funding</b>		<b>32</b>
<b>Subdivision A—Sources of conditions</b>		
38	Sources of conditions .....	32
<b>Subdivision B—The mandatory conditions</b>		
39	This Subdivision sets out the mandatory conditions.....	32
40	Funding payment must be expended on the funded project.....	32
41	Funding recipient must give Minister audited financial statements .....	33
42	Funding recipient must allow inspections by authorised persons.....	33
43	Amount repayable on breach of condition.....	33

---

---

<b>Subdivision C—Determination of other conditions if no funding agreement</b>	34
44    Determination of other conditions if no funding agreement .....	34
<b>Part 5—Funding for land transport research entities</b>	35
45    Definitions .....	35
46    Approval of funding for land transport research entities .....	35
47    Submission of particulars to get funding .....	36
48    Commonwealth funding for land transport research entities .....	37
49    Requirements with which funding agreements must comply .....	37
50    Conditions of funding .....	37
51    Relationship with Part 4 .....	37
51A    Funding arrangements with non-corporate Commonwealth entities .....	38
<b>Part 7—Black Spot Projects</b>	39
<b>Division 1—Approval of projects as Black Spot Projects</b>	39
69    What is a Black Spot Project? .....	39
70    Approval of Black Spot Projects .....	39
71    What projects are eligible for approval? .....	39
72    Is it appropriate to approve a project? .....	39
73    Submission of particulars of projects.....	40
74    Matters specified in project approval instrument.....	40
75    Requirements with which funding agreements must comply .....	41
76    Variation or revocation of project approval instrument .....	41
<b>Division 2—Provision of Commonwealth funding</b>	42
77    Commonwealth funding for Black Spot Projects .....	42
78    Approval of provision of Commonwealth funding if no funding agreement .....	42
<b>Division 3—Conditions that apply to Commonwealth funding</b>	44
<b>Subdivision A—Sources of conditions</b>	44
79    Sources of conditions .....	44
<b>Subdivision B—The mandatory conditions</b>	44
80    This Subdivision sets out the mandatory conditions.....	44
81    Funding payment must be expended on the funded project.....	44
82    Funding recipient must give Minister audited financial statements .....	45
83    Funding recipient must allow inspections by authorised persons.....	45

---

---

84	Funding recipient must maintain records relating to motor vehicle crashes.....	45
85	Amount repayable on breach of condition.....	46
<b>Subdivision C—Determination of other conditions if no funding agreement</b>		46
86	Determination of other conditions if no funding agreement .....	46
<b>Part 8—Roads to Recovery Program</b>		48
87	Roads to Recovery List.....	48
88	Variation of Roads to Recovery List .....	48
89	Payments to persons and bodies specified in Roads to Recovery List .....	50
90	Conditions that apply to payments.....	50
91	Minister’s power to waive conditions etc. ....	51
<b>Part 9—Miscellaneous</b>		53
92	Recovery of amounts as debt due to Commonwealth .....	53
92A	Treatment of partnerships.....	53
93	Delegation .....	54
94	Annual report on operation of Act.....	54
95	Provision of funding otherwise than under this Act.....	54
96	Regulations.....	54
<b>Endnotes</b>		55
<b>Endnote 1—About the endnotes</b>		55
<b>Endnote 2—Abbreviation key</b>		56
<b>Endnote 3—Legislation history</b>		57
<b>Endnote 4—Amendment history</b>		58

# An Act to provide for the funding of projects related to land transport matters, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *National Land Transport Act 2014*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Parts 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 July 2005
2. Parts 3, 4, 5, 6, 7 and 8	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	28 July 2005 (see F2005L02026)
3. Part 9	The day on which this Act receives the Royal Assent.	6 July 2005

Section 3

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Object of Act

The object of this Act 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.

### 4 Definitions

- (1) In this Act, unless the contrary intention appears:

***appropriate auditor*** means:

- (a) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of a State—the Auditor-General of the State; or
- (b) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of the Commonwealth—the Auditor-General of the Commonwealth; or
- (c) in relation to any other person or body—a person (other than a director, officer or employee of the person or body) who is:
  - (i) registered as a company auditor or a public accountant under a law in force in a State; or
  - (ii) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Accountants.

***approved funding recipient*** means 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;



(c) a Transport Development and Innovation Project.

**approved purposes**, in relation to the following projects, means 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:

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

**authority of a State** means a body:

- (a) that is established by a State or by a law of a State; or
  - (b) in which a State has a controlling interest;
- but does not include a local government authority.

**Black Spot Project** has the meaning given by section 69.

**construction:**

- (a) when used in relation to a railway or road, has a meaning affected by subsection (2); and
- (b) when used in relation to an inter-modal transfer facility, has a meaning affected by subsection (3).

**eligible funding recipient** means:

- (a) a State; or
  - (b) an authority of a State; or
  - (c) a local government authority; or
  - (d) any other body corporate;
- and, when used in Parts 4 and 5, includes a partnership.

Note: Section 92A sets out how this Act applies to partnerships.

**funding agreement:**

- (a) when used in Part 3, 4 or 7—means a written agreement between the Commonwealth and an eligible funding recipient relating to the provision of Commonwealth funding under that Part for a particular project; and

- (b) when used in Part 5—means a written agreement between the Commonwealth and a land transport research entity (within the meaning of that Part) for the provision of Commonwealth funding for the entity under that Part.

**Indian Ocean Territory** means:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands.

**inter-modal transfer facility** means a facility for the transfer of cargo or passengers from one mode of transport to another. At least one of the modes of transport must be road or rail.

**Investment Project** has the meaning given by section 8.

**local government authority** means a body established for the purposes of local government by or under a law applying in a State or Territory.

**maintenance**, in relation to a road, railway or inter-modal transfer facility, includes works and repairs to keep the road, railway or facility in a safe and useable condition.

**National Land Transport Network** means the National Land Transport Network, as in force from time to time, that is determined by the Minister under Part 2.

**non-corporate Commonwealth entity** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Note: Section 51A deals with funding arrangements with non-corporate Commonwealth entities.

**project** includes a program.

**project approval instrument** means:

- (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).

**public utility** has a meaning affected by subsection (4).

**railway** includes any of the following:

- (a) railway signs;
- (b) railway control equipment;
- (c) railway communications equipment;
- (d) railway lighting equipment;
- (e) a bridge or tunnel associated with a railway, including a bridge or tunnel for the use of pedestrians;
- (f) any other thing that is specified in the regulations for the purposes of this definition, being a thing that is associated with a railway.

**road**:

- (a) subject to paragraph (b), includes any of the following associated with a road:
  - (i) traffic signs;
  - (ii) traffic control equipment;
  - (iii) street lighting equipment;
  - (iv) a bridge or tunnel, including a bridge or tunnel for the use of pedestrians;
  - (v) a path for the use of persons riding bicycles;
  - (va) a facility off the road used by heavy vehicles in connection with travel on the road (for example, a rest area or weigh station);
  - (vi) any other thing that is specified in the regulations for the purposes of this definition; and
- (b) when used in Part 8:
  - (i) also includes a vehicular ferry associated with a road; but
  - (ii) does not include the other things specified in the regulations referred to in subparagraph (a)(vi).

