



AusLink (National Land Transport) Act 2005

No. 93, 2005

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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AusLink (National Land Transport) Act 2005

No. 93, 2005

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

[Assented to 6 July 2005]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *AusLink (National Land Transport) Act 2005*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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

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, in relation to an AusLink National Project, an AusLink Transport Development and Innovation Project, an AusLink Strategic Regional Project or an AusLink Black Spot Project, means the eligible funding recipient identified in the project approval instrument.

approved purposes, in relation to an AusLink National Project, an AusLink Transport Development and Innovation Project, an AusLink Strategic Regional Project or an AusLink Black Spot Project, 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.

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

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AusLink National Project has the meaning given by section 8.

AusLink Roads to Recovery List has the meaning given by subsection 87(1).

AusLink Strategic Regional Project has the meaning given by section 52.

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

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.

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).

Corridor Strategy means a strategy (as updated from time to time) that:

- (a) is called a Corridor Strategy; and
- (b) is determined by executive action of the Minister; and
- (c) relates to land transport issues affecting a corridor between 2 places joined, or proposed to be joined, by existing or proposed roads or railways that are included in the National Land Transport Network.

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.

funding agreement:

- (a) when used in Part 3, 4, 6 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.

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.

National Land Transport Plan means the plan (as updated from time to time) that:

- (a) is called the National Land Transport Plan; and
(b) is determined by executive action of the Minister; and
(c) sets priorities for expenditure on the National Land Transport Network.

project includes a program.

project approval instrument means:

- (a) in relation to an AusLink National Project—the instrument approving the project under subsection 9(1); and

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- (b) in relation to an AusLink Transport Development and Innovation Project—the instrument approving the project under subsection 29(1); and
- (c) in relation to an AusLink Strategic Regional Project—the instrument approving the project under subsection 53(1); and
- (d) in relation to an AusLink Black Spot Project—the instrument approving the project under subsection 70(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;
 - (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).

State includes the Australian Capital Territory and the Northern Territory.

*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;

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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.

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

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- (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.

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

Part 3—AusLink National Projects

Division 1—Approval of projects as AusLink National Projects

8 What is an AusLink National Project?

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

9 Approval of AusLink National Projects

- (1) The Minister may, in writing, approve a project as an AusLink National 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 AusLink National Project if the project is for one or more of the following:

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

- (d) the acquisition or application of technology that will, or may, contribute to the efficiency, security or safety of transport operations on the National Land Transport Network.

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 AusLink National Project include, but are not limited to, the following matters:

- (a) the National Land Transport Plan;
- (b) any relevant Corridor Strategy;
- (c) the extent to which the project will improve the efficiency, security or safety of transport operations on the National Land Transport Network;
- (d) the results of any assessment of the economic, environmental or social costs or benefits of the project;
- (e) any other 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 AusLink National 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 AusLink National Project, whether or not particulars of the project were submitted in response to an invitation.

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- (4) The Minister is not required to consider a project for approval as an AusLink National 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 AusLink National 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 AusLink National 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 AusLink National 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 AusLink National 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 AusLink National 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 AusLink National Projects

- (1) Commonwealth funding for an AusLink National 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 AusLink National 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

18 Sources of conditions

The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for an AusLink National 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.

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:

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- (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, the work:
 - (i) is urgently required because of an emergency; or
 - (ii) is of such a minor nature that the invitation of tenders for the work would involve undue additional cost; or
 - (iii) is of a kind for which it is not practicable to prepare adequate tender specifications; or
 - (iv) is of a kind for which competitive tenders are unlikely to be received; or
 - (v) will contribute to employment in a region.
- (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*.

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.
- (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 AusLink National 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 AusLink National 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.

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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.

Part 4—AusLink Transport Development and Innovation Projects

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

28 What is an AusLink Transport Development and Innovation Project?

An *AusLink 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 AusLink Transport Development and Innovation Projects

- (1) The Minister may, in writing, approve a project as an AusLink 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 an AusLink Transport Development and Innovation Project if the project is for either or both 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.

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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 an AusLink 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 on AusLink National Projects.

32 Submission of particulars of projects

- (1) The Minister may invite the submission of particulars of projects for consideration for approval as AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 an AusLink Transport Development and Innovation Project may exclude one or more specified purposes from being purposes on which funding may be expended.

Part 4 AusLink Transport Development and Innovation Projects

Division 1 Approval of projects as AusLink Transport Development and Innovation Projects

Section 34

34 Requirements with which funding agreements must comply

If the project approval instrument for an AusLink 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 an AusLink 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 AusLink Transport Development and Innovation Projects

- (1) Commonwealth funding for an AusLink 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 an AusLink 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

Part 4 AusLink Transport Development and Innovation Projects

Division 2 Provision of Commonwealth funding

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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

38 Sources of conditions

The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for an AusLink 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.

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

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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 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.

Part 5—AusLink 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 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.
- (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.

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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

The conditions that apply to a payment of funding under this Part are the conditions specified in the relevant funding agreement.

51 Relationship with Part 4

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

Part 6—AusLink Strategic Regional Projects

Division 1—Approval of projects as AusLink Strategic Regional Projects

52 What is an AusLink Strategic Regional Project?

An *AusLink Strategic Regional Project* is a project for which an approval by the Minister under subsection 53(1) is in force.

