FINAL REPORT OF THE

INDEPENDENT REVIEW OF THE NATIONAL PARTNERSHIP AGREEMENT ON LAND TRANSPORT INFRASTRUCTURE PROJECTS

The Hon Catherine King MP
Minister for Infrastructure, Transport, Regional
Development and Local Government
Parliament House
CANBERRA ACT 2600

Dear Minister

In July 2023, you commissioned an independent review of the National Partnership Agreement on Land Transport Infrastructure Projects 2019–2024 (NPA), as required under Part 6, Clause 72 of the Agreement.

I am pleased to provide you with the report for your consideration, and that of state and territory infrastructure and transport ministers. This Review engaged with all jurisdictions to consider the current arrangements.

As principal reviewer, I was assisted by Ms Dixie Crawford, First Nations Advisor, who led the First Nations component of the Review.

The findings and recommendations are designed to inform the development of a new Land Transport Federation Funding Agreement with states and territories (the States).

The new agreement provides an important opportunity for governments to reset the objectives for land transport investment, together with the ambition and operation of intergovernmental arrangements.

This Review of the NPA was undertaken in parallel to the Independent Strategic Review of the Infrastructure Investment Program that was completed in August. While the two reviews were distinct, the findings are complementary.

Land transport infrastructure is a critical enabler to our national productivity, underpinning the effective operation of the nation and directly supporting economic activity.

Joint long-term strategic planning by all governments provides a real opportunity to achieve longer term goals, use funding more efficiently and ensure proportionate use of the policy levers available to governments.

Governments' collective investment in land transport infrastructure can also have wider social impacts, including accelerating economic outcomes for our First Nations peoples and contribute to other challenges such as climate change mitigation.

Yours sincerely,

Professor Jane Halton AO PSM

8 September 2023

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Executive summary

Land transport is fundamental to the Australian economy, to the movement of people and goods, and to the delivery of services. With Australia's population centres separated by long distances, the Commonwealth balances its investment in land transport infrastructure across Australia to deliver access to affordable and reliable transport. This extends to the freight network, as investment in safe and efficient land transport infrastructure is vital to freight movement, including key exports that support our competitiveness.

Governments are expected to deliver well-targeted, timely and cost-effective investment in land transport infrastructure that meets the needs of the Australian people and the economy. Communities take a strong interest in the progress of works on their local road and rail infrastructure. The civil construction industry, and the myriad sectors of the economy that rely on a well-functioning land transport network, keenly follow land transport investment decisions made by governments. Advocates from the safety, environmental, heritage and other sectors want to understand potential opportunities and impacts. The media reflects this interest, featuring land transport infrastructure issues at a national and local level every day.

Achieving nationally significant investment policy priorities, like transitioning to a net-zero economy by 2050, while successfully delivering large transport infrastructure projects presents significant challenges. Achieving these objectives will require new commitments to integrated, long-term investment planning and streamlined administrative processes that enable clear decision-making in order to sequence and deliver infrastructure projects.

The Commonwealth has committed to a ten-year $120 billion pipeline of investment in land transport infrastructure. The majority of this spend is funded through the National Partnership Agreement on Land Transport Infrastructure Projects (NPA), augmented by joint investments with the States.

The existing NPA commenced on 1 July 2019 and will conclude on 30 June 2024. When the agreement commenced, the then Government focused on delivering its priorities. The COVID-19 pandemic significantly changed the emphasis of spending and the flexibility of the NPA enabled rapid injection of stimulus to support employment. However, no plan was in place to wind back that spending in a timely way. In the last two years of the agreement, the focus has been on achieving a more sustainable and deliverable pipeline of investment, and on reforming arrangements that support this investment.

An independent review of the NPA is now required under Part 6, Clause 72 of the agreement. This Review assesses how different elements of the agreement have performed in supporting the Commonwealth's objectives for infrastructure investments and examines how governments can accelerate economic outcomes of First Nations people. Findings will support the negotiation of a new Federation Funding Agreement Schedule (FFAS) to replace the NPA.

This Review comes at a key inflection point in land transport infrastructure investment, and for the economy more broadly. It takes a substantially different approach to the Review of the prior NPA conducted in 2018, which made no significant recommendations for changing the Commonwealth's investment settings under the now current agreement.

The current NPA has an acknowledged focus on outcomes, while project delivery is the dominant focus for infrastructure program administration and reporting requirements. The lack of connection between the current NPA's principles and any information that clearly defines the Commonwealth's expectations for making investments is a key concern of this Review. There has also been no systemic data gathering or outcomes analysis over the course of the current NPA to date.

This lack of information and connection between the NPA's principles and investment priorities substantially limits assurance that the current agreement is delivering on its objectives. This undermines the Commonwealth's capacity to be an informed investor in land transport infrastructure.

A related concern is that the announcement of land transport infrastructure projects as 'approved' has often occurred before necessary diligence is completed to adequately evaluate the proposed budget, program of works and completion requirements. Current processes, which are outlined in both the *National Land Transport Act 2014* (NLT Act) and the supporting Notes on Administration, significantly exacerbate this problem. There must be a clear distinction between projects that are proposed/promoted (by a range of proponents), projects that are accepted as worthy of consideration by relevant planning and administrative bodies and are 'under consideration', and projects that are formally approved. These distinctions are neither contemplated nor facilitated by current funding and administrative arrangements.

Further, current administrative arrangements are not efficient, are not risk-sensitive and lack flexibility. There is general agreement that these arrangements are complex, and do not support scaling effort based on project size, complexity or risk. These arrangements are seen to contribute to project commencement delays, cost overruns, and duplication of effort. Changes to both project and program administration are required to address these issues, and to direct administrative efforts to the areas of highest risk and impact.

Based on evidence provided to this Review, the absence of a long-term investment horizon, a stop-start approach to funding, an undifferentiated Commonwealth oversight regime not calibrated according to risk, supply chain disruption, cost increases that exceed the allowances made at the time of project approval and poor cost estimation and scoping processes in the first place all contribute to poor project outcomes.

This Review cannot judge the merit of all of these claims. However, a longer-term investment horizon and changes to priority setting, including greater transparency, improved advice to Government from Infrastructure Australia (IA) and changes to administrative arrangements would streamline and focus effort in order to improve outcomes.

Concerns with the current NPA, its administration and the infrastructure projects it is used to prioritise have been raised more broadly. During the period of the current NPA's operation, the Australian National Audit Office, state audit offices, and parliamentary committees have identified and commented on the limitations of the existing arrangements.

The Australian Government has also commissioned both an independent review to consider IA's role as an independent adviser to the Commonwealth and a Strategic Review of the Infrastructure Investment Program (IIP) to provide advice as to whether federally funded infrastructure projects meet government policy objectives and deliver benefits for Australians.

It is clear there is now an opportunity to reset existing arrangements in order to improve accountability, transparency, efficiency and, especially, outcomes. This Review considers both the NPA and the surrounding supporting arrangements that give effect to the investments made under the NPA's auspices.

The NPA, and the future FFAS, are by their nature high level agreements between governments. Key to their effectiveness are high quality contemporary systems and guidance that support accountability, assurance, risk management, decision-making and reporting.

The opportunity to leverage the significant expenditure under the current and forthcoming agreement is significant. However, as outlined in this report, there is a thicket of policy and priority areas that can, and should, be integrated into the next agreement. This requires a more sophisticated and thoughtful approach than simply settling a set of targets and performance indicators. The absence of a well thought through strategy can be seen in respect of First Nations outcomes which have not been nationally driven or supported, and hence performance is patchy.

This Review was a rapid one, tasked within a tight timeframe. Consultations with state and territory governments, who are partners to the NPA, occurred through meetings held with each jurisdiction to understand their views on what has worked well, what has not worked well, and opportunities for the new FFAS. Industry and peak body submissions were also invited, and a range of meetings held with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) and other Commonwealth officials. Consultations on the Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework), which sits within the current NPA, were conducted by the First Nations Advisor to the Review, Ms Dixie Crawford.

This Review is structured in three main sections:

- An assessment of the history, context and performance of the current NPA, including consideration of key issues raised in consultations,
- Recommendations for strengthening the upcoming FFAS and its supporting documentation, and updating other key regulatory and reference material, and
- A set of appendices that provide material to further explain the terms of this Review and the key legislative and financial elements of the Commonwealth's framework for making investments in land transport infrastructure.

1.1 Recommendations

This Review makes recommendations for how the new Land Transport Federation Funding Agreement should be structured to better support the Australian Government to deliver on its infrastructure investment priorities and objectives. The recommendations also require a commitment to improving the administrative, procurement and approvals processes that support the new agreement, as well as improved risk and performance management processes to guide project-level funding commitments.

These are long-term commitments that will allow the Commonwealth to plan and deliver on its land transport infrastructure priorities so that it can fully realise the benefits of investments it makes throughout the life of the next agreement.

This Review recommends:

Recommendation 1.

The Commonwealth should work with the States to develop a new Land Transport Federation Funding Agreement that more effectively enables priority setting, risk management, funding flows, delivery, accountability and transparency of IIP investments.

The Agreement should set performance targets for agreed social and economic benefits, recognise jurisdictional diversity and identify, on a bilateral basis, targets for improvement over the course of the agreement.

Recommendation 2.

A long-term, integrated approach to planning and priority setting to inform funding decisions and for managing the infrastructure investment pipeline moving forward should be developed. The FFAS should clearly define the roles of key bodies involved in the land transport infrastructure investment process, including IA.

Recommendation 3.

Funding and procurement mechanisms that enable the integrated delivery of agreed priorities including the wider benefits of significant procurement activities should be developed.

Recommendation 4.

An outcomes and performance framework should form part of the new agreement. Reports should be provided during the course of the agreement to Ministers and officials to enable assessment on progress. This should include:

- Outcomes achieved,
- Administrative performance,
- Performance in respect of agreed targets in priority areas, and
- Progress reports should be published at regular intervals.

Recommendation 5.

A risk framework, underpinned by a confidence index and gateway reviews, should be developed to ensure investment risks are borne by the party that has the ability to manage them effectively. Once developed, this structured approach to risk should be used to streamline administration. Consideration should be given to program arrangements to deliver small, low-risk infrastructure projects.

Recommendation 6.

The approval process should be redesigned. This should include:

- A 2-pass process in order to ensure that all necessary due diligence, including planning and costing, is undertaken before approval is granted and announced,
- Projects 'under consideration' should be eligible for funding for scoping, design and costing before approval,
- A clear definition of when a project is to be included in the pipeline, and
- A 'sunset clause' which, absent a formal agreement, automatically removes a project from the pipeline if it has not commenced or met agreed significant milestones after a certain period.

Recommendation 7.

In the context of broader Australian infrastructure investment settings, the NLT Act and the National Land Transport Network should be reviewed to ensure they reflect contemporary productivity priorities and appropriately support the Commonwealth to deliver solutions for future land transport priorities.

Recommendation 8.

Reporting arrangements should be streamlined and underpinned by a requirement for personal positive attestation. State officials should actively, promptly and concisely disclose information to the Commonwealth that materially impacts project delivery timelines and costs. This disclosure should not be unreasonably delayed by the state or territory authorising environment.

Recommendation 9.

The cost escalation model should be reviewed to ensure it remains fit for purpose.

Recommendation 10.

The Notes on Administration (NoA) should be rewritten for clarity and to ensure they are appropriate for subordinate guidance. This should have appropriate oversight from the Commonwealth.

The revised NoA should be embedded in land transport investment decision-making processes so all decision-makers have sufficient visibility of the broader legal, regulatory, financial and policy framework that guides infrastructure investments. The NoA should include up-to-date guidance on the project life-cycle with a view to ensuring funding decisions are taken at the right time, and with consideration of the right information. The DITRDCA should consult IA as part of this process.

Recommendation 11.

The use of land transport infrastructure investment as COVID stimulus should be included in any overall review of COVID management to inform future responses to significant economic shocks.

Recommendation 12.

The Commonwealth and the States should commit to accelerating socioeconomic outcomes for First Nations Australians through their joint investment in land transport infrastructure by:

- Establishing a new policy framework following the principles of continuous improvement, being an informed investor, and greater engagement with First Nations people and businesses,
- Implementing new governance arrangements including focused leadership supported by champions within government and the sector, and appropriate resourcing for DITRDCA to lead the Commonwealth’s revised role,
- Developing a methodology by which the First Nations socioeconomic outcomes of a project, including employment and contracting as well as supporting food security, access to health and education, etc., are appropriately quantified in both the business case and post-completion phases, and
- Reporting and data capture to support a narrative around the socioeconomic outcomes of the policy and the telling of stories around successes and challenges in its implementation, and in ensuring the accountability of the policy to the public.

Australian land transport infrastructure

Land transport is fundamental to the Australian economy; to the movement of people and goods, and to the delivery of services. With Australia's population centres separated by long distances, the Commonwealth balances its investment in land transport infrastructure across Australia to deliver access to affordable and reliable transport. This extends to the freight network, as investment in safe and efficient land transport infrastructure is vital to freight movement, including key exports that support our economic competitiveness.

Whether it is travel by Australians for leisure and business, or the shipment of manufactured goods, grain or iron ore to markets both within Australia and to ports for export, everyone is impacted by the availability and quality of land transport infrastructure.

Planning, decision-making and project execution can have multi-generational effects. Failure to maintain infrastructure can increase costs, exacerbate delays and pose a risk to safety.

Significant investments in land transport infrastructure predate Federation.

The first railways were built by the colonies in the mid-1800s and were conceived in isolation from each other with limited thought about the operation of a national network[1].

The lack of coordination between the colonies prior to Federation led to a rail network consisting of different gauges. This meant passengers and goods had to be offloaded and reloaded on to different trains to travel between states. This lack of interoperable infrastructure led to inefficiencies in the network that would not be resolved until 1995[2].

This is known as 'the rail gauge problem', a term often used as a metaphor for the challenge of delivering national outcomes in a federal system of government.

Land transport infrastructure has always featured in Commonwealth–state relations. Significantly, a condition imposed by the Western Australian Government for joining the Commonwealth was the construction of the Trans-Australian Railway[3] which would connect the east with the west.

The arguments for the Trans-Australian Railway were promoting commerce and the movement of troops in support of Australia's national defence[4]. Upon completion of the Railway in 1917, then Treasurer Sir John Forrest said: "*Today, East and West are indissolubly joined together by bands of steel, and the result must be increased prosperity and happiness for the Australian people*[5]".

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1 Australian Rail Track Corporation 'The Rise, Decline and Rise of Australia's Railways', available at www.artc.com.au/library/agreement_railwayrise.pdf

2 ibid

3 National Museum of Australia 'Trans-Australian Railway', available at www.nma.gov.au/defining-moments/resources/trans-australian-railway

4 ibid

5 ibid

Many of the land transport infrastructure issues present at Federation remain today. The ongoing prospect of a fragmented transport network remains and the emergence of new technologies such as connected and autonomous vehicles underscore this risk. This reinforces the need to focus on the national network, as well as effective delivery of infrastructure within individual states and territories. If new technologies are implemented without deliberate coordination, there will be significant impacts to safety and the nation's productivity.

The reasons for investing in infrastructure have remained unchanged since the 1900s. Productivity, strategic national interests and the wellbeing of all Australians still drive investment decisions of governments today.

The Australian Constitution enables the Commonwealth to invest in land transport infrastructure (Appendix 10). In this context, and in cooperation with the States, the Commonwealth plays an important role in nation building by promoting the effective performance of Australia's land transport infrastructure, particularly through the National Land Transport Network (Network).

Each jurisdiction's network contributes to the Network, which, in turn, drives productivity, delivers goods and services, and allows people to participate in the economy and society. Congestion, poor connectivity, inadequate capacity and critical failures in one part of the national network can impact parts of the system elsewhere.

Well planned national infrastructure enables the economy and the country to function well. Proper functioning of the Network is fundamental for all governments, making engagement in joint long-term strategic planning a necessity. This planning should include consideration of future population growth to enable the smooth functioning of the economy and provide necessary community benefits.

Investment in infrastructure can drive policy solutions and be affected by the problems they seek to solve. The opportunities and challenges are often two sides of the same coin.

2.1 Infrastructure investment enables economic and social outcomes

Infrastructure facilitates productivity and delivers a range of economic, social, cultural and environmental benefits.

The potential to deliver these benefits is reflected in the significant amounts governments allocate to infrastructure spending. The Commonwealth has committed to a ten-year $120 billion pipeline of investment in land transport infrastructure. This is in addition to the significant amounts the state, territory and local governments spend on road and rail projects each year. In a single financial year (2020–21) the States spent around $36 billion on road and rail infrastructure, in addition to the Commonwealth's investment.

2.1.1 Economic benefits of land transport infrastructure

Infrastructure is a key enabler of the broader economy; it directly supports economic activity, sustains employment and has a multiplier effect on our national economy[6].

Effective land transportation networks deepen markets and promote competition, specialisation, innovation and a more dynamic economy through the cost-efficient flow of workers, goods and services[7]. Transport infrastructure supports productivity by reducing costs to business through faster, more efficient roads, rail and ports.

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6 Deloitte 'Infrastructure as an economic stimulus' October 2020, available at www2.deloitte.com/content/dam/Deloitte/global/Documents/Public-Sector/gx-gps-infrastructure-economic-stimulus.pdf

7 OECD (2020), Transport Bridging Divides, OECD Urban Studies, OECD Publishing, Paris.

Ineffective land transport has real costs for Australia's economy – time lost to congestion, increased greenhouse gas emissions, higher vehicle running costs, more road crashes and reduced family and leisure time. Without action, the cost of road congestion in Australia is forecast to grow from $18.9 billion in 2016 to $38.8 billion in 2031, impairing Australia's productivity and global competitiveness[8].

The infrastructure industry contributes to the Australian economy. In 2021–22, 8.9 per cent of national GDP was accounted for by Australian infrastructure industries[9]. The transport sector employed 690,000 people in August 2022 and in 2021–22, 55 per cent of infrastructure construction was in the transport sector[10].

Land transport infrastructure also contributes to improved social outcomes by reducing travel times and costs for people, and increasing access to education, health and other services.

2.1.2 Additional benefits achieved through infrastructure procurement

The collective purchasing power of governments provides an opportunity to generate a range of benefits above and beyond the infrastructure being procured.

Governments frequently use procurement policies to drive targeted reforms, diversify supply chains and promote competition during the delivery of infrastructure projects. This includes:

- setting employment targets for underrepresented groups on infrastructure projects,
- increasing opportunities for local suppliers and those that deliver social benefits, and
- influencing larger suppliers to prioritise social value creation and environmental outcomes.

The ongoing nature and scale of the infrastructure investment pipeline in Australia is able to sustain requirements across a range of priority areas. Importantly, governments can drive change in the construction sector through procurement policies. For example, governments are able to use their buying power to create markets and demand for recycled materials, contributing to the circular economy and decarbonisation.

Some groups are markedly under-represented within the construction sector, notably women, First Nations-owned businesses and people. The Australian Constructors Association's Construction Industry Culture Taskforce notes a more diverse and inclusive industry will help address capability and capacity constraints, and create opportunities for greater collaboration and innovation[11].

A predictable pipeline means industry can plan, invest in plant and equipment and employ apprentices, and individual employees can plan for their, and their family's, futures.

Progress, including cultural change, can be amplified by leveraging existing infrastructure expenditure. While there may be some initial additional costs associated with investing in these outcomes, if thoughtfully managed, returns on this investment will ultimately deliver the market capacity and capability noted above.

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8 Infrastructure Australia (2019), An Assessment of Australia's Future Infrastructure Needs: The Australian Infrastructure Audit 2019, Sydney, p. 22.

9 Bureau of Infrastructure and Transport Research Economics (BITRE) (2022), Australian Infrastructure and Transport Statistics Yearbook – 2022. Australian Infrastructure Industries are

- Transport, postal and warehousing;
- Energy industry (electric and gas);
- Information, media and tele-communications; and
- Water supply and waste services.

10 ibid

11 Construction Industry Culture Taskforce, available at www.constructionindustryculturetaskforce.com.au/culture-standard/diversity-and-inclusion

2.2 Influences on investment in land transport infrastructure

Global economic challenges, labour shortages and climate change are key factors currently shaping investments in land transport infrastructure in Australia, leading to a stronger focus on long-term fiscal and environmental sustainability.

The fiscal context has contributed to challenges for the infrastructure industry over recent years. In addition to traditionally having little influence on prices and being a price taker, other factors have impacted capacity to deliver infrastructure projects. Disruption to global supply chains caused by the COVID-19 pandemic and the war in Ukraine have resulted in delays and cost escalations for imported materials needed by the sector[12]. Within Australia, severe labour shortages are now seen as the biggest risk to sector capacity[13].

Actual and anticipated pressure on national, state and local infrastructure has led to an unprecedented demand for infrastructure projects over recent years. Pandemic stimulus measures and rebuilding programs following a succession of natural disasters have contributed to these growing demands, as the infrastructure construction sector struggles to keep up with rising costs. This has disrupted the delivery of projects and exposed weaknesses in construction, planning and priority setting.

This Review heard consistently about the challenge of delivering large numbers of projects in this context and the need to ensure that systems and processes, including in respect to cost escalation and maintenance, are fit for purpose.

Review consultations underscored growing awareness of the urgent need to focus on resilience, climate change and supply-chain challenges. Deloitte Access Economics estimates the annual cost of natural disasters and extreme weather events in Australia to be around $38 billion, and expects this to reach $73 billion by 2060[14].

Building infrastructure to be more resilient can deliver significant long-term savings, such as reduced maintenance costs. This approach generally requires higher initial investment and benefits may not always justify additional costs.

Actuarial analysis conducted for the Insurance Council of Australia provides a clear example of the benefits of investing in resilience. This analysis showed that estimated investment of approximately $2 billion in a five-year program of resilience measures would reduce costs to governments and households by more than $19 billion by 2050[15].

Embodied emissions are emissions resulting from the production of materials used in the construction of infrastructure, their transport to site and from the construction process itself. Embodied emissions of construction materials are estimated to be approximately five to ten per cent of Australia's total emissions – with the share expected to rise in coming years.[16]

The Commonwealth and the States have committed to Net Zero by 2050, with some jurisdictions committing to higher emissions reductions targets. To meet these targets infrastructure investment decisions will need to include a greater focus on carbon. Infrastructure and transport ministers have agreed to work together to develop a nationally-consistent approach to measuring embodied carbon in transport infrastructure[17].

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[12] Infrastructure Australia '2022 Infrastructure Market Capacity report', 14 December 2022 available at www.infrastructureaustralia.gov.au/publications/2022-market-capacity-report

[13] ibid

[14] National Emergency Management Agency, available at www.nema.gov.au/about-us/policies/resilience-investment

[15] Insurance Council of Australia, 'Building a more resilient Australia', February 2022, available at www.insurancecouncil.com.au/wp-content/uploads/2022/02/220222-ICA-Election-Platform-Report.pdf

[16] Infrastructure NSW 'Decarbonising Infrastructure Delivery', October 2022, available at www.infrastructure.nsw.gov.au/media/mdcdk0am/infr9941-decarbonising-infrastructure-delivery.pdf

[17] Infrastructure and Transport Ministers' Meetings, communique 9 June 2023, available at www.infrastructure.gov.au/sites/default/files/documents/itmm-communique-9-june-2023-final-with-minor-amendments.pdf

It is apparent there is appetite to effect needed change in the delivery of land transport infrastructure using levers such as infrastructure spend.

The Commonwealth's independent Strategic Review of the IIP[18] and the New South Wales (NSW) Government's review of its infrastructure program[19] are both expected to make recommendations for more sustainable investment pipelines aimed at improving productivity. A focus on sustainable delivery and coordinated investment decision-making between governments aligns with advice from IA regarding proactive demand management and sequencing of the pipeline[20].

The focus on fiscal restraint and productivity is leading to a renewed emphasis on rigorous infrastructure investment decision-making. The Productivity Commission's (PC) *Productivity Inquiry*, released in March 2023, recommends improving the efficacy and productivity outcomes of public expenditure through institutional and governance arrangements that address the systemic absence or disregard of rigorous cost-benefit analysis[21].

There is an opportunity for governments to leverage the investment pipeline to transform the activities of supply chains, accelerate emissions reduction and improve the climate resilience of Australia's land transport networks.

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18 Australian Government 'Infrastructure Investment Program Strategic Review' 2023, available at www.investment.infrastructure.gov.au/about/budget-announcements/infrastructure-investment-program-strategic-review

19 NSW Government 'Strategic Infrastructure Review', 5 May 2023, available at www.infrastructure.nsw.gov.au/media/h05n1x31/strategic-infrastructure-review-tor.pdf

20 Infrastructure Australia '2022 Infrastructure Market Capacity report', 14 December 2022 available at www.infrastructureaustralia.gov.au/publications/2022-market-capacity-report

21 Infrastructure Australia '2022 Infrastructure Market Capacity report', 14 December 2022 available at www.infrastructureaustralia.gov.au/publications/2022-market-capacity-report

Roles of key stakeholders

Australia's land transport network is vast with a total road length of 877,651 kilometres in 2018[22], and an estimated 32,900 kilometres of operational heavy railways[23].

3.1 Commonwealth

The Commonwealth has a role in nationally significant land transport infrastructure investments, including in the Network. It also has a role in the efficient and safe operation of land transport, illustrated through strategic guidance such as the National Freight and Supply Chain Strategy, and the National Road Safety Strategy. It does not own or operate Australia's public road network.

The Commonwealth is responsible for the national interstate rail network through the Australian Rail Track Corporation (ARTC). The ARTC is a Commonwealth-owned entity that maintains and operates rail lines across 8,500 kilometres of rail network, spanning five states. The ARTC was created in 1987 through an agreement between the Commonwealth and the States to streamline access to the standardised national interstate rail network.

In addition to rail, the Commonwealth also plays a role in aviation and space, telecommunications, maritime, energy and water infrastructure. To a lesser extent, the Commonwealth has supported some social infrastructure.

The Commonwealth has indicated it will invest $120 billion from 2023–24 to 2032–33 in land transport infrastructure through the infrastructure investment pipeline. The around $90 billion Infrastructure Investment Program forms a part of this pipeline, and is implemented through a NPA with states and territories, where the Commonwealth selects projects to co-invest in with the States. The Commonwealth is accountable for project expenditure under the IIP.

3.2 States

The States have primary responsibility for the planning and delivery of infrastructure. This includes and is not limited to public transport, intermodal connections, ports, the integration of planning works and consideration of future needs.

As asset owners, the States invest in land transport infrastructure and have primary responsibility for network planning and delivery of road and rail in their jurisdictions. This includes maintenance of their assets and preservation of corridors for future infrastructure development. Under the IIP, the States are the Commonwealth's delivery partners, being responsible for all aspects of project planning and construction. They also work with local councils to deliver projects under the IIP.

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22 Bureau of Infrastructure and Transport Research Economics 'Australian Infrastructure and Transport Statistics Yearbook 2022', available at www.bitre.gov.au/sites/default/files/documents/bitre-yearbook-2022.pdf

23 Bureau of Infrastructure and Transport Research Economics, 'Trainline 8 Statistical Report 2021', available at www.bitre.gov.au/sites/default/files/documents/train_008.pdf

3.3 Local Government

Responsibility for roads is shared with local government. Local councils own and maintain approximately 75 per cent of all roads in Australia[24].

3.4 Traditional Owners

Governments engage with First Nations communities as Traditional Custodians of the lands where land transport infrastructure is located. Governments recognise First Nations peoples' continuing responsibility of stewardship and caring for country and culture.

First Nations people and businesses were engaged as part of this Review and a list of these is provided at Section 10.

