

# **EXPLANATORY STATEMENT**

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development

*National Land Transport Act 2014*

*National Land Transport Regulations 2022*

## **Purpose**

The *National Land Transport Regulations 2022* (the Regulations) are designed to expand and clarify the eligibility of land transport infrastructure projects. This expansion and additional clarity will enable faster and more efficient project approvals, supporting projects to start construction sooner and secure jobs for Australians. The Regulations will also ensure the Commonwealth is able to respond to infrastructure priorities across jurisdictions, aligned to the Australian Government's infrastructure agenda, and contemporary delivery approaches. This will contribute to the delivery of the Australian Government's significant infrastructure investment agenda, which is delivering on the economic plan for a stronger and more resilient Australia.

## **Background**

The *National Land Transport Act 2014* (the Act) enables the Australian Government's investment in land transport infrastructure projects across Australia.

Section 96 of the Act provides that the Governor-General may make regulations prescribing the following 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.

The Regulations expand funding eligibility of the Act by including additional items under the definition of railway, road and construction in relation to railway or road, such as bus stops, pedestrian pathways, car parks, amenities at rest areas and electric vehicle charging facilities.

The purpose of the Regulations is to support the Act being fit for purpose in facilitating the Australian Government's significant land transport infrastructure agenda and to reflect developments in transport infrastructure technology. The Regulations also seek to reduce areas of uncertainty that may exist as to the eligibility of particular types of land transport-related projects. The changes ensure that the Australian Government is in a position to continue to invest in land transport infrastructure projects that support national and regional economic and social development.

Specifying things for the purposes of these provisions of the Act has the effect of expanding the eligibility of those things for approval under the Act. Whether to approve a particular project as an investment project would remain a decision of the responsible Minister in accordance with Part 3, sections 9, 10 and 11 of the Act.

## **Consultation**

Public consultation was not considered necessary as the Regulations are an update to clarify areas of eligibility within the *National Land Transport Act 2014*. The content of the Regulations draws on feedback from stakeholders. The Regulations do not affect the rights or obligations of individuals or parties as they are not specifically affected by this instrument. The changes outlined in this instrument are technical in nature and facilitate internal government approvals.

## **Regulatory Impact Statement (RIS)**

The Office of Best Practice Regulation (OBPR) was consulted and advised that a RIS is not required (OBPR22-01542). OBPR considers the proposal unlikely to have a more than minor regulatory impact, and therefore the preparation of a RIS was not required.

## **Details of the accompanying instrument**

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the accompanying instrument are set out in Attachment A.

## **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

## **Commencement and making**

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* that commenced on the day after registration.

## **Details of the *National Land Transport Regulations 2022***

### **Part 1 – Preliminary**

#### **Section 1 – Name of Regulations**

This section provides that the title of the Regulations is *National Land Transport Regulations 2022*.

#### **Section 2 – Commencement**

This section provides that the Regulations are to commence on the day after this instrument is registered.

#### **Section 3 – Authority**

This section provides that the National Land Transport Regulations 2022 are made under the *National Land Transport Act 2014*.

#### **Section 4 – Definitions**

This section provides that definition of the word *Act* in the Regulations means the *National Land Transport Act 2014*.

The note provides that a number of expressions used in the Regulations are defined in the Act, including the following:

- (a) railway;
- (b) road.

### **Part 2 – Railway, road and construction**

#### **Section 5 – Additional things included in the definition of *railway***

Section 5 of the Regulations provide that for the purposes of the definition of the word *railway* in subsection 4(1) of the Act, the following things are specified:

- (a) a facility for the transfer of cargo or passengers from one rail vehicle to another;
- (b) amenities for the use of persons who travel on a railway (for example, shelter, toilets, seating, waste receptacles, drinking water facilities and eating facilities);
- (c) railway technology.

An intention in specifying the things in section 5 of the Regulations is to expand the range of projects and expenditure eligible for approval under Part 3 of the Act. Consequently, the things specified in section 5 of the Regulations have been drafted broadly, so that a wide range of things are captured and therefore are eligible for approval as an investment project, or as part of an investment project, under Part 3 of the Act.

Railway technology is specified in the Regulations. This is intended to capture a broad range of technology (both currently available technology, and technologies which may be

developed in the future) which may be applied to or in relation to railways. This includes technology which contributes to modern infrastructure delivery and control of rail infrastructure from remote locations, but may also extend to other types of technology such as technologies developed or implemented to improve amenity for railway users or other persons.

