

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSLINK (NATIONAL LAND TRANSPORT) AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport, Regional Development and
Local Government, the Honourable Anthony Albanese, MP)

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OUTLINE

The AusLink (National Land Transport) Amendment Bill 2008 amends the *AusLink (National Land Transport) Act 2005* (the Act).

The main provisions of the Bill:

- amend the definition of 'road' contained in the Act so as to put beyond doubt that projects for the development of off road facilities used by heavy vehicles in connection with travel on the road may be funded; and
- extend the Roads to Recovery Program until 30 June 2014.

The legislation also makes clear that funds can be allocated under the Roads to Recovery program for use in a particular state whilst the most appropriate entity to finally receive the allocation is determined.

This will allow funds to be preserved whilst, for example, a decision is made on who should receive funds so as to provide roads in unincorporated areas where there is no local council, or to provide bridges and Aboriginal Access Roads in remote parts of a State.

FINANCIAL IMPACT STATEMENT

Subject to the Senate allowing the increase to the Road User Charge, the Heavy Vehicle Safety and Productivity Program is anticipated to receive funding as follows:

2008-09	2009-10	2010-11	2011-12
\$10m	\$20m	\$20m	\$20m

The Roads to Recovery Program is anticipated to receive funding, as follows, noting that funding only to 2011-12 is identified in the Forward Estimates:

2009-10	2010-11	2011-12	2012-13	2013-14
\$350m	\$350m	\$350m	\$350m	\$350m

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NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 provides for the Act to be called the AusLink (National Land Transport) Amendment Act 2008.

Clause 2: Commencement

Clause 2 provides for the Act to commence on the day after it receives the Royal Assent.

Clause 3: Schedule(s)

Clause 3 provides that each Act specified in a Schedule to the Bill is amended or repealed in accordance with the terms set out in the Schedule.

Schedule 1 – AusLink (National Land Transport) Act 2005

Item 1 – Subsection 4(1)

Item 1 provides a statutory definition for the phrase **AusLink Roads to Recovery funding period** so as to allow two separate funding periods, enabling the Roads to Recovery Program to continue until 30 June 2014.

Item 2 – Subsection 4(1) (after subparagraph (a)(v) of the definition of road)

Item 2 adds to the definition of a “road” contained in the Act, so as to include off the road facilities used by heavy vehicles in connection with travel on the road.

The addition to the definition is necessary so that projects involving the development of these types of facilities can be funded under the terms of the Act.

The Bill gives rest areas or weigh stations as examples of the sort of facility that will fall within the extended definition. It is not the Government’s intention that the funding of any commercial developments such as motels, food or fuel outlets would be covered by this addition to the definition.

Item 3 – Section 87

Item 3 repeals and substitutes section 87 of the Act.

The new section 87 requires the Minister to publish two AusLink Roads to Recovery Lists: one list for the period 1 July 2005 – 30 June 2009, and another list for the period 1 July 2009 – 30 June 2014.

These lists set out the local councils and other entities who will receive funds under the Roads to Recovery Program, and the amounts to be received.

Such a list must be published prior to, or as soon as practicable after, the commencement of a Roads to Recovery funding period.

The new section is similar in structure to the repealed section.

However, one addition is a capacity contained in a proposed new subparagraph 87(2)(b)(ii) to allow an amount of money to be allocated for eligible projects in a State, or a part of a State, where the entity to receive funds has yet to be determined.

This will allow funds to be preserved whilst, for example, arrangements can be put in place to provide funds for roads in unincorporated areas where there is no local council, or to provide bridges and access roads in remote areas.

The Minister's determination of the AusLink Roads to Recovery List will be a legislative instrument for purposes of the *Legislative Instruments Act 2003* but the disallowance provisions of that Act will not apply.

The exemption from the sunseting provisions of the *Legislative Instruments Act 2003* has been removed because the combination of the exemption from sunseting in new subsection 87(3) and the prohibition on revocation in new subsection 88(6) would have had the effect that an Auslink Roads to Recovery List would remain on the Federal Register of Legislative Instruments indefinitely.

The list of funding recipients and their funding allocations is central to the administration of the Roads to Recovery Program. Local government authorities will be expecting to continue to receive funding under the Roads to Recovery Program. The listing of funding recipients follows existing practice, is well known to local government, and is not subject to disallowance.

Item 4 – Saving

Item 4 is a technical provision designed to remove any doubt about the continued eligibility of entities listed on the AusLink Roads to Recovery List made prior to the repeal and substitution of section 87 of the Act.

Item 5 – Paragraphs 88(1)(a) and (2)(a)

Item 7 – Subsection 88(3)

Item 8 – Subsection 88 (4) and (5)

Item 9 – subsection 89(1)

Items 5, 7, 8 and 9 are technical amendments that amend the provisions listed above to reflect the fact that there are now two AusLink Roads to Recovery Lists made rather than one.

Item 6 – After subsection 88(2)

Item 6 adds a new subsection 88(2A) of the Act to create a mechanism that permits any funds preserved under a listing made under subparagraph 87(2)(b)(ii) (discussed in the clause note to **item 3**) to be subsequently transferred to the entity to receive the funding.

Item 8 – subsection 88(4) and (5)

Items 8 make technical revisions to section 88 of the Act, which affirms that the Minister can only amend an AusLink Roads to Recovery list in the circumstances listed in the section.

This includes, as a result of amendments to the Act made by this Bill, a variation to a list as a result of the exercise of the mechanism created by subparagraph 87(2)(b)(ii) and subsection 88(4), discussed earlier.

Item 9 Subsection 89(1)

Item 10 Subsection 89(3)

Items 9 and 10 permit payments under the Roads to Recovery Program to be made until 30 June 2014.