3.5 Industry

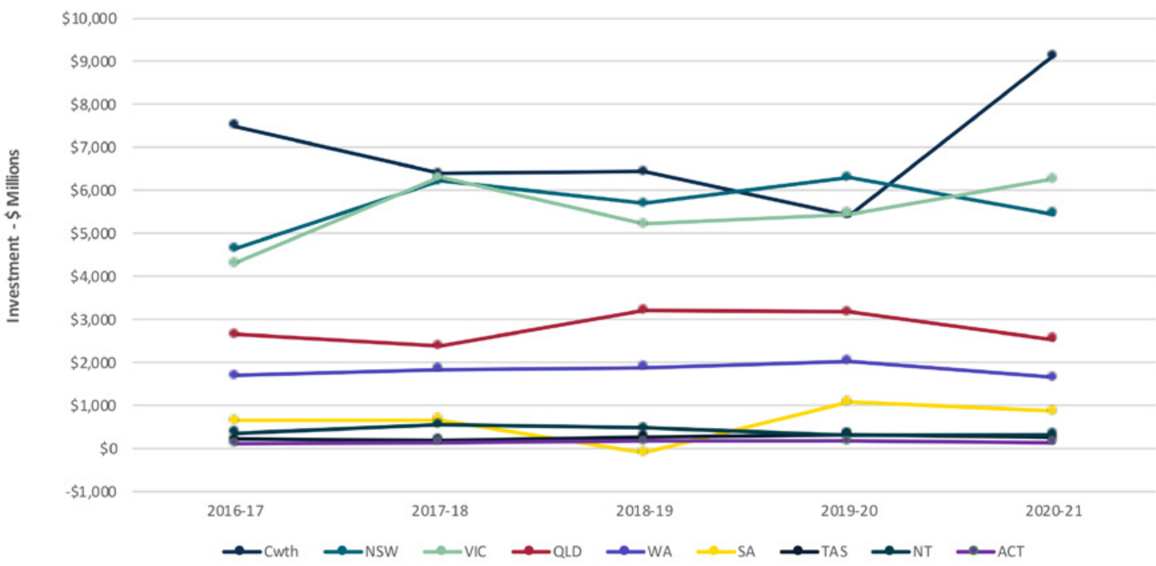
Governments work with the construction industry to deliver land transport infrastructure. Government infrastructure projects draw on a range of skills and occupations including engineers and architects, project management professionals, structures and civil trades, and labour[25].

This Review invited submissions from a number of peak industry bodies. A summary of their responses is at Appendix 3.

3.6 Investors

Figures 1 and 2 below depict the size of each government's investment in road and rail infrastructure. The Northern Territory (NT) Government did not invest in rail infrastructure, and the Tasmanian Government's contribution to rail infrastructure projects is represented as zero in the Bureau of Infrastructure and Transport Research Economics (BITRE) figures as it is less than the value of Commonwealth grants.

Figure 1. Road infrastructure expenditure by government 2016–17 to 2020–21



Source: BITRE – Australian Infrastructure and Transport Statistics – Yearbook 2022.

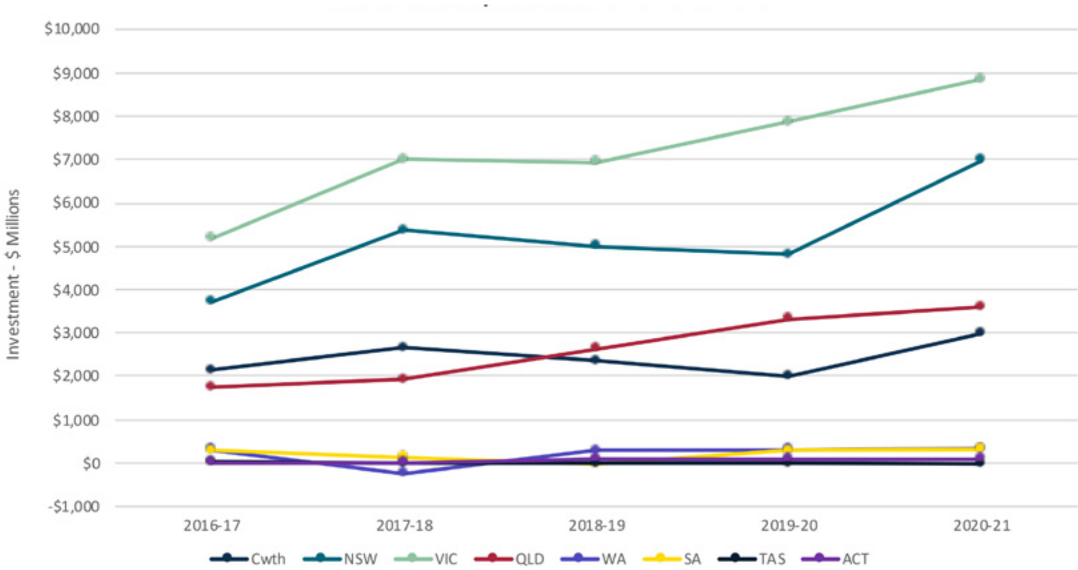
Note: Includes general government and public non-financial corporations.

[24] Australian Local Government Association 'Facts and Figures', available at www.alga.com.au/facts-and-figures/#:~:text=Local%20roads%20make%20up%20around,are%20managed%20by%20local%20governments.

[25] Infrastructure Australia "Infrastructure workforce and skills supply", October 2021, available at https://www.infrastructureaustralia.gov.au/sites/default/files/2021-11/Infrastructure%20Workforce%20and%20Skills%20Supply%20report%20211117.pdf

In 2018–19 the Commonwealth provided South Australia (SA) with a prepayment for road construction. The prepayment is netted off the state government expenditure figure resulting in a negative value.

Figure 2. Rail infrastructure expenditure by government 2016–17 to 2020–21



Source: BITRE – Australian Infrastructure and Transport Statistics – Yearbook 2022.

Note: Includes general government and public non-financial corporations.

Negative values are due to some mismatch between Commonwealth expenditure, and reported state expenditure from the Australian Bureau of Statistics (ABS) Government Financial Statistics. Negative values occur when total Commonwealth grants exceed state expenditure.

3.7 Supporting governments' investment

A number of key bodies support governments' investment decisions regarding project planning and delivery.

The Commonwealth receives independent advice on major infrastructure projects from IA, which was established as a statutory body in April 2008 under the *Infrastructure Australia Act 2008*[26]. Most jurisdictions also have their own infrastructure advisory bodies. They perform varied functions including assessing infrastructure investment proposals, providing independent advice to ministers, and, in some cases, coordinating with the Commonwealth on funding submission.

The Australian Transport Assessment and Planning (ATAP) Guidelines provide national consistency in infrastructure planning and support business case development. The ATAP Guidelines are endorsed by the Commonwealth and the States.

The ongoing maintenance of the ATAP Guidelines is overseen by the ATAP Steering Committee, reporting to the Infrastructure and Transport Senior Officials Committee.

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[26] In 2022 an independent review of IA was undertaken to ensure Infrastructure Australia is positioned to achieve its core purpose. A number of recommendations were made including changes to governance, requiring legislative amendments. The report and the Government's response is available at www.infrastructure.gov.au/have-your-say/independent-review-infrastructure-australia

National Partnership Agreements

Intergovernmental agreements became an important model for Commonwealth–state payments with the establishment of the Council of Australian Governments (COAG) in 1992[27]. Road transport was included among COAG's early Intergovernmental agreements in the 1990s.

In 2009, COAG endorsed a new Intergovernmental Agreement on Federal Financial Relations (IGA FFR). The IGA FFR included a new form of payment – National Partnership payments and National Partnership Agreements (NPA).

While Intergovernmental agreements can deal with a wide range of matters, the Commonwealth typically enters into agreements with the States that provide for the making of national partnership payments to support service delivery in areas such as public health, education, infrastructure and community services.

An NPA describes the mutually agreed objectives, outcomes and performance indicators for Commonwealth–state funding over a defined period.

National partnership payments are made to the states through the federal financial relations system. This system is governed by the *Federal Financial Relations Act 2009* (FFR Act), along with the *COAG Reform Fund Act 2008* and Intergovernmental agreements such as the NPA on Land Transport Infrastructure Projects.

Commonwealth payments to the States under the NPA on land transport are not covered by the Commonwealth Grant Rules and Guidelines 2017, nor are they procurements. They are National partnership payments under the FFR Act, made as grants of financial assistance to the States in reliance on sections 96 and 122 of the Australian Constitution (Appendix 2 refers).

A new framework was implemented in 2020, following a review to consolidate Commonwealth–State agreements by the Council on Federal Financial Relations (CFFR). The next agreement for land transport infrastructure will be a FFAS.

FFAS's will perform the same function as NPAs but are structured in a way that "seeks to minimise the overall administration and reporting burden for all parties, recognising that the states meet high levels of public accountabilities through their own parliaments and audit arrangements[28]". The new agreement arrangements will not modify the requirements for expending Commonwealth funds, meaning the Australian National Audit Office (ANAO) and the *Public Governance Performance and Accountability (PGPA) Act 2013* will continue to provide accountability for investments into land transport infrastructure that are made through the pending FFAS.

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27 Federalist Paper 1, Australia's Federal Future, April 2007, available at https://www.caf.gov.au/__data/assets/pdf_file/0006/927582/AustraliasFederalFuture.pdf

28 FFA schedule template – Infrastructure, multilateral FFAS_Infra_MULTI-TEMPLATE.docx (live.com)

4.1 Treatment of NPA funding by the Commonwealth Grants Commission

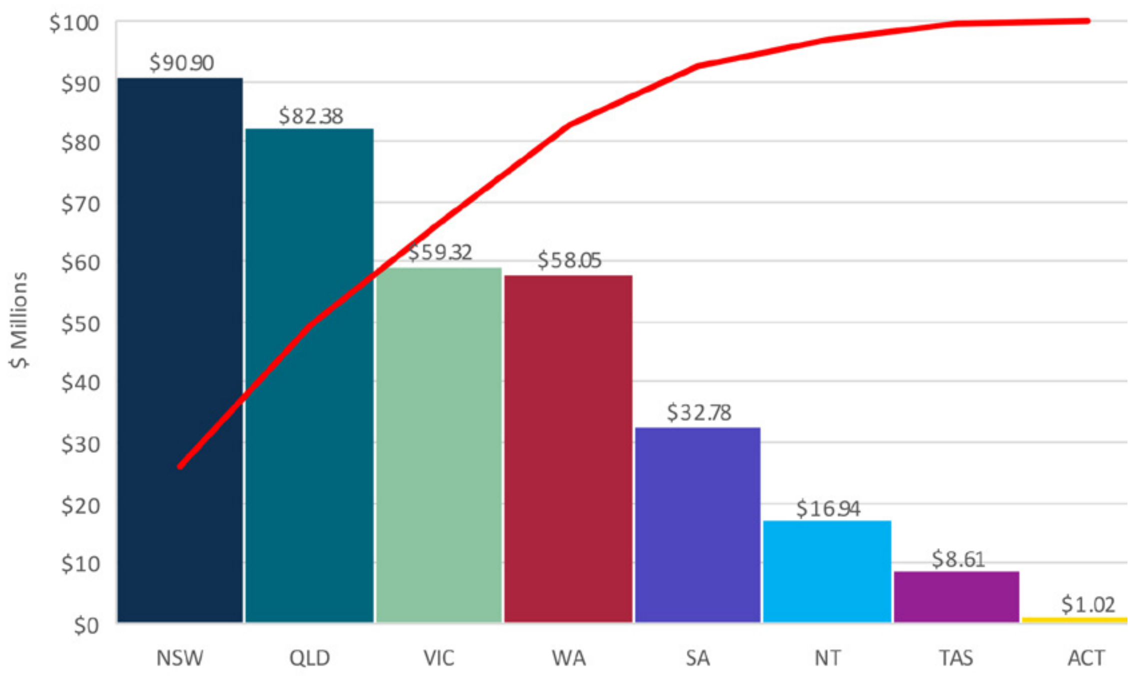
The Commonwealth Grants Commission (CGC) advises on Commonwealth financial assistance to the States for the purpose of ensuring equitable access to services. The CGC has a key role in horizontal fiscal equalisation[29] (HFE), which compensates states with a comparatively lower capacity to raise their own revenue and is a key feature of the Australian Federation.

The CGC collects information annually on Commonwealth payments to the States to assess how the payments impact GST relativities. As part of this process, the DITRDCA classifies projects in the land transport infrastructure pipeline as being either on or off the Network outlined in Section 7. This is detailed in Figure 4. Funding for projects that are on the Network are assessed at a different rate (50 per cent) for the purposes of HFE payments.

Typically, network status is determined through spatial data, and with reference to the Network Determination that is in effect at the time. Assessing a project's status depends on sufficient spatial information being provided to DITRDCA, either at the time of the Australian Government commitment or through a Project Prosposal Report (PPR). Where the proposed works under a project are both on and off the Network, the project is split into components to reflect the status.

The Commonwealth also provides maintenance funding for the Network. The funding, a total of $350 million per year, is proportionally allocated[30] to each jurisdiction. Figure 3 identifies how funding for the 2022–23 financial year was allocated. This funding has not been increased since the 2014–15 financial year. Additionally, an average of $20 million[31] in supplementary local roads funding is provided to SA to address the disparity between its population and extensive road network.

Figure 3. 2022–23 NLTN maintenance funding allocation



[29] A Fact Sheet explaining Horizontal Fiscal Equalisation in the Australian Federation is available from https://www.cgc.gov.au/sites/default/files/2021-11/fs04_horizontal_fiscal_equalisation.pdf

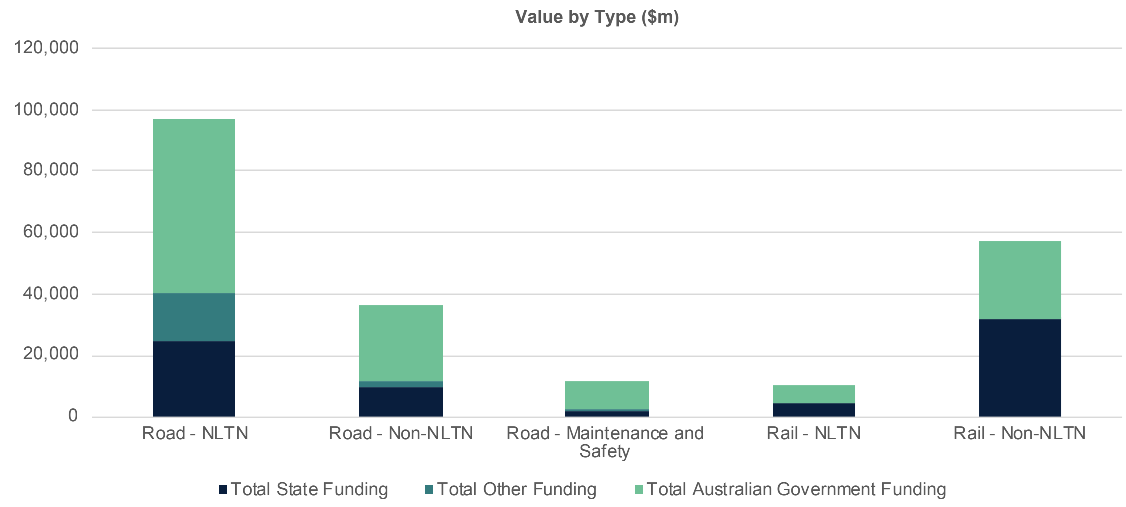
[30] Allocations are provided according to section 6.1 of the current Notes on Administration.

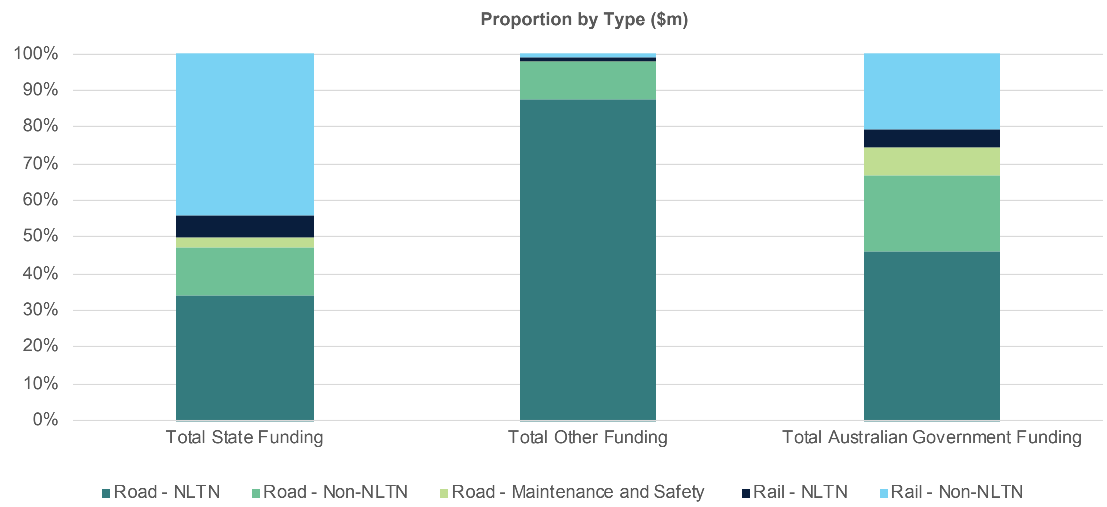
[31] Funding allocations were $20 million in 2017–18. $60 million in 2018–19, $0 from 2019–20 to 2020–21, and $20 million in 2021–22, 2022–23 and 2023–24.

The GST Revenue Grants that the Commonwealth provides for the purpose of HFE can be used by the States for any purpose. HFE measures may influence infrastructure decisions, with this influence being dependent on how the Commonwealth has structured and negotiated its investment priorities. Refer Appendix 4 for more detail on HFE in the infrastructure context.

Different funding ratios, and whether a project is on the Network (and hence partially excluded from equalisation), may distort the investment choices made by the States and the priority they place on types of investment and spending. This is relevant in the case of infrastructure spending where the ratio of Commonwealth to State funding varies.

Figure 4. Australia Total – Schedule October Budget Summary 2022–23 – Road and Rail NLTN and Non-NLTN (value and proportion)





Note: Appendix 4 provides detailed data.

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

(1) It should be noted that there are some funding sources that are To be Determined, specifically for Victoria (see Appendix 4 – Table 4).

4.2 Timing of NPA Review

The existing agreement states that an independent review is to be undertaken approximately 12 months before its expiry. This Review has been undertaken consistent with that requirement.

Unlike the light touch review done of the previous NPA in 2018 which made no significant recommendations for change, the context of this Review is markedly different. The COVID-19 pandemic including supply chain issues and stimulus settings have changed to the current need for fiscal restraint in order to manage inflation and labour shortages.

These impacts, whilst substantial, are temporary, as pandemics end and fiscal conditions change. However, other external factors such as climate change are enduring and are increasingly having an impact on the performance of our land transport assets. This NPA Review also occurs in the context of the other recent policy reforms outlined at Section 7.

All good policies and programmatic responses need to be reviewed against current priorities and a changed operating environment. Therefore, it is timely that a considered review is undertaken now to make recommendations to inform the design and negotiation of the next agreement. There is a significant opportunity to reset and reframe to support reform gains and drive future investment priority setting and performance, ensuring the best use of each investment dollar.

The current NPA

The NPA on Land Transport Infrastructure Projects 2019–2024 was largely a continuation of the previous agreement (2014–2019).

In common with other NPAs, this agreement has broad objectives and high-level performance indicators. It is not prescriptive in the description of its purpose or how this should be achieved.

The NPA describes its objectives as safety, productivity, supporting population growth, competitive markets and employment opportunities. The NPA establishes five performance indicators that broadly align with its stated objectives:

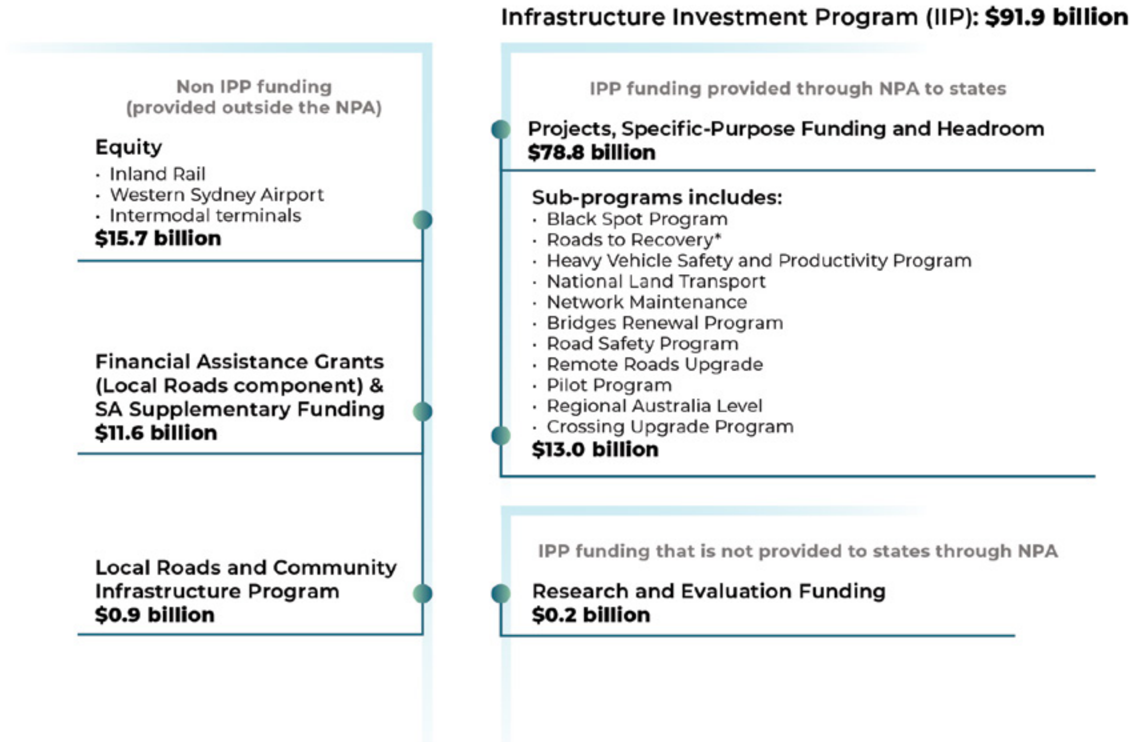
- improvements in road safety measured by crash reduction,
- improvements in productivity measured by reduction in travel time and operating costs,
- opportunities for First Nations contractors and job seekers,
- opportunities for local industry as measured by the analysis of Local or Australian Industry Plans, and
- improved data sharing as measured by provision of standardised data sets in the PPR.

In addition to improving productivity, sustainability and the liveability of cities and towns across Australia, the Commonwealth recognises that it can use its infrastructure investments to influence a broad variety of positive economic, social and cultural outcomes. The current NPA identifies several goals and objectives to shape the Commonwealth's land transport infrastructure investments so that they achieve broader goals linked to equity and local participation in funded projects.

The NPA consolidates several arrangements for providing funding to the state and territory infrastructure sectors into a single agreement. It specifically covers land transport infrastructure projects, with the exception of research and evaluation funding projects, that are delivered through the IIP, which forms part of the broader $120 billion, 10-year infrastructure investment pipeline.

Figure 5 sets out the funding sources that comprise the pipeline. This figure provides a specific breakdown of the $91.9 billion IIP to identify those elements – projects, special purpose funding and the sub-programs – that are administered according to the NPA because they provide infrastructure funding to and through the States.

Figure 5. $120 billion Infrastructure Investment Pipeline 2023–24 to 2032–33



* Roads to Recovery is administered according to the Roads to Recovery Conditions 2019 and the *Roads to Recovery List 2019*, while the NPA supports administration of Roads to Recovery in a way that complies with this legislation.

The intergovernmental agreement governs the provision of approximately $92 billion in IIP investments to the states. At the time of writing this comprised:

- 775 individual projects for the planning and delivery of road and rail infrastructure, which include major projects that are significant investments in individual land transport infrastructure assets, and
- specific-purpose funding, which is tied to a specific purpose and provided to the States before it is allocated to individual projects.

Specific purpose funding provides the States with confidence about funding availability while they identify the specific infrastructure investments required to address safety, freight and transport issues. A key example of this is corridor management, with the Commonwealth providing funding tied to this purpose and the States subsequently identifying investments through the Roads of Strategic Importance (ROSI) Program.

Additionally, the NPA guides how funds are provided through several sub-programs[32] that are legislated under the NLT Act and provide purpose-specific funding through the States that may be accessed by local councils. The NPA governs the provision of approximately $13 billion in IIP funding through these arrangements.

The sub-program arrangements provide funding for local infrastructure projects that are lower cost and less complex than major infrastructure projects, which are larger projects that are agreed and listed individually in the NPA schedules. While there is no cost threshold to distinguish sub-program investments from larger individual projects, the sub-programs provide funding via the states for access by councils to complete infrastructure works that they could not fund using their local sources of revenue.

[32] There is no formal definition for what constitutes a 'sub-program' and not all sub-programs are in the IIP. The IIP sub-programs have the objective of supporting the viability of land transport infrastructure in many local councils, particularly by funding road construction and upkeep.

The current program framework also provides potential for duplication. For example, road safety projects can be funded from multiple sources. Projects can be funded directly through the IIP, in addition to there being two separate infrastructure sub-programs that have been legislated to achieve road safety outcomes – the Black Spot Program and the Roads to Recovery Program. These funding streams also do not apply the same eligibility requirements or reporting obligations, meaning the Commonwealth is not receiving consistent information about its investments to improve road safety objectives. The absence of consistent data on road safety outcomes was raised in Review consultations.

5.1 Financial framework of the NPA

The NPA's financial framework is given effect through individual state Schedules. These Schedules list the Commonwealth's funding contribution to each individual project and the sum total is known as the 'program' for the State.

The NPA allows under and over spends to be reallocated within a state's program.

Advance payments to the States are permitted in limited circumstances under the NPA. The formula for calculating interest earned and the treatment of interest is described in the NoA. See Section 7 for further details. Neither the NPA or NoA describe what those limited circumstances are.

Breaches of the NLT Act and the project approval instruments that are issued under the Act may result in the Commonwealth withholding funds or a refund being sought. The notion of a breach is also described in the NPA and the Act, while dispute resolution processes are outlined in the NPA. The NoA is silent on dispute resolution.

There are some important omissions from the NPA around its financial framework. Firstly, there is no mention of the agreed project funding splits or the cost sharing ratio the Commonwealth will commit to. The NPA notes the Commonwealth's estimated financial contribution will be detailed in the Schedules to the agreement. In the past the Commonwealth has generally funded regional/remote projects on an 80:20 cost-share ratio, while urban projects are generally funded on a 50:50 basis. While these arrangements are widely known, they are not mandated in the NPA or described in the NoA.

Table 1: Australian Government Contribution (AGC) Project Funding split as at June 2023

Funding Split	AGC 50	AGC 80	AGC 80+
Percentage	28.7%	46.8%	24.5%
Projects	209	341	178
Value (millions)	**$38,093**	**$39,060**	**$14,323**

Figures include all Major Projects in the IIP and excludes projects that are closed or withdrawn, cancelled, completed, and currently not proceeding. There are 8 projects included that are related to additional funding of another project in the count. There are 12 projects excluded as these have no Total Project cost in IMS but a Total Aus Gov Funding of ($m) $3,177 so we are unable to clearly calculate the split.

Additionally, there is little mention of cost escalation, above the allocation made during project approval, and how it would be treated if and when it arises. Clause 56 of the NPA says, "where a Project exceeds the 'Total Commonwealth Committed Funding', additional contributions can be allocated from savings from other Projects within the relevant State's Program, with the Commonwealth's agreement." The NoA says a probabilistic cost estimation process that includes contingency and escalation must be used for projects exceeding $25 million.

When cost escalation falls outside of these parameters, the States seek additional funds from the Commonwealth twice-yearly during budget processes. The funding sought aligns with the Projects initial agreed funding spilt. If the Commonwealth has agreed to fund 80 per cent of the Project, it is expected the Commonwealth will fund 80 per cent of the escalation.

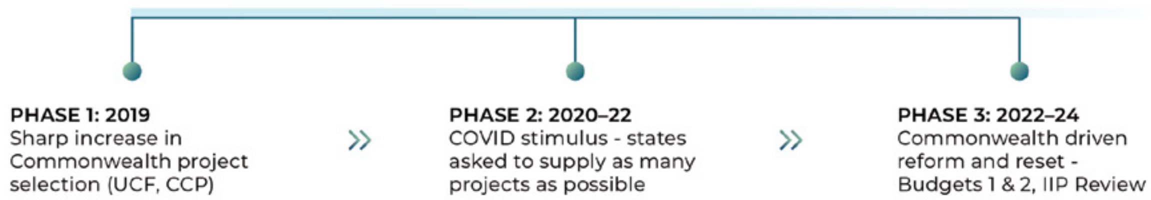
The financial framework does not tie investment decisions to joint planning, priorities setting or a long-term investment horizon.