53 Approval of AusLink Strategic Regional Projects

- (1) The Minister may, in writing, approve a project as an AusLink Strategic Regional Project if, and only if:
 - (a) the Minister is satisfied that the project is eligible for approval (see section 54); and
 - (b) the Minister considers that it is appropriate to approve the project (see section 55).
- (2) An instrument approving a project is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

54 What projects are eligible for approval?

A project is eligible for approval as an AusLink Strategic Regional Project if the project is for one or more of the following:

- (a) the construction of an existing or proposed road, in a State or Indian Ocean Territory, that is not included in the National Land Transport Network;
- (b) the maintenance of an existing or proposed road, in a State or Indian Ocean Territory, that:
 - (i) is not included in the National Land Transport Network; and
 - (ii) is in an area for which no local government authority has responsibility;

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- (c) the construction of an existing or proposed railway, in a State or Indian Ocean Territory, that is not included in the National Land Transport Network;
- (d) the construction of an existing or proposed inter-modal transfer facility, in a State or Indian Ocean Territory, that is not included in the National Land Transport Network;
- (e) 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).

55 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 AusLink Strategic Regional Project include, but are not limited to, the following matters:

- (a) the extent to which the project is likely to improve the ability of regional industries and communities to compete in international, inter-State or inter-regional trade and commerce;
- (b) the extent to which the project is likely to improve a road, railway or inter-modal transfer facility that is regionally significant;
- (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 will improve the safety of transport operations;
- (e) the extent to which the project is likely to improve access for regional communities to services and employment;
- (f) for projects that relate to roads in areas for which no local government authority has responsibility—the extent to which the project will improve or maintain the serviceability of a road in such an area;
- (g) the extent to which persons other than the Commonwealth propose to contribute funding to the project.

56 Submission of particulars of projects

- (1) The Minister may invite the submission of particulars of projects for consideration for approval as AusLink Strategic Regional 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 53, the Minister may approve a project as an AusLink Strategic Regional 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 AusLink Strategic Regional Project unless such particulars of the project as the Minister requires have been submitted to the Minister.

57 Matters specified in project approval instrument

- (1) The project approval instrument for an AusLink Strategic Regional 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 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 AusLink Strategic Regional 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

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- (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 AusLink Strategic Regional Project may exclude one or more specified purposes from being purposes on which funding may be expended.

58 Requirements with which funding agreements must comply

If the project approval instrument for an AusLink Strategic Regional 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.

59 Variation or revocation of project approval instrument

- (1) The Minister may, in writing, vary or revoke the project approval instrument for an AusLink Strategic Regional 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 57.

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

60 Commonwealth funding for AusLink Strategic Regional Projects

- (1) Commonwealth funding for an AusLink Strategic Regional Project may be provided to the approved funding recipient:
 - (a) in accordance with section 61; 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 58.
- (2) The payments of funding are to be made out of money appropriated by the Parliament.

61 Approval of provision of Commonwealth funding if no funding agreement

- (1) The Minister may, in writing, approve the provision of Commonwealth funding for an AusLink Strategic Regional 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

62 Sources of conditions

- (1) The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for an AusLink Strategic Regional 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 61—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 entered into with a local government authority, in relation to the provision of funding to the body for an AusLink Strategic Regional Project, must include a condition that requires the body to maintain the level of its expenditure on roads, so far as that expenditure comes from sources other than Commonwealth, State or Territory funding.

Subdivision B—The mandatory conditions

63 This Subdivision sets out the mandatory conditions

The mandatory conditions are as set out in this Subdivision.

64 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.

65 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.

66 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.

67 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

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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

68 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 61.
- (2) The Minister may determine different conditions to apply in different classes of situations.

Note: The Minister may, for example, determine a condition that requires a local government authority that receives funding in accordance with section 61 to maintain the level of its expenditure on roads, so far as that expenditure comes from sources other than Commonwealth, State or Territory funding.

- (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.

Part 7—AusLink Black Spot Projects

Division 1—Approval of projects as AusLink Black Spot Projects

69 What is an AusLink Black Spot Project?

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

70 Approval of AusLink Black Spot Projects

- (1) The Minister may, in writing, approve a project as an AusLink 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 an AusLink 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; and
- (d) the site is not included in the National Land Transport Network.

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 an AusLink Black Spot Project include, but are not limited to, the following matters:

- (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 AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 an AusLink 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 AusLink Black Spot Projects

- (1) Commonwealth funding for an AusLink 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 an AusLink 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

The conditions that apply to a payment (the *funding payment*) of Commonwealth funding for an AusLink 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.

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.
- (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).

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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.

Part 8—AusLink Roads to Recovery Program

87 Minister to publish AusLink Roads to Recovery List

- (1) By 1 July 2005, or as soon as practicable after then, the Minister must, in writing, determine a list (the *AusLink Roads to Recovery List*) specifying:
 - (a) the amounts of Commonwealth funding that are to be provided under the AusLink Roads to Recovery Program; and
 - (b) in relation to each of those amounts, the name of the person or body that is to receive the amount.
- (2) A determination under subsection (1) 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.

88 Variation of AusLink Roads to Recovery List

- (1) If:
 - (a) a person or body (the *named recipient*) specified in the AusLink 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 the AusLink 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

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- (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.
- (3) The Minister may, in writing, vary the AusLink 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 the AusLink Roads to Recovery List except as permitted by subsections (1), (2) and (3) and cannot revoke the List.
- (5) An instrument varying the AusLink Roads to Recovery List 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.

89 Payments to persons and bodies specified in AusLink Roads to Recovery List

- (1) Subject to this section and to section 92, each amount specified in the AusLink Roads to Recovery List is payable to the person or body 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) Payments under this Part can only be made after 30 June 2005 and before 1 July 2009.
- (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.

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.
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- (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.
- (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

- (1) 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.
- (2) An amount that a person or body is liable to repay to the Commonwealth under the conditions that apply to a payment made under the *Australian Land Transport Development Act 1988* or the *Roads to Recovery Act 2000* may be deducted from any future payment to the person or body under this Act.

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, 6, 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.

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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.

*[Minister's second reading speech made in—
House of Representatives on 9 December 2004
Senate on 10 February 2005]*

(247/04)