



Land Transport Infrastructure Amendment Act 2014

No. 101, 2014

***An Act to amend the *Nation Building Program
(National Land Transport) Act 2009*, and for related
purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Main amendments		3
Part 1—Amendments		3
	<i>Nation Building Program (National Land Transport) Act 2009</i>	3
Part 2—Application and transitional provisions		15
Schedule 2—Repeals and other amendments		20
Part 1—Repeal of Acts		20
	<i>Australian Land Transport Development Act 1988</i>	20
	<i>Railway Standardization (New South Wales and Victoria) Agreement Act 1958</i>	20
	<i>Roads to Recovery Act 2000</i>	20
Part 2—Other amendments		21
	<i>Income Tax Assessment Act 1997</i>	21
	<i>Telstra Corporation Act 1991</i>	21



Land Transport Infrastructure Amendment Act 2014

No. 101, 2014

**An Act to amend the *Nation Building Program
(National Land Transport) Act 2009*, and for related
purposes**

[Assented to 11 September 2014]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

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 this Act receives the Royal Assent.	11 September 2014
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Main amendments

Part 1—Amendments

Nation Building Program (National Land Transport) Act 2009

1 Section 1

Omit “*Nation Building Program (National Land Transport) Act 2009*”, substitute “*National Land Transport Act 2014*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

2 Subsection 4(1) (definition of *approved funding recipient*)

Repeal the definition, substitute:

approved funding recipient means the eligible funding recipient identified in the project approval instrument in relation to the following projects:

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

3 Subsection 4(1) (definition of *approved purposes*)

Repeal the definition, substitute:

approved purposes, in relation to the following projects, means the purposes forming part of the project, other than any purposes that are excluded by the project approval instrument from being purposes on which funding may be expended:

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

4 Subsection 4(1)

Insert:

Black Spot Project has the meaning given by section 69.

5 Subsection 4(1) (definition of *Corridor Strategy*)

Repeal the definition.

6 Subsection 4(1) (definition of *eligible funding recipient*)

Repeal the definition, substitute:

eligible funding recipient means:

- (a) a State; or
- (b) an authority of a State; or
- (c) a local government authority; or
- (d) any other body corporate;

and, when used in Parts 4 and 5, includes a partnership.

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

7 Subsection 4(1) (paragraph (a) of the definition of *funding agreement*)

Omit “, 6”.

8 Subsection 4(1)

Insert:

Investment Project has the meaning given by section 8.

9 Subsection 4(1)

Repeal the following definitions:

- (a) definition of *National Land Transport Plan*;
- (b) definition of *Nation Building Program Black Spot Project*;
- (c) definition of *Nation Building Program National Project*;
- (d) definition of *Nation Building Program Off-Network Project*;
- (e) definition of *Nation Building Program Roads to Recovery funding period*;
- (f) definition of *Nation Building Program Roads to Recovery List*;
- (g) definition of *Nation Building Program Transport Development and Innovation Project*.

10 Subsection 4(1)

Insert:

non-corporate Commonwealth entity means:

- (a) a Department within the meaning of the *Public Service Act 1999*; or
- (b) an Executive Agency within the meaning of the *Public Service Act 1999*; or
- (c) any other Agency (except a body corporate) to which the *Financial Management and Accountability Act 1997* applies.

Note: Section 51A sets out how this Act applies to non-corporate Commonwealth entities.

11 Subsection 4(1) (definition of ***project approval instrument***)

Repeal the definition, substitute:

project approval instrument means:

- (a) in relation to a Black Spot Project—the instrument approving the project under subsection 70(1); and
- (b) in relation to an Investment Project—the instrument approving the project under subsection 9(1); and
- (c) in relation to a Transport Development and Innovation Project—the instrument approving the project under subsection 29(1).

12 Subsection 4(1)

Insert:

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

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

13 Subsection 4(1)

Insert:

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

14 After section 4

Insert:

4A Alternative constitutional basis

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

- (7) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in relation to external affairs.
- (8) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding for purposes relating to the defence of Australia.
- (9) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in so far as it is appropriate for the funding to be provided by the Commonwealth as the national Government of Australia.
- (10) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding in so far as it is appropriate for the Parliament, as the national Parliament of Australia, to authorise the Minister to provide the funding.
- (11) This Act also has the effect it would have if its operation in relation to Commonwealth funding were expressly confined to an operation limited to Commonwealth funding for purposes relating to the executive power of the Commonwealth.