Project financial risk and reporting on risk is not mentioned in the NPA. The NoA says that "known risks to project completion and strategies adopted to mitigate these risks" should, along with other key progress information, be included in monthly progress reports.

5.2 Three phases

This NPA has had three distinct phases, each of which has influenced infrastructure investment decisions.

Figure 6. Phases of investment



During the first year of the NPA's operation from 2019–2020, the Commonwealth increasingly initiated project selection, where project priorities were not necessarily shared with the States.

Phase two of the NPA's operation covers the COVID-19 pandemic from early 2020. As Australia closed its international border and state lockdowns became prevalent, governments used infrastructure investment to deliver economic stimulus (detailed below).

The final phase, from May 2022 onwards, has seen the new Australian Government indicating its intention to reset and reform processes for land transport infrastructure investments. The Commonwealth's stated intention is to shift the infrastructure investment pipeline towards nationally significant projects consistent with national priorities. A significant portion of the current pipeline comprises small projects (under $50 million in value).

5.3 COVID stimulus

The NPA was used as a mechanism to provide economic stimulus during COVID (the second distinct phase of this NPA).

The Commonwealth looked to States to drive delivery via "shovel ready" projects and to local councils to deliver on local priorities through Local Roads and Community Infrastructure (LRCI) Program funding. The need to stimulate the economy and to keep workers employed was the primary factor guiding land transport infrastructure project selection.

In June 2020, the Commonwealth announced a $1.5 billion stimulus package designed to commence projects faster, which due to their nature (shovel ready and smaller scale) were considered less likely to have complex design phases compared to other projects. This investment included $1 billion in funding for shovel ready projects and $500 million for Targeted Road Safety Works as part of the Commonwealth's economic stimulus package in response to the global COVID-19 pandemic.

It is appropriate for governments to use infrastructure investment as a response to macroeconomic challenges. The scope of this Review does not allow for a full examination of the COVID stimulus measures, however there are a number of observations that can be made.

Importantly, the NPA and its investment processes allowed for flexibility, and were able to respond to the extraordinary circumstances that governments faced in early 2020. This 'break glass' mechanism should be retained for future arrangements, to enable government to respond swiftly to unforeseen crises.

Projects selected as part of stimulus were necessarily subject to a lower threshold. This may have led to too many mid-sized projects being brought forward without sufficient planning. This resulted in delivery challenges.

At the beginning of and during the crisis little consideration was given to the settings or the development of indicators that would signal when the emergency settings should end.

This Review observes the stimulus measures were not wound back quickly. A number of people consulted during the course of the Review suggested that this may have contributed to inflationary and market capacity pressures that the Australian market is now facing.

The COVID stimulus warrants its own review, as documenting lessons learnt will be important in informing responses to the next crisis.

5.4 First Nations communities

First Nations outcomes were first referenced in the 2014–2019 agreement. This NPA called for states to "be accountable for…developing and implementing Indigenous workforce strategies, including the promotion of accreditation and training pathways for Indigenous people in affected regions, and the use of Indigenous suppliers where possible" (clause 17(j) refers).

This was broadly consistent both in timing and effect with the introduction of the Commonwealth's Indigenous Procurement Policy in 2015. Whilst 'affected regions' is not further defined in the agreement, it is assumed to refer to the locality where the project was being delivered.

In November 2008, COAG approved the National Indigenous Reform Agreement. This agreement set out, for the first time, Australia's Closing the Gap targets, including to halve within a decade the gap in employment outcomes between Indigenous and non-Indigenous Australians. The Prime Minister's Closing the Gap Report 2018 highlighted this target had not been met, and the introduction of the Framework as an addendum to the 2019 NPA was intended to partially address this by leveraging the Commonwealth's investment in infrastructure projects.

In 2019, the National Agreement on Closing the Gap (the National Agreement) came into effect. The National Agreement includes four priority reforms and 17 socioeconomic targets. The Framework's outcomes contribute to achieving target eight: 'Strong economic participation and development of people and their communities'.

The current NPA introduced the Framework, which was implemented from July 2019 onwards. The Framework requires project proponents to set and implement targets, with reference to ABS Census data for the Local Indigenous Working Age Population (LIWAP), for all relevant projects.

This Review considers the First Nations outcomes achieved by the NPA and the existing framework.

The First Nations policy objectives of the NPA have an underpinning implementation framework set out at a high level through the NPA including roles for the Commonwealth and the States in preparing and agreeing to Indigenous Participation Plans (IPPs).

5.5 Other policy priorities

NPA objectives also include improving safety, easing congestion, supporting productivity, encouraging innovation and the uptake of technology to solve transport problems, and providing opportunities for local businesses and employment (particularly women in construction). While progress could be measured on these objectives more broadly, through the evaluation of strategies such as the Road Safety Strategy and through reporting completed by the BITRE, the NPA itself does not have an effective framework to deliver against these policy objectives, or to measure the impact of joint investments made through the NPA.

There is a clear opportunity to implement more disciplined and integrated arrangements to guide investment in projects that can deliver real benefits that contribute to the Government's policy objectives.

Operation of the NPA

The NPA delivers funding for agreed land transport projects and programs. The selection and successful delivery of projects that align with the stated objectives of the NPA is a key outcome of the agreement. The overall success of the agreement must also be judged on its efficiency in achieving the outcomes identified in the agreement including wider social, cultural and system benefits.

6.1 Projects funded under the NPA

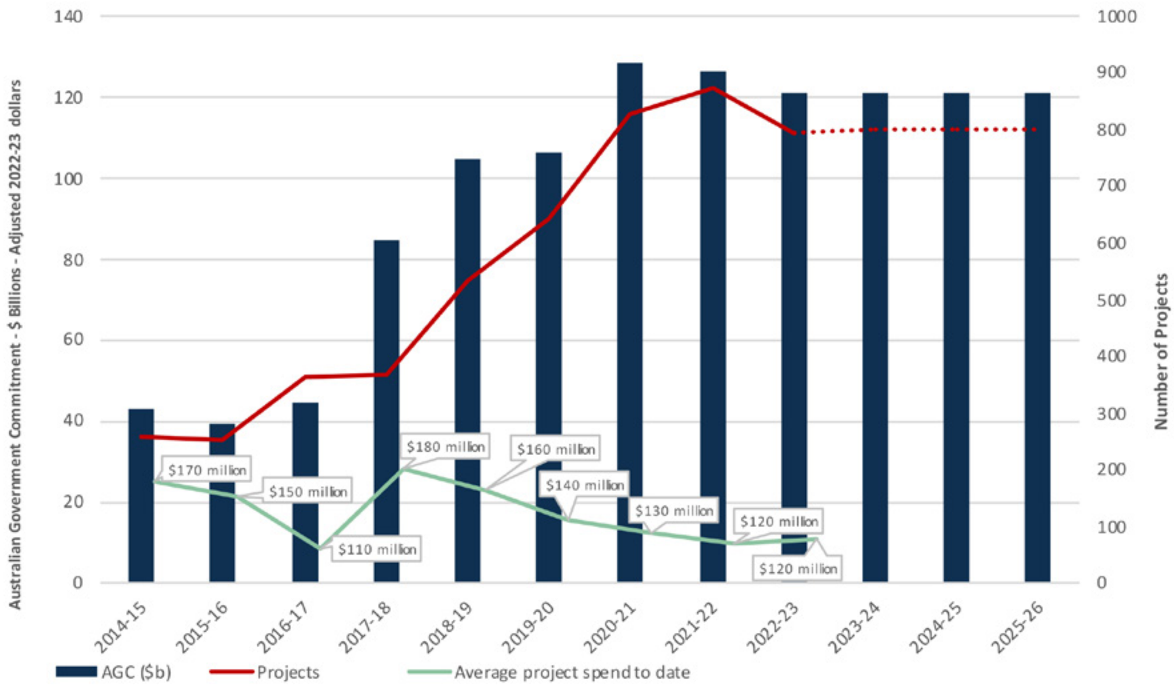
The number of projects in the IIP has increased significantly since 2018.

From 2014–15 to 2022–23 the project count and value both tripled. The number of active projects has increased since 2017–18, however average project value has decreased. Over this period the Commonwealth's investment focus has shifted to funding a larger number of smaller projects. See Figure 7 below.

This Review has heard that the progressive increase in projects on the IIP has placed the Commonwealth's administration of the IIP under pressure. In practice the pipeline is currently so large that the Commonwealth's approach to managing risk effectively under current settings is compromised.

Current arrangements are not risk sensitive. Upon receiving formal approval from the Commonwealth, each project is required by the Commonwealth to report in the same way, regardless of size or other risks. Projects are also generally required to have the same number of financial milestones each year. These requirements are depicted in the project lifecycle at Section 6 of this report.

Figure 7. Growth in IIP expenditure and project numbers post 2014–15



A risk framework would provide benefits to States and the Commonwealth. Efficiencies could be realised through a differentiated approach, as fewer resources would be required to manage low risk investments. Additional resources could then be dedicated to higher-risk projects, ensuring investment interests are actively managed.

Some higher-value projects currently have additional oversight measures in place. This Review heard these measures are not always working effectively for either party.

One approach to managing risk is to reduce the volume of projects currently in the pipeline. The relative merit and capacity to execute many of these projects is under active examination with a view to reducing the total number. It is also possible to calibrate levels of oversight of individual projects to better reflect the risk exposure.

At an investment level, the lack of agreed risk management strategy in the NPA undermines the Commonwealth's ability to implement approaches to sharing risks, particularly where it is most needed – for larger and more complex transport infrastructure projects.

Key components of the $120 billion pipeline from 2023–24 to 2032–33 are shown at Figure 5. It is anticipated that the majority of funding under the pipeline will be directed toward funding projects and activities undertaken by the States.

If this pipeline is to be delivered successfully, a more structured, disciplined and calibrated approach to priority setting and project execution and oversight will be needed.

6.2 Project lifecycle

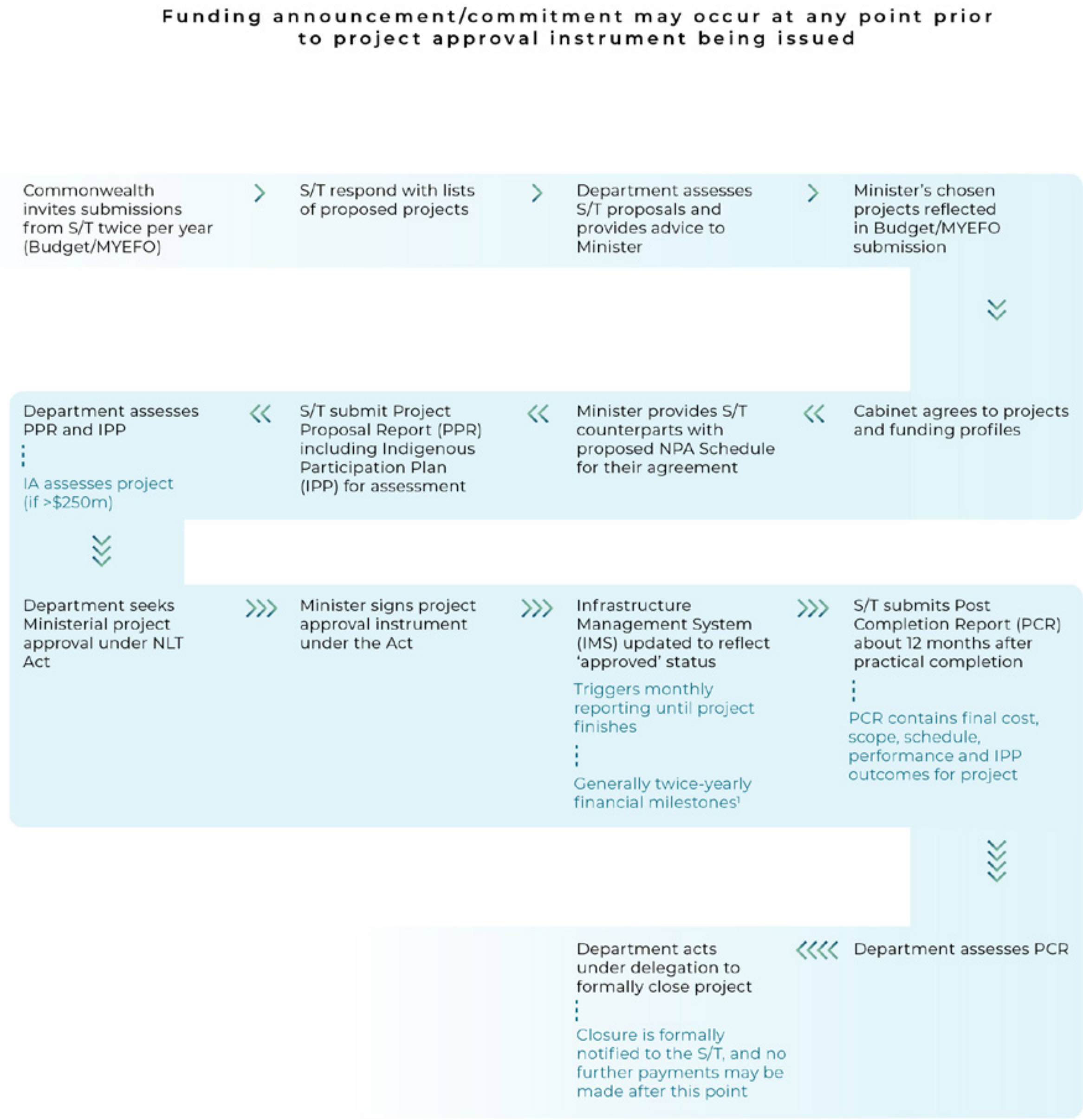
The current process for selecting projects and seeing them through to delivery is described in the project lifecycle.

The lifecycle for a typical infrastructure project that is implemented under the NPA is illustrated at Figure 8. The project lifecycle can be divided into two key stages:

- project selection, and
- project oversight once on the IIP pipeline.

Refer to Appendix 5 for a further description on how the current process operates.

Figure 8. NPA Project lifecycle



1 Construction milestones are generally not scheduled in advance but payments are made on concrete evidence. General expenditure is expected to match progress.

Projects can be considered for addition to the IIP at any time. Typically the Commonwealth invites submissions for projects from States twice-yearly in line with Budget and Mid-Year Economic Fiscal Outlook (MYEFO) updates. At other times, the Commonwealth may announce support for a project, often as an election commitment but also in the ordinary course of engagement with States on priorities.

The announcement of a project creates an expectation in the minds of the local community, industry and related non-government organisations (for example, road safety advocates). This Review heard there have been cases of industry investing in capacity and capability (either human resources, training, technology or machinery) in anticipation of projects, that resulted in negative outcomes where projects had been cancelled.

Funding allocations made by the Commonwealth are formally considered in Budget or MYEFO, along with the Commonwealth's share of the funding, known as a funding split. Once approved by the Expenditure Review Committee (ERC) and Cabinet, the details are published in bilateral state Schedules, which the states agree to through Ministerial correspondence. Once this has occurred, the project is considered to be on the IIP pipeline even though the project is not yet formally approved under legislation.

Committing funds at a federal Budget or MYEFO does not constitute formal approval by the Commonwealth. The Commonwealth still requires the satisfactory completion of a PPR before it will issue a project approval instrument, which constitutes formal approval under the NLT Act. A PPR covers key information about the project including project scope, costs, benefits, and risks. The PPR also includes a Benefit Cost Ratio (BCR), which is prepared using ATAP Guidelines.

Projects that are $250 million or more are to be assessed by IA, which considers the business case and the associated BCR. This requirement has not been consistently applied over the course of this agreement[33].

A low BCR does not necessarily mean the Commonwealth will not fund a project. In practice, most regional projects will have a low BCR. These projects are agreed to by the Commonwealth because of the other wider social and economic benefits that the project will deliver. This Review agrees that this is appropriate.

Announcing a project, listing it on the pipeline or committing funds through a Budget process does not constitute formal approval of the project. Under the NLT Act the Commonwealth Minister must approve projects. The Minister has delegated decision-making for approving and administering projects to senior officials within the Commonwealth. Government authorising policy, at least in the past few years, means that senior officials do not exercise this delegation.

By the time a project is on the IIP, advocates and the community expect that it will be delivered; these groups do not have visibility of the PPR process. Expectations are therefore set prior to the formal approval process under the Act, whether or not the proposed solution is the best available option, or the allocated funding is sufficient for delivery, or the scope, benefits and risks are well considered.

This sequencing can lead to confusion about project status. It can also lead to projects on the IIP not progressing, or projects progressing that would otherwise not have been committed to had appropriate planning, qualification and cost verification been done prior to announcing support for the project. For example, without proper planning, projects can encounter environmental, geotechnical and other challenges that increase cost, delay delivery and even challenge feasibility.

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33 2023–24 Budget Estimates, Rural and Regional Affairs and Transport Committee, Infrastructure, Transport, Regional Development, Communications and the Arts Portfolio Question on Notice 28, Portfolio question number SQ23-003582 https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId7-EstimatesRoundId21-PortfolioId47-QuestionNumber28

The NPA requires ‘significant’ variations to an approved project’s scope, cost, respective funding contributions and timelines to be agreed to in writing by both parties. The NoA says that a formal request for variation must be submitted to the Commonwealth with supporting information. The NoA also says States should discuss the variation with the Commonwealth early, as the nature of the variation will determine the type and amount of supporting information required. The Commonwealth may seek to review and validate cost estimates used to justify any request. Consistent with the Minister’s NLT Act Delegation Instrument 2022, in relation to funding, any cost variation that exceeds the amount the Commonwealth has committed to in the Schedule is required to be approved by the Minister.

The NPA outlines the conditions under which either party may agree to withdraw from or cancel a project. These conditions include cost increases, inability to agree to a delivery timeline, significant delays to project delivery, and material changes to a project’s scope.

However, as discussed, the above provisions do not realistically support decision-making about the pipeline. Taking a decision to cancel or significantly descope a project that should not have been added to the pipeline in the first place carries significant, preventable political and economic risk. Not adding projects to the IIP until there is sufficient confidence and agreement would help reduce the numbers of undeliverable and inappropriate projects on the pipeline.

Consideration should therefore be given to a gateway approach to project selection that provides that until the necessary strategic planning is completed, a project is not presented to ERC for formal commitment. The Commonwealth should consider funding arrangements that support major project business cases for all proposed projects, prior to their addition to the pipeline through the FFAS.

The Commonwealth approved funding of $200 million in the 2023–24 Budget to support Major Project Business Cases. A permanent funding stream sufficient to co-fund strategic business cases for prospective projects identified as strategically worthy of consideration for the pipeline. This would support a more effective project selection approach.

The NSW Government has issued a memorandum providing direction for the provision of reliable information about infrastructure costs and delivery timetables to the public. The Commonwealth should similarly agree on guidance for the provision of information to the public on proposed infrastructure projects to ensure that information accurately reflects the stage and confidence of a proposed project. This would support the Government to communicate its intent to address a need and the steps it proposes to take to provide a solution, without committing to a specific solution at a point in time when risks and costs are not yet understood.

Finally, it is clear that the provisions in the current NPA that provide for the parties to withdraw from or cancel a project are not being used when it is apparent there is a strong case to use them. During consultations it became clear that a key concern is being publicly identified as the party who has taken a decision to cancel a project that, while potentially undeliverable or unaffordable, still has community support. An automatic sunsetting provision, with necessary support for budget reconciliation, and the ability for decision-makers to intervene, would assist with the removal of unviable projects from the pipeline.

6.3 Sub-programs

The IIP also includes a range of land transport infrastructure sub-programs as packages of funding set aside to treat specific land transport infrastructure needs. Under the NPA there is no formal definition of a sub-program. The IIP sub-programs have evolved over time to address specific needs and are administered using different funding models. The individual program arrangements require different reporting and approvals processes – some are specifically legislated while others are not.

For example, the Roads to Recovery sub-program supports the construction and maintenance of local road infrastructure assets. It provides funding to all local governments, and to States in unincorporated areas. Funding recipients are responsible for choosing road projects on which to spend their funding, based on their local priorities. Roads to Recovery does not contain a sunset clause under the NLT Act, meaning no new legislation is required for the continuation of the program.

Sub-programs play an important role supporting councils to construct and/or maintain road infrastructure. Some sub-programs sit outside the NPA but are a feature of the broader infrastructure pipeline to this point, for example, the stimulus LRCI Program. For the purposes of this Review, if a sub-program or corridor structure is agreed as part of risk management settings, arrangements should be clearly set out in the agreement.

Table 2 provides an overview of the sub-program arrangements. Considering the differences in how funds are being provided at the program level, the agreed principles in the NPA are particularly important to guide allocation of funds for smaller-scale projects that are targeted through these programs.

Table 2: IIP Sub-Programs as at 1 July 2023

Sub-Program	Proponent	Funding Model*	Est'd
Black Spot Program	Councils, S/T govt	Independently assessed grant	1990
Roads to Recovery (R2R)	Councils, ACT	Semi-tied	2001
Heavy Vehicle Safety and Productivity program (HVSPP)**	Councils, S/T govt	Departmentally assessed grant	2009
National Land Transport Network Maintenance	S/T govt	Untied	2009**
Bridges Renewal Program (BRP)	Councils, S/T govt	Departmentally assessed grant	2015
Road Safety Program	S/T govt	Departmentally assessed grant	2020
Remote Roads Upgrade Pilot Program (RR)	Councils, S/T govt	Departmentally assessed grant	2021
Regional Australia Level Crossing Upgrade Program	TBC	Departmentally assessed grant	2022

* Models are:

- Untied funds, funding available to all local councils and with no requirement that it is spent on infrastructure;
- Semi-tied funding, which is funding provided to all councils to be spent only on eligible works,
- Departmentally assessed grants, which require the DITRDCA to make a merits-based assessment of funding proposals and the Minister's approval to provide funding, and
- Independently assessed grants, which require an independent panel to make a merits-based assessment of funding proposals and the Minister's approval to provide funding.

**includes the Heavy Vehicle Rest Area Program, established 2022.

*** Current system of road maintenance funding is based on the 2009 National Partnership Agreements on Implementation of Major Infrastructure Projects with each state/territory.

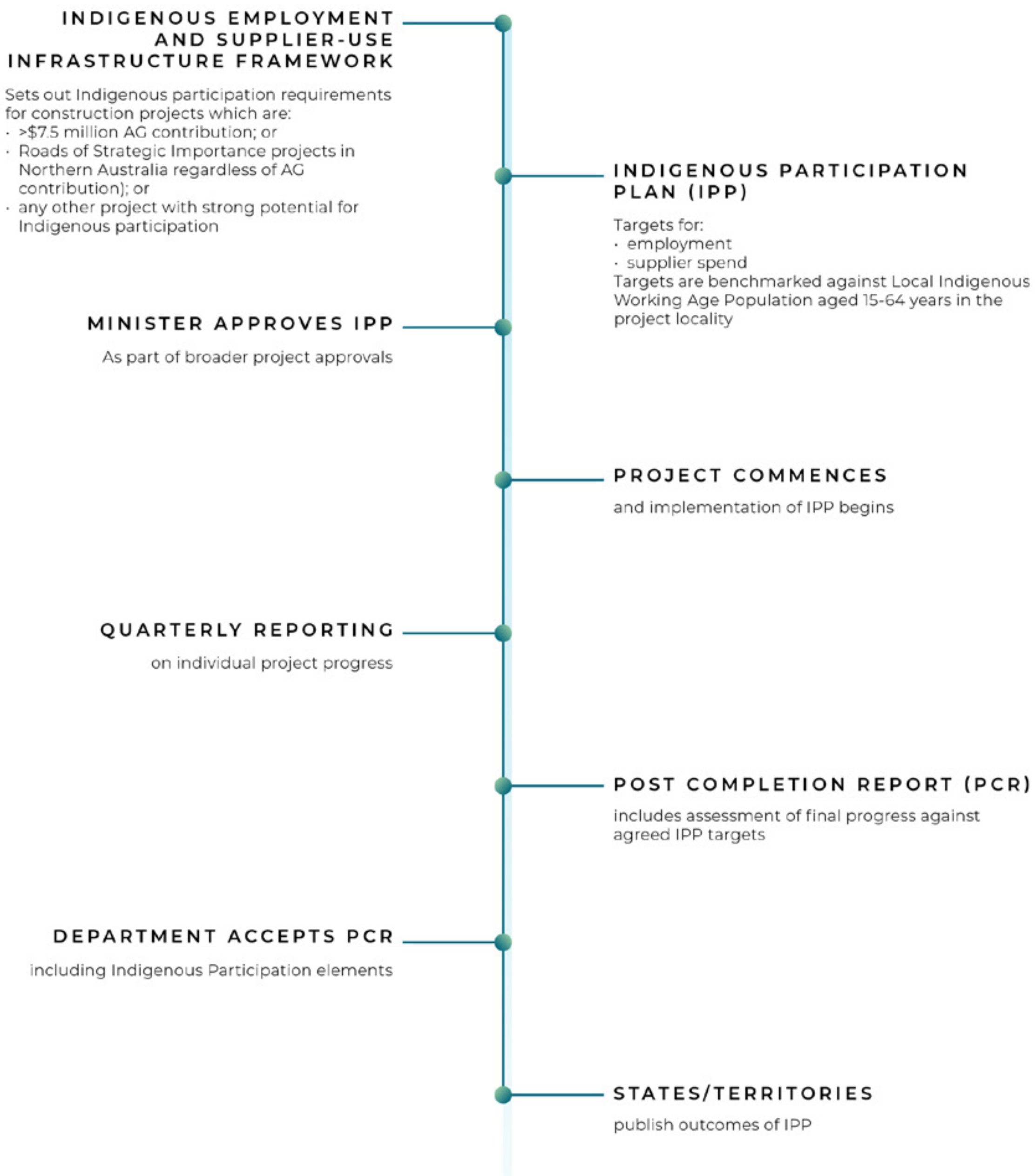
6.4 First Nations engagement

The Indigenous Employment and Supplier-use Infrastructure Framework (the Framework) commenced in 2019 as part of the current NPA (see Figure 9). It responded to the failure to meet employment targets under the National Indigenous Reform Agreement. The Framework largely mirrors the Commonwealth's Indigenous Procurement Policy. The latter requires that Indigenous-owned businesses be afforded the opportunity to participate in major government procurements.

The Framework is intended to leverage the Commonwealth's investment in land transport infrastructure to increase First Nations employment and supplier use, in line with Closing the Gap Outcome 8 'strong economic participation and development of people and their communities'. The Framework aims to achieve social and economic benefits for First Nations people, communities and businesses. It applies to projects funded under the NPA:

- with a Australian Government contribution of $7.5 million or more, or
- carried out in Northern Australia and funded under the ROSI Program, irrespective of the amount of Australian Government funding, or
- with strong potential to produce positive outcomes for Indigenous people, irrespective of project locality or the amount of Australian Government funding.

Figure 9: Indigenous Employment and Supplier-use Infrastructure Framework



As at August 2023, Indigenous Participation Plans (IPP) had been approved for 325 projects funded under the NPA, which is 100 per cent of projects which meet the IPP criteria. DITRDCA's modelling[34] suggests these projects may generate around 3,000 jobs for First Nations people and $1.5 billion of work for First Nations-owned businesses.

Of projects with an approved IPP, 261 were actively under construction. Progress reporting against these 261 projects has been inconsistent across jurisdictions, meaning DITRDCA cannot accurately monitor the health of First Nations targets for many individual projects and across the Framework as a whole. As a worked example, we were unable to agree on statistics for inclusion in this report, which clearly demonstrates the current limitations on evaluation. This Review was advised that similar challenges also occur in other Commonwealth–State engagement on data sharing. Consistent with recommendations 8 and 10, it is imperative that all governments work together to resolve outstanding reporting issues in order to achieve timely, consistent and usable data collection.

PCRs have been accepted by DITRDCA for 18 of the 325 projects, of which all but one met or exceeded their targets. Current reporting arrangements do not adequately capture qualitative information about projects' achievements, meaning that it is difficult for DITRDCA and the States to tell the positive social stories resulting from the Framework.

Evidence shows substantial benefits to investing in and buying with First Nations businesses. These include increased financial autonomy, self-esteem and wellbeing, reduced public health costs and income support payments, increased services and resources in remote and regional areas and preservation of the world's oldest living culture. Improving these outcomes for First Nations people enriches the lives of all Australians and helps build understanding, trust and social cohesion[35].