Section 4

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**Roads to Recovery funding period** means the period specified in the Roads to Recovery List under subsection 87(1).

**Roads to Recovery List** means the list in force under subsection 87(1) of this Act.

**State** includes the Australian Capital Territory and the Northern Territory.

**Transport Development and Innovation Project** has the meaning given by section 28.

*Meaning of construction in relation to a railway or road*

- (2) In this Act, **construction**, when used in relation to a railway or road, includes:
- (a) the reconstruction or realignment of the railway or road; and
  - (b) the bringing of the railway or road to a higher standard; and
  - (c) investigation and associated engineering studies in connection with:
    - (i) the construction, reconstruction or realignment of the railway or road; or
    - (ii) the bringing of the railway or road to a higher standard; or
    - (iii) the planning of alternative routes for the railway or road; and
  - (d) the acquisition of an interest in land for the purpose of:
    - (i) constructing, reconstructing or realigning the railway or road; or
    - (ii) the bringing of the railway or road to a higher standard; and
  - (e) in relation to a matter described in paragraph (a) or (b)—the doing of any other thing specified in the regulations for the purposes of this subsection;
- but does not include the maintenance of the railway or road.

*Meaning of **construction** in relation to an inter-modal transfer facility*

- (3) In this Act, **construction**, when used in relation to an inter-modal transfer facility, includes:
- (a) the reconstruction of the facility; and
  - (b) work to enable the facility to operate more efficiently; and
  - (c) investigation and associated engineering studies in connection with:
    - (i) the construction or reconstruction of the facility; or
    - (ii) work to enable the facility to operate more efficiently;
- but does not include maintenance of the facility.

*Meaning of **public utility***

- (4) The regulations may define or otherwise clarify the meaning of **public utility** for the purposes of this Act.

#### **4A Alternative constitutional basis**

- (1) Without limiting its effect apart from this section, this Act also has effect in relation to Commonwealth funding as provided by this section.
- (2) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in connection with trade or commerce:
- (a) between Australia and other countries; or
  - (b) among the States; or
  - (c) between Territories or between a Territory and a State.
- (3) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding for a corporation to which paragraph 51(xx) of the Constitution applies.

Section 4A

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- (4) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding:
  - (a) in relation to a Territory government; or
  - (b) in relation to projects or activities in a Territory.
- (5) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in relation to places acquired by the Commonwealth for public purposes.
- (6) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding:
  - (a) by way of financial assistance to a State; or
  - (b) in relation to railway construction and extension in a State with the consent of the State.
- (7) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in relation to external affairs.
- (8) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding for purposes relating to the defence of Australia.
- (9) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in so far as it is appropriate for the funding to be provided by the Commonwealth as the national Government of Australia.
- (10) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in so far as it is appropriate for the Parliament, as the national Parliament of Australia, to authorise the Minister to provide the funding.

- (11) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding for purposes relating to the executive power of the Commonwealth.

## Part 2—The National Land Transport Network

### 5 Determination of the National Land Transport Network

- (1) The Minister must, in writing, determine a National Land Transport Network.
- (2) The National Land Transport Network is to consist of such of the following in the States as the Minister considers, subject to subsection (3), should be included:
  - (a) existing and proposed roads:
    - (i) connecting 2 capital cities; or
    - (ii) connecting a capital city and a major centre of commercial activity; or
    - (iii) connecting 2 major centres of commercial activity; or
    - (iv) connecting a capital city or a major centre of commercial activity and an inter-modal transfer facility; or
    - (v) in a capital city or a major centre of commercial activity that connect 2 or more roads covered by any of subparagraphs (i) to (iv); or
    - (vi) connecting a road covered by any of subparagraphs (i) to (v) and an inter-modal transfer facility;
  - (b) existing and proposed railways:
    - (i) connecting 2 capital cities; or
    - (ii) connecting a capital city and a major centre of commercial activity; or
    - (iii) connecting 2 major centres of commercial activity; or
    - (iv) connecting a capital city or a major centre of commercial activity and an inter-modal transfer facility; or
    - (v) in a capital city or a major centre of commercial activity that connect 2 or more railways covered by any of subparagraphs (i) to (iv); or



- (vi) connecting a railway covered by any of subparagraphs (i) to (v) and an inter-modal transfer facility;
  - (c) existing and proposed inter-modal transfer facilities which can be accessed by a road or railway covered by paragraph (a) or (b).
- (3) The Minister must not include an existing or proposed road, railway or inter-modal transfer facility in the National Land Transport Network unless the Minister is satisfied that the road, railway or facility is or will be important for either or both of the following:
- (a) the development of international, inter-State or inter-regional trade and commerce;
  - (b) the facilitation of international, inter-State or inter-regional travel.
- (4) An instrument determining the National Land Transport Network is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.

## **6 Variation of the National Land Transport Network**

- (1) The Minister may, in writing, vary the National Land Transport Network.
- (2) The Minister must not vary the National Land Transport Network unless the composition of the Network, once the variation has been made, will accord with the requirements of section 5.
- (3) An instrument varying the National Land Transport Network is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.

**7 Publication**

The Minister must cause the determination, or any variation, of the National Land Transport Network to be published in such way or ways as the Minister considers appropriate.

Note: This section applies in addition to the requirements of the *Legislative Instruments Act 2003*.

## **Part 3—Investment Projects**

### **Division 1—Approval of Investment Projects**

#### **8 What is an Investment Project?**

An *Investment Project* is a project for which an approval by the Minister under subsection 9(1) is in force.

#### **9 Approval of Investment Projects**

- (1) The Minister may, in writing, approve a project as an Investment Project if, and only if:
  - (a) the Minister is satisfied that the project is eligible for approval (see section 10); and
  - (b) the Minister considers that it is appropriate to approve the project (see section 11).
- (2) An instrument approving a project is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **10 What projects are eligible for approval?**

A project is 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.

Note: The definition of *construction* in section 4 covers some kinds of work on an existing road, railway or inter-modal transfer facility (hence the references above to the construction of an existing road, railway or inter-modal transfer facility).

## **11 Is it appropriate to approve a project?**

The matters to which the Minister may have regard in deciding whether it is appropriate to approve a project as an Investment Project include, but are not limited to, the following matters:

- (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, integration, 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.

## **12 Submission of particulars of projects**

- (1) The Minister may invite the submission of particulars of projects for consideration for approval as Investment Projects.
- (2) An invitation may be given:
  - (a) to such persons or bodies as the Minister considers appropriate; and
  - (b) by any method that the Minister considers appropriate.

- (3) Subject to section 9, the Minister may approve a project as an Investment Project, whether or not particulars of the project were submitted in response to an invitation.
- (4) The Minister is not required to consider a project for approval as an Investment Project unless such particulars of the project as the Minister requires have been submitted to the Minister.

