



AusLink (National Land Transport— Consequential and Transitional Provisions) Act 2005

No. 94, 2005

**An Act to amend laws, and to deal with transitional
matters, in connection with the *AusLink (National
Land Transport) Act 2005*, 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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No. 94, 2005

An Act to amend laws, and to deal with transitional matters, in connection with the *AusLink (National Land Transport) Act 2005*, and for related purposes

[Assented to 6 July 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *AusLink (National Land Transport—Consequential and Transitional Provisions) 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. Sections 1 to 3 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. Schedules 1 and 2	At the same time as Parts 3 to 8 of the <i>AusLink (National Land Transport) Act 2005</i> commence.	28 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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Australian Land Transport Development Act 1988

1 Title

Omit “**establish a reserve**”, substitute “**govern payments**”.

2 Subsection 3(1)

Insert:

AusLink transition time means the commencement of Parts 3 to 8 of the *AusLink (National Land Transport) Act 2005*.

3 Subsection 3(1) (definition of *charge rate*)

Repeal the definition.

4 Subsection 3(1) (definition of *indexation factor*)

Repeal the definition.

5 Subsection 3(1)

Insert:

payment under this Act includes the following:

- (a) a payment made out of the Australian Land Transport Development Reserve;
- (b) a payment made out of the Australian Land Transport Development Account;

before the AusLink transition time.

Note: The Australian Land Transport Development Reserve existed under the Act until 1 July 1999, when it was replaced by the Australian Land Transport Development Account (a special account by force of the *Financial Management Legislation Amendment Act 1999*). That account was abolished by the *AusLink (National Land Transport—Consequential and Transitional Provisions) Act 2005*.

6 Subsection 3(1) (definition of *Reserve*)

Repeal the definition.

7 Subsection 3(1) (definition of *road user charge*)

Repeal the definition.

8 Subsection 3(1) (definition of *urban area*)

Repeal the definition.

9 Subsection 3(6)

Omit “out of the Reserve” (wherever occurring), substitute “under this Act”.

10 Sections 4 to 10

Repeal the sections.

11 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Payments under this Act

12 Sections 11 to 14

Repeal the sections.

13 Subsection 15(1)

Omit “sections 16, 17, 18 and 19, amounts standing to the credit of the Reserve may be paid out of the Reserve”, substitute “section 19, the Minister may authorise payments under this Act of the following kinds”.

Note: The heading to section 15 is replaced by the heading “**Payments under this Act**”.

14 Subparagraph 15(1)(a)(ii)

Repeal the subparagraph.

15 Subparagraph 15(1)(a)(v)

After “a project, or program of projects,”, insert “approved under subsection 26(3),”.

16 Paragraph 15(1)(ba)

Repeal the paragraph.

17 Subsection 15(2)

Omit “out of the Reserve”, substitute “under this Act”.

18 Subsection 15(3)

Repeal the subsection.

19 Sections 17 and 18

Repeal the sections.

20 Section 19

Repeal the section, substitute:

19 Reallocation of funds

If:

- (a) an amount has been paid under this Act to a State for a particular purpose or project; and
- (b) the Minister considers, having regard to the policies of the Commonwealth in relation to land transport, that it is appropriate to do so;

the Minister may authorise the amount (or a specified part of the amount) to be used by the State for another purpose or project set out in section 15 and specified by the Minister.

21 Sections 20 and 21

Repeal the sections.

22 Section 22

Omit “out of the Reserve”, substitute “under this Act”.

23 Section 23

Repeal the section, substitute:

23 Statement accompanying payment

A payment made under this Act must be accompanied by a statement requiring that the payment be expended in arranging, assisting or carrying out a specified project or program, or a specified class of projects or programs, approved under subsection 26(3).

24 Section 24

Omit “out of the Reserve”, substitute “under this Act”.

25 Section 26

Repeal the section, substitute:

26 Closing off the Act to new approvals

No new approvals

- (1) The Minister must not grant an approval of a project or program under this Act on or after the AusLink transition time.

Certain approvals under this Act continue in force

- (2) If:
- (a) immediately before the AusLink transition time, an approval was in force under subsection 26(3) of this Act, as then in force; and
 - (b) the approval is not an approval that is taken to be an approval granted under the *AusLink (National Land Transport) Act 2005* by item 2 of Schedule 2 to the *AusLink (National Land Transport—Consequential and Transitional Provisions) Act 2005*;

then the approval continues in force, and may be dealt with, on and after the AusLink transition time, as if section 26 of this Act, as in force immediately before the AusLink transition time, had not been repealed.

- (3) A reference in this Act to a project or program approved under subsection 26(3) of this Act is a reference to a project or program for which an approval continues in force under subsection (2).