The Framework fails to deliver on its full potential to create long-term sustainable social change for First Nations peoples and communities.

The one-size-fits-all approach of the current Framework is at odds with the diverse and unique needs of First Nations communities, places, cultures and languages throughout Australia; therefore, the policy needs to recognise the socioeconomic differences between cities, regional centres and remote Australia. Furthermore, these differences must be considered in the context of business development, education and employment opportunities.

To mitigate the risk of ambiguous interpretation of its policy and build a more consistent approach amongst the jurisdictions, focused leadership and direction in developing and implementing the next iteration of this policy is needed. The new policy framework should be well-defined, measurable and lead to meaningful social change for First Nations people, businesses and communities. The Commonwealth should commit to fostering and sustaining localised partnerships and collaborations, enabling self-determination and autonomy, and creating opportunities for education and economic empowerment.

34 The number of First Nations jobs is estimated based on a model that uses total project cost and locality to estimate the total number of direct jobs generated by each project; the Indigenous employment target for each project is applied to this figure to estimate the number of direct First Nations jobs. First Nations supplier spend is calculated by multiplying each project's total project cost by its Indigenous supplier-use target.

35 Reserve Bank of Australia, Evans, M & Polidano, C (2022). *First Nations Businesses: Progress Challenges and Opportunities.* Accessed from First Nations Businesses: Progress, Challenges and Opportunities | Bulletin – June 2022 | RBA

Bunbury Outer Ring Road

The Bunbury Outer Ring Road, the largest single infrastructure investment in regional Western Australia, has incorporated specific First Nations outcomes helping to create sustainable careers and contributing to socioeconomic, health and housing outcomes for long-term unemployed Aboriginal people. The local Indigenous working age population is 2.75 per cent (ABS Census data 2021). Main Roads Western Australia (WA) has set a participation target of 13.3 per cent comprising of 10% Indigenous employment and 3.3 per cent Indigenous supplier-use value for the terms of the project. In conjunction with the WA Department of Justice, Main Roads WA will engage with Breakaway Aboriginal Corporation to seek employees on the project who are post release from incarceration. The Yaka Dandjoo program, delivered as part of the Bunbury Outer Ring Road project, focuses on providing new employment opportunities for young people, people over 45 years old, women and Aboriginal people who are unemployed or have never been employed, and has produced 150 graduates.

Infrastructure can be a critical enabler of social change and outcomes. The Commonwealth's $120 billion rolling pipeline, supplemented with State investment, has the economic power and influence to improve the social inequities and achieve Closing the Gap initiatives. Well-designed and implemented policy could tackle three of the four priority reforms, and ten of the Closing the Gap targets. Further details are in Appendix 7.

6.5 Other priorities

Australian or Local Industry Plans are required for projects receiving more than $20 million in Commonwealth funding. The Commonwealth onforwards these plans to the relevant Commonwealth agency, in this case Department of Industry, Science, and Resources, for review.

There is a genuine opportunity to leverage the collective purchasing power of governments to deliver a range of secondary economic, social and cultural benefits.

6.6 Efficiency of administration

The current agreement is burdened by complex administrative arrangements, which must be satisfied in addition to PGPA requirements that apply more broadly when providing Commonwealth funding. The arrangements for administering the NPA are not structured to avoid delays in Commonwealth decision-making, and this contributes to project delivery delays and budgetary issues. Delayed decision-making by the Commonwealth, even by a few months, can lead to project delivery delays and budgetary issues.

The practical impact, as reported by states and territories, is that project approval delays of a few months by the Commonwealth can have a big impact on construction timelines, which the States manage. In many jurisdictions there is a construction season when weather conditions permit building activity. It is not uncommon for construction completion times to be impacted by up to 12 months because of a delay in Commonwealth approval. This view was echoed by industry. This is a barrier to projects under the current NPA being delivered on time and contributes to cost overruns.

The NoA makes it clear that new projects require a PPR to be completed prior to project approval. The NoA is less clear on what needs to occur for project variations or extensions of work. The NoA says States should "discuss the potential variation with the Commonwealth Department at the earliest possible instance as the nature of the variation will determine the type and amount of supporting information required." The NoA does not describe in any more detail what that process is or what the evidence requirements are.

In the absence of clarity, different Commonwealth officers have taken different approaches to determining when a PPR is required. In one instance a jurisdiction advised it has been asked to provide an individual PPR for each of seven sections of the same road, when each section was substantially the same as the others. It is unclear why a single PPR for straightforward works was not an option. Others expressed concern about the overlap between the PPR and reporting.

Administrative complexity can lead to unintended duplication of effort by officials. The views of project proponents and industry representatives that funding, approvals and reporting processes could be streamlined to improve capacity to focus on issues that are more directly related to the successful delivery of funded projects are well known.

The complexity of administrative arrangements and the lack of clear, single-source guidance material impacts the ability of Commonwealth officers to make informed and effective decisions and perform a range of other functions relating to infrastructure investments. It is not easy to fully understand the connections between the various legislative regulatory, policy and financial settings that comprise the Commonwealth's framework for making land transport infrastructure investments.

A consistent theme raised through consultations was the need to reform the current administrative arrangements into a more effective model.

6.7 Maintenance, asset renewal and resilience

Over the past 18 months or so, large parts of the country have been significantly impacted by flooding. The Bureau of Meteorology reports the intensity of heavy rain fall events has increased by around 10 per cent[36] over recent decades in Australia. This trend is likely to continue as the Australian Research Council Centre of Excellence for Climate Extremes (ARCCECE) has said there are likely to be more intense extremes in the future, including rainfall events and heatwaves[37].

ARCCECE research shows that heavy rainfall events have increased by 40 per cent over the past 20 years in the Sydney region[38]. Higher rainfall over short periods has implications for land transport infrastructure in terms of damage caused by flash flooding.

Several Commonwealth infrastructure investment programs are utilised to help flood-affected communities undertake road works, including the LRCI, Roads to Recovery and Bridges Renewal programs. LRCI does not fall under the NPA.

Review consultations consistently raised the importance of climate change in increasing the likelihood of extreme weather events, which will continue to impact land transport assets and the performance of key transport routes. An example of this is the recent flooding of the Fitzroy River Bridge in WA, which created a single point of failure in the Network.

Governments are aware of the need to build back better after key infrastructure has been badly damaged. Future arrangements should not only focus on rebuilding more resilient infrastructure after an event but also prioritise mitigations that reduce the impact on the network of such events. Future funding should be concerned with the resilience and renewal of key assets to ensure the network continues to function effectively.

Consultations also consistently raised the level of funding for road maintenance.

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36 Bureau of Meteorology submission to House of Representatives Standing Committee on Regional Development, Infrastructure and Transport, February 2023, available at https://www.aph.gov.au/Parliamentary_Business/Committees/House/Regional_Development_Infrastructure_and_Transport/ResilientRoads/Submissions

37 ARC Centre of Excellence for Climate Extremes submission to House of Representatives Inquiry into the Implications of Severe Weather Events on the National Regional, Rural and Remote Road Network, 28 February 2023, available at https://www.aph.gov.au/Parliamentary_Business/Committees/House/Regional_Development_Infrastructure_and_Transport/ResilientRoads/Submissions

38 ibid

This Review heard universally strong views about the inadequacy of maintenance funding and notes that, if maintained at its current settings, it will continue to decline in real purchasing power. The maintenance fund can only be used for the Network.

Table 3 shows that the Commonwealth has made an average annual allocation of $350 million to the states and territories for road network maintenance purposes for the period 2014–15 to 2022–23.

The States report that with the recent extreme weather events around the country the Commonwealth's level of maintenance funding is inadequate, with a risk that assets will significantly degrade leading to higher costs to rebuild/repair crucial parts of the national land transport infrastructure.

Table 3: Commonwealth NLT Network Maintenance Allocations 2014–15 to 2022–23

F/Y	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
Spend ($m)	350.0	350.0	350.0	350.0	350.0	350.0	437.5	262.5	350.0

* Estimate based on current commitments.

Maintenance is a broader issue for asset owners. Other programs such as Roads to Recovery and the stimulus LRCI Program have filled some of the gap off-Network. However demand for maintenance and renewal will continue to increase in the face of increased pressures on the road network associated with transition to net zero and extreme weather.

6.8 Cost escalation

A number of reasons have been presented for cost overruns throughout the Review process. These include poor and inconsistent scoping of projects, the impacts of recent natural disasters and the COVID pandemic. While some of these are transitory, others may be more enduring with more direct linkages to the operation of the system for making investments in land transport infrastructure.

This Review heard consistently that the cost escalation model that is used when estimating the financial commitments required for project delivery is contributing to overruns.

Created in 2015 by BIS Oxford Economics at the request of the Commonwealth, the cost escalations process is intended to support the Commonwealth to procure road and rail projects. The escalations process involves developing formulae that are used to determine how project-level costs (particularly materials, labour, technical and fees) are expected to change in the period between the Government making a financial commitment and the expected completion date for the project.

The Commonwealth revisits cost escalations formulae to validate cost estimates and apply relevant cost benchmarks for new road and rail infrastructure projects. The escalation rate that is determined for a project may be revisited:

- if the state approaches the Commonwealth with a funding problem, or
- to negotiate project variations requested by the states, particularly if the request involves an increase in scope and funding, or an extension to the delivery timeframe for a road or rail project.

There are separate road and rail escalation models, which the Commonwealth indexes in the second half of each financial year. These are the:

- Road Construction Outturn Cost Index (RCOCI), which is state-specific and weights the key components for road infrastructure components and incorporates contractor margins and client costs (this is described in more detail at Figure 10), and
- Rail Construction Outturn Cost Index (RailCOCI), which is applied as a national index due to the limited number and complexity of rail projects. The RailCOCI provides two separate escalation rates for aboveground and belowground rail projects.

Figure 10. Process for Developing the Road Construction Outturn Cost Index

INCORPORATE KEY ROAD PROJECT COST DRIVERS

- Input materials costs (such as concrete, cement and steel being key materials in infrastructure construction activity)
- Labour costs (labourers, tradepersons and management resources)
- Machinery and equipment costs (purchasing or leasing machinery, equipment and spare parts)
- Oil-based costs: Fuel for vehicles, machinery and equipment, and oil-based input materials such as bitumen are key during road construction)

PROCESS STEPS

1. Identify key components driving direct road construction costs
2. Apply appropriate component weights for each jurisdiction
3. Include contractor margins or selling prices
4. Include client costs
5. Develop overarching outturn price index

DEVELOPMENT OF THE RCOCI

After input weightings, contract margin allowance and proportion of client costs have been determined, overall (RCOCI) is developed:

1. Given the selection of subordinate input prices, their growth rates in a period and their relative weights, a Road Project Base Cost Index (RPBCI) is created
2. As the aim of the index is to focus the analysis on ourput (or selling) prices, the RPBCI is 'grossed up' by the size of the contractor margin in each period. This created a second sub-index, the Road Project Base Cost and Margins Index (RPBCMI), calculated as RPBCMI = (RPBCI * (1+M)
3. Finally, the RCOCI is determined as the weighted average growth of the RPBCMI and the separate index accounting for growth in client costs.

The Cost Estimation Network (CEN) comprises representatives from the Australian, and State Governments who meet to discuss technical topics relating to cost estimation, including the appropriateness of escalation rates and their own modelling to support their views through this process. However, the NPA and the NoA do not contain any meaningful provisions on how to deal with significant escalation if a project's costs exceed the Australian Government's funding commitment.

The process for determining cost escalations and the underlying model may have served parties well in the past, but is now regarded as inadequate by the States and other stakeholders. The current approach to managing cost escalation leaves the Commonwealth open to significant financial shocks which can potentially have a significant impact on budget management. This Review acknowledges that the States also have problems with the estimations process.

The Australian Government should re-examine its approach to managing cost escalation. The cost escalation model would benefit from a full review to ensure it remains fit for purpose. External validation of the model should increase transparency in its application and visibility to decision-makers.

6.9 Project scoping

The lack of a clear and agreed approach to the early scoping of infrastructure projects to ensure a sound foundation for funding decisions also contributes significantly to cost pressures. The NoA identify that scoping entails investigating project options and identifying the preferred alternative to addressing an identified transport problem.

A lack of minimum expectations and practical guidance on how to embed effective scoping into early project planning means that potentially significant problems relating to size, cost, scheduling and sequencing are not being consistently identified and mitigated as infrastructure projects are originated and designed. Consequently, the Commonwealth has no assurance that appropriate risk mitigations are being embedded before projects commence. This is critical to outcomes, particularly for projects that have significant and complex construction components.

A related issue is assurance that project-level risks are being appropriately assigned and managed. It is acknowledged that improving the quality of scoping will require larger investments in upfront investigation and planning activities and a commitment from governments to work more closely with industry to improve understanding of risks that drive cost escalations to infrastructure projects.

6.10 Cost sharing

The States require budget stability and certainty in funding arrangements from the Commonwealth in terms of cost and risk sharing on projects, particularly in relation to cost sharing on any subsequent genuine escalations.

Cost-sharing arrangements are agreed through the Commonwealth's Budget or MYEFO processes and are published on the state Schedules.

The scope of this Review does not allow for any depth in assessment of cost-sharing except to observe that feedback to the Review underscores that planning and delivery would be enabled by greater certainty.

A number of States indicated that a 50:50 funding split as a one-size-fits-all approach is not always appropriate. This Review heard strong views that there would be a reduction in the State's investment in regional infrastructure in the absence of an 80:20 funding split

There may be times when the Commonwealth needs to adjust the funding split and should retain the flexibility to do so. The Commonwealth should ensure appropriate arrangements are in place for the future agreement. This should factor in the effects of CGC HFE.

6.11 Funding flows

Infrastructure expenditure is often used to assist governments – Commonwealth and state – with budget presentation issues. The current arrangements create financial risks for the Commonwealth if and when the IIP is called on for whole-of-government budget management.

Specifically, when the Commonwealth makes significant advanced payments against individual projects it loses its leverage and is unable to protect its investment interests and ensure value for money at the project level.

A case in point is the ANAO findings in relation to Victoria's East West Link Project in 2015. The Commonwealth provided $1.5 billion in advance payments shortly before the project was cancelled. None of the funds had been spent by the state prior to the project's cancellation, and the funding had not been returned to the Commonwealth at the time of the ANAO's report. Interest earned on the advance payments was estimated to be more than $49 million.

For the future agreement the Commonwealth should investigate what options may be available to manage funding flows that retain project leverage when needed while streamlining administration and delivering certainty around macro funding flows where possible.

Current payments are meant to be based on the sum of the amounts due in respect of individual project milestones for that particular month. There is no differentiation in the treatment of projects based on size or risk. As a consequence, the level of administrative overhead and duplication of effort is significant.

In some instances particular agreed priorities which are delivered via smaller projects with low risk and of a similar type may be best funded via program arrangements which do not require monthly line by line reconciliation.

Consideration should be given to how payments to the States can be reconciled to ensure that Commonwealth payments are not significantly in advance of requirements. Withholding funds from the States is a lever the Commonwealth should use when it is fair and reasonable to do so. Macro arrangements for each state could enable the Commonwealth to use this lever more effectively.

Options available may include different tranches of payments for different types of projects (small versus large, low and high risk). This would enable macro-payment schedules for each State with a periodicity of reconciliation which is attuned to the scale and/or risk of the project. This would provide states with greater budget certainty and protect the Commonwealth against risk. It would also allow all parties to achieve administrative efficiencies.

Any change to payment arrangements between the Commonwealth and the States should be made in the broader context of federal financial arrangements. It is beyond the scope of this Review to make detailed proposals in this regard but clarity about the role the Commonwealth wishes to adopt will dictate the shape of these arrangements.

6.12 Audit Analysis

Operation of the current agreement has been the subject of significant criticism from audit bodies such as the ANAO, parliamentary committees and state auditors general.

Common themes throughout the audits examined as part of this report include the need for transparent governance, reporting, decision-making, and accountability.

A number of audits, including the ANAO report on Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements, and the Northern Territory Auditor-General Office's review of effective enrolment, identified deficiencies in performance measurements. They recommend a performance framework to clearly outline and assess the range of performance measures included in project plans.

Indicating the achievement of outputs and outcomes through a performance framework would increase transparency and accountability. It would also allow for greater reporting of performance achieved against objectives and measures.

The Victorian Auditor-General's Office (VAGO) report on the Suburban Rail Loop and Melbourne Airport Rail, and the ANAO's report on Approval and Administration of Commonwealth Funding for the East West Link Project identified risk in making advance payments for projects due to the non-legally binding nature of NPAs. This is more likely to occur when funding commitment decisions are made without complete business cases being submitted through the usual process for consideration.

The ANAO's report on Effectiveness of Monitoring and Payment Arrangements under NPAs recommends consideration be given to implementing monitoring and payment arrangements to allow strengthened controls over delivery and payment milestones, and for final payment to states to be withheld by the Commonwealth pending evidence of successful completion of the project. This was also evidenced in a NSW Independent Commission Against Corruption finding on inadequate reporting and other accountability arrangements.

The VAGO's report on the Suburban Rail Loop and Melbourne Airport Rail, and the ANAO's report on Administration of Commuter Car Parks Projects within the Urban Congestion Fund found that a 'one size fits all' approach to funding programs, noting some projects such as bespoke or mega-projects, may not work well. They recommend consideration of tailored guidance for these projects, with funding programs under the IIP to have implementation plans, performance indicators, and an evaluation strategy specific to the individual funding program.

Additionally, while funding programs such as the Black Spot Program are not currently reported on due to their scale, risk profile and administrative burden, the ANAO recommended the Australian Government consider a sampling approach as a way of improving the evidence base on project milestones with minimal increase to administrative costs and imposts on the states.

Efficient record keeping, the use of consistent templates and checklists, and looking at lessons learned to incorporate into future processes where appropriate are other key recommendations from these audits.

Future governance arrangements must respond to these findings and meet community expectations for public governance. Further details on relevant audit outcomes are summarised at Appendix 8.

6.13 Commonwealth–State working relationship

In order to give effect to the shared objectives agreed in the NPA, close working relationships amongst Commonwealth, State and Territory Ministers and officials are required. This cooperation is required in respect to both policy and administration.

The Commonwealth and the States have established the Infrastructure and Transport Minister Meeting (ITMM), as a structured forum for Ministers to agree on how to progress transport reforms and address issues that require cross-border cooperation. Senior transport officials contribute expert advice and technical analysis to the ITMM through the Infrastructure and Transport Senior Officials Committee (ITSOC).

The ITMM process considers a set of specific priorities (as set out below) and the Commonwealth has developed alternate processes to work with the States on other issues. An example is the informal Land Transport Infrastructure Working Group that the Commonwealth has established to collaborate with the States to develop the Infrastructure Policy Statement for Land Transport Infrastructure (the IPS).

6.13.1 Infrastructure and Transport Ministers' Meetings

The ITMM provides a forum for intergovernmental collaboration, decision-making and progressing priorities of national importance. As a forum, the ITMM enables national cooperation and consistency on enduring strategic issues. The forum is used to both perform regulatory policy and standard setting functions and to address issues that require cross-border collaboration.

Engagement between the Commonwealth and the States is informed by the ITMM's current priorities, including those tasked by National Cabinet. These are:

- to address in current market capacity constraints affecting the construction industry (also a National Cabinet priority),
- improving the interoperability of rail systems and streamlining approvals process for national transport infrastructure projects (also a National Cabinet priority),
- to decarbonise infrastructure and transport,
- heavy vehicle productivity and safety, and
- the Road safety action plan.

The ITMM receives support from the ITSOC. The ITSOC provides advice on transport infrastructure proposals that are presented to the ITMM. It also considers industry views to inform the ITMM and approves items that are outside of the ITMM's key priorities (excluding those that fall under legislative requirements) on behalf of the ITMM.

6.13.2 Land Transport Infrastructure Governance Working Group

The Land Transport Infrastructure Governance Working Group (LTIGWG) is an informal working group comprised of operational Senior Executive representatives from the Commonwealth and the States. The Working group has been collaborating on appropriate principles to inform future Commonwealth infrastructure investment priorities. The LTIGWG has been engaging on matters of integrity, productivity, ensuring maturity of project proposals, maintaining existing transport networks, value for money, issues affecting delivery capacity and capability, environmental considerations, and social outcomes.

The LTIGWG has had a particular focus on defining the right investment principles to ensure investments in land transport infrastructure are appropriately informed and to address risks. This has involved examining whether project selection is appropriately aligned with strategic objectives, achieving a level of funding optimisation to support shared policy, and how to achieve fit-for-purpose governance and reporting arrangements.

This Review heard during consultations there were good working arrangements and relationships between officials.

6.14 Shared priorities

The majority of project expenditure under the NPA is executed by the States. Noting the broad acceptance of election commitments as a particular category, analysis of activity under this NPA suggests that shared priorities and funding arrangements are both material to the successful execution of individual projects.

During the first two phases of this NPA, there was generally little overlap between Commonwealth and State priorities for infrastructure investments and the outcomes they should achieve noting the role of COVID stimulus, outlined in Section 5, should not be regarded as emblematic of ongoing priorities and processes.

However, evidence does suggest that announcement of projects unilaterally, particularly when not consistent with State priorities does not lead to successful project completion rates. The Commuter Car Park (CCP) projects are a relevant example of the Commonwealth unilaterally initiating land transport infrastructure projects. The CCP has been the subject of much external scrutiny. An ANAO report examined the Urban Congestion Fund (UCF), which housed the CCP and was established in the 2018–19 Budget. The Report found that by 31 March 2021, construction had been completed at two of the sites, with commencement of works at a further three sites. Many of the project delivery problems with the CCP can be attributed to poor project selection.

Table 4 shows two phases of the NPA where one party was predominantly driving project selection. The number of projects that still have not commenced construction is high at around 40 per cent regardless of whether the Commonwealth or the states initiated project selection.

Table 4: Projects approved from July 2019 onwards

Project Status						
	UCF	**CCP**	**C'th funding contribution greater than 80 per cent** May 2019– May 2022	**C'th Election Commitments** May 2019– May 2022	**TOTAL**	**Phase 2: 2020–21** COVID stimulus, S/T driving project selection
In Planning	31	7	51	49	138	169
Under Construction	30	5	34	15	84	131
Completed	17	5	33	2	57	84
Cancelled	6	16	0	0	22	5
Total	**84**	**33**	**118**	**66**	**301**	**389**

*The UCF, CCP, Commonwealth funding contribution greater than 80 per cent, and Commonwealth election commitments have been used as a proxy for Commonwealth initiation.

Shared priorities and joint commissioning should lead to better outcomes. The next agreement should outline the role that shared planning and commissioning can play based on mutually agreed priorities.

This Review notes there is a role for the Commonwealth to at times act unilaterally in the national interest and commission projects of significant and strategic importance to Australia.

Regulatory, legal, financial and policy framework

7.1 Regulations policies and priorities

Legislation, subordinate regulations and policies define the Commonwealth's approach to, and objectives for, its investments in infrastructure, and financial settings that influence how it provides funds. These elements are all material to determining the scope, purpose, objectives and, arguably, the success of project-level infrastructure investments.

Infrastructure investments are generally complex undertakings that require significant cooperation and time for the full scope of their intended benefits to the community to be realised. Commonwealth investments in land transport infrastructure are therefore supported by a suite of integrated regulations and policies, and are guided by structured engagement with the States, as delivery partners, and advisors from industry.

The NPA is critical to the Commonwealth operationalising its land transport infrastructure priorities. However, the NPA does not legally bind the States to specific priorities and funding decisions. The Commonwealth's engagement with the States is therefore critical to agreeing and progressing desired investment outcomes.

The structural context in which the current NPA operates is an important contributor to how well it has performed. An understanding of how well the current NPA influences the delivery of positive outcomes delivered through this framework, as well as how it is influenced by limitations in this framework, must be understood to identify what a new FFAS may require moving forward.

This Review also notes that the Commonwealth has implemented several review processes that examine different regulatory and policy settings that impact upon the planning, negotiation and delivery of infrastructure investments in different ways. The recommendations to Government arising from these reviews may, if adopted, have important implications for the structure of a new FFAS and how it is negotiated with the States.

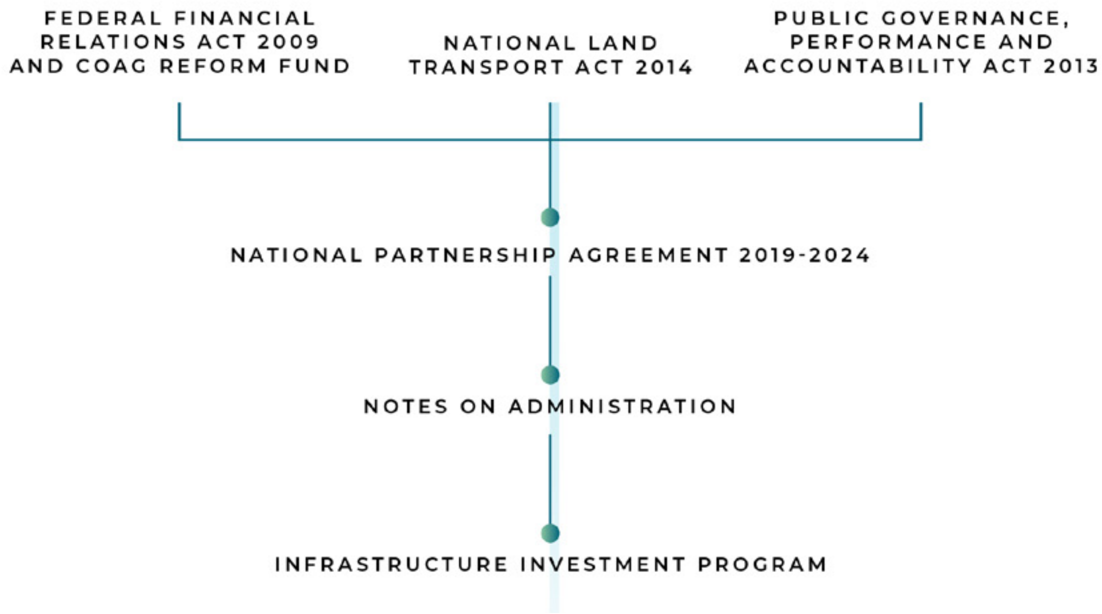
7.2 Legislation and other dependencies

Three sets of legislation interact with the NPA, which are captured in the schematic below (Figure 11). The PGPA Act establishes a system of governance and accountability for public resources, which the Commonwealth must comply with.

The FFR Act is described at Section 4.

The NLT Act is listed at Section 7.2.1.

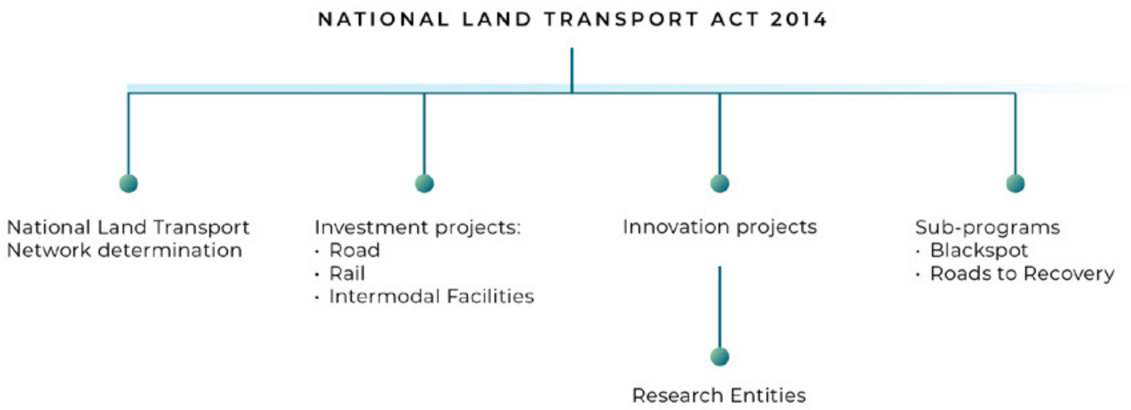
Figure 11. Schematic of the legal framework including Federal Financial System



The current NPA must be read in conjunction with the NLT Act as projects under the NPA are administered under the NLT Act.