### **13 Matters specified in project approval instrument**

- (1) The project approval instrument for an Investment Project must:
  - (a) identify the project; and
  - (b) specify the maximum funding amount that the Commonwealth may contribute to the project; and
  - (c) identify the eligible funding recipient to which the funding may be paid; and
  - (d) if the approval is conditional on a funding agreement being entered into with the eligible funding recipient—contain a statement to that effect.
- (2) The project approval instrument for an Investment Project must state that the approval is conditional on a funding agreement being entered into with the eligible funding recipient, unless the recipient is:
  - (a) a State; or
  - (b) an authority of a State; or
  - (c) a local government authority; or
  - (d) a body in which one of the following persons or bodies has, or 2 or more of the following persons or bodies together have, a controlling interest:
    - (i) the Commonwealth;
    - (ii) a State;
    - (iii) an authority of a State.

Note: This subsection does not prevent the project approval instrument from stating that the approval is conditional on a funding agreement being entered into with a funding recipient of a kind referred to in paragraph (a), (b), (c) or (d).

- (3) The project approval instrument for an Investment Project may exclude one or more specified purposes from being purposes on which funding may be expended.

#### **14 Requirements with which funding agreements must comply**

If the project approval instrument for an Investment Project states that the approval is conditional on a funding agreement being entered into with the approved funding recipient:

- (a) the total amount of funding that the agreement provides for must not exceed the maximum funding amount specified in the project approval instrument; and
- (b) the agreement must comply with any other requirements (for example, requirements relating to the inclusion of conditions) specified in the project approval instrument.

#### **15 Variation or revocation of project approval instrument**

- (1) The Minister may, in writing, vary or revoke the project approval instrument for an Investment Project.
- (2) A variation may be of a matter dealt with in the project approval instrument before the variation, or to include a new matter in the project approval instrument. The instrument as varied must be consistent with section 13.

Note: For example, the project approval instrument may be varied to change the eligible funding recipient to which funding will be paid, or to specify a purpose that is excluded from the purposes on which funding may be expended.

- (3) If there is a funding agreement with the approved funding recipient, the powers given by subsection (1) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) An instrument varying or revoking the project approval instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Division 2—Provision of Commonwealth funding**

### **16 Commonwealth funding for Investment Projects**

- (1) Commonwealth funding for an Investment Project may be provided to the approved funding recipient:
  - (a) in accordance with section 17; or
  - (b) if the project approval instrument states that the approval is conditional on a funding agreement being entered into—in accordance with a funding agreement, entered into with the approved funding recipient, that satisfies the requirements of section 14.
- (2) The payments of funding are to be made out of money appropriated by the Parliament.

### **17 Approval of provision of Commonwealth funding if no funding agreement**

- (1) The Minister may, in writing, approve the provision of Commonwealth funding for an Investment Project to the approved funding recipient. The Minister may, in writing, vary or revoke the approval.
- (2) The funding is to be provided in one or more instalments paid to the approved funding recipient. Subject to subsection (3), the amount and timing of an instalment are as determined by the Minister.
- (3) The total amount of funding provided for the project to the approved funding recipient must not exceed the maximum funding amount specified in the project approval instrument.
- (4) An instrument:
  - (a) approving the provision of Commonwealth funding, or varying or revoking such an approval; or

**Part 3** Investment Projects

**Division 2** Provision of Commonwealth funding

Section 17

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(b) determining the amount or timing of an instalment of funding;

is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.



## **Division 3—Conditions that apply to Commonwealth funding**

### **Subdivision A—Sources of conditions**

#### **18 Sources of conditions**

- (1) The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for an Investment Project (the *funded project*) to an eligible funding recipient (the *funding recipient*) are:
  - (a) the mandatory conditions (see Subdivision B); and
  - (b) either:
    - (i) if the funding payment is provided in accordance with section 17—the conditions (if any) determined under Subdivision C; or
    - (ii) if the funding payment is provided in accordance with a funding agreement—the conditions specified in the funding agreement.
- (2) A funding agreement may specify a condition by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **Subdivision B—The mandatory conditions**

#### **19 This Subdivision sets out the mandatory conditions**

The mandatory conditions are as set out in this Subdivision.

#### **20 Funding payment must be expended on the funded project**

The funding payment must be wholly expended on approved purposes in relation to the funded project.

## **21 Funding recipient must give Minister audited financial statements**

For each financial year in which the funding recipient spends or retains any of the funding payment, the funding recipient must give to the Minister as soon as practicable, and in any event within 6 months, after the end of that year:

- (a) a written statement as to:
  - (i) the amount spent by the funding recipient during that year out of the funding payment; and
  - (ii) the amount retained by the funding recipient out of the funding payment as at the end of that year; and
- (b) a report in writing and signed by the appropriate auditor stating whether, in the auditor's opinion:
  - (i) the statement is based on proper accounts and records; and
  - (ii) the statement is in agreement with the accounts and records; and
  - (iii) the expenditure referred to in subparagraph (a)(i) has been on the funded project.

## **22 Funding recipient must allow inspections by authorised persons**

The funding recipient must, at all reasonable times, permit a person authorised by the Minister:

- (a) to inspect any work involved in the carrying out of the funded project; and
- (b) to inspect and make copies of any documents relating to the funded project.

## **23 Funding recipient must provide information on request**

The funding recipient must, as and when requested by the Minister, provide information relevant to the progress of the funded project or the operation or condition of the National Land Transport Network.

**24 State or State authority must call for public tenders for certain work**

- (1) If the funding recipient is a State or an authority of a State, the funding recipient must call for public tenders for all work on the funded project, other than:
  - (a) work that is maintenance of a road or railway; or
  - (b) work that is to be carried out by a public utility; or
  - (c) work that the Minister has, by a written exemption relating to the project, exempted from this condition because, in the Minister's opinion:
    - (i) the work is urgently required because of an emergency; or
    - (ii) the work is of such a minor nature that the invitation of tenders for the work would involve undue additional cost; or
    - (iii) the work is of a kind for which it is not practicable to prepare adequate tender specifications; or
    - (iv) the work is of a kind for which competitive tenders are unlikely to be received; or
    - (v) the work will contribute to employment in a region; or
    - (vi) the cost of the work is less than an amount determined by the Minister by legislative instrument under subsection (4) for the purposes of this subparagraph.
- (2) The Minister may, in writing, vary or revoke an exemption referred to in paragraph (1)(c).
- (3) An instrument granting, varying or revoking an exemption referred to in paragraph (1)(c) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (4) The Minister may, by legislative instrument, determine an amount for the purposes of subparagraph (1)(c)(vi).

**25 State or State authority using funding payment to acquire interest in land—obligation if the interest is sold or disposed of**

- (1) If the funding recipient is a State or an authority of a State, and the recipient sells or disposes of an interest in land that was acquired using all or part of the funding payment—the recipient must, subject to subsection (2), pay to the Commonwealth an amount calculated using the formula:

$$\text{Consideration or value} \times \frac{\text{Commonwealth contribution}}{\text{Acquisition cost}}$$

where:

**acquisition cost** means the amount paid by the funding recipient to acquire the interest (but not deducting any other costs associated with that acquisition).