### **Section 6 – Additional things included in the definition of *road***

Section 6 of the Regulations provides that for the purposes of the definition of *road* in subsection 4(1) of the Act, the following things are specified to the extent they are not otherwise a road:

- (a) a path for the use of pedestrians;
- (b) a path for the use of persons using any form of transport;
- (c) a bus stop;
- (d) a bus station or interchange;
- (e) a facility for passengers to enter or exit road vehicles;
- (f) a facility for the transfer of cargo or passengers from one road vehicle to another;
- (g) a car park;
- (h) a facility off the road used by road vehicles (for example, a rest area);
- (i) amenities for the use of persons who travel on a road (for example, shelter, toilets, seating, waste receptacles, drinking water facilities and eating facilities);
- (j) a facility for the care or management of livestock travelling on a road;
- (k) a facility for charging electric or hydrogen fuel cell road vehicles;
- (l) technology relating to road transport.

The Note provides that this section would specify things only to the extent they are not already a road within the meaning of the Act.

An intention in specifying the things in section 6 of the Regulations is to expand the range of projects and expenditure eligible for approval under Part 3 of the Act. Consequently, the things specified in section 6 of the Regulations have been drafted broadly, so that a wide range of things are captured and therefore are eligible for approval as an investment project, or as part of an investment project, under Part 3 of the Act.

The Regulations adopt the formulation in section 6 of specifying things only ‘to the extent they are not otherwise a road’. This formulation was adopted having regard to subparagraph (b)(ii) in the definition of ‘road’ in subsection 4(1) of the Act, and was intended to make clear that specifying things by section 6 of the Regulations does not cause anything presently included in the term ‘road’ for the purposes of Part 8 of the Act to be removed from the meaning of ‘road’ in that Part.

The additional things specified in the definition of *road* include things to further support active transport and public transport. Projects for the construction of such things can support reduced congestion outcomes which improves overall operation of land transport networks as well as provide broader social and economic benefits. A project for the construction of some things which relate to active transport and public transport are already eligible under the Act for approval as an investment project under Part 3, including railways, paths for the use of persons riding bicycles, and intermodal transfer facilities. An intention in specifying some of the additional matters in section 6 (including the things in paragraphs (a), (b), (c), (d) and (f)

in section 6 of the Regulations) is to ensure a wider range of public transport and active transport projects are eligible for approval as an investment project, or as part of an investment project. This enables more of the benefits mentioned to be realised and also reduces areas of uncertainty as to eligibility under the Act.

Section 6 of the Regulations includes the specification of things related to technology, namely a ‘facility for charging hydrogen and electric fuel cell road vehicles’ and ‘technology relating to road transport’. These provisions are intended to capture a broad range of technology (both currently available and which may be developed in the future).

### **Section 7 – Additional things included in the definition of *construction* in relation to a railway or road**

Section 7 of the Regulations provides that for the purposes of subsection 4(2) of the Act, a range of matters related to construction are included to increase clarity and broaden the eligibility criteria of projects for the construction of a railway or road.

The Regulations, in relation to the matters mentioned in paragraphs 4(2)(a) and (b) of the Act, expand the definition of *construction* to include the following:

- (a) community consultation and other communication with the community;
- (b) environmental remediation;
- (c) environmental harm mitigation;
- (d) payment of financing costs;
- (e) payment of compensation;
- (f) payment of costs of removing and relocating facilities and other things.

Section 7 of the Regulations expands and clarifies the types of matters that are included in the definition of ‘construction’ in the Act.

Although the existing definition of *construction* in the *National Land Transport Act 2014* includes a wide scope of activities, the Regulations further expand this to explicitly include certain other matters that may arise in relation to construction projects, such as financing costs, compensation, and costs for other activities related to road and rail construction. The matters specified have been drafted broadly, so that a wide range of matters are captured and are therefore eligible for approval as (or to be included in) a project for the construction of a railway or road.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the  
*Human Rights (Parliamentary Scrutiny) Act 2011*

*National Land Transport Regulations 2022*

### Overview of the Disallowable Legislative Instrument

This Legislative Instrument expands the eligibility of land transport infrastructure investment funding under the *National Land Transport Act 2014*.

This Legislative Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

### Human rights implications

The Regulations does not engage any of the applicable rights or freedoms.

### Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Barnaby Joyce, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development**