7.2.1 *National Land Transport Act 2014*

Figure 12. Schematic of the NLT Act



The NLT Act (schematic at Figure 12) was enacted to replace the former *Nation Building Program (National Land Transport) Act 2009* with a more modern regulatory framework.

The NLT Act provides that the Australian Government Minister with portfolio responsibility for transport must approve Commonwealth investments for land transport infrastructure projects. The NLT Act also sets administrative requirements for the process of seeking project approvals, basic tendering requirements and related exemptions processes, and the basic financial reporting obligations for the States as funding recipients.

Projects must be approved according to the NLT Act provisions before the Commonwealth can commit funding through the NPA arrangements. The NLT Act prescribes a set of rigid funding eligibility requirements and related restrictions in an attempt to differentiate what the Commonwealth will fund from state contributions to projects.

The NLT Act funding eligibility requirements are set out in Table 5 below. Given the specificity of these requirements, they are a significant influence on the priorities and the goals that the Commonwealth can set through the NPA.

Table 5: Overview of NLT Act funding eligibility requirements

NLT Act provisions	Funding permissions and restrictions
Part 3 – Investment Projects	Permits the Commonwealth to fund projects that have the purpose of: • constructing road, rail and intermodal facilities, • maintaining roads and railways in the National Land Transport Network, and • acquiring or applying technology that will support the efficiency, security or safety of transport operations.
Part 4 – Transport Development and Innovation projects	Permits the Commonwealth to fund innovation and research projects. These projects that are either for: • for planning, research, investigations, studies or analysis of matters related to the present or future development of the Land Transport Network, • research and development into new technology or practices that may be used in connection with transport operation on the National Land Transport Network, or • project-level research, investigations, studies and analysis activities. This permission does not extend to funding projects that involve construction works.
Part 5 – Land Transport research entities	Permits the Commonwealth to provide funding for a land transport infrastructure entity for a particular period.
Part 7 – Black Spots Projects	Permits the Commonwealth to fund Black Spot Projects. Projects are eligible for approval as a Black Spot Project if the: • project is for the improvement of road safety of a site (being all or part of any road), and • site is in a State, and • nature of the site has contributed to, or is likely to contribute to, serious motor vehicle crashes involving death or personal injury.
Part 8 – Roads to Recovery Program	Permits the Commonwealth to fund the Roads to Recovery Program.

7.2.2. NLT Act limitations

Consultations reported the terms of the NLT Act are unreasonably restrictive and too mode specific. Specifically, that it restricts investments to road, rail and intermodal facilities. The lack of flexibility in respect of modes limits investment choices and does not allow for other, sometimes better policy solutions to be funded.

States report wanting to enter into arrangements with the Commonwealth about solutions and not modes. Criticisms of the NLT Act often related to limitations regarding active transport. The NLT Act permits the funding of active transport in certain circumstances.

Other limitations of the NLT Act include not being able to fund electric ferries, when that was the better public transport outcome.

It is timely to consider whether the NLT Act continues to support the type of governance structure that is required to improve coordination, clarity and transparency of infrastructure investments. This Review sees this as particularly important as Australia moves towards a net zero economy and begins implementing reforms to achieve this.

The NLT Act also dictates a number of project administration requirements. While the terms of the Act are beyond the scope of this Review it would be appropriate to consider whether minor amendments to the Act would enable needed flexibility in both project selection and administration.

7.2.3 National Land Transport Network

The Commonwealth Minister is required by the NLT Act to determine the Network, known as the National Land Transport Network Determination 2020[39]. Its principal purpose is to support the construction and maintenance of nationally-significant transport corridors. The rationale for determining the Network is connectivity with an emphasis on connecting the capital cities, major centres of commercial activity and inter-modal transfer facilities.

The Network includes:

- interstate and interregional road and railway links that are nationally important for trade and commerce or travel, and
- local and urban road and railway links to ports, airports and other inter-modal transfer facilities, which also connect to interstate and interregional transport corridors.

The Network is set out as a list of roads, rail links and their intermodal connections within the determination. Projects on-Network should be deemed a priority.

The Network determination has implications for HFE (Appendix 4 refers) and maintenance funding. Section 10 of the NLT Act allows the Government to provide construction funding for projects under a variety of circumstances, it limits the provision of maintenance funding to projects existing or proposed road or railway projects that are included in the Network.

Maps of the Network are available here: The National Land Transport Network | Infrastructure Investment Program.

7.2.4 Notes on Administration

The NoA combines the requirements of NLT Act and the NPA in a set of guidance notes for administration officers[40]. These notes prescribe much of the administrative processes and hence burden that is a feature of the current arrangements.

The NoA guide officers of DITRDCA in their administration of the NPA. They prescribe administrative processes designed to apply the collective provisions of the NLT Act and Network Determination and relevant policy decisions when conducting Government business, including engaging with the States. State and territory officials also refer to the NoA as a guide to provisions applied by the Commonwealth in the allocation and administration of funding.

The NoA is supposed to provide an explanation to Commonwealth officers who administer, and make decisions as part of, the various parts of the framework. However the NoA reflects a build-up of administrative requirements that have been added to over time. The impact of this is that the requirements of the NoA are not easily understood, which has led to a number of practice directions being developed that sit outside of the NoA that attempt to provide additional clarity for administration officers.

The NoA needs to be revised to clearly express how the overall framework for making land transport infrastructure investments functions to improve transparency.

All officers should be clear on the status of the NoA and where it sits within the hierarchy of documents. The NoA is not a legal document but it needs to be legally accurate.

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39 The Network determination was updated in 2020 and is available at https://www.legislation.gov.au/Details/F2020L00851

40 Notes on Administration are available at https://investment.infrastructure.gov.au/sites/default/files/documents/notes-on-administration-january-2021.pdf

The NoA is agreed between officials, however given its importance it is arguable that oversight of the NoA is insufficient. Given its scope and role in ensuring an informed and pragmatic application of the established apparatus for guiding investments, the NoA needs to be properly scrutinised to ensure it is appropriate for this role.

The guidance that the NoA provides should be the minimum required to give effect to the program. Streamlining the NoA with appropriate governmental oversight should occur as a priority

7.3 Policies

This NPA is complementary to the National Urban Policy and the Regional Investment Framework. These policies (shown in Figure 13) articulate the Australian Government's priorities and how it intends to use investments to drive improvements in transport infrastructure in urban and regional areas. The Australian Government is also developing an IPS, which is intended to serve an overarching statement of priorities and objectives for infrastructure investments.

Figure 13. Policies and reforms

7.3.1 National Urban Policy

The Commonwealth is developing a new National Urban Policy (Policy) which will frame its policy approach to achieving a vision for more productive, equitable and resilient cities. The Policy will also present a shared government vision for the sustainable growth of our cities.

The Policy will identify key challenges and opportunities facing our cities and outline the Government's aspirations and actions to respond to these. As part of this, the Policy will discuss the importance of access to affordable and reliable active and public transport in our cities as a key factor in improving productivity, equity and resilience. The Policy will also discuss this importance of integrating land use with current and planned infrastructure to support long-term productivity improvements.

The Policy will advocate for planning and zoning reforms that can improve life in our cities, for example through increased medium and high-density housing in well located areas close to existing public transport connections, amenities and employment.

The Policy is not envisioned to include a funding or investment framework. Instead, it may be used to help prioritise and guide future decisions in our capital and large regional cities.

The Policy is being developed and refined in consultation with the State governments, urban planning experts and First Nations groups, ahead of a public consultation process.

7.3.2 Regional Investment Framework

The Commonwealth has published its Regional Investment Framework, which outlines its approach to targeting investments that support strong and sustainable regions.

The Regional Investment Framework emphasises improved outcomes for regional people, industries and economies in regional communities, and the services they are reliant on. The Regional Investment Framework acknowledges the significant diversity across Australia's regional communities and their economic circumstances, and seeks to embed the value of local voices and priorities to guide investment decisions across all Commonwealth portfolios.

Like the NPA, the Regional Investment Framework identifies broad objectives for regional investments that include providing better opportunities for, and meeting the needs of, First Nations people, supporting Australia's transition to a net zero economy, and achieving gender equality. In addition to sharing these broad goals, the Regional Investment Framework complements the NPA by identifying the need to collaborate to ensure infrastructure, which includes land transport infrastructure, is delivered when and where it is needed to enable regional communities to thrive.

The Australian Government has committed to using the priority focus areas set out in this Framework to influence decision-making in Budget and MYEFO processes. At an operational level, the Regional Investment Framework emphasises the value genuine partnerships between the Australian and the States to both coordinate and leverage experience to guide investment decisions.

7.3.3 Draft Infrastructure Policy Statement for Land Transport

The Commonwealth is currently developing an IPS that will set out the strategic directions that will guide the Australian Government's investments in land transport infrastructure and the outcomes that these investments will achieve. It is intended that the IPS will provide the States, industry and other stakeholders with clarity about the Commonwealth's investment reform agenda, particularly its commitment to funding nationally significant infrastructure projects and using these investments to achieve improvements to productivity, liveability and sustainability.

It will identify properly planned and targeted investments in infrastructure investment as key enablers for significant economic, social and environmental policy objectives. Noting this, the Commonwealth should give proper consideration to how these priorities will be integrated into arrangements for the new agreement.

The Commonwealth should also make it clear how it will favourably recognise ambition in its other priority areas, when selecting projects for joint investment. All parties should stretch to achieve progress against joint policy priorities, starting with a realistic appraisal of reform capability and agreed targets set out in bilateral Schedules to the FFAS.

This suite of policy objectives is being driven in parallel to the existing agreement, and has been largely unconnected to project selection processes. A realistic pathway for integration and implementation must also be found. A phased approach may be necessary.

7.4 Reform of key elements

The Commonwealth is considering recommendations from several recent independent reviews. Collectively, these reviews provide recommendations to transition the current infrastructure investment pipeline to a ten-year rolling pipeline of projects that are nationally significant, improve planning and coordination, and establish appropriate advisory and governance arrangements for infrastructure investments.

7.4.1 Independent Strategic Review of the IIP

This NPA Review is being undertaken in parallel to the Independent Strategic Review of the IIP[41], which the Commonwealth commissioned on 1 May 2023 to support its commitment to a ten-year, $120 billion infrastructure pipeline of nationally significant and nation-shaping infrastructure projects.

7.4.2 Independent Review of Infrastructure Australia

An independent Review into the role of IA was completed in mid-2022. The Review recommended IA be given a clearer purpose, that its role as a national adviser be enhanced and that its governance structure be reformed. The Review also identified that IA's assurance role and assessment responsibilities must also be revised to fully achieve its potential as an advisor to the Commonwealth. This included advice that the Commonwealth should reconsider what is 'nationally significant' infrastructure.

On 8 December 2022, the Commonwealth announced that IA will undergo several changes to reposition itself as an independent expert advisor on nationally significant infrastructure, including:

- Producing a more refined, smaller, targeted Infrastructure Priority List,
- Developing a national planning and assessment framework to support national consistency in infrastructure assessment,
- Adopting a more active role in the post-completion stage of infrastructure projects, and
- Adopting a structure so that it can work closely with the infrastructure bodies (i-bodies) set up by states and territories.

IA will also have a new governance model. Three commissioners will replace the former executive board arrangement and lead IA. The three commissioners will be supported by an advisory board with experts from infrastructure and related sectors, and senior public service officials. IA is operating under transitional arrangements while the *Infrastructure Australia Act 2008* is amended so that the new leadership structure can be implemented.

7.4.3 2023 Review of the National Freight and Supply Chain Strategy

On 9 June 2023, infrastructure and transport ministers agreed in principle to bring forward the first five-year review of the National Freight and Supply Chain Strategy. The Review seeks to build a more effective strategy that can guide Australia in managing its growing and changing freight tasks.

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[41] IIP Strategic Review, Infrastructure Investment Program Strategic Review | Infrastructure Investment Program

The Review will assess whether there are gaps in the Strategy's goals, consider its performance to date and priorities for the next five-year National Action Plan, and propose a small number of national, data-driven key performance indicators (KPIs) to monitor the Strategy's continued implementation. The Review will also consider and provide advice to Government on appropriate governance arrangements to support the implementation of the Strategy, including the role of the Freight Industry Reference Panel.

The Review is scheduled to commence public consultations, consider stakeholder submissions and provide a report to the infrastructure and transport ministers by the end of 2023. The updated Strategy and National Action Plan for the next five year will be completed by mid-2024.

7.4.4 National Road Safety Action Plan

The National Road Safety Action Plan 2023–25 is the first plan to support the National Road Safety Strategy 2021–30. The Strategy sets out Australia's current road safety objectives, and includes key priorities for action and targets to reduce the annual number of fatalities by at least 50 per cent and serious injuries by at least 30 per cent by 2030. The Commonwealth has specifically committed to lead research into workplace crashes and near misses, where the road is part of the workplace and to establish base data for workplace fatalities involving vehicles. The States have committed to contributing data to support the Commonwealth to create this baseline for workplace fatalities.

The Commonwealth has also committed to target future road safety programs to deliver safe system treatments on moderate to high volume roads. The States will review traffic management policies and undertake safety risk assessments on moderate to high volume regional roads as part of this action plan.

7.4.5 Other Reviews

An overview of the Review of Inland Rail can be found at Appendix 9.

Assessing performance

As outlined at Section 4 the NPA is a high-level document that adopts a principles-based approach. Its purpose, roles and responsibilities, and financial arrangements are described at a broad level. With the exception of First Nations economic outcomes, the NPA does not outline shared priorities with the states nor how relativities between priorities, particularly where these differ between the jurisdictions, will be determined.

The NPA neither directly contemplates nor links information about how investments will be made using its principles. It does not mandate any priority setting or planning processes.

The NPA describes its objectives as safety, productivity, supporting population growth, competitive markets and employment opportunities. It has five performance indicators.

This broadly enabling approach had advantages during the pandemic when a rapid pivot and significant flexibility was needed. It is unarguable that rapid decision-making and early expenditure during the pandemic provided a needed boost to the economy.

Examining performance requires consideration of the terms of the agreement and its performance indicators to both determine whether the NPA has had a positive impact on the delivery of land transport infrastructure over its life and whether this impact can be accurately measured.

This performance assessment must also consider the impact of the COVID pandemic and the increasing impact of climate change (reflected in the number of disasters and their consequent effect on infrastructure), which are both relevant and unique to the life of this NPA. This includes identifying how effectively the current expenditure has been leveraged to support responses to these challenges.

8.1 Project delivery and expenditure under the current NPA

As was outlined in Section 4 and Figure 4 total expenditure under this NPA is currently $31 billion and expected to be $45.4 billion over the life of the Agreement. During this time 517 projects[42] will have been completed. This compares to the previous agreement when $27.43 billion was spent and 264 infrastructure projects were completed.

As noted previously the size of projects over this period has decreased (a trend that continued during COVID).

[42] 359 individual projects were completed between 1 July 2019 and 30 June 2023. It is estimated that a further 158 projects will be completed between 1 July 2023 and 30 June 2024.

8.1.1 On and off network projects

For projects committed to from 1 July 2019 onwards (Table 6), there are slightly more projects that are off the Network than on. However, more funding has been dedicated to projects that are on the Network.

Table 6: Number of projects on and off the network committed to from 1 July 2019 onwards

	On Network	Off Network
Number of projects	316	360
Total investment	**$24.85 billion**	**$19.39 billion**

The Commonwealth's infrastructure investments should arguably largely focus on ensuring that the Network and key transport routes perform effectively and are sustained. However, there is limited aggregate data to assess whether and how projects selected under the NPA meet broader policy objectives. Anecdotal evidence suggests policy context and key priorities have not always been reflected in project selection. This is only partially explained by rapid decision-making and the need for 'shovel ready projects' as part of COVID stimulus.

This Review has heard that many projects in the pipeline are not being delivered within budget nor on time. The absence of clear aggregated data makes these claims difficult to assess at a whole of NPA level however on a project by project basis they clearly have justification. While this is not a function of the NPA – as it does not mandate detailed administrative arrangements – these outcomes clearly undermine the achievement of the objectives espoused in the NPA.

A number of reasons have been presented for cost overruns throughout the Review process. These include poor and inconsistent scoping of projects, the impacts of recent natural disasters and the COVID pandemic. While some of these are transitory, others may be more enduring with more direct linkages to the operation of the system for making investments in land transport infrastructure.

Based on evidence provided to the Review the absence of a long-term investment horizon, a stop start approach to funding, an undifferentiated commonwealth oversight regime not calibrated according to risk, supply chain disruption, cost increases which exceed the allowances made at the time of project approval and poor cost estimation and scoping processes in the first place all contribute to poor project outcomes.

Oversight and cost control mechanisms are well established in jurisdictions. They also have sophisticated project control methodologies designed to manage ongoing programs of work. The jurisdictions argue that delays and cost blow outs are exacerbated by Commonwealth processes in respect of indexation, delays in project approval, including of scope changes, supply chain issues and failure to identify long term objectives and investment horizons to enable planning and orderly project delivery.

This Review cannot judge the merit of all of these claims. However, a longer-term investment horizon and changes to priority setting including greater transparency, improved advice to Government from IA and changes to administrative arrangements would streamline and focus effort in order to improve outcomes.

This Review has also heard that State priorities and significant cost overruns are not always notified to the Commonwealth in a timely fashion, making decision-making difficult.

This Review notes the stated intention of the current Commonwealth to focus its expenditure under the NPA on larger projects of national significance.

8.2 Program oversight

The Commonwealth has a Governance, Assurance, Performance and Reporting Committee (GAPR) that oversees the implementation of the IIP. At the program level GAPR provides strategic oversight, monitors expenditure and risk.

Teams within DITRDCA's Infrastructure Group are responsible for relationships and day-to-day administration of the IIP. Each state has a Director and team assigned to work with them on their state's IIP project approvals and delivery.

During consultations, states raised the turnover of staff within these teams as contributing to inefficiency and lack of administrative consistency.

8.3 Project oversight

All land transport infrastructure projects that are funded under the NPA are subject to the same Commonwealth reporting and financial milestone requirements, with the exception of projects under $25 million.

The way this information is provided means there is a lack of accessible project and aggregated data enabling monitoring of whether the NPA is achieving its purpose. This impedes the Commonwealth's ability to direct its resources and effort towards addressing its greatest risks. It also impedes its ability to oversee performance effectively.

Current Commonwealth oversight settings do not appear to contribute to improved project delivery nor assessment of the outcomes agreed in the NPA.

The ANAO and parliamentary committees that have also investigated government administration and have identified that there are deficiencies with the current administrative arrangements for supporting the NPA. These are summarised at Appendix 8 Audit Findings Analysis.

All parties should strive for best practice and evidence-based approaches to maximise the value from the investments made in land transport infrastructure.

A resetting of existing administrative arrangements is needed to enable effective oversight under any future agreement.

8.4 Project closure reporting

The current reporting arrangements require a PCR to be submitted by the states to the Commonwealth, once the project has been delivered. It is sound practice to record the final project outcomes. The PCRs currently capture the key information that would be expected for project closure.[43]

The template should be reviewed to ensure the PCR template aligns strongly with the investor role.

The PCR template allows a large amount of evidence to be submitted as free text. This is appropriate when capturing narrative style information, for example, in relation to project innovations. Free text is less appropriate when the input is quantitative. Allowing quantitative information to be submitted in free text limits the Commonwealth's ability to aggregate and analyse project outcomes.

Attention should be given by the Commonwealth to the consistent collection of quantitative metrics that would allow for rich national reporting overtime. This is particularly relevant for the section in the template that seeks data in relation to the meeting of agreed "Transport Performance Indicators".

[43] PCR templates are available at post-completion-report-template-january-2021.docx (live.com)

This Review recommends the Commonwealth develop system capability to enable quantitative analysis to be undertaken on completed project outcomes. The Commonwealth's replacement for the Infrastructure Management System (IMS) should have regard to this requirement.

8.5 Performance and outcome measurement

The operation of land transport in Australia has been the subject of many reviews including economic and social analysis of transport safety, freight, congestion and other productivity performance data. The collection of data from multiple sources and the insights they generate are important inputs to the policy and decision-making of governments.

Assessment of whether the outcomes sought under the terms of the NPA have been achieved should be an important consideration of further agreements, policy and priority setting. Funding under the NPA is significant and, as an outcomes-based agreement, assessment of whether these outcomes have been achieved should provide a foundation for future agreements and funding.

Despite this there has been no systematic data gathering nor analysis of outcomes over the course of the agreement to date. There have not been outcome-based performance reports provided to ministers or senior officials.

The outcome measures specified:

- improvements in road safety measured by crash reduction,
- improvements in productivity measured by reduction in travel time and operating costs,
- opportunities for First Nations contractors and job seekers,
- opportunities for local industry as measured by the analysis of Local or Australian Industry Plans, and
- improved data sharing as measured by provision of standardised data sets in the PPR

require sophisticated data gathering and analysis in order to assess the specific impact of spending under the NPA as opposed to long term trends (e.g. population increase) and the effects of other factors (e.g. the impact of reduced travel during COVID on crash reduction).

This Review has been advised that many of these outcome indicators are assessed in respect to individual project proposals. It is valid to examine each project's contribution to the outcomes sought. Unfortunately, the Review is unable to assess whether this occurs in practice and the impacts generated. This is because the Commonwealth's IMS captures information at the project level, generally as free text, which does not enable aggregate reporting.

With the advance of technology, the Commonwealth should give consideration to the use of large language models, which may be used to obtain aggregate assessment from free text on project outcomes.

Regular administrative reporting (ideally as an administrative by-product) enabling a dashboard available to senior officials (and ministers as required) would deliver improved transparency and facilitate the operation of the agreement. Existing Commonwealth administration reporting focuses on financial expenditure in any given year. Other details are not readily available.

The Commonwealth has some administrative data on the progress of implementation of the Framework but uses manual workarounds to collect data from states.

Incomplete reporting makes assessment difficult. Employment figures are also reported as both hours and full-time equivalent making comparisons difficult.

The States are also not reporting on all eligible projects, which distorts the ability to assess implementation. While the reporting is incomplete, progress towards the targets appears low.

This Review is unable to draw any meaningful inference except the current approach to data reporting is not working.

The PC found in its Closing the Gap – Annual Data Compilation Report July 2023 that nationally in 2021, 55.7 per cent of Aboriginal and Torres Strait Islander people aged 25–64 years were employed[44]. This is an increase from 51.0 per cent in 2016 (the baseline year).

The PC found that this national target shows improvement and is on track to be met (noting this assessment should be used with caution as it is based on a limited number of data points). The average annual change of 0.94 percentage points (pp) is above what is required (0.73 pp) to meet the target.

More broadly however, the PC found that progress towards the 15 targets that can be assessed has been limited, with only four on track to be met (employment being one of the four).

Little is currently done at the Commonwealth level to evaluate or measure the impact of the infrastructure investment projects.

The benefit of evaluation is that it will objectively assess the impact of the infrastructure investment, demonstrate the value gained from the investment. Evaluation also provides a rich source of evidence that may inform future investment decisions.

A program of evaluation that selects a series of projects for long-term evaluation, building in metrics before the project commences and establishing a baseline that allows time series evaluation to be undertaken could be considered.

The Commonwealth should have a system in place that readily enables monitoring and evaluation activities. This Review notes the Commonwealth has been working on a replacement for its IMS for some time, and expresses concern about about how long this replacement is taking.

8.6 COVID

As outlined in Section 5, the Commonwealth implemented a $1.5 billion stimulus package to expedite the commencement of infrastructure projects and support the local construction industry through the impacts brought about by the COVID pandemic. This stimulus package formed part of the Commonwealth's broader expansionary fiscal policy response to alleviate the national economic impact of restrictions implemented to limit the spread of COVID.

Like other elements of Commonwealth's COVID response, it is known that the stimulus package for land transport projects helped maintain and create new jobs, particularly as demand for infrastructure continued throughout the pandemic.

The number of overall jobs (direct, indirect, and induced) that were supported through these stimulus measures cannot be easily quantified. In many cases, the Commonwealth provided stimulus funding to build on pre-existing investment activities, an example being the stimulus funding that was provided for the Fixing Local Roads Program in NSW that is described in the case study below. Additionally, individual project proponents use different methods and underlying assumptions to create and sometimes revise job estimates across a project's life cycle.

44 Productivity Commission, Closing the Gap – Annual Data Compilation Report July 2023

Stimulus funding case study – Fixing Local Roads Program

As part of the COVID-19 stimulus package, the Commonwealth committed $191 million to the Fixing Local Roads Program to support economic activity and social wellbeing in regional NSW.

This Program is administered by the NSW Government and is used to provide funding to rural and regional areas in NSW for small local roads projects (up to $20 million in value). These projects include:

- Pavement rehabilitation,
- Sealing of unsealed roads,
- Asphalt resurfacing,
- Drainage rehabilitation, and
- Routine maintenance including cracks and potholes.

The Commonwealth's commitment increased the total funding provided for this program to $691 million. It is estimated that the total funding provided by both the Australian and NSW governments supported up to 3,500 jobs across NSW throughout the pandemic.

In April 2022, the Crawford School released a paper entitled *Fiscal policy in the COVID-19 era*[45], which found that the then Australian Government's decision to provide compensation through stimulus funding reduced foreseeable inequities while also limiting weakness in economic activity and employment. The paper also identifies deficiencies with the stimulus response, particularly that the Government overcompensated for losses arising from the pandemic and thereby created the conditions for new inequities to emerge as well as disincentives that detracted from its employment transition objectives.

This Review has heard that the emphasis on economic stimulus when selecting land transport infrastructure projects was allowed to continue for too long. This mirrors the conclusion that the Crawford School formed in 2022 that monetary policy needed to account for the stimulus that had already provided to the Australian market in order to avoid an outbreak of inflation upon lifting market restrictions.

This Review has also identified that the Australian Government did not give enough consideration to identifying and developing indicators to signal when the emergency settings and related stimulus should end. A related issue is a lack of thinking about how to return the IIP to normal funding arrangements.

There are suggestions that the COVID stimulus may have contributed to inflationary and capacity pressures that the Australian market is now facing. The development and implementation of the COVID stimulus arrangements warrants its own review, as documenting lessons learnt will be important to informing economic responses to the next crisis.

45 Crawford School of Public Policy, Fiscal Policy int he COVID-19 era. https://taxpolicy.crawford.anu.edu.au/sites/default/files/publication/taxstudies_crawford_anu_edu_au/2022-04/complete_wp_c_murphy_apr_2022.pdf

Future arrangements

The COVID pandemic and a recent succession of national disasters have tested and revealed deficiencies in Australia's land transport infrastructure investment framework. When considered against the scope of the current Government's priorities, it is clear that:

- A business as usual approach to planning, implementing and engaging with the States is not sufficient to ensure the Commonwealth's infrastructure investments result in efficiently implemented and appropriately risk assured projects that are also aligned with broader priorities, and
- Improvements to project planning and delivery, and related risk management and reporting are required. This includes developing a risk assurance process that provides the Commonwealth with a level of information and risk mitigations that are commensurate with the size, complexity and criticality of a project's outcomes, and the level of Commonwealth investment.

The Australian Government's priorities and regulatory, legal, financial and policy reforms are important considerations for determining what should be included in the FFAS and the context for negotiating this with the States.

The NPA was designed and agreed in its current form some ten years ago. While this Commonwealth–State agreement and the administrative arrangements that have underpinned it have delivered significant infrastructure investment and needed stimulus during the recent pandemic it is timely to consider whether the model can be improved to achieve better outcomes.

It is clear that key aspects of the current agreement are not fit for purpose for the forthcoming FFAS. Administrative arrangements, accountability and oversight mechanisms should be both streamlined and strengthened. Outcomes should be measured and progress reported.

In the 2023 Intergenerational Report[46], infrastructure spend has been assumed to be 0.33 per cent of GDP through to the end of the projection period in 2062–63. This major ongoing investment provides an opportunity to improve key economic drivers like freight productivity and tourism, deliver social benefits, leverage needed changes in order to enhance resilience and improve outcomes for women and First Nations people through infrastructure investment delivered by a new FFAS.