**Commonwealth contribution** means so much of the funding payment as was used to meet the acquisition cost.

**consideration or value** means the greater of:

- (a) the consideration received by the funding recipient for the sale or disposal (but not deducting any costs associated with that sale or disposal); and
  - (b) the market value of the interest at the time of the sale or disposal.
- (1A) The funding recipient must, as soon as practicable after selling or disposing of an interest in land that was acquired using all or part of the funding payment, notify the Minister of the sale or disposal.
- (2) The funding recipient may instead, with the written approval of the Minister, spend an amount equal to the amount worked out under subsection (1) on approved purposes in relation to another Investment Project.

- (3) The Minister may, in writing, vary or revoke an approval referred to in subsection (2).
- (4) If the funding recipient spends an amount in accordance with subsection (2) on another Investment Project, then, for the purposes of the application of this Act in relation to that other project:
  - (a) the funding recipient is taken to have received a payment of Commonwealth funding in relation to that other project equal to the amount so spent; and
  - (b) the amount so spent is taken to have been paid out of that payment of Commonwealth funding.
- (5) An instrument granting, varying or revoking an approval referred to in subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (6) For the purposes of this section, a reference to acquiring an interest in land using all or part of the funding payment includes a reference to compulsorily acquiring an interest in land and using all or part of the funding payment to pay compensation for the acquisition.

## **26 Amount repayable on breach of condition**

- (1) If the Minister notifies the funding recipient in writing that the Minister is satisfied that the funding recipient has failed to fulfil any condition that applies to the funding payment (whether that condition is specified in this Subdivision, in a funding agreement or in a determination under Subdivision C), then the funding recipient must repay to the Commonwealth an amount equal to so much of the funding payment as the Minister specifies in the notice.
- (2) The Minister may, by notice in writing, vary or revoke a notice given under subsection (1).

- (3) If there is a funding agreement with the funding recipient, the powers given to the Minister by subsections (1) and (2) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) A notice under subsection (1), or an instrument varying or revoking such a notice, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Subdivision C—Determination of other conditions if no funding agreement**

**27 Determination of other conditions if no funding agreement**

- (1) The Minister may, in writing, determine other conditions that apply to the provision of funding in accordance with section 17.
- (2) The Minister may determine different conditions to apply in different classes of situations.
- (3) The Minister may, in writing, vary or revoke conditions determined under subsection (1).
- (4) An instrument determining, varying or revoking conditions is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.
- (5) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, an instrument determining or varying conditions may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

## **Part 4—Transport Development and Innovation Projects**

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

#### **28 What is a Transport Development and Innovation Project?**

A *Transport Development and Innovation Project* is a project for which an approval by the Minister under subsection 29(1) is in force.

#### **29 Approval of Transport Development and Innovation Projects**

- (1) The Minister may, in writing, approve a project as a Transport Development and Innovation Project if, and only if:
  - (a) the Minister is satisfied that the project is eligible for approval (see section 30); and
  - (b) the Minister considers that it is appropriate to approve the project (see section 31).
- (2) An instrument approving a project is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **30 What projects are eligible for approval?**

A project is eligible for approval as a Transport Development and Innovation Project if the project is for any of the following:

- (a) planning, research, investigations, studies or analysis of matters related to the present or future development or usage of the National Land Transport Network;
- (b) research or development related to technology or practices that will, or may, be used in connection with transport operations on the National Land Transport Network;

- (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.

### **31 Is it appropriate to approve a project?**

The matters to which the Minister may have regard in deciding whether it is appropriate to approve a project as a Transport Development and Innovation Project include, but are not limited to, the following matters:

- (a) the extent to which the project is likely to improve the efficiency, security or safety of transport operations on the National Land Transport Network;
- (b) the extent to which the project is likely to improve the economic, environmental or social impact or performance of the National Land Transport Network, or of transport operations on the Network;
- (c) the extent to which the project is likely to assist better-informed decision-making in relation to future expenditure under the Act.

### **32 Submission of particulars of projects**

- (1) The Minister may invite the submission of particulars of projects for consideration for approval as Transport Development and Innovation Projects.
- (2) An invitation may be given:
  - (a) to such persons or bodies as the Minister considers appropriate; and



- (b) by any method that the Minister considers appropriate.
- (3) Subject to section 29, the Minister may approve a project as a Transport Development and Innovation Project, whether or not particulars of the project were submitted in response to an invitation.
- (4) The Minister is not required to consider a project for approval as a Transport Development and Innovation Project unless such particulars of the project as the Minister requires have been submitted to the Minister.

### **33 Matters specified in project approval instrument**

- (1) The project approval instrument for a Transport Development and Innovation Project must:
  - (a) identify the project; and
  - (b) specify the maximum funding amount that the Commonwealth may contribute to the project; and
  - (c) identify the eligible funding recipient to which the funding may be paid; and
  - (d) if the approval is conditional on a funding agreement being entered into with the eligible funding recipient—contain a statement to that effect.
- (2) The project approval instrument for a Transport Development and Innovation Project must state that the approval is conditional on a funding agreement being entered into with the eligible funding recipient, unless the recipient is:
  - (a) a State; or
  - (b) an authority of a State; or
  - (c) a local government authority; or
  - (d) a body in which one of the following persons or bodies has, or 2 or more of the following persons or bodies together have, a controlling interest:
    - (i) the Commonwealth;
    - (ii) a State;

(iii) an authority of a State.

Note: This subsection does not prevent the project approval instrument from stating that the approval is conditional on a funding agreement being entered into with a funding recipient of a kind referred to in paragraph (a), (b), (c) or (d).

- (3) The project approval instrument for a Transport Development and Innovation Project may exclude one or more specified purposes from being purposes on which funding may be expended.

### **34 Requirements with which funding agreements must comply**

If the project approval instrument for a Transport Development and Innovation Project states that the approval is conditional on a funding agreement being entered into with the approved funding recipient:

- (a) the total amount of funding that the agreement provides for must not exceed the maximum funding amount specified in the project approval instrument; and
- (b) the agreement must comply with any other requirements (for example, requirements relating to the inclusion of conditions) specified in the project approval instrument.

### **35 Variation or revocation of project approval instrument**

- (1) The Minister may, in writing, vary or revoke the project approval instrument for a Transport Development and Innovation Project.
- (2) A variation may be of a matter dealt with in the project approval instrument before the variation, or to include a new matter in the project approval instrument. The instrument as varied must be consistent with section 33.

Note: For example, the project approval instrument may be varied to change the eligible funding recipient to which funding will be paid, or to specify a purpose that is excluded from the purposes on which funding may be expended.

- (3) If there is a funding agreement with the approved funding recipient, the powers given by subsection (1) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) An instrument varying or revoking the project approval instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Division 2—Provision of Commonwealth funding**

### **36 Commonwealth funding for Transport Development and Innovation Projects**

- (1) Commonwealth funding for a Transport Development and Innovation Project may be provided to the approved funding recipient:
  - (a) in accordance with section 37; or
  - (b) if the project approval instrument for the project states that the approval is conditional on a funding agreement being entered into—in accordance with a funding agreement, entered into with the approved funding recipient, that satisfies the requirements of section 34.
- (2) The payments of funding are to be made out of money appropriated by the Parliament.