15 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Investment Projects

16 Division 1 of Part 3 (heading)

Repeal the heading, substitute:

Division 1—Approval of Investment Projects

17 Section 8

Repeal the section, substitute:

8 What is an Investment Project?

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

18 Section 9 (heading)

Repeal the heading, substitute:

9 Approval of Investment Projects

19 Subsection 9(1)

Omit “a Nation Building Program National”, substitute “an Investment”.

20 Sections 10 and 11

Repeal the sections, substitute:

10 What projects are eligible for approval?

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

- (a) the construction of an existing or proposed road that is in a State or Indian Ocean Territory;
- (b) the maintenance of an existing or proposed road that is included in the National Land Transport Network;
- (c) the construction of an existing or proposed railway that is in a State or Indian Ocean Territory;
- (d) the maintenance of an existing or proposed railway that is included in the National Land Transport Network;
- (e) the construction of an inter-modal transfer facility in a State or Indian Ocean Territory;
- (f) the acquisition or application of technology that will, or may, contribute to the efficiency, security or safety of transport operations in a State or Indian Ocean Territory.

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

11 Is it appropriate to approve a project?

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

- (a) the extent to which the project is likely to improve the ability of industries and communities to compete in international, inter-State or inter-regional trade and commerce;
- (b) the extent to which the project will improve the efficiency, integration, security or safety of transport operations;
- (c) the results of any assessment of the economic, environmental or social costs or benefits of the project;
- (d) the extent to which the project is likely to improve access for communities to services and employment;
- (e) any transport or land use plans that might be relevant to the project;
- (f) the extent to which persons other than the Commonwealth propose to contribute funding to the project.

21 Subsection 12(1)

Omit “Nation Building Program National”, substitute “Investment”.

22 Subsections 12(3) and (4)

Omit “a Nation Building Program National”, substitute “an Investment”.

23 Subsections 13(1), (2) and (3)

Omit “a Nation Building Program National”, substitute “an Investment”.

24 Section 14

Omit “a Nation Building Program National”, substitute “an Investment”.

25 Subsection 15(1)

Omit “a Nation Building Program National”, substitute “an Investment”.

26 Section 16 (heading)

Repeal the heading, substitute:

16 Commonwealth funding for Investment Projects

27 Subsections 16(1), 17(1) and 18(1)

Omit “a Nation Building Program National”, substitute “an Investment”.

28 Subparagraph 24(1)(c)(vi)

Omit “prescribed by the regulations”, substitute “determined by the Minister by legislative instrument under subsection (4)”.

29 At the end of section 24

Add:

- (4) The Minister may, by legislative instrument, determine an amount for the purposes of subparagraph (1)(c)(vi).

30 After subsection 25(1)

Insert:

- (1A) The funding recipient must, as soon as practicable after selling or disposing of an interest in land that was acquired using all or part of the funding payment, notify the Minister of the sale or disposal.

31 Subsections 25(2) and (4)

Omit “Nation Building Program National”, substitute “Investment”.

32 Section 30

Omit “either or both”, substitute “any”.

33 At the end of section 30

Add:

- ; (c) research, investigations, studies or analysis of:
(i) projects for which Commonwealth funding has been provided under Part 3 or 7; or

- (ii) projects for which Commonwealth funding was provided under Part 6 as in force immediately before its repeal; or
- (iii) projects for which particulars have been submitted for approval under Part 3 or 7; or
- (iv) the construction or maintenance of roads that have been funded (in whole or in part) under Part 8.

34 Paragraph 31(c)

Omit “on Nation Building Program National Projects”, substitute “under the Act”.

35 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Funding for land transport research entities

36 Section 45 (definition of *land transport research entity*)

After “eligible funding recipient”, insert “, or a non-corporate Commonwealth entity,”.

37 At the end of Part 5

Add:

51A Funding arrangements with non-corporate Commonwealth entities

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

Note: Sections 48 to 50 deal with funding agreements.

38 Part 6

Repeal the Part.

39 Section 87

Omit “The Nation Building Program Roads to Recovery List must:”
substitute:

- (1) The Minister must, by legislative instrument, determine a list (the *Roads to Recovery List*) that must:

40 Before paragraph 87(a)

Insert:

- (aa) specify a funding period in relation to the Roads to Recovery Program; and

41 Paragraph 87(a)

Omit “Nation Building Program Roads to Recovery Program during the”, substitute “Roads to Recovery Program during the specified”.

42 At the end of section 87

Add:

- (2) Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to an instrument under subsection (1).

43 Subsection 92(1)

Omit “(1)”.

44 Subsection 92(2)

Repeal the subsection.