Certain declarations under this Act continue in force

- (4) If, immediately before the AusLink transition time, a declaration was in force under subsection 4(1), 4(2), 5(1), 6(1), 7(1), 7(3), 7A(1), 7B(1), 7B(2), 7C(1), 8(1) or 8(2) of this Act, as then in force, then the declaration continues in force, and may be dealt with, on and after the AusLink transition time, as if sections 4, 5, 6, 7, 7A, 7B, 7C and 8 of this Act, as in force immediately before the AusLink transition time, had not been repealed.

- (5) A reference in this Act to a declaration under subsection 4(1), 4(2), 5(1), 6(1), 7(1), 7(3), 7A(1), 7B(1), 7B(2), 7C(1), 8(1) or 8(2) of this Act is a reference to a declaration under that subsection, as in force immediately before the AusLink transition time, that continues in force under subsection (4).

26 Section 27

Omit “out of the Reserve” (wherever occurring), substitute “under this Act”.

27 Paragraph 27(2)(a)

Omit “for which the Reserve was established”, substitute “of this Act”.

Note: The heading to section 28 is altered by omitting “**Reserve**” and substituting “**payments**”.

28 Section 28A

Omit “from the Reserve” (wherever occurring).

Note: The heading to section 28A is altered by omitting “**from Reserve**” and substituting “**under this Act**”.

29 Subsection 28A(2)

After “paragraph 15(1)(ba)”, insert “, as in force immediately before the AusLink transition time,”.

30 Subsection 28A(3)

After “paragraph 15(1)(ba)”, insert “, as in force immediately before the AusLink transition time,”.

31 Subsection 29(1)

Omit “out of the Reserve”, substitute “under this Act”.

32 Subsection 30(1)

Omit “out of the Reserve”, substitute “under this Act”.

33 Section 31

Omit “out of the Reserve” (wherever occurring), substitute “under this Act”.

Note: The heading to section 31 is altered by omitting “**out of Reserve**” and substituting “**under this Act**”.

34 Subsection 32(1)

Omit “out of the Reserve” (wherever occurring), substitute “under this Act”.

35 Section 33

Omit “out of the Reserve”, substitute “under this Act”.

36 Section 34

Repeal the section.

37 Paragraph 37(1)(a)

Omit “out of the Reserve in accordance with”, substitute “under”.

38 Section 41

Repeal the section, substitute:

41 Report to Parliament

As soon as practicable after 30 June in each financial year in which payments have been made under this Act, the Minister must cause a report to be tabled in each House of the Parliament on the operation of this Act during that financial year.

39 Schedule 2

Repeal the Schedule.

Schedule 2—Transitional provisions

1 Definition of *transition time*

In this Schedule:

transition time means the commencement of this Schedule.

2 Determination of what approvals become approvals under the *AusLink (National Land Transport) Act 2005*

- (1) The Minister may, in writing, determine:
 - (a) that specified approvals of projects or programs (each of which is a *carried over approval*) that are in force under subsection 26(3) of the *Australian Land Transport Development Act 1988* immediately before the transition time are to be taken, after that time, to be approvals properly granted under the *AusLink (National Land Transport) Act 2005*; and
 - (b) for each of those carried over approvals—whether the approval is to be taken to be an approval of an AusLink National Project, an AusLink Transport Development and Innovation Project or an AusLink Black Spot Project (within the meaning of the *AusLink (National Land Transport) Act 2005*).
- (2) The determination has effect accordingly.
- (3) The Minister may, in writing, vary the determination to correct an error.
- (4) The Minister cannot vary the determination except as permitted by subitem (3) and cannot revoke the determination.
- (5) For the purposes of the *AusLink (National Land Transport) Act 2005*, an amount paid under the *Australian Land Transport Development Act 1988* before the transition time in respect of a project or program to which a carried over approval relates is to be counted towards the maximum funding amount that may be provided under the *AusLink (National Land Transport) Act 2005* for the project or program.
- (6) The determination under subitem (1), or an instrument varying the determination, 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.

3 Appropriation

\$1,371,489,000 is appropriated out of the Consolidated Revenue Fund in respect of the financial year ending on 30 June 2005, for the purpose of:

- (a) making payments under the *AusLink (National Land Transport) Act 2005* during so much of that year as occurs after the transition time; and
- (b) making payments under the *Australian Land Transport Development Act 1988* during so much of that year as occurs after the transition time.

4 Final charge rate determination

- (1) Despite the amendments made by Schedule 1 to this Act, section 10 of the *Australian Land Transport Development Act 1988*, as in force immediately before the transition time, continues to have effect after the transition time for the purpose of the making of a determination under that section in respect of the financial year ending on 30 June 2005.
- (2) A determination under section 10 of the *Australian Land Transport Development Act 1988*, as that section continues to have effect under subitem (1), has effect for the purposes of that Act as in force from 1 July 2004 to the transition time.

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

(248/04)

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