### **37 Approval of provision of Commonwealth funding if no funding agreement**

- (1) The Minister may, in writing, approve the provision of Commonwealth funding for a Transport Development and Innovation Project to the approved funding recipient. The Minister may, in writing, vary or revoke the approval.
- (2) The funding is to be provided in one or more instalments paid to the approved funding recipient. Subject to subsection (3), the amount and timing of an instalment are as determined by the Minister.
- (3) The total amount of funding provided for the project to the approved funding recipient must not exceed the maximum funding amount specified in the project approval instrument.

- (4) An instrument:
- (a) approving the provision of Commonwealth funding, or varying or revoking such an approval; or
  - (b) determining the amount or timing of an instalment of funding;
- is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Division 3—Conditions that apply to Commonwealth funding**

### **Subdivision A—Sources of conditions**

#### **38 Sources of conditions**

- (1) The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for a Transport Development and Innovation Project (the *funded project*) to an eligible funding recipient (the *funding recipient*) are:
  - (a) the mandatory conditions (see Subdivision B); and
  - (b) either:
    - (i) if the funding payment is provided in accordance with section 37—the conditions (if any) determined under Subdivision C; or
    - (ii) if the funding payment is provided in accordance with a funding agreement—the conditions specified in the funding agreement.
- (2) A funding agreement may specify a condition by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **Subdivision B—The mandatory conditions**

#### **39 This Subdivision sets out the mandatory conditions**

The mandatory conditions are as set out in this Subdivision.

#### **40 Funding payment must be expended on the funded project**

The funding payment must be wholly expended on approved purposes in relation to the funded project.

#### **41 Funding recipient must give Minister audited financial statements**

For each financial year in which the funding recipient spends or retains any of the funding payment, the funding recipient must give to the Minister as soon as practicable, and in any event within 6 months, after the end of that year:

- (a) a written statement as to:
  - (i) the amount spent by the funding recipient during that year out of the funding payment; and
  - (ii) the amount retained by the funding recipient out of the funding payment as at the end of that year; and
- (b) a report in writing and signed by the appropriate auditor stating whether, in the auditor's opinion:
  - (i) the statement is based on proper accounts and records; and
  - (ii) the statement is in agreement with the accounts and records; and
  - (iii) the expenditure referred to in subparagraph (a)(i) has been on the funded project.

#### **42 Funding recipient must allow inspections by authorised persons**

The funding recipient must, at all reasonable times, permit a person authorised by the Minister:

- (a) to inspect any work involved in the carrying out of the funded project; and
- (b) to inspect and make copies of any documents relating to the funded project.

#### **43 Amount repayable on breach of condition**

- (1) If the Minister notifies the funding recipient in writing that the Minister is satisfied that the funding recipient has failed to fulfil any condition that applies to the funding payment (whether that condition is specified in this Subdivision, in a funding agreement or in a determination under Subdivision C), then the funding

Section 44

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recipient must repay to the Commonwealth an amount equal to so much of the funding payment as the Minister specifies in the notice.

- (2) The Minister may, by notice in writing, vary or revoke a notice given under subsection (1).
- (3) If there is a funding agreement with the funding recipient, the powers given to the Minister by subsections (1) and (2) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) A notice under subsection (1), or an instrument varying or revoking such a notice, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Subdivision C—Determination of other conditions if no funding agreement**

**44 Determination of other conditions if no funding agreement**

- (1) The Minister may, in writing, determine other conditions that apply to the provision of funding in accordance with section 37.
- (2) The Minister may determine different conditions to apply in different classes of situations.
- (3) The Minister may, in writing, vary or revoke conditions determined under subsection (1).
- (4) An instrument determining, varying or revoking conditions is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.
- (5) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, an instrument determining or varying conditions may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.



## **Part 5—Funding for land transport research entities**

### **45 Definitions**

In this Part:

***funded entity***, in relation to a funding approval instrument, means the land transport research entity identified in the instrument.

***funding approval instrument*** means an instrument under subsection 46(1) approving the provision of funding for a particular land transport research entity for a particular period.

***funding period***, in relation to a funding approval instrument, means the period identified in the instrument.

***land transport operations*** means transport operations involving road or rail, including operations involving inter-modal transfer facilities.

***land transport research entity*** means an eligible funding recipient, or a non-corporate Commonwealth entity, whose functions include carrying out, arranging or assisting planning, research, investigations, studies or analysis of matters related to land transport operations.

### **46 Approval of funding for land transport research entities**

- (1) The Minister may, in writing, approve the provision of funding for a particular land transport research entity for a particular period.
- (2) The matters to which the Minister may have regard in deciding whether to approve the provision of funding for a land transport research entity for a period include, but are not limited to, the extent to which the entity's activities during the period are likely to improve land transport operations in Australia.

Section 47

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- (3) The funding approval instrument must:
  - (a) identify the entity and the period; and
  - (b) specify the maximum funding amount that the Commonwealth may provide for the entity during the period; and
  - (c) contain a statement to the effect that the approval is conditional on a funding agreement being entered into with the entity.
- (4) Subject to subsection (5), the Minister may, in writing, vary or revoke the funding approval instrument.
- (5) If there is a funding agreement with the entity, the powers given by subsection (4) must be exercised in accordance with any relevant provisions of the funding agreement.
- (6) An instrument approving the provision of Commonwealth funding, or varying or revoking such an approval, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**47 Submission of particulars to get funding**

- (1) The Minister may invite land transport research entities to submit particulars of their proposed activities for consideration for approval of funding under subsection 46(1).
- (2) An invitation may be given:
  - (a) to such land transport research entities as the Minister considers appropriate; and
  - (b) by any method that the Minister considers appropriate.
- (3) Subject to section 46, the Minister may grant an approval under subsection 46(1) for a particular land transport research entity, whether or not particulars of the entity's proposed activities were submitted in response to an invitation.

- (4) The Minister is not required to consider a land transport research entity for an approval under subsection 46(1) unless such particulars of the entity's proposed activities as the Minister requires have been submitted to the Minister.

#### **48 Commonwealth funding for land transport research entities**

- (1) If a funding approval instrument is in force, Commonwealth funding for the funded entity may be provided during the funding period in accordance with a funding agreement that satisfies the requirements of section 49.
- (2) The payments of funding are to be made out of money appropriated by the Parliament.

#### **49 Requirements with which funding agreements must comply**

A funding agreement entered into for the purposes of this Part must satisfy the following requirements:

- (a) the total amount of funding that the agreement provides for must not exceed the maximum funding amount specified in the relevant funding approval instrument;
- (b) the agreement must comply with any other requirements (for example, requirements relating to the inclusion of conditions) specified in the relevant funding approval instrument.

#### **50 Conditions of funding**

- (1) The conditions that apply to a payment of funding under this Part are the conditions specified in the relevant funding agreement.
- (2) A funding agreement may specify a condition by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

#### **51 Relationship with Part 4**

This Part does not limit, and is not limited by, Part 4.