This Review has heard from many stakeholders about the strengths and weaknesses of the current NPA, its administration and the outcomes achieved. Specifically, the existing NPA:

- Provides a broad framework, not specific objectives,
- Does not take a longer term approach to the planning and delivery of infrastructure to take account of the timelines needed to deliver large projects,
- Has an acknowledged focus on outcomes whereas project delivery is the dominant focus of program administration and reporting,

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46 Australian Government Intergenerational Report 2023: Australia's future to 2063, page 186 Intergenerational Report 2023 (treasury.gov.au)

- Does not deliver the wider range of integrated social and economic outcomes possible given the leverage offered by the large spending under the agreement,
- Acknowledges transport outcomes (safety, congestion, productivity), innovation and technology, local business and First Nations Australians but provides little guidance on how outcomes are to be achieved,
- Has not universally driven the wider outcomes possible for First Nations Australians through full participation in land transport infrastructure activity, leading to underperformance,
- Does not agree relativities between priorities particularly where these differ between jurisdictions,
- Is burdened by complex administrative arrangements,
- Does not take a risk-based approach to delivery of small, low risk projects,
- Has enabled project selection outside of agreed priorities,
- Has not supported the delivery of funded projects consistently, within budget or on time, and
- Has not supported direct assessment of whether agreed outcomes have been achieved.

The agreement was flexible and enabled rapid injection of stimulus spending during the pandemic. However, these settings were not reset quickly after the crisis had passed.

The agreement itself, its administration and projects prioritised and announced for funding have been widely commented on including by the ANAO, state audit offices and parliamentary committees.

In this context there is a clear opportunity to reset existing arrangements in order to improve accountability, transparency, efficiency and outcomes.

On 29 May 2020, CFFR was asked by National Cabinet to take responsibility for all Commonwealth–State funding agreements and review the stock of existing agreements with a view to consolidation and rationalisation.

The new Federation Funding Agreement (FFA) architecture following this review consolidated all existing FFAS into two forms of agreements: National Agreements and sectoral FFAs. National Agreements contain significant policy content and act as sources of ongoing funding and have relatively complex and bespoke terms and conditions.

The sectoral FFAs covering Health, Education and Skills, Infrastructure, Environment, and Affordable Housing, Community Services and Other, consolidated all existing National Partnership Agreements, Streamlined Agreements and Project Agreements as schedules. New agreements under the relevant sectoral FFA are now termed FFA Schedules.

Eight FFA Principles were developed by CFFR and endorsed by National Cabinet to formalise CFFR's role in influencing the policy direction and content of new agreements under the FFA Framework. These Principles outline how new agreements should be constructed and the process for their negotiation. The FFA Principles should be read alongside the complementary IGA FFR Principles. They are:

1. Strong economic, social and fiscal outcomes,
2. Should limit the number of low value agreements to ensure value for money,
3. Balance government priorities,
4. Provide budget autonomy and greater flexibility,
5. Deliver funding certainty,
6. CFFR will retain oversight of agreements,
7. CFFR will involve portfolio ministers, and
8. Ensure accountability and transparency.

This new framework together with an assessment of the performance of the existing NPA should guide design and negotiation of the new FFAS.

Recommendation 1. The Commonwealth should work with the States to develop a new Land Transport Federation Funding Agreement that more effectively enables priority setting, risk management, funding flows, delivery, accountability and transparency of IIP investments.

The Agreement should set performance targets for agreed social and economic benefits, recognise jurisdictional diversity and identify, on a bilateral basis, targets for improvement over the course of the agreement.

9.1 Planning and priority setting

Delivering on new and emerging priorities will require different approaches to procurement and project delivery.

In addition to existing agreed priorities (see Section 5) the need to focus on resilience, climate change, the energy transition, use of recycled materials, cultural heritage and culture in the construction industry should be considered for inclusion under the next agreement.

Australian governments are currently designing the path towards a net zero economy by 2050. Decarbonisation objectives coupled with other market capacity issues are creating new infrastructure delivery challenges, such as a need to prioritise and secure access to specific rare earth materials.

A business as usual approach to planning, implementing and engagement is unlikely to support delivery against these priorities, particularly considering the need to drive broader objectives for the community.

The Commonwealth and the states should consider what other shared complementary priorities can be achieved under the new FFA. An example of what may be achieved is highlighted by Victoria's application of their ecologiQ initiative.

The Victorian Government has developed ecologiQ as an initiative to optimise the use of recycled and reused materials in Victoria's major transport infrastructure projects, reduce waste and contribute to the Victorian circular economy.

The program has worked closely with state government agencies to change the approach to technical standards and specifications, allowing more recycled content to be used on major infrastructure projects. To date, through the program more than 3.3 million tonnes of reused and recycled materials have been committed on major road and rail projects.

Population planning and housing supply both influence land transport planning and development and the achievement of improvements to liveability and productivity.

This Review notes that there is a contention between green fields versus brown fields housing and subsequently land transport infrastructure.

The majority of new developments for people moving to Australian cities are low liveability, low amenity and situated in ex-urban areas that require lengthy commutes to work and service centres.

DITRDCA has responsibility both for regional and cities policy. Continued close engagement both internally, and with the Australian Treasury on housing policy, will be necessary to ensure that infrastructure investments are appropriate to Australia's future growth needs. This will include consideration of active transport options, as well as traditional road and rail.

The current NPA does not deliver infrastructure investment spend and the related funding arrangements in a way that positions the Commonwealth to achieve its priorities and objectives for infrastructure development. Further, it is principles based and does not mandate any priority setting or planning processes. Nor does it provide a clear link between the principles and how investment decisions should be made.

The absence of long-term planning also limits capacity to achieve priorities and objectives.

The NPA's current financial framework does not tie investment decisions to joint planning, priority setting or a long-term investment horizon.To ensure alignment the Commonwealth should require the States to demonstrate how a project meets the objectives of the IPS and complementary agreed priorities.

The Commonwealth should also consider the role that IA may be able to play in externally validating the project's contribution to agreed strategic planning objectives.

The FFAS should have a role in long-term planning that extends beyond setting out the Commonwealth's expectations for an infrastructure project life cycle.

Recommendation 2. A long-term, integrated approach to planning and priority setting to inform funding decisions and for managing the infrastructure investment pipeline moving forward should be developed. The FFAS should clearly define the roles of key bodies involved in the land transport infrastructure investment process, including IA.

The opportunity to leverage expenditure under the current and forthcoming agreement is significant. However, as outlined in this report there is a thicket of policy and priority areas that can and should be integrated into the next agreement. This requires a more sophisticated and thoughtful approach than simply settling a set of targets and performance indicators. The absence of a well thought through strategy can be seen in respect of First Nations outcomes where outcomes have not been nationally driven or supported, and hence performance is patchy.

The Commonwealth should set and agree priorities including relativities with the States. The Commonwealth should consider what priorities are essential and must feature in all infrastructure investments, and how this will be achieved, and give careful consideration to how surrounding policies and priorities which deliver wider economic and social benefits will be integrated into the new agreement.

Appropriate consultation with First Nations Australians is crucial to the achievement of improved outcomes.

Recommendation 3. Funding and procurement mechanisms that enable the integrated delivery of agreed priorities including the wider benefits of significant procurement activities should be developed.

9.2 Performance and outcome measurement

The new agreement should be supported by improved outcomes measurement to inform planning and priority setting moving forward, including specific roles and responsibilities within the Commonwealth for collecting and using data, and assessing and monitoring outcomes. Project delivery should be monitored including through the use of program dashboard reporting to improve transparency and priority setting, and enable decision-making. Separate arrangements should be agreed for sub-programs.

Outcomes should include the delivery of projects, the role of agreed infrastructure spending in delivery of productivity and economic benefits and the wider suite of economic and social outcomes and other agreed relevant policies.

Performance targets should be achievable for each state. Measures of progress on wider economic and social objectives agreed under the FFA and in respect of individual projects should be measured against the baseline of the individual state's previous performance. All jurisdictions should show improvement over time rather than be required to meet a national target that may be set too high for some and too low for others.

Recommendation 4. An outcomes and performance framework should form part of the new agreement. Reports should be provided during the course of the agreement to Ministers and officials to enable assessment on progress. This should include:

- Outcomes achieved,
- Administrative performance, and
- Performance in respect of agreed targets in priority areas.

Progress reports should be published at regular intervals.

9.3 Risk and financial management

Current administrative arrangements are not efficient, are not risk sensitive and lack flexibility to effectively manage small, low risk projects and associated reporting requirements.

The Commonwealth does not have a well-developed risk management framework to guide its oversight of NPA operations, leading to a one-size-fits-all approach. At the project level the current arrangements are not risk sensitive and the Commonwealth does not necessarily risk-share with the states.

This Review recommends a risk framework be developed. This framework should inform how investment risks are identified and treated from project selection through to project delivery. A differentiated approach, which calibrates project oversight according to their risk rating, would enable a great focus on high-risk projects.

Where practical, low risk activities should be subsumed within (sub) programs.

This Review also proposes a new confidence index and that gateway reviews should apply throughout the project lifecycle, beginning with project selection. This would give all investors insight into the maturity of a project's planning, costings and timeline for delivery.

Gateway reviews are currently used by a number of States to actively review and manage projects.

A confidence index would rate a proposed project based on the maturity of the proposal in respect of its planning, costing and level of available detail including any anticipated barriers to delivery. A project with low confidence would be subject to a higher risk rating and hence greater level of scrutiny.

The confidence index would identify a number of indicators that together contribute to an assessment of project risk. The Commonwealth should negotiate the index with the states as part of the new agreement.

States should undertake these assessments, as they have the expertise and access to relevant information to undertake a rating. Consideration should also be given to the role that IA could play.

All agreed indicators should be applied when a project is under consideration and before a public announcement about a project is made, noting the findings set out in the "Project Approval" section below.

Any significant change during the construction phase, particularly a downgrade in a rating, would trigger a gateway review. A project that is assessed as high confidence would not be subject to the same gateway and reporting requirements as others unless its rating changes.

Recommendation 5. A risk framework, underpinned by a confidence index and gateway reviews, should be developed to ensure investment risks are borne by the party that has the ability to manage them effectively. Once developed, this structured approach to risk should be used to streamline administration. Consideration should be given to program arrangements to deliver small, low-risk infrastructure projects.

9.4 Project approval

The term 'approval' has many meanings under the current NPA. It can be taken to mean the formal approval under the Act or more commonly when the project is allocated funding by the ERC. Sometimes it is taken to mean when it has been announced by a Minister. In practice this leads to confusion and the raising of expectations amongst a wide group of stakeholders that may not be realised. It can result in pressure to give effect to an 'approval' as to not do so will lead to widespread complaint.

The reasons a proposed project may not succeed can include poor planning and/or costing, failure to reach agreement, significant increases in costs, natural disasters, a change in priorities and/or absence of funding. It would clearly be preferable that the planning, approval and delivery arrangements provided the best opportunity for success and do not create unreasonable expectations that place decision-makers under pressure to proceed when this is not indicated and/or proper decision-making is not possible as all relevant information is not (yet) available.

Lack of consistent scoping means potentially significant problems relating to the size, cost, scheduling and sequencing of infrastructure projects are not being identified when they can be best mitigated. This means the Commonwealth has no assurance that risk mitigations are embedded before projects commence.

Announcement of land transport infrastructure projects as 'approved' often occurs before necessary diligence is completed to adequately evaluate the proposed budget, program of works and completion requirements. Current processes outlined in both the NLT Act and NoA significantly exacerbate this problem.

There is a clear distinction between projects that are proposed/promoted (by a range of proponents), projects that have been accepted as worthy of consideration by relevant planning and administrative bodies and are 'under consideration' and projects that are formally approved. These distinctions are neither understood nor facilitated by the current funding and administrative arrangements.

A two-pass process enabling a project under consideration to be thoroughly scoped and costed, with funding, should precede formal approval.

Jointly commissioned projects based on mutually agreed priorities have a greater likelihood of completion. As demonstrated at 6.12, around 40 per cent of projects that were unilaterally commissioned have not commenced construction a couple of years after securing funding.

In this context, noting that election commitments represent a separate class of project, joint investment decisions should be made where possible. Departures from this principle should be made transparent.

Pipeline management is also complicated by the number of projects that are added to a state's schedule but do not proceed in a meaningful way. This similarly creates expectations about funding and confusion about priorities. Automatic removal of projects that do not proceed after a relevant period (say 4 years) should be considered to assist with pipeline management.

Negotiation of macro funding arrangements between the Commonwealth and the States should consider how funds released from approved projects removed from the pipeline due to failure to proceed should be managed.

Recommendation 6. The approval process should be redesigned. This should include:

- A 2-pass process in order to ensure that all necessary due diligence, including planning and costing, is undertaken before approval is granted and announced,
- Projects 'under consideration' should be eligible for funding for scoping, design and costing before approval,
- A clear definition of when a project is to be included in the pipeline, and
- A 'sunset clause' which, absent a formal agreement, automatically removes a project from the pipeline if it has not commenced or met agreed significant milestones after a certain period.

9.5 Authorisation and administration framework

This Review heard repeatedly that the provisions of the NLT Act place too much emphasis on the mode of transport when setting directions for how the Commonwealth will make funding decisions. The use of 'mode' in this way limits investment choices and prevents other better policy solutions to transport issues from being funded. An alternative view proposed was that the Commonwealth has other funding mechanisms available to it to deliver projects outside the NLT settings, and the current settings provide a necessary fiscal boundary on the scope of transport infrastructure investments.

The NLT Act limits the Commonwealth's ability to consider funding certain types of projects. This is part of a broader concern the NLT Act is not structured to provide the type of governance structure required to improve coordination, clarity and transparency of infrastructure investments and the investment process. While it is beyond the scope of this Review to consider specific changes to the NLT Act, it is worth considering whether the current legislative arrangements are structured appropriately to support the Commonwealth to deliver on its key priorities moving forward.

Recommendation 7. In the context of broader Australian infrastructure investment settings, the NLT Act and the National Land Transport Network should be reviewed to ensure they reflect contemporary productivity priorities and appropriately support the Commonwealth to deliver solutions for future land transport priorities.

There is general agreement that the administrative arrangements that have been implemented to support the NPA are complex and rigid, meaning they do not allow for the scaling of effort for implementing agreed infrastructure projects, based on their size, complexity or risk. These arrangements are seen as contributing to project commencement delays, cost overruns, and duplication of effort. Changes to both project and program administration should be made to address these issues and to direct administrative efforts to the areas of highest risk and impact.

The implementation of a risk framework (see Recommendation 5 above) will assist with targeting administrative effort and reporting. A confidence index would assist with targeting effort towards those projects/programs where risk is highest. However, a one-off assessment should not be relied upon over the course of a project's lifecycle.

Any material change to a project may require a higher level of oversight. This could include delay, change in costings, planning or other issues. This Review has heard that problems with individual projects, particularly in respect of delay and significant cost increases, only become evident when a request is being made for significant additional funding to be allocated to a project. This is clearly problematic.

A revised reporting framework should include a requirement for personal positive attestation. Positive obligation requires active disclosure of material impacts on a project's likelihood of delivering on time and budget. This information needs to be reported to the Commonwealth in a concise, plain English way. This is to ensure that pertinent information is not missed and is readily understood.

Recommendation 8. Reporting arrangements should be streamlined and underpinned by a requirement for personal positive attestation. State officials should actively, promptly and concisely disclose information to the Commonwealth that materially impacts project delivery timelines and costs. This disclosure should not be unreasonably delayed by the state or territory authorising environment.

This Review heard consistently that cost overruns and funding for these to enable project completion is problematic. Greater attention to the reasons for these overruns, improved and more timely reporting together with improved project scoping should all contribute to better performance. Accuracy in project costing is also important.

Stakeholders consulted during the Review argue the Commonwealth's current approach to project cost escalation is not fit-for-purpose and exposes the Commonwealth and States to significant financial overruns. The cost escalation process and underlying model are not widely understood. The current cost escalation model was developed some time ago and it is timely that it be reviewed.

Recommendation 9. The cost escalation model should be reviewed to ensure that it remains fit for purpose.

The current NoA also does not provide clear administrative guidance or the right information to support decision-making across different levels of the land transport infrastructure framework. They are currently more an accumulation of different approaches to program administration over time than a considered and integrated set of instructions and guidance. This has led to the development of practice directions that sit outside of the NoA with the resultant risks of duplication and decision-making practices that are inconsistent with the NPA.

There is a lack of shared awareness that the NoA exists and its intended purpose. Noting that some elements of the NPA could be strengthened (see Section 8), the current NPA does not effectively describe expectations for how land transport infrastructure investments will be delivered.

Recommendation 10. The NoA should be rewritten for clarity and to ensure they are appropriate for subordinate guidance. This should have appropriate oversight from the Commonwealth.

The revised NoA should be embedded in land transport investment decision-making processes so all decision-makers have sufficient visibility of the broader legal, regulatory, financial and policy framework that guides infrastructure investments. The NoA should include up-to-date guidance on the project life-cycle with a view to ensuring funding decisions are taken at the right time, and with consideration of the right information. The DITRDCA should consult IA as part of this process.

9.5.1 COVID administration

There is evidence to demonstrate that the NPA was effectively leveraged to support fiscal responses to the COVID-19 pandemic. While the NPA has flexibility to enable delivery of land transport infrastructure funding in response to urgent and unforeseen circumstances, it is beyond the capacity of this Review to fully evaluate the pandemic response.

Noting this, the Review observes that the NPA did not 'reset' quickly post pandemic and that the economic stimulus may have contributed to current capacity and inflationary pressures currently being experienced in the Australian market. This was in part due to insufficient consideration of criteria to guide decision-making.

A separate review process would need to test these observations and develop learnings and principles to ensure any future stimulus activities are appropriately calibrated to address needs while limiting associated cost pressures to the extent possible.

Recommendation 11. The use of land transport infrastructure investment as COVID stimulus should be included in any overall review of COVID management to inform future responses to significant economic shocks.

9.6 Accelerating outcomes for First Nations

The opportunity to leverage improved outcomes in respect to key policies priorities through infrastructure spending is real and significant (Recommendation 3 refers). The need to accelerate outcomes is particularly acute in respect to First Nations people.

To deliver these outcomes DITRDCA will need to pivot to the role of informed investor, and trusted and active supporter, with a more rigorous, evidence-based understanding of the broader socioeconomic impacts of the Framework and improved capability to deliver outcomes.

While there is some understanding of the primary economic impact (number of jobs, education and training qualifications, and dollar value of contracts), the profound secondary economic impacts for First Nations people are neither known nor quantified.

Far from being limited to Closing the Gap outcomes 7 and 8, there is an opportunity through a focused and determined next iteration of this policy for land transport infrastructure projects to contribute to additional priority reforms and outcomes:

- providing a stable and sustainable career path will help individuals and families access adequate healthcare and housing (outcomes 1 and 9),
- genuine and ongoing engagement, and a spirit of collaboration, with First Nations people and businesses, will see a transformed approach to project and process design and decision-making at all levels of government (Priority Reform 3),
- improved access to, management and sharing of data relating to the First Nations workforce and business landscape (and other relevant information), will assist in joint, community-based decision-making and foster inclusiveness (Priority Reform 4 and outcome 17),
- continued and increased efforts to incorporate vocational and further education opportunities for First Nations people into project workforce design will continue to achieve results against education, training and employment targets (Targets 6 to 8), and may be able to contribute to improving family safety and reducing detention/incarceration and re-offending of young people and adults (Outcome 10), and
- culturally-sensitive workforce and project design, heritage protection and project construction can lead to improvements in connection to country, community and culture, and greater social and emotional wellbeing (Outcomes 14 to 16).

An appropriate methodology should be developed to properly quantify these socioeconomic impacts both in calculating a project's BCR prior to its approval and in confirming its outcomes post-construction.

There is a need to understand the types and level of roles targeted to First Nations people and businesses through this policy. The current Framework applies only to the construction phase of projects, meaning there is no opportunity to engage in the planning and design phase.

Engaging earlier is critical to incorporate First Nations outcomes, particularly with cultural heritage and land management as core values within a project. While considered an approved purpose under the NLT Act, the Commonwealth does not provide advice on how to implement pre-construction phase engagement with First Nations people, communities and businesses, nor are there incentives for jurisdictions to target higher-paid or more technical roles such as engineers, designers and project managers for First Nations participation. There are also no mechanisms to require or even encourage formal training or development of First Nations employees through this policy.

The Commonwealth must build a better understanding of the market in which its investment operates. A common theme through stakeholder engagement is the need for creating stable and sustainable career and training opportunities for employees, regardless of whether or not they are First Nations. This is often problematic due to the peaks and troughs in infrastructure investment cycles. As discussed in Section 2 of this report, flattening the infrastructure investment pipeline and identifying opportunities to offset downturns in infrastructure construction with increased activity in mining, resources, agriculture and other industries with complementary skill sets (and vice versa) will help address this.

The future of this policy lies not in primary and reasonably limited employment and contracting targets. Rather, the opportunity is in building the capability of the sector to champion better social and economic outcomes in First Nations communities, and in facilitating education, training and employment development for individuals.

This will enable individuals to enjoy rewarding careers rather than simply employing them for what is typically a short project delivery period, and businesses to adequately plan for future work.

There are broader opportunities to draw in cultural heritage to infrastructure projects. These include traditional place names on project signage, walks on Country prior to planning and incorporating local arts and craftspeople on project delivery, and major reform of design and project delivery practice. This is well-incorporated into urban and social infrastructure planning, but needs to be better incorporated in transport planning where it can assist in the transition from human-centred to Country-centred design.

Infrastructure is often treated as merely functional, however, when designed with Country, infrastructure celebrates and weaves First Nations cultures and ways of being into the fabric of our urban realm. The strengths of incorporating traditional knowledge of Country into the design and development of projects can reduce environmental impacts, teach, inspire, protect and preserve sites for future generations and connect people back to their homelands.

The Perth CBD Transport Plan – Swan River Bridge

Traditional Owners contributed by incorporating significant Indigenous design, including the s-shaped curves to represent the sinuous movement of the Wagyl (rainbow serpent) and there are references to prominent Whadjuk Noongar people, including *Yagan*, a warrior and young leader, represented by a boomerang-inspired pier, and *Balbuk*, who fought to retain the Swan Coastal Plains and is represented by two digging stick-inspired piers.

Infusing cultural heritage into land transport infrastructure projects creates a statement about a community's value of First Nations heritage and encourages learning, as well as contributing to improved transport outcomes.

A clear understanding of First Nations culture and business practices, and the First Nations workforce and business landscape across Australia will be critical to success under a new FFAS and ensuring the Framework actively responds to the needs of First Nations peoples, communities and businesses. This means DITRDCA needs to research and understand regional demographics and workforce influences as well as the location and nature of First Nations businesses, but also to strengthen its approach to validating genuine indigeneity of the people and organisations employed on projects it funds.

Over the past few years, First Nations businesses and leaders have raised concerns about so called 'black cladding'. This is the practice of a non-Indigenous business entity or individual taking unfair advantage of an Indigenous business entity or individual to gain access to otherwise inaccessible Indigenous procurement policies or contracts.

Some jurisdictions identified this as an issue and have responded with localised solutions including requiring a higher percentage of First Nations ownership than the Indigenous Procurement Policy requires (50 per cent) and new processes to validate First Nations businesses (i.e. not accepting a statutory declaration of cultural heritage). One jurisdiction has gone as far as to build its own business database, which they are now using for its procurement practices, and also to help connect First Nations businesses to participation opportunities.

Ancillary business organisations are also taking a leading role in this space with certification processes that enable connection to First Nations businesses that have met a higher standard of assurance when it comes to ownership, as well as daily operation and effective control of an enterprise.

For a future iteration of this policy to be meaningful, its intended outcomes must be transparent and measurable. The lack of clear and measurable outcomes makes it impossible to capture and validate data to undertake an analysis of the implementation of the Framework and the impact of its performance. This aligns with Recommendations 3 and 4 of the Review.

Jurisdictions are currently required to provide quarterly progress reports on all projects with an approved IPP that are under construction at the reporting date. However, the information captured through this process is incomplete and limited to actual employment and contracting figures and a broad overview of the types of roles undertaken, and any qualifications achieved, by First Nations people. This does not allow the Commonwealth to truly understand or report on the education and training outcomes of its investment, nor where a First Nations-owned business has been supported to expand its capability or to tier up.

Additionally, data is not published by the Commonwealth, and States are not publishing in a consistent or relatable way. This must be more transparent, in line with Closing the Gap Priority Reform 4. The Framework requires that post completion reporting on First Nations outcomes must be publicly reported by the relevant jurisdiction; these are not published in a consistent manner and should be instead published by the Commonwealth, with an overlaid narrative and analysis of the raw data. It is critical that First Nations people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap and their priorities, and drive their development (Priority Reform 4). Narrative and visualisations are crucial to ensuring this data tells a story.

The Closing the Gap priority reforms note that in order to affect "real change, government must work collaboratively and in genuine formal partnership with Aboriginal and Torres Strait Islander peoples"[47]. DITRDCA must lead by example in genuinely engaging First Nations people in the design and implementation of a refreshed policy, recognising and respecting their extensive cultural knowledge and related insights.

The Commonwealth must be committed in its understanding of and willingness to effectively respond to First Nations communities' experiences and bring about meaningful social change. The Commonwealth will achieve this through the amplification of First Nations voices and leadership within DITRDCA. This commitment must be ongoing and demonstrated, focusing on championing change.

DITRDCA established a Community of Practice (CoP) that includes State officials in 2023. In its early establishment phase, the CoP focused on information-sharing between the States and the Commonwealth. The CoP must now shift focus to building the capacity of all jurisdictions to deliver long-term and sustainable social outcomes to by allowing the Commonwealth to obtain relevant and live advice from the States regarding the unique needs and challenges experienced with implementing the Framework.

Despite the Framework being part of the NPA, targets and outcomes under the Framework do not, in practical terms, form part of funding conditions, nor are the agreed targets within an IPP reflected in project approval instruments.

The Framework lacks an evaluation process that allows comparison of implementation or results of each jurisdiction.Consistent approaches to data collection and reporting should minimise duplication for the States.

At least one jurisdiction is reaching beyond the Framework and exceeding the targets required of it. In its next iteration, this policy should be transitioned to one which embodies continuous improvement and, through periodic performance reviews, seeks to have every jurisdiction reach for stretch targets beyond its current level of engagement.

Rather than simply requiring basic targets for employment and contracting, this would involve the States working towards increasing training and education opportunities, or supporting programs such as employment post release from incarceration.

[47] Priority Reforms | Closing the Gap

Recommendation 12. The Commonwealth and the States should commit to accelerating socioeconomic outcomes for First Nations Australians through their joint investment in land transport infrastructure by:

- Establishing a new policy framework following the principles of continuous improvement, being an informed investor, and greater engagement with First Nations people and businesses,
- Implementing new governance arrangements including focused leadership supported by champions within government and the sector, and appropriate resourcing for DITRDCA to lead the Commonwealth's revised role,
- Developing a methodology by which the First Nations socioeconomic outcomes of a project, including employment and contracting as well as supporting food security, access to health and education, etc., are appropriately quantified in both the business case and post-completion phases, and
- Reporting and data capture to support a narrative around the socioeconomic outcomes of the policy and the telling of stories around successes and challenges in its implementation, and in ensuring the accountability of the policy to the public.

Stakeholder engagement summary

States and key First Nations Stakeholders, as identified within the Terms of Reference (Appendix 1 refers), were offered the opportunity to engage as part of the Review process.

A broad range of stakeholders were consulted as part of the Review process from 24 July 2023 to 21 August 2023, including:

- State and Territory transport departments
- Commonwealth central agencies
- Department of Infrastructure, Transport, Regional Development, Communications and the Arts
- National Indigenous Australians Agency
- Department of Defence
- Department of Climate Change, Energy, the Environment and Water
- Department of Industry, Science and Resources
- Australian Trade and Investment Commission
- Infrastructure Australia
- Infrastructure Partnerships Australia
- Office of Major Transport Infrastructure Delivery (WA)
- Australian Automobile Association
- Indigenous Community of Practice group, transport and infrastructure officials from Commonwealth and State governments
- NT Indigenous Business Network
- Indigenous construction companies
- Waalitj Hub
- Nudge
- Indigenous Management Group WA
- Invited peak industry bodies by written submission
- PSG Holdings
- Tiwi Partners.