45 After section 92

Insert:

92A Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

- (3) If this Act would otherwise permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (4) If the Minister enters into a funding agreement with a partnership, the agreement must state:
 - (a) the names of all the partners; and
 - (b) if the partnership has a registered business name, the registered business name.
- (5) If under this Act a document is given to a partner of the partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.
- (6) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under this Act.
- (7) For the purposes of this Act, a change in the composition of the partnership does not affect the continuity of the partnership.

46 Section 94

Omit “6”.

47 Amendments of listed provisions

Further amendments		
Item	Provision	Omit
1	Part 4 (heading)	Nation Building Program
2	Division 1 of Part 4 (heading)	Nation Building Program
3	Section 28 (heading)	Nation Building Program
4	Section 28	<i>Nation Building Program</i>
5	Section 29 (heading)	Nation Building Program
6	Subsection 29(1)	Nation Building Program
7	Section 30	Nation Building Program
8	Section 31	Nation Building Program (first occurring)
9	Subsections 32(1), (3) and (4)	Nation Building Program
10	Subsections 33(1), (2) and (3)	Nation Building Program
11	Section 34	Nation Building Program

Schedule 1 Main amendments

Part 1 Amendments

Further amendments		
Item	Provision	Omit
12	Subsection 35(1)	Nation Building Program
13	Section 36 (heading)	Nation Building Program
14	Subsections 36(1), 37(1) and 38(1)	Nation Building Program
15	Part 7 (heading)	Nation Building Program
16	Division 1 of Part 7 (heading)	Nation Building Program
17	Section 69 (heading)	Nation Building Program
18	Section 69	<i>Nation Building Program</i>
19	Section 70 (heading)	Nation Building Program
20	Subsection 70(1)	Nation Building Program
21	Sections 71 and 72	Nation Building Program
22	Subsections 73(1), (3) and (4)	Nation Building Program
23	Subsections 74(1) and (2)	Nation Building Program
24	Section 75	Nation Building Program
25	Subsection 76(1)	Nation Building Program
26	Section 77 (heading)	Nation Building Program
27	Subsections 77(1), 78(1) and 79(1)	Nation Building Program
28	Part 8 (heading)	Nation Building Program
29	Section 87 (heading)	Nation Building Program
30	Section 88 (heading)	Nation Building Program
31	Paragraphs 88(1)(a), (2)(a) and (2A)(a)	Nation Building Program
32	Subsections 88(2B), (3), (4), (5) and (6)	Nation Building Program
33	Section 89 (heading)	Nation Building Program
34	Subsection 89(1)	Nation Building Program (wherever occurring)

Part 2—Application and transitional provisions

48 Definitions

In this Part:

new law means the *National Land Transport Act 2014* as in force on and after the commencement of this item.

old law means the *Nation Building Program (National Land Transport) Act 2009* as in force immediately before the commencement of this item.

49 Application

Approval of Nation Building Program National Projects

- (1) The amendments made by items 9 and 20 do not apply in relation to projects approved as Nation Building Program National Projects before the commencement of those items.

Public tenders for certain work

- (2) The amendment made by item 28 does not apply in relation to projects approved as Nation Building Program National Projects before the commencement of that item.

Sale or disposal of interest in land

- (3) The amendment made by item 30 applies in relation to sales and disposals made on or after the commencement of that item, even if the land was acquired before the commencement of that item using all or part of a funding payment for a Nation Building Program National Project made before that commencement.

50 Transitional—Nation Building Program National Projects

Part 3 instruments

- (1) An instrument in force under Part 3 of the old law immediately before the commencement of this item in relation to a project that was a Nation Building Program National Project has effect, on and after that commencement, as if:
 - (a) that project were an Investment Project; and

Schedule 1 Main amendments

Part 2 Application and transitional provisions

(b) that instrument were in force under Part 3 of the new law in relation to that Investment Project.

- (2) Subitem (1) does not prevent a variation or revocation of that instrument on or after the commencement of this item.

Funding agreement

- (3) A funding agreement in force in relation to the Nation Building Program National Project immediately before the commencement of this item has effect, on and after that commencement, as if it were a funding agreement in force in relation to the Investment Project.

- (4) Subitem (3) does not prevent a variation or termination of that agreement on or after the commencement of this item.

Funding conditions

- (5) The conditions that applied under section 18 of the old law to a payment of Commonwealth funding for the Nation Building Program National Project that was made before the commencement of this item continue to apply on and after that commencement.