Section 51A

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**51A Funding arrangements with non-corporate Commonwealth entities**

- (1) For the purposes of this Part, the Minister may, in writing, enter into an arrangement with a non-corporate Commonwealth entity.
- (2) If the Minister enters into an arrangement under subsection (1), this Part applies as if the arrangement were a funding agreement entered into for the purposes of this Part.

Note: Sections 48 to 50 deal with funding agreements.

## **Part 7—Black Spot Projects**

### **Division 1—Approval of projects as Black Spot Projects**

#### **69 What is a Black Spot Project?**

A *Black Spot Project* is a project for which an approval by the Minister under subsection 70(1) is in force.

#### **70 Approval of Black Spot Projects**

- (1) The Minister may, in writing, approve a project as a Black Spot Project if, and only if:
  - (a) the Minister is satisfied that the project is eligible for approval (see section 71); and
  - (b) the Minister considers that it is appropriate to approve the project (see section 72).
- (2) An instrument approving a project is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **71 What projects are eligible for approval?**

A project is eligible for approval as a Black Spot Project if:

- (a) the project is for the improvement of road safety of a site (being all or part of any road); and
- (b) the site is in a State; and
- (c) the nature of the site has contributed to, or is likely to contribute to, serious motor vehicle crashes involving death or personal injury.

#### **72 Is it appropriate to approve a project?**

The matters to which the Minister may have regard in deciding whether it is appropriate to approve a project as a Black Spot Project include, but are not limited to, the following matters:

**Part 7** Black Spot Projects

**Division 1** Approval of projects as Black Spot Projects

**Section 73**

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- (a) the accident history of the site to which the project relates;
- (b) the results of any assessment of the safety benefits and the costs of the project;
- (c) the results of any road safety audit conducted in relation to the site;
- (d) the extent to which persons other than the Commonwealth propose to contribute funding to the project.

**73 Submission of particulars of projects**

- (1) The Minister may invite the submission of particulars of projects for consideration for approval as Black Spot Projects.
- (2) An invitation may be given:
  - (a) to such States or authorities of a State as the Minister considers appropriate; and
  - (b) by any method that the Minister considers appropriate.
- (3) Subject to section 70, the Minister may approve a project as a Black Spot Project, whether or not particulars of the project were submitted in response to an invitation.
- (4) The Minister is not required to consider a project for approval as a Black Spot Project unless such particulars of the project as the Minister requires have been submitted to the Minister.

**74 Matters specified in project approval instrument**

- (1) The project approval instrument for a Black Spot Project must:
  - (a) identify the project; and
  - (b) specify the maximum funding amount that the Commonwealth may contribute to the project; and
  - (c) identify the eligible funding recipient, being a State or authority of a State, to which funding may be paid; and
  - (d) if the approval is conditional on a funding agreement being entered into with the eligible funding recipient—contain a statement to that effect.

- (2) The project approval instrument for a Black Spot Project may exclude one or more specified purposes from being purposes on which funding may be expended.

### **75 Requirements with which funding agreements must comply**

If the project approval instrument for a Black Spot Project states that the approval is conditional on a funding agreement being entered into with the approved funding recipient:

- (a) the total amount of funding that the agreement provides for must not exceed the maximum funding amount specified in the project approval instrument; and
- (b) the agreement must comply with any other requirements (for example, requirements relating to the inclusion of conditions) specified in the project approval instrument.

### **76 Variation or revocation of project approval instrument**

- (1) The Minister may, in writing, vary or revoke the project approval instrument for a Black Spot Project.
- (2) A variation may be of a matter dealt with in the project approval instrument before the variation, or to include a new matter in the project approval instrument. The instrument as varied must be consistent with section 74.

Note: For example, the project approval instrument may be varied to change the eligible funding recipient to which funding will be paid, or to specify a purpose that is excluded from the purposes on which funding may be expended.

- (3) If there is a funding agreement with the approved funding recipient, the powers given by subsection (1) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) An instrument varying or revoking the project approval instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Division 2—Provision of Commonwealth funding**

### **77 Commonwealth funding for Black Spot Projects**

- (1) Commonwealth funding for a Black Spot Project may be provided to the approved funding recipient:
  - (a) in accordance with section 78; or
  - (b) if the project approval instrument for the project states that the approval is conditional on a funding agreement being entered into—in accordance with a funding agreement, entered into with the approved funding recipient, that satisfies the requirements of section 75.
- (2) The payments of funding are to be made out of money appropriated by the Parliament.

### **78 Approval of provision of Commonwealth funding if no funding agreement**

- (1) The Minister may, in writing, approve the provision of Commonwealth funding for a Black Spot Project to the approved funding recipient. The Minister may, in writing, vary or revoke the approval.
- (2) The funding is to be provided in one or more instalments paid to the approved funding recipient. Subject to subsection (3), the amount and timing of an instalment are as determined by the Minister.
- (3) The total amount of funding provided for the project to the approved funding recipient must not exceed the maximum funding amount specified in the project approval instrument.
- (4) An instrument:
  - (a) approving the provision of Commonwealth funding, or varying or revoking such an approval; or



(b) determining the amount or timing of an instalment of funding;  
is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Division 3—Conditions that apply to Commonwealth funding**

### **Subdivision A—Sources of conditions**

#### **79 Sources of conditions**

- (1) The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for a Black Spot Project (the *funded project*) to an eligible funding recipient (the *funding recipient*) are:
  - (a) the mandatory conditions (see Subdivision B); and
  - (b) either:
    - (i) if the funding payment is provided in accordance with section 78—the conditions (if any) determined under Subdivision C; or
    - (ii) if the funding payment is provided in accordance with a funding agreement—the conditions specified in the funding agreement.
- (2) A funding agreement may specify a condition by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **Subdivision B—The mandatory conditions**

#### **80 This Subdivision sets out the mandatory conditions**

The mandatory conditions are as set out in this Subdivision.

#### **81 Funding payment must be expended on the funded project**

The funding payment must be wholly expended on approved purposes in relation to the funded project.

**82 Funding recipient must give Minister audited financial statements**

For each financial year in which the funding recipient spends or retains any of the funding payment, the funding recipient must give to the Minister as soon as practicable, and in any event within 6 months, after the end of that year:

- (a) a written statement as to:
  - (i) the amount spent by the funding recipient during that year out of the funding payment; and
  - (ii) the amount retained by the funding recipient out of the funding payment as at the end of that year; and
- (b) a report in writing and signed by the appropriate auditor stating whether, in the auditor's opinion:
  - (i) the statement is based on proper accounts and records; and
  - (ii) the statement is in agreement with the accounts and records; and
  - (iii) the expenditure referred to in subparagraph (a)(i) has been on the funded project.

**83 Funding recipient must allow inspections by authorised persons**

The funding recipient must, at all reasonable times, permit a person authorised by the Minister:

- (a) to inspect any work involved in the carrying out of the funded project; and
- (b) to inspect and make copies of any documents relating to the funded project.

**84 Funding recipient must maintain records relating to motor vehicle crashes**

- (1) The funding recipient must maintain records relating to the nature and frequency of motor vehicle crashes involving death or personal injury occurring at the site of the funded project.