Appendices

Appendix 1: Terms of Reference for the Review

Review of the National Partnership Agreement on Land Transport Infrastructure Projects 2019–2024

Context

The Review of the National Partnership Agreement on Land Transport Infrastructure Projects (the Agreement) is occurring at a time when the Commonwealth is repositioning its investment towards nationally significant infrastructure priorities to build the nation's future economic, environmental and social prosperity. The Commonwealth, in collaboration with the States, is embarking on reforms to support a more sustainable pipeline of investment and productive construction sector that will assist with the transition to a decarbonised economy.

The Commonwealth is committed to increasing the transparency of the infrastructure investment pipeline, ensuring investment decisions are merit-based and informed by a strong evidence base. The Government has committed to an Infrastructure Policy Statement and Project Selection Framework that will articulate the Commonwealth's infrastructure priorities and underpin the identification, selection and reporting of projects. Through its significant investment in

infrastructure, the Commonwealth will also progress key Australian Government priorities such as the Australian Skills Guarantee, the Buy in Australia Plan and the Circular Economy.

Objectives for the Review

The Reviewer will be engaged to lead consultations with stakeholders to understand what elements of the Agreement have worked well, which of these have worked less well, and identify

opportunities that may be pursued in negotiating a new agreement.

The Reviewer will also consider how governments can accelerate economic outcomes for First Nations peoples through their joint-investments in infrastructure. In doing so the Reviewer will assess the effectiveness of the existing Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework), which is implemented through the current Agreement.

The Reviewer will provide a report of high-level findings and key themes for consideration to Infrastructure and Transport Ministers in mid-2023.

Consultation

States and Territories and key First Nations stakeholders will be engaged throughout the Review.

The views offered by parties through the Review process shall not bind any future agreement.

Independent Review

The Agreement is required to be independently reviewed approximately 12 months prior to its expiry in June 2024.

One independent person will be appointed to lead the Review by the Australian Government Minister for Infrastructure, Transport, Regional Development and Local Government.

The Reviewer will be supported by a First Nations advisor who will provide advice on how to engage with and appropriately consider the First Nations outcomes of the Agreement and the Framework.

Secretariat support for the Review will be provided by the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Appendix 2: Systems overview

Introduction and Scope

Funding provided for land transport infrastructure under the *National Land Transport Act, 2014 (the* NLT Act) is included within the Federal Financial Relations (FFR) system agreed to by the Council on Federal Financial Relations (CFFR)[48]. The NLT Act outlines the Commonwealth's constitutional responsibilities as they pertain to land transport. The National Partnership Agreement on Land Transport Infrastructure Projects[49] (the NPA) has been made as part of the FFR system. The NPA is the mechanism for providing Commonwealth funding to the States and territories for the delivery of land transport infrastructure and the practical operations the system. The NPA specifies the roles and responsibilities of each party.

The following material provides an outline of the NLT Act, the FFR system and the practical administration of the NPA.

Federal Financial Relations System

The FFR system underpins Australia's federal system. It is primarily governed by the *Federal Financial Relations Act 2009* (FFR Act) and the *COAG Reform Fund Act 2008*.

The FFR Act provides a standing appropriation for the Commonwealth to provide financial support for the delivery of services by the States including the provision of general revenue assistance, national specific purpose payments, national health reform payments, temporary energy bill relief, and other payments relating to housing, homelessness, and housing affordability matters.

National partnership payments is another category of payments that can be made under the FFR Act. However, instead of being drawn down against the standing appropriation in the FFR Act, national partnership payments are debited from the COAG Reform Fund, which is a special account established by the *COAG Reform Fund Act 2008*, and subject to an annual debit limit.

Following a review by the CFFR in 2020, the Federation Funding Agreements (FFA) Framework was implemented as part of the FFR system.

Federation Funding Agreements Framework[50]

The FFA Framework provides the governance arrangements for Commonwealth–State funding.

This framework comprises five elements as below.

- Intergovernmental Agreement on Federal Financial Relations (IGA FFR),
- CFFR,
- FFA Architecture,
- FFA Principles, and
- Administrative arrangements.

[48] The Council on Federal Financial Relations (CFFR) comprises the Commonwealth Treasurer as Chair and all state and territory treasurers, is responsible for overseeing the financial relationship between the Commonwealth and state and territory governments.

[49] https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2021-01/land_transport_infrastructure_np.pdf

[50] The Federation Funding Agreements Framework | Federal Financial Relations

Intergovernmental Agreement on Federal Financial Relations

The Intergovernmental Agreement on Federal Financial Relations (IGA FFR) is the principal agreement between the Commonwealth and each State that governs federal financial relationships. The IGA FFR provides the foundation for 'collaboration on policy development and service delivery and facilitates the implementation of economic and social reforms in areas of national importance'. The IGA FFR has been in place since 1 January 2009, noting it was varied in 2022.

The IGA FFR outlines the objectives, principles and institutional arrangements governing financial relations between the Commonwealth and the States. It recognises that the States have primary responsibility for many areas of service delivery, but that coordinated action is necessary to address Australia's economic and social challenges. It provides the foundation for the establishment of funding agreements between the Commonwealth and the States.

Alongside the primary responsibility of state governments for service delivery in relevant areas, the IGA FFR recognises that collaboration with the Commonwealth is needed to solve complex challenges. As per the IGA FFR, further details of the roles and responsibilities of the Commonwealth and States are to be detailed in the national agreements.

Federation Funding Agreement Principles

The eight FFA Principles outline how new agreements should be constructed and the process for negotiation. These principles are made to complement the **IGA FFR principles**. The eight FFA Principles are outlined below:

1. Strong economic, social, and fiscal outcomes,
2. Limit the number of low value agreements to ensure value for money,
3. Balance government priorities,
4. Budget autonomy and greater flexibility,
5. Funding certainty,
6. CFFR will retain oversight of agreements,
7. CFFR will involve portfolio ministers, and
8. Accountability and transparency.

Federation Funding Agreement – Infrastructure

The NPA[51] also falls under the FFA – Infrastructure, which provides the framework for federal financial relations in the infrastructure sector. The NPA is an agreement between the Commonwealth and all States.

National Partnership Agreement on Land Transport Infrastructure Projects 2019–2024 – Roles and responsibilties of each party

The practical administration of funding for land transport infrastructure projects under the IGA FFR is controlled by the NPA. The NPA is created subject to the provisions of the IGA FFR and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements.

To realise the objectives and commitments in the NPA, each Party has specific roles and responsibilities, as outlined in Appendix Table 1 below.

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51 https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2021-01/land_transport_infrastructure_np.pdf

Appendix Table 1: Roles and responsibilities of each party

Role of the Commonwealth	(a) assessing and determining which Projects are to be funded under this Agreement, in consultation with the States and in accordance with the NLT Act (and other relevant legislation) and the associated Notes on Administration, (b) providing a financial contribution to the States for the Projects set out in the Schedules, (c) coordinating the development and revision of the Schedules in partnership with the States, (d) monitoring and assessing performance in the delivery of Projects under this Agreement to ensure that outputs are delivered and outcomes are achieved within the agreed timeframe, (e) assessing and approving targets for Indigenous Participation Plans submitted by the States, in accordance with the Notes on Administration and the Indigenous Employment and Supplier-use Infrastructure Framework, with relevant Commonwealth agencies to deliver appropriate supply-side supports consistent with their portfolio responsibilities, (f) in accordance with the Building and Construction Industry (Improving Productivity) Act 2016, ensuring that financial contributions to a building project or projects as defined under the Building and Construction Industry (Improving Productivity) Act 2016, are only made where a builder or builders accredited under the Australian Government Building and Construction Work Health and Safety Accreditation Scheme, where applicable, is contracted, (g) *no longer in force,* (h) in line with the requirements of Schedule E, Clause 26 of the IGA FFR, recognising the State's funding contribution to projects in all publications, promotional and advertising materials, and public announcements and activities in relation to a Project as appropriate, and consulting the State prior to release of all promotional materials concerning Projects funded through this Agreement, and (i) to consult with the States on a case-by-case basis on updating or otherwise amending the Notes on Administration to this Agreement and seek States' agreement where change is proposed.
Role of the States and territories	(a) providing a financial or in-kind contribution, where agreed, to Projects set out in the Schedules, to support the implementation of this Agreement, (b) providing Project Proposal Reports, accompanying Indigenous Participation Plans and project data, such as modelling outputs and expected project benefits, consistent with the guidance and templates in the Notes on Administration, and providing additional information requested by the Commonwealth to support its roles and responsibilities, (c) delivering the infrastructure Projects set out in the Schedules to support the implementation of this Agreement, (d) ensuring procurement practices deliver value for money for public funds and support the longer-term capacity and diversity of the construction market, in accordance with principles agreed through the Transport and Infrastructure Council, (e) maintaining the roads on the National Land Transport Network to the appropriate standard based on their classification, as set out in the Notes on Administration, (f) monitoring and assessing performance in the delivery of Projects under this Agreement, including providing relevant information on development and progress of a funded Project on request to assist the Commonwealth with performing its roles and responsibilities, (g) reporting on the delivery of outcomes and outputs as set out in Part 4 – Performance Monitoring and Reporting, (h) ensuring that only a builder or builders accredited under the Australian Government Building and Construction Work Health and Safety Accreditation Scheme, where applicable, is contracted, and providing the necessary assurances to the Commonwealth, (i) *no longer in force,* (j) implementing Indigenous participation requirements for Projects in accordance with the Indigenous Employment and Supplier-use Infrastructure Framework, including developing and delivering Indigenous Participation Plans for Projects above the financial threshold set out in the Notes on Administration, determining targets for Indigenous employment and supplier-use to be agreed by the Commonwealth, and reporting against performance,

Appendix Table 1: Roles and responsibilities of each party

Role of the States and territories	(k) providing to the Commonwealth cost estimates for all Projects with a total anticipated Outturn cost (including contingency) exceeding $25 million that, unless otherwise approved by the Commonwealth, have been developed using appropriate probabilistic cost estimation techniques (as defined in the Notes on Administration) to generate P502 and P90 Outturn costs for projects and providing access to underpinning data, (l) providing Infrastructure Australia with business cases and relevant supporting information and documentation for assessment for Projects where a State is seeking a Commonwealth funding contribution for a Project equal to or greater than the threshold as set out in the Notes on Administration, and (m) providing the State's consideration, in relevant Project documents, of opportunities for private sector financial participation, and public private partnership (PPP) procurement options, for Projects set out in the Schedules to this Agreement where: (i) the Project's size and nature is conducive to financing opportunities, and (ii) for PPPs, the estimated capital cost of a Project is greater than or equal to the threshold set out in the Notes on Administration.
Shared roles and responsibilities	(a) agreeing to the initial Notes on Administration to support the implementation of this Agreement, (b) participating in consultations as appropriate regarding the implementation of this Agreement and agreeing updates to the Notes on Administration, (c) negotiating new or revised Schedules to this Agreement, (d) negotiating memoranda of understanding or project specific agreements for relevant Projects under this Agreement as outlined at clauses 68 to 70, (e) jointly participate in Project governance, such as steering committees and Project boards, on a case-by-case basis, as outlined at clause 30, (f) for business cases where the Commonwealth has contributed funding, primarily through the Major Project Business Case Fund and on a case-by-case basis, agree to form joint Project teams with access to information jointly shared between the relevant Parties and State decision-making to have due regard to the Commonwealth's interests, objectives, and desired outcomes, (g) agreeing that in certain circumstances involving a third party (or parties), there may be a need to negotiate an additional agreement(s) related to a Project to ensure that the interests of all parties are adequately recognised, and (h) conducting evaluations and reviews of services and outputs delivered under this Agreement, including compliance with the NLT Act (and other relevant legislation) and the associated Notes on Administration. The Parties agree that the National Land Transport Network (the Network) is a joint responsibility and that maintenance funding for roads on the Network is required from both the Commonwealth and the States.

National Land Transport Act 2014

The object of the *National Land Transport Act 2014*[52] (the NLT 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.

Combined with the NPA, the NLT Act and the NPA Schedules form the suite of documents that enable and support the Australian Government's investment in land transport infrastructure projects (Projects). (refer to Appendix 10 Constitutional Matters for further material).

The National Land Transport Network (the Network) is a network of nationally important road and rail infrastructure links and their intermodal connections. The Network is determined by the Minister in the National Land Transport Network Determination 2020 under the NLT Act[53].

The Network was reviewed and updated on 25 June 2020 to ensure it includes nationally significant major road and railway links, including projects recently completed, underway or proposed.

Project Approval Instruments for land transport infrastructure projects are made under the NLT Act. They are the formal document signed by the Minister (or delegate) to approve a project for Commonwealth funding under the NLT Act.

Appendix Figure 1: Funding conditions under the *National Land Transport Act 2014*[54]

	NLT Act mandatory conditions (as described below)							
Project type	**A1.1**	**A1.2**	**A1.3**	**A1.4**	**A1.5**	**A1.6**	**A1.7**	**A1.8**
Projects contained in the NPA Schedules	✔	✔	✔	✔	✔	✔	✖	✔
Maintenance Projects	✔	✔	✔	✔	✖	✖	✖	✔
Black Spot Projects	✔	✔	✔	✔	✖	✖	✔	✔

A1.1 Funding payment must be expended on the funded project

A1.2 Funding recipient must give Minister audited financial statements

A1.3 Funding recipient must allow inspections by authorised persons

A1.4 Funding recipient must provide information on request

A1.5 State Funding recipient must call for public tenders for certain work

A1.6 Obligations following the sale or disposal of interests in land

A1.7 Funding recipient must maintain records relating to motor vehicle crashes

A1.8 Other funding conditions determined by the Minister

Overview of the administration of the NPA

Notes on Administration (NoA) are available at https://investment.infrastructure.gov.au/sites/default/files/documents/notes-on-administration-january-2021.pdf

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52 National Land Transport Act 2014 (legislation.gov.au)

53 The Network is determined by the Minister under the NLTA. The Network is available at The National Land Transport Network | Infrastructure Investment Program

54 https://investment.infrastructure.gov.au/sites/default/files/documents/notes-on-administration-january-2021.pdf

NPA Schedule Agreed[55]

The Minister provides the States with a proposed NPA Schedule for their agreement.

Treasury publishes agreed NPA schedules

The Australian Government will publicise and report on the funding it commits or approves to a funding recipient. This can include publicising the funding recipient's name, the amount of the funds given to the funding recipient, the name of the project, a description of the project, maps of the Project's location, or any other information the Commonwealth deems appropriate.
The Commonwealth may do this by:

- Including information about the funding in traditional and social media,
- In general announcements and speeches,
- In annual reports and Budget documents,
- On DITRDCA's website or websites belonging to any Australian Government Minister, or
- By any other method.

[55] Agreed Schedules to the NPA are available at Land Transport Infrastructure Projects (2019-2024) | Federal Financial Relations

Appendix 3: Summary of industry views

This Review extended invitations to a number of business peak bodies and construction industry representatives to make submissions. A total of six submissions were received, from the Australian Constructors Association, the Australasian Railway Association, the Business Council of Australia, the Civil Contractors Federation Australia, the Infrastructure Sustainability Council, and Roads Australia.

Procurement framework

Approaches used for infrastructure project contracting are not best suited to the complexity and risk of modern infrastructure projects. This is because those contracting approaches may lack the flexibility required to respond to unforeseen circumstances such as sudden and significant cost escalations. They may also be constraining innovation and productivity growth within the construction industry and limiting its ability to meet rising demand. To address this, some stakeholders recommended that the National Partnership Agreement on Land Transport Infrastucture Projects (NPA) establish a framework that creates a more constructive, collaborative and risk-based procurement environment that incentivises innovation. A framework that ensures each construction project has a contract type that best suits it.

The procurement framework should also require early market engagement, before final contract requirements are set. Industry argue this approach could lead to better defined project scope, enhanced understanding of project cost and improved management of project risks. A more consistent approach to incorporating project requirements such as sustainability is also needed.

Funding approval processes around Project Proposal Report sign-off should be streamlined. Current processes can cause delays in project commencement that can have a cumulative effect, potentially leading to additional delays and costs. A streamlined process could involve granting pre-approval to commence early works pending final approval of the detailed project scope and amount.

Project risks should be allocated to the partner best able to manage those risks. Inappropriate contract risk allocation to private sector delivery partners leads to fewer bidders, reduced value for money outcomes and a potentially adversarial environment between contractors and clients. Industry suggested that use of a broader range of contracting approaches can provide different ways to share risks and recommended that the NPA require appropriate risk sharing with the private sector.

Industry capacity

Industry capacity remains a challenge, and there is a concern that the construction industry is unable to expand its capacity to meet rising demand. Industry reported the market is already stretched to capacity with less than one unemployed construction worker for every job vacancy in the industry. This is exacerbated by a decline in construction productivity over the last decade. Meanwhile, demands on the industry are set to increase, driven by the transition to renewable energy, the 2032 Olympic Games and a heightened focus on Defence-related investment. A productivity step-change is required to help meet this demand and the NPA can play an important role in driving this, including through introduction of a strengthened procurement framework.

Capacity constraints make it important that the infrastructure pipeline be coordinated nationally and aligned with the industry's capacity to deliver. It was suggested that projections of industry capacity be taken from reports by Infrastructure Australia (IA) and industry. The issue of industry tiers was raised, including that major projects be subdivided into smaller contracts to ensure all tiers are fully utilised.

Performance monitoring and reporting

Performance indicators are considered vital in the planning, implementation and monitoring of land transport infrastructure projects. Further, they facilitate efficient resource allocation, improved decision-making, and successful project outcomes. It was recommended by industry that the NPA incorporate several new performance indicators, including diversity and sustainability targets, application of new technologies and innovations, and whole of life maintenance costs.

Performance reporting by state procurement agencies should be expanded. Reporting should encompass inhouse capabilities to manage NPA projects and measures to address any capability or capacity deficits. Annual performance reports should also be provided detailing project delivery time to market for all federally funded projects.

Performance monitoring by the Commonwealth should also be expanded. The Commonwealth should conduct annual audits of the procurement agencies on all federally funded projects. The audits should measure how successfully the funding is being directed to a broad spread of head contracting opportunities in order to encourage a sustainable and competitive sector.

NPA objectives

Several new or expanded objectives were recommended for inclusion in the NPA in recognition of their importance. The proposed objectives encompass a wide range of matters including co-funded investment; improving rail safety; solving transport problems related to energy efficiency, decarbonisation and interoperability; the use of Australian and international standards; and industry participation.

Role of Infrastructure Australia

Industry are of the view that IA should be given a stronger role in assessing business cases and recommending infrastructure projects to government. Independent, well-informed and frank advice on national infrastructure investment priorities would better assist governments to determine where infrastructure investments will deliver the greatest national benefits. This stronger role should be formalised in the NPA by specifying that the Commonwealth consult with IA when assessing and determining which projects are to be funded.

Decarbonisation

The importance of the decarbonisation of infrastructure construction was acknowledged. A rethink of how transport infrastructure is planned, designed, built and operated is considered necessary to achieve this. In some cases, it may be more productive to deliver the solution to an infrastructure demand through a low-build or no-build program. The NPA should incorporate a transparent approach to decarbonisation objectives, consistent with national emission reduction commitments, and business cases for large projects should include an embedded carbon base case.

Road maintenance

A long-term strategic approach to road maintenance should be adopted. The NPA should include objectives for road maintenance that also highlight the role each link of the network plays. For example, some regional infrastructure might have low traffic flow but play a vital role in connecting local, regional and national centres.

Appendix 4: Horizontal fiscal equalisation

HFE and Road and Rail Investment

Horizontal fiscal equalisation (HFE) refers to the principle behind the financial transfers between the Commonwealth and the State Governments. These transfers are made in the response to the Vertical Fiscal Imbalance (VFI) that occurs in Australia where the Commonwealth raises the most funds through taxation, but the States and Territories spend the funds. This is particularly the case in the transport sector where the States have constitutional responsibility for transport[56]. National Partnership Agreements[57] are made to establish the framework within which guides how funds transfers are made and reported. Reallocation of GST taxes under the advice of the Commonwealth Grants Commission (CGC) is a further action that applies the HFE principle. This principle is discussed further in the section below on the CGC and the National Partnership Agreement for Land Transport Infrastructure Projects 2019–2024 (NPA).

HFE means that all Australian residents are to be treated equally in terms of their access to services and infrastructure as a result of budget settings expenditure. Funding transfers, therefore, help position the States to provide their residents with comparable services[58].

Due to differences, for example in geography, urban density, demographics, population growth patterns and economic development priorities, the provision of services and infrastructure to achieve the desired level of equity will be different within and between States.

In terms of road and rail investment, another way to think about HFE and funds transfer is to consider State boundaries as arbitrary. Funding needs then are based on the settlement pattern, necessity[59], desired economic development outcomes and policy objectives[60].

Review of Current Funding Apportionment

Tables 2 to 11 provide a summary of the funding allocations made under the NPA. The most recent schedules by State and territory are summarised, noting that for most States and territories this will be up to 2022–23 budgets; however, for Queensland and Tasmania the summary is up to the 2023–24 budgets.

Maintenance and Safety funding has been listed separately under Road projects but not differentiated between National Land Transport Network (NLTN) and Non-NLTN sites, or Rail projects, given uncertainly in site location.

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56 Commonwealth Government Previous Federal Financial Agreements (pre 2020), Inc Intergovernmental agreement on the reform of Commonwealth–State financial relations https://federation.gov.au/about/agreements/intergovernmental-agreement-reform-commonwealth-state-financial-relations

57 Commonwealth Government. https://investment.infrastructure.gov.au/resources-funding-recipients/national-partnership-agreement. Accessed August 2023

58 Commonwealth Grants Commission (2020) 2020 Review of Horizontal Fiscal Equalisation https://www.cgc.gov.au/reports-for-government/2020-review

59 i.e. to achieve desired level of equity from the services to be provided. The CGC notes that HFE arrangements in Australia since the 1980s have sought to ensure that each State has the same fiscal capacity to deliver services. Each State may pursue its own policies and priorities, but its fiscal capacity to do so is equalised, taking account of the differences between jurisdictions in their tax bases and their service delivery needs or costs.

60 Commonwealth Grants Commission (2020) 2020 Review of Horizontal Fiscal Equalisation https://www.cgc.gov.au/reports-for-government/2020-review

Overall Summary

The national summary of NPA funding, as shown in Appendix Table 2. It should be noted that some funding sources are to be determined, specifically for Victoria (see Appendix Table 4) The summary in Appendix Table 2 illustrates that:

- Total NPA funding is summarised as approximately $211B,
- Overall, just over half of all funding is on NLTN Roads,
- The next largest funding destination is Non-NLTN Rail, at around 20% or $43B,
- The proportion of State and Territory funding is highest for Non-NLTN Rail, with just under half of State funding being for this mode, and
- Total other sourced funding is dominated by NLTN Roads which, which is largely Toll Roads.

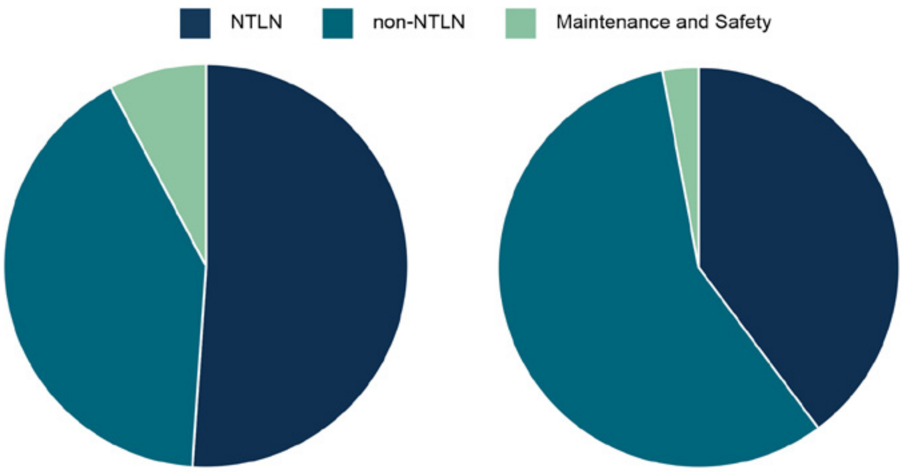
Appendix Table 2: Australia Total – Schedule October Budget Summary 2022–24 – Road and Rail NLTN and Non-NLTN

NPA Project Funding (1)	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	110335.8	24560.7	15690.7	56360
Non-NLTN	36571.3	9397.4	1899.1	24726.4
Maintenance and Safety	11546	2081.9	13.7	9450.6
RAIL				
NLTN	9971.7	4103.5	198.5	5669.8
Non-NLTN	43071.3	31837	163.9	25295.6
TOTAL	**211496.1**	**71980.5**	**17965.9**	**121502.4**
Proportion by Type (%)				
ROAD				
NLTN	52.17%	34.12%	87.34%	46.39%
Non-NLTN	17.29%	13.06%	10.57%	20.35%
Maintenance and Safety	5.46%	2.89%	0.08%	7.78%
RAIL				
NLTN	4.71%	5.70%	1.10%	4.67%
Non-NLTN	20.37%	44.23%	0.91%	20.82%
TOTAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

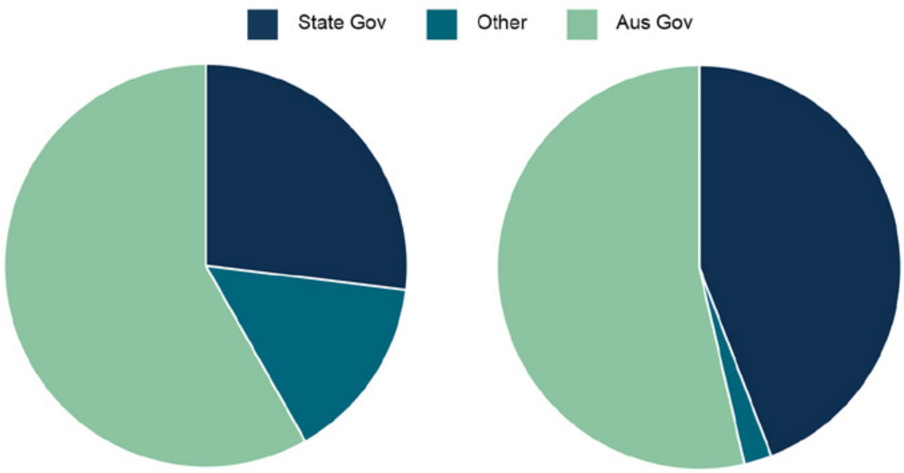
(1) It should be noted that there are some funding sources that are To be Determined, specifically for Victoria (see Appendix Table 4)

AUS NPA Funded Projects – Australian Government Funding Proportions by Type



Appendix Figure 2: Proportion of Total Australian Government Funding by Type for NPA Projects

Appendix Figure 3: Proportion of Total State and Territory Funding by Type for NPA Projects



Appendix Figure 4: All NLTN Project Funding Source

Appendix Figure 5: All Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

New South Wales Summary

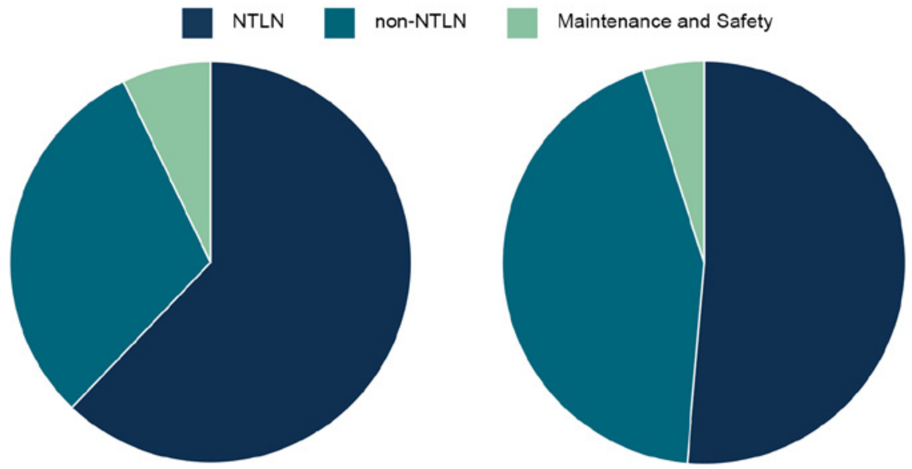
Appendix Table 3 shows the NSW summary for Road and Rail NLTN and Non-NLTN funding, including that:

- Around 39 per cent of all road and rail project funding is in NSW,
- Approximately, 22.8 per cent of project funding is through other funding sources, which is almost entirely for WestConnex and NorthConnex,
- The NSW Government contributes approximately 26.4 per cent to total project funding, whilst the Australian Government contributes 50.8 per cent,
- Around 30 per cent of NSW Government funding is for non-NLTN Rail projects, and
- Overall, NLTN Road projects accounted for around two thirds of all funded projects.