51 Transitional—Nation Building Program Transport Development and Innovation Projects

Part 4 instruments

- (1) An instrument in force under Part 4 of the old law immediately before the commencement of this item in relation to a project that was a Nation Building Program Transport Development and Innovation Project has effect, on and after that commencement, as if:
- (a) that project were a Transport Development and Innovation Project; and
 - (b) that instrument were in force under Part 4 of the new law in relation to that Transport Development and Innovation Project.
- (2) Subitem (1) does not prevent a variation or revocation of that instrument on or after the commencement of this item.

Funding agreement

- (3) A funding agreement in force in relation to the Nation Building Program Transport Development and Innovation Project immediately before the commencement of this item has effect, on and after that commencement, as if it were a funding agreement in force in relation to the Transport Development and Innovation Project.
- (4) Subitem (3) does not prevent a variation or termination of that agreement on or after the commencement of this item.

Funding conditions

- (5) The conditions that applied under section 38 of the old law to a payment of Commonwealth funding for the Nation Building Program Transport Development and Innovation Project that was made before the commencement of this item continue to apply on and after that commencement.

52 Transitional—Nation Building Program Off-Network Projects

Part 6 instruments

- (1) An instrument in force under Part 6 of the old law immediately before the commencement of this item in relation to a project that was a Nation Building Program Off-Network Project has effect, on and after that commencement, as if:
 - (a) that project were an Investment Project; and
 - (b) that instrument were in force under Part 3 of the new law in relation to that Investment Project.
- (2) Subitem (1) does not prevent a variation or revocation of that instrument on or after the commencement of this item.

Funding agreement

- (3) A funding agreement in force in relation to the Nation Building Program Off-Network Project immediately before the commencement of this item has effect, on and after that commencement, as if it were a funding agreement in force in relation to the Investment Project.
- (4) Subitem (3) does not prevent a variation or termination of that agreement on or after the commencement of this item.

Funding conditions

- (5) The conditions that applied under section 62 of the old law to a payment of Commonwealth funding for the Nation Building Program Off-Network Project that was made before the commencement of this item continue to apply on and after that commencement.

53 Transitional—Nation Building Program Black Spot Projects

Part 7 instruments

- (1) An instrument in force under Part 7 of the old law immediately before the commencement of this item in relation to a project that was a Nation Building Program Black Spot Project has effect, on and after that commencement, as if:
- (a) that project were a Black Spot Project; and
 - (b) that instrument were in force under Part 7 of the new law in relation to that Black Spot Project.
- (2) Subitem (1) does not prevent a variation or revocation of that instrument on or after the commencement of this item.

Funding agreement

- (3) A funding agreement in force in relation to the Nation Building Program Black Spot Project immediately before the commencement of this item has effect, on and after that commencement, as if it were a funding agreement in force in relation to the Black Spot Project.
- (4) Subitem (3) does not prevent a variation or termination of that agreement on or after the commencement of this item.

Funding conditions

- (5) The conditions that applied under section 79 of the old law to a payment of Commonwealth funding for the Nation Building Program Black Spot Project that was made before the commencement of this item continue to apply on and after that commencement.

54 Transitional—Roads to Recovery Program

1 July 2009 to 30 June 2014 funding period

The old law, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a payment made under Part 8 of the old law during the Nation Building Program Roads to Recovery funding period starting on 1 July 2009.

Note: For example, this means that the conditions determined under section 90 of the old law would continue to apply to such a payment and amounts would be able to be recovered under section 92 of the old law.

55 Transitional rules

The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Act.

Schedule 2—Repeals and other amendments

Part 1—Repeal of Acts

Australian Land Transport Development Act 1988

1 The whole of the Act

Repeal the Act.

Railway Standardization (New South Wales and Victoria) Agreement Act 1958

2 The whole of the Act

Repeal the Act.

Roads to Recovery Act 2000

3 The whole of the Act

Repeal the Act.

Part 2—Other amendments

Income Tax Assessment Act 1997

4 Section 995-1 (paragraph (a) of the definition of *Transport Department*)

Omit “*Nation Building Program (National Land Transport) Act 2009*”, substitute “*National Land Transport Act 2014*”.

5 Section 995-1 (definition of *Transport Minister*)

Omit “*Nation Building Program (National Land Transport) Act 2009*”, substitute “*National Land Transport Act 2014*”.

Telstra Corporation Act 1991

6 Section 3 (definition of *Transport Minister*)

Omit “*Nation Building Program (National Land Transport) Act 2009*”, substitute “*National Land Transport Act 2014*”.

[*Minister’s second reading speech made in—
House of Representatives on 27 February 2014
Senate on 25 March 2014*]

(12/14)