Section 85

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- (2) The funding recipient must maintain the records required by subsection (1) for a period of 5 years, commencing on the receipt of the funding payment.
- (3) The funding recipient must, at all reasonable times, permit a person authorised by the Minister to inspect any records maintained by the funding recipient as required by subsection (1).

**85 Amount repayable on breach of condition**

- (1) If the Minister notifies the funding recipient in writing that the Minister is satisfied that the funding recipient has failed to fulfil any condition that applies to the funding payment (whether that condition is specified in this Subdivision, in a funding agreement or in a determination under Subdivision C) then the funding recipient must repay to the Commonwealth an amount equal to so much of the funding payment as the Minister specifies in the notice.
- (2) The Minister may, by notice in writing, vary or revoke a notice given under subsection (1).
- (3) If there is a funding agreement with the funding recipient, the powers given to the Minister by subsections (1) and (2) must be exercised in accordance with any relevant provisions of the funding agreement.
- (4) A notice under subsection (1), or an instrument varying or revoking such a notice, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Subdivision C—Determination of other conditions if no funding agreement**

**86 Determination of other conditions if no funding agreement**

- (1) The Minister may, in writing, determine other conditions that apply to the provision of funding in accordance with section 78.

- (2) The Minister may determine different conditions to apply in different classes of situations.
- (3) The Minister may, in writing, vary or revoke conditions determined under subsection (1).
- (4) An instrument determining, varying or revoking conditions is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.
- (5) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, an instrument determining or varying conditions may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

## Part 8—Roads to Recovery Program

### 87 Roads to Recovery List

- (1) The Minister must, by legislative instrument, determine a list (the *Roads to Recovery List*) that must:
  - (aa) specify a funding period in relation to the Roads to Recovery Program; and
  - (a) specify the amounts of Commonwealth funding that are to be provided under the Roads to Recovery Program during the specified funding period; and
  - (b) in relation to each of those amounts, either:
    - (i) specify the name of the person or body that is to receive the amount; or
    - (ii) state that the amount is specified on account of a particular State, or a particular area of a State, but the persons or bodies that are to receive the amount have not yet been decided.
- (2) Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to an instrument under subsection (1).

### 88 Variation of Roads to Recovery List

- (1) If:
  - (a) a person or body (the *named recipient*) specified in a Roads to Recovery List ceases to exist before receiving the full amount (the *named recipient's amount*) specified for the named recipient in the List; and
  - (b) the Minister considers that one or more other persons or bodies have taken over the responsibilities of the named recipient;the Minister may, in writing, vary the List to redirect some or all of the remainder of the named recipient's amount to the other person or body, or to one or more of the other persons or bodies.

- (2) If the Minister considers that:
- (a) the amount specified in a Roads to Recovery List for a person or body (the ***named recipient***) was wholly or partly on account of a particular area for which the named recipient was responsible; and
  - (b) before the named recipient receives the full amount (the ***named recipient's amount***) specified for the named recipient in the List, one or more other persons or bodies takes over responsibility for all or part of that area;

the Minister may, in writing, vary the List to redirect some or all of the remainder of the named recipient's amount to the other person or body, or to one or more of the other persons or bodies.

- (2A) If:
- (a) a Roads to Recovery List includes a statement referred to in subparagraph 87(b)(ii) in relation to an amount; and
  - (b) the Minister considers that one or more persons or bodies are or will become responsible for all or part of the State or area referred to in the statement;

the Minister may, in writing, vary the List to direct some or all of the amount to the person or body, or to one or more of the persons or bodies.

- (2B) If an amount is specified in a Roads to Recovery List in relation to a person or body, the Minister may, in writing, vary the List to increase that amount.
- (3) The Minister may, in writing, vary a Roads to Recovery List to correct an error or to update the name of a person or body specified in the List.
- (4) The Minister cannot vary a Roads to Recovery List except as permitted by subsection (1), (2), (2A), (2B) or (3).
- (5) An instrument varying a Roads to Recovery List is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.
- (6) The Minister cannot revoke a Roads to Recovery List.
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### **89 Payments to persons and bodies specified in Roads to Recovery List**

- (1) Subject to this section and to section 92, each amount specified in a Roads to Recovery List for a Roads to Recovery funding period is payable to the person or body (if any) specified in the List for that amount.
- (2) The amount is payable in one or more instalments. The amounts and timing of instalments are as determined by the Minister.
- (3) The amount may only be paid during the funding period.
- (4) Payments under this Part are to be made out of money appropriated by the Parliament.
- (5) An instrument determining the amount or timing of an instalment of funding is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **90 Conditions that apply to payments**

- (1) The Minister must, in writing, determine the conditions that apply to payments under this Part.
- (2) The conditions must include:
  - (a) a condition that requires the payment to be spent on the construction or maintenance of roads; and
  - (b) a condition that requires the expenditure to be properly accounted for; and
  - (c) for any payment that is made to a local government authority—a condition that requires the authority to maintain the level of its expenditure on roads, so far as that expenditure comes from sources other than Commonwealth, State or Territory funding; and
  - (d) a condition that requires signs to be displayed in relation to projects (other than maintenance programs) that are funded under this Part.



- (3) The conditions may also include conditions requiring the funding recipient to repay amounts to the Commonwealth in the event of a breach of any of the conditions.
- (4) Subsections (2) and (3) do not limit the matters that may be dealt with in the conditions.
- (5) The Minister may, in writing, vary or revoke any of the conditions.
- (6) An instrument determining, varying or revoking conditions is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.
- (7) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, an instrument determining or varying conditions may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **91 Minister's power to waive conditions etc.**

- (1) The Minister may, by notice in writing to a person or body:
  - (a) exempt the person or body from a condition determined under section 90; and
  - (b) if the Minister considers it appropriate to do so—specify a replacement condition to be complied with by the person or body.
- (2) The Minister may, by notice in writing to the person or body:
  - (a) revoke the exemption; or
  - (b) vary or revoke a replacement condition.
- (3) The other conditions determined under section 90 have effect in relation to a replacement condition as if the replacement condition were a condition determined under section 90.

Section 91

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- (4) A notice under subsection (1), or an instrument revoking an exemption or varying or revoking a replacement condition, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Part 9—Miscellaneous**

### **92 Recovery of amounts as debt due to Commonwealth**

An amount that a person or body is liable to repay to the Commonwealth under a condition that applies to a payment under this Act:

- (a) may be recovered by the Commonwealth as a debt in a court of competent jurisdiction; or
- (b) may be deducted from any future payment to the person or body under this Act.

#### **92A Treatment of partnerships**

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) If this Act would otherwise permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (4) If the Minister enters into a funding agreement with a partnership, the agreement must state:
  - (a) the names of all the partners; and
  - (b) if the partnership has a registered business name, the registered business name.
- (5) If under this Act a document is given to a partner of the partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.
- (6) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under this Act.

Section 93

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- (7) For the purposes of this Act, a change in the composition of the partnership does not affect the continuity of the partnership.

**93 Delegation**

- (1) Subject to subsection (2), the Minister may, by signed instrument, delegate to an SES employee, or an acting SES employee, in the Department all or any of the Minister's powers or functions under this Act.
- (2) The Minister's powers and functions under Part 2 are not to be delegated.

**94 Annual report on operation of Act**

As soon as practicable after the end of each financial year that ends after the commencement of Parts 3, 4, 5, 7 and 8, the Minister must cause a report to be tabled in each House of the Parliament on the operation of this Act during the financial year.

**95 Provision of funding otherwise than under this Act**

This Act does not impliedly limit any power of the Commonwealth to provide funding for, or in relation to, land transport matters otherwise than under this Act.

**96 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
AusLink (National Land Transport) Act 2005	93, 2005	6 July 2005	s 8–91: 28 July 2005 (s 2(1) item 2) Remainder: 6 July 2005 (s 2(1) items 2, 3)	
AusLink (National Land Transport) Amendment Act 2008	106, 2008	18 Oct 2008	19 Oct 2008 (s 2)	Sch 1 (item 4)
Nation Building Program (National Land Transport) Amendment Act 2009	56, 2009	26 June 2009	27 June 2009 (s 2)	Sch 1 (items 113–122)
Land Transport Infrastructure Amendment Act 2014	101, 2014	11 Sept 2014	Sch 1 (items 1–55): 10 Oct 2014 (s 2(1) item 2)	Sch 1 (items 48–55)
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 49, 74–77) and Sch 7 (items 1, 2): 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7 (items 1, 2)

*National Land Transport Act 2014*

57

Compilation No. 4

Compilation date: 14/4/15

Registered: 16/4/15

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 1 .....	am No 56, 2009; No 101, 2014
s 4 .....	am No 106, 2008; No 56, 2009; No 101, 2014; No 36, 2015
s 4A .....	ad No 101, 2014
<b>Part 3</b>	
Part 3 heading .....	rs No 56, 2009; No 101, 2014
<b>Division 1</b>	
Division 1 of Part 3 .....	rs No 56, 2009; No 101, 2014
s 8 .....	am No 56, 2009
	rs No 101, 2014
s 9 .....	am No 56, 2009; No 101, 2014
s 10 .....	am No 56, 2009
	rs No 101, 2014
s 11 .....	am No 56, 2009
	rs No 101, 2014
s 12 .....	am No 56, 2009; No 101, 2014
s 13 .....	am No 56, 2009; No 101, 2014
s 14 .....	am No 56, 2009; No 101, 2014
s 15 .....	am No 56, 2009; No 101, 2014
<b>Division 2</b>	
s 16 .....	am No 56, 2009; No 101, 2014
s 17 .....	am No 56, 2009; No 101, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 18 .....	am No 56, 2009; No 101, 2014
<b>Subdivision B</b>	
s 24 .....	am No 56, 2009; No 101, 2014
s 25 .....	am No 56, 2009; No 101, 2014

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 27 .....	am No 56, 2009
<b>Part 4</b>	
Part 4 heading .....	rs No 56, 2009 am No 101, 2014
<b>Division 1</b>	
Division 1 heading .....	rs No 56, 2009 am No 101, 2014
s 28 .....	am No 56, 2009; No 101, 2014
s 29 .....	am No 56, 2009; No 101, 2014
s 30 .....	am No 56, 2009; No 101, 2014
s 31 .....	am No 56, 2009; No 101, 2014
s 32 .....	am No 56, 2009; No 101, 2014
s 33 .....	am No 56, 2009; No 101, 2014
s 34 .....	am No 56, 2009; No 101, 2014
s 35 .....	am No 56, 2009; No 101, 2014
<b>Division 2</b>	
s 36 .....	am No 56, 2009; No 101, 2014
s 37 .....	am No 56, 2009; No 101, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 38 .....	am No 56, 2009; No 101, 2014
<b>Subdivision C</b>	
s 44 .....	am No 56, 2009
<b>Part 5</b>	
Part 5 heading .....	rs No 56, 2009; No 101, 2014
s 45 .....	am No 101, 2014
s 50 .....	am No 56, 2009
s 51A .....	ad No 101, 2014
Part 6 heading .....	rs No 56, 2009 rep No 101, 2014

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Part 6 .....	rep No 101, 2014
Division 1 heading.....	rs No 56, 2009
	rep No 101, 2014
s 52 .....	am No 56, 2009
	rep No 101, 2014
s 53 .....	am No 56, 2009
	rep No 101, 2014
s 54 .....	am No 56, 2009
	rep No 101, 2014
s 55 .....	am No 56, 2009
	rep No 101, 2014
s 56	am No 56, 2009
	rep No 101, 2014
s 57 .....	am No 56, 2009
	rep No 101, 2014
s 58 .....	am No 56, 2009
	rep No 101, 2014
s 59 .....	am No 56, 2009
	rep No 101, 2014
Division 2 .....	rep No 101, 2014
s 60 .....	am No 56, 2009
	rep No 101, 2014
s 61 .....	am No 56, 2009
	rep No 101, 2014
Division 3 .....	rep No 101, 2014
Sudivision A .....	rep No 101, 2014
s 62 .....	am No 56, 2009
	rep No 101, 2014
Subdivision B .....	rep No 101, 2014
s 63 .....	rep No 101, 2014
s 64 .....	rep No 101, 2014

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 65 .....	rep No 101, 2014
s 66 .....	rep No 101, 2014
s 67 .....	rep No 101, 2014
Subdivision C .....	rep No 101, 2014
s 68 .....	am No 56, 2009 rep No 101, 2014
<b>Part 7</b>	
Part 7 heading .....	rs No 56, 2009 am No 101, 2014
<b>Division 1</b>	
Division 1 heading .....	rs No 56, 2009 am No 101, 2014
s 69 .....	am No 56, 2009; No 101, 2014
s 70 .....	am No 56, 2009; No 101, 2014
s 71 .....	am No 56, 2009; No 101, 2014
s 72 .....	am No 56, 2009; No 101, 2014
s 73 .....	am No 56, 2009; No 101, 2014
s 74 .....	am No 56, 2009; No 101, 2014
s 75 .....	am No 56, 2009; No 101, 2014
s 76 .....	am No 56, 2009; No 101, 2014
<b>Division 2</b>	
s 77 .....	am No 56, 2009; No 101, 2014
s 78 .....	am No 56, 2009; No 101, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 79 .....	am No 56, 2009; No 101, 2014
<b>Subdivision C</b>	
s 86 .....	am No 56, 2009
<b>Part 8</b>	
Part 8 heading .....	rs No 56, 2009 am No 101, 2014

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 87 .....	rs No 106, 2008 am No 56, 2009; No 101, 2014
s 88 .....	am No 106, 2008; No 56, 2009; No 101, 2014
s 89 .....	am No 106, 2008; No 56, 2009; No 101, 2014
s 90 .....	am No 56, 2009
<b>Part 9</b>	
s 92 .....	am No 101, 2014
s 92A .....	ad No 101, 2014
s 94 .....	am No 101, 2014

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