Appendix Table 3: NSW Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

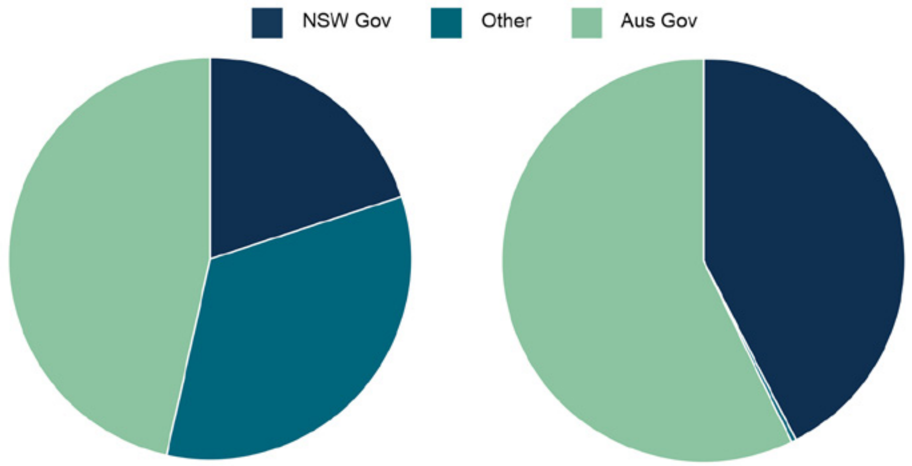
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	43224.2	8233.2	15509.1	19481.9
Non-NLTN	7846.9	2509.2	71.4	5274.8
Maintenance and Safety	3357.5	879.2	0.3	2478.0
RAIL				
NLTN	3086.9	1024.5	0.0	2062.4
Non-NLTN	10752.7	5382.5	0.0	5370.2
TOTAL	**68268.2**	**18028.5**	**15580.9**	**34667.3**
Proportion by Type (%)				
ROAD				
NLTN	63.3%	45.7%	99.5%	56.2%
Non-NLTN	11.5%	13.9%	0.5%	15.2%
Maintenance and Safety	4.9%	4.9%	0.0%	7.1%
RAIL				
NLTN	4.52%	5.68%	0.00%	5.95%
Non-NLTN	15.8%	29.9%	0.0%	15.5%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 6: Proportion of Australian Government Funding by Type for NSW NPA Projects

Appendix Figure 7: Proportion of NSW Government Funding by Type for NSW NPA Projects



Appendix Figure 8: NLTN Project Funding Source

Appendix Figure 9: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Victorian Summary

Appendix Table 4 and the following figures, provide the summary of Victorian NPA project funding. It is noted that the Total Project Costs do not align with the sum of the Total State, Other and Australian Government Funding. The main causes of this issue are listed in Appendix Table 5. In particular, funding sources for North-East Link and Suburban Rail Loop East skew the totals.

Questions of funding sources aside, the Road and Rail NLTN and Non-NLTN summary for Victoria shows that:

- Around 80 per cent of declared Victorian funding is directed at Non-NLTN Rail projects. This estimate includes $11.8B in State funding for the Suburban Rail Loop East project,
- The Australian Government contributes around half of all project funding,
- Just over 50 per cent of Total Australian Government Funding is directed towards non-NLTN Rail projects,
- The Victoria Government contributes just over 10 per cent of all funding to NLTN projects (both Road and Rail), noting that State funding for Northern East Link is listed as To Be Determined, therefore, the percentage could increase), and
- NLTN Roads comprises around 40 per cent of all funding. This estimate includes North-East Link.

Appendix Table 4: VIC Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

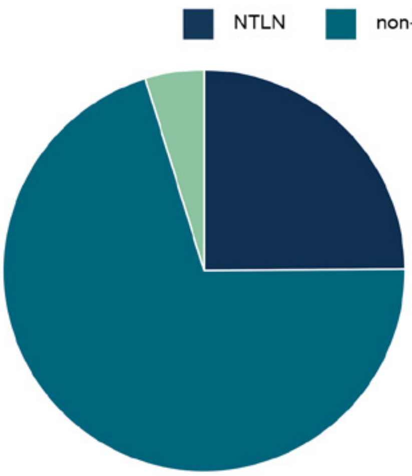
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	21664.8	2163.4	12.5	5368.9
Non-NLTN	6471.9	1267.1	95.5	4026.7
Maintenance and Safety	1360.6	185.8	0	1174.8
RAIL				
NLTN	1259.2	352.1	82	825.1
Non-NLTN	19761.1	20494.5	0	13491.7
TOTAL	**50517.6**	**24462.7**	**190**	**24887.2**
Proportion by Type (%)				
ROAD				
NLTN	42.9%	8.8%	6.6%	21.6%
Non-NLTN	12.8%	5.2%	50.3%	16.2%
Maintenance and Safety	2.7%	0.8%	0.0%	4.7%
RAIL				
NLTN	2.5%	1.4%	43.2%	3.3%
Non-NLTN	39.1%	83.8%	0.0%	54.2%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

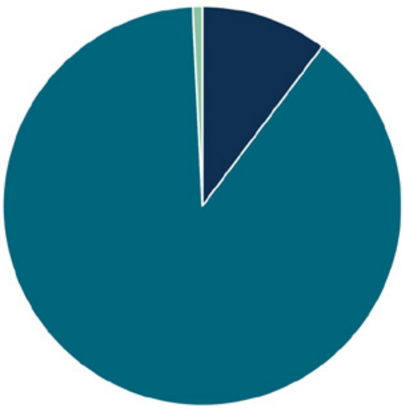
Appendix Table 5: Funding Impacting Total – VIC Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

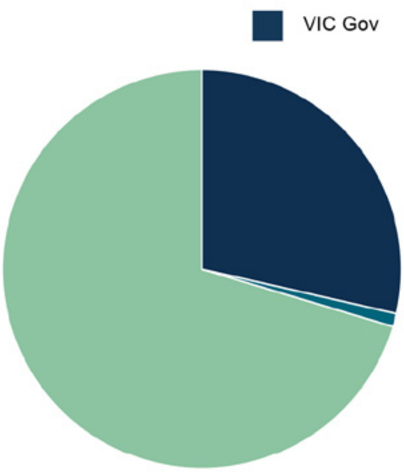
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Project with Sources Unclear ($m)				
North East Link	15,800.00	TBD	TBD	1,750.00
Suburban Roads Upgrades – South Eastern Roads and Northern Roads	2,268.80	0	0	1,140.10
Suburban Rail Loop East	TBD	11,800.00	TBD	2,200.00
East West Link Interest	N/A	N/A	N/A	-70
EWL interest – unallocated	N/A	N/A	N/A	48

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024

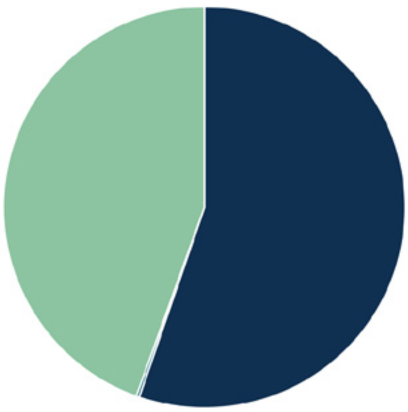


Appendix Figure 10: Proportion of Australian Government Funding by Type for Victoria NPA Projects


Appendix Figure 11: Proportion of Victorian Government Funding by Type for Victoria NPA Projects



Appendix Figure 12: NLTN Project Funding Source


Appendix Figure 13: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Queensland Summary

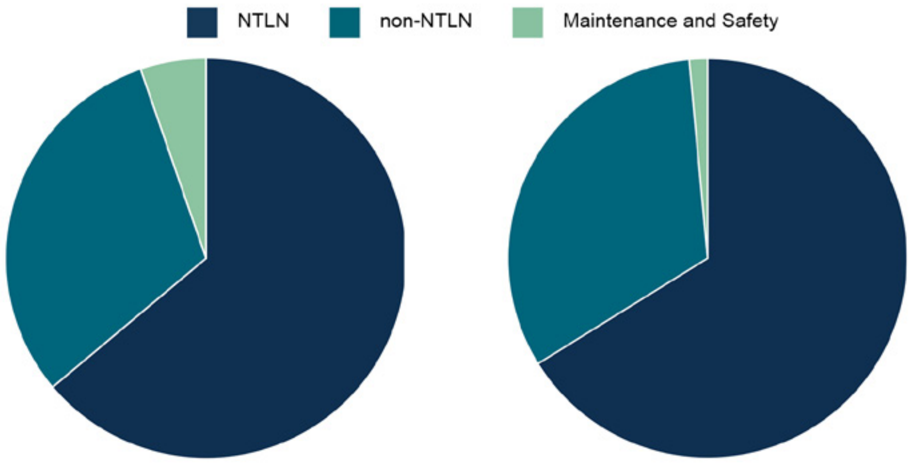
The Queensland funding figures, as summarised below, show that:

- The Australian Government contributed just under 70 per cent of NPA project funding in Queensland,
- Just over 50 per cent of all funding from all sources was for NLTN Roads,
- Around 36 per cent of Queensland Government funding went to Rail, both NLTN and Non-NLTN Rail projects, and
- The Australian Government contributed half of all rail project funding.

Appendix Table 6: QLD Schedule October Budget 2023–24 – Road and Rail NLTN and Non-NLTN

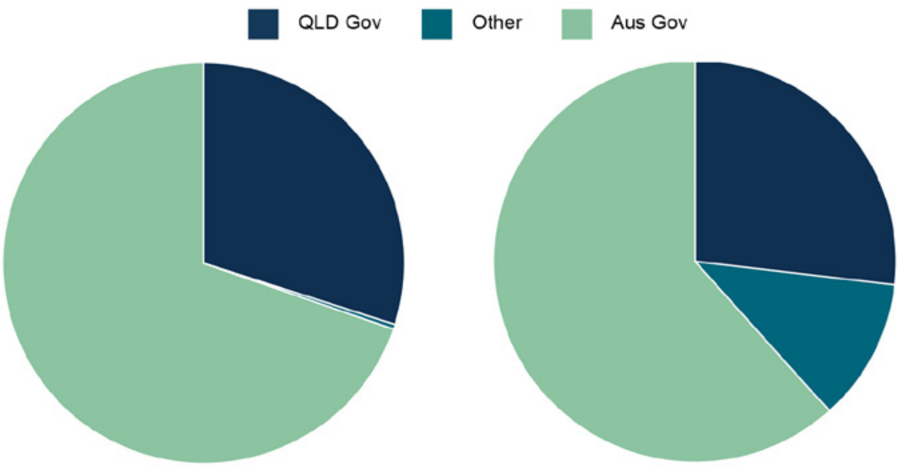
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	23022.9	6026.9	0.2	16995.8
Non-NLTN	9653.9	1715.9	1561.0	6801.8
Maintenance and Safety	1770.6	183.2	0.0	1587.4
RAIL				
NLTN	4439.1	2193.7	106.5	2138.9
Non-NLTN	4905.0	2308.4	163.1	2433.6
TOTAL	43791.5	12428.1	1830.8	29957.4
Proportion by Type (%)				
ROAD				
NLTN	52.6%	48.5%	0.0%	56.7%
Non-NLTN	22.0%	13.8%	85.3%	22.7%
Maintenance and Safety	4.0%	1.5%	0.0%	5.3%
RAIL				
NLTN	10.1%	17.7%	5.8%	7.1%
Non-NLTN	11.2%	18.6%	8.9%	8.1%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 14: Proportion of Australian Government Funding by Type for QLD NPA Projects

Appendix Figure 15: Proportion of Queensland Government Funding by Type for QLD NPA Projects



Appendix Figure 16: NLTN Project Funding Source

Appendix Figure 17: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Western Australian Summary

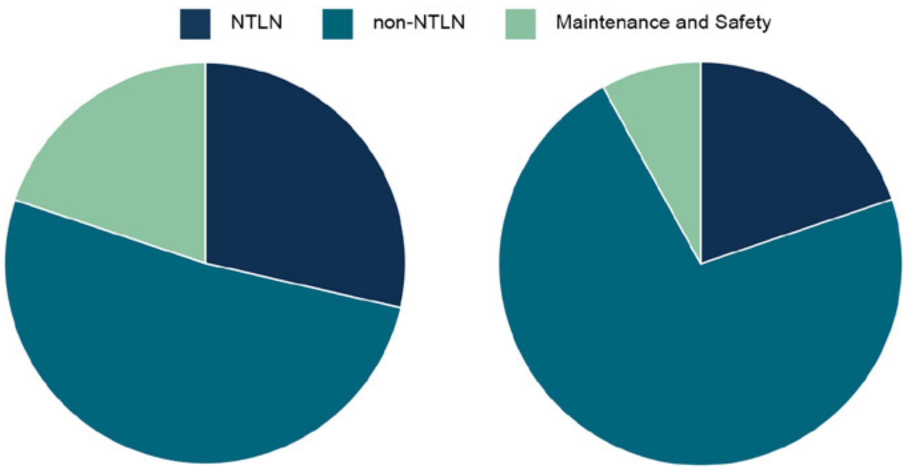
Appendix Table 7, below, and associated Figures, shows that:

- The Australian Government funded around two thirds of the cost of land transport infrastructure in Western Australia,
- The Australian Government also funded just over half of the cost of non-NLTN Rail projects in the State,
- Of Total funding by the Western Australian Government, around half went to non-NLTN Rail projects, and
- The Total Funding of Road projects was roughly evenly split between NLTN projects and Non-NLTN projects.

Appendix Table 7: WA Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

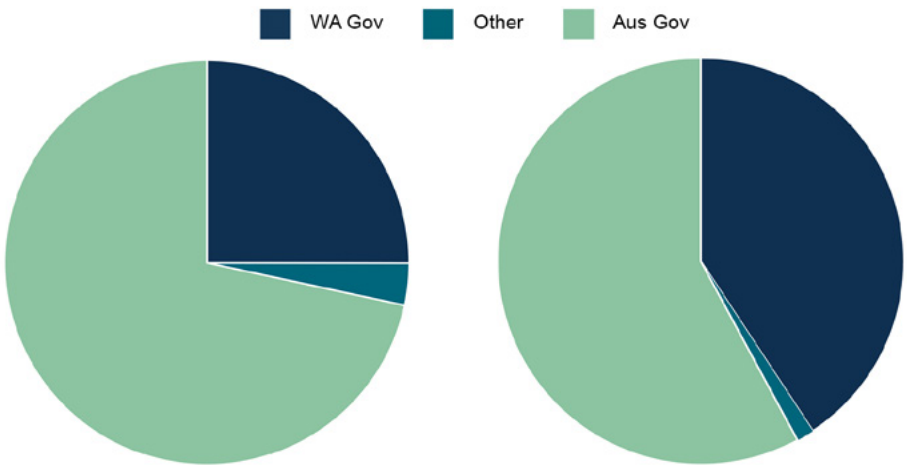
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	5228.6	1290.9	167.9	3765.3
Non-NLTN	5199.4	1685.4	164.8	3371.5
Maintenance and Safety	3193.3	537.2	13.3	2642.9
RAIL				
NLTN	77.0	35.5	10.0	31.5
Non-NLTN	6617.7	3139.6	0.8	3477.3
TOTAL	**20316.0**	**6688.7**	**356.8**	**13288.3**
Proportion by Type (%)				
ROAD				
NLTN	25.7%	19.3%	47.1%	28.3%
Non-NLTN	25.6%	25.2%	46.2%	25.4%
Maintenance and Safety	15.7%	8.0%	3.7%	19.9%
RAIL				
NLTN	0.4%	0.5%	2.8%	0.2%
Non-NLTN	32.6%	46.9%	0.2%	26.2%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 18: Proportion of Australian Government Funding by Type for WA NPA Projects

Appendix Figure 19: Proportion of Western Australian Government Funding by Type for WA NPA Projects



Appendix Figure 20: NLTN Project Funding Source

Appendix Figure 21: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

South Australian Summary

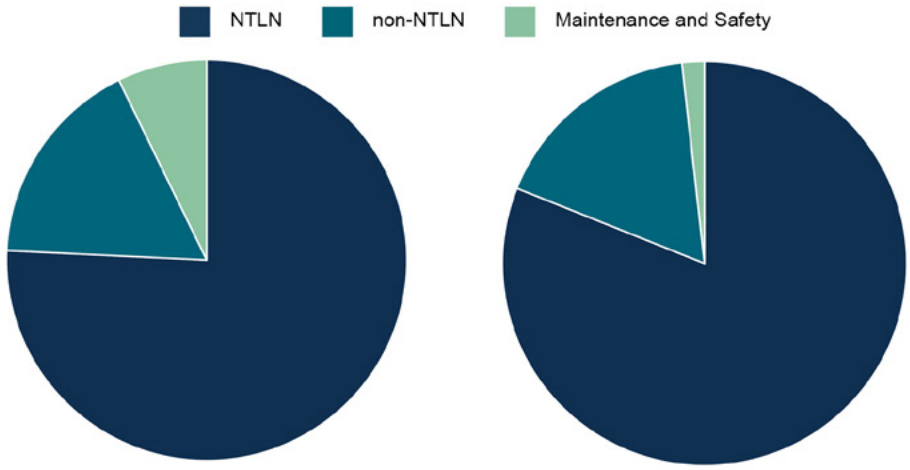
The summary of South Australian NPA funding, as shown in the below Table and Figures, indicates that:

- The Australian Government funds around 60 per cent of South Australian NPA land transport projects,
- Around three quarters of all projects are NLTN Road projects, and
- Around 80 per cent of all South Australian Government funding went towards NLTN Road projects.

Appendix Table 8: SA Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

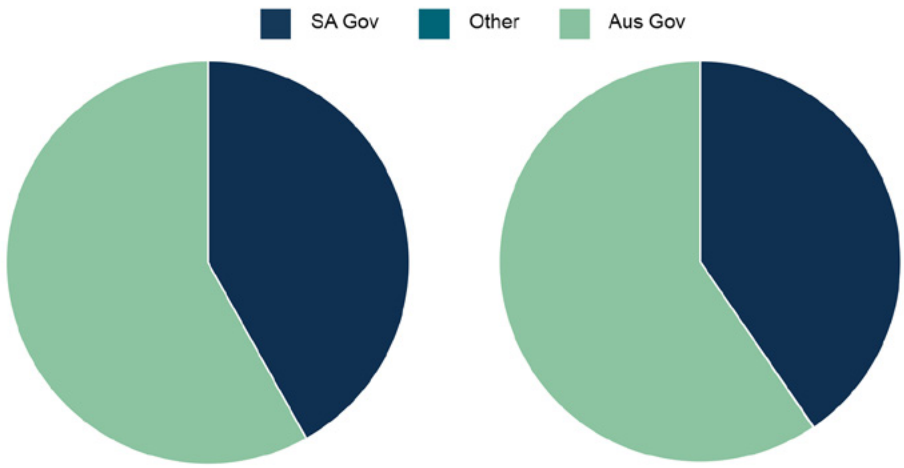
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	14825.7	6332.8	1.0	8891.9
Non-NLTN	2890.4	1114.0	1.2	1775.1
Maintenance and Safety	1022.2	146.1	0.0	876.1
RAIL				
NLTN	560.0	280.0	0.0	280.0
Non-NLTN	568.0	284.0	0.0	284.0
TOTAL	**19866.3**	**8157.0**	**2.2**	**12107.1**
Proportion by Type (%)				
ROAD				
NLTN	74.6%	77.6%	46.2%	73.4%
Non-NLTN	14.5%	13.7%	53.8%	14.7%
Maintenance and Safety	5.1%	1.8%	0.0%	7.2%
RAIL				
NLTN	2.82%	3.43%	0.00%	2.31%
Non-NLTN	2.9%	3.5%	0.0%	2.3%
TOTAL	100.0%	100.0%	100.0%	100.0%

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 22: Proportion of Australian Government Funding by Type for South Australia NPA Projects

Appendix Figure 23: Proportion of South Australian Government Funding by Type for South Australia NPA Projects



Appendix Figure 24: NLTN Project Funding Source

Appendix Figure 25: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Tasmanian Summary

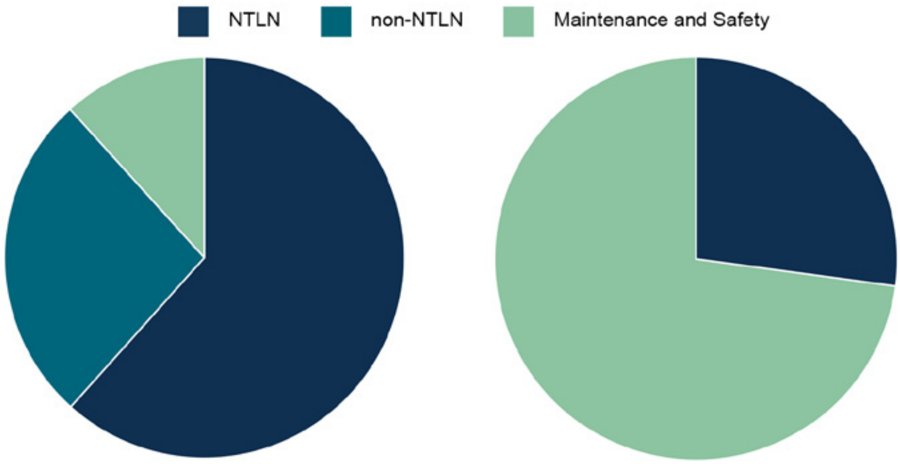
Tasmania NPA NLTN and Non-NLN projects are summarised in the following Table and Figures. It shows that:

- Just over 50 per cent of all project funding is for NLTN Road projects,
- The Australian Government funds around 80 per cent of all NPA projects, and
- Around half of all Australian Government funding is for NLTN Road projects.

Appendix Table 9: TAS Schedule October Budget 2023–24 – Road and Rail NLTN and Non-NLTN

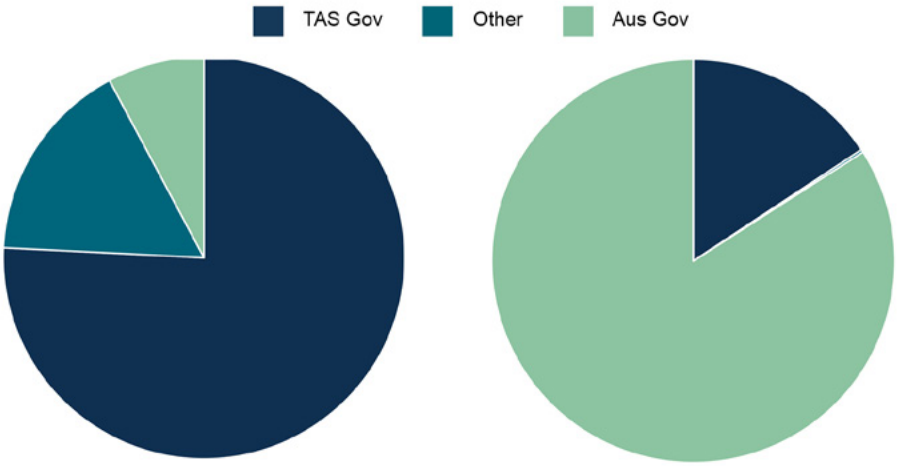
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	2059.4	490.6	0.0	1568.8
Non-NLTN	880.6	149.7	2.2	807.4
Maintenance and Safety	434.2	72.9	0.1	361.2
RAIL				
NLTN	549.2	217.6	0.0	331.6
Non-NLTN	18.0	3.6	0.0	14.4
TOTAL	**3941.4**	**934.4**	**2.3**	**3083.4**
Proportion by Type (%)				
ROAD				
NLTN	52.3%	52.5%	0.0%	50.9%
Non-NLTN	22.3%	16.0%	94.8%	26.2%
Maintenance and Safety	11.0%	7.8%	5.2%	11.7%
RAIL				
NLTN	13.9%	23.3%	0.0%	10.8%
Non-NLTN	0.5%	0.4%	0.0%	0.5%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 26: Proportion of Australian Government Funding by Type for Tasmania NPA Projects

Appendix Figure 27: Proportion of Tasmanian Government Funding by Type for Tasmania NPA Projects



Appendix Figure 28: NLTN Project Funding Source

Appendix Figure 29: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

ACT Summary

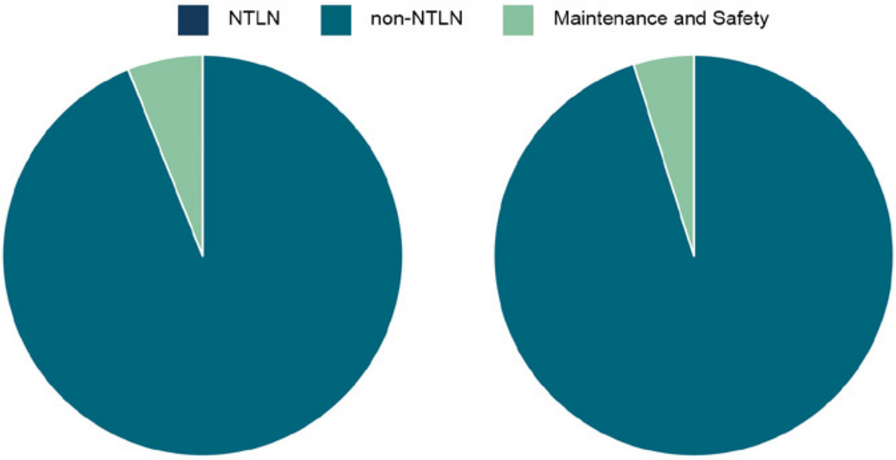
A summary of ACT Road and Rail NLTN and Non-NLTN projects is summarised in the below table and Figures. They show that:

- No project funding went to NLTN projects,
- The Australian Government funded around 50 per cent of total funded project cost, and
- Non-NLTN Rail projects accounted for two fifths of all funding.

Appendix Table 10: ACT Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

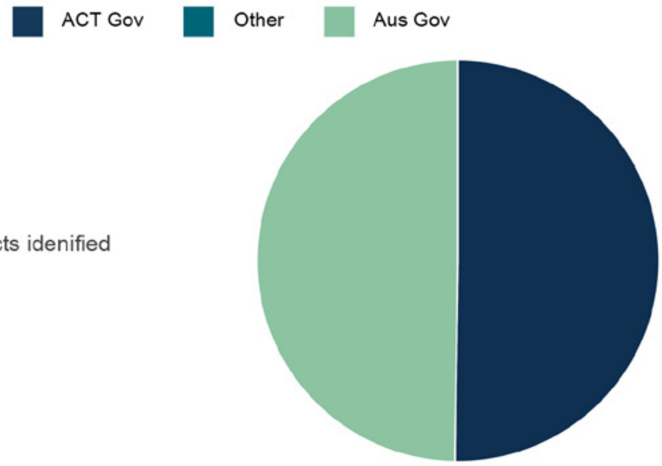
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	0.0	0.0	0.0	0.0
Non-NLTN	653.0	329.3	0.0	323.7
Maintenance and Safety	63.5	28.3	0.0	35.3
RAIL				
NLTN	0.0	0.0	0.0	0.0
Non-NLTN	448.8	224.4	0.0	224.4
TOTAL	**1165.3**	**581.9**	**0.0**	**583.4**
Proportion by Type (%)				
ROAD				
NLTN	0.0%	0.0%	0.0%	0.0%
Non-NLTN	56.0%	56.6%	0.0%	55.5%
Maintenance and Safety	5.5%	4.9%	0.0%	6.1%
RAIL				
NLTN	0.0%	0.0%	0.0%	0.0%
Non-NLTN	38.5%	38.6%	0.0%	38.5%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 30: Proportion of Australian Government Funding by Type for ACT NPA Projects

Appendix Figure 31: Proportion of ACT Government Funding by Type for ACT NPA Projects



No NLTN projects idenified

Appendix Figure 32: NLTN Project Funding Source

Appendix Figure 33: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Northern Territory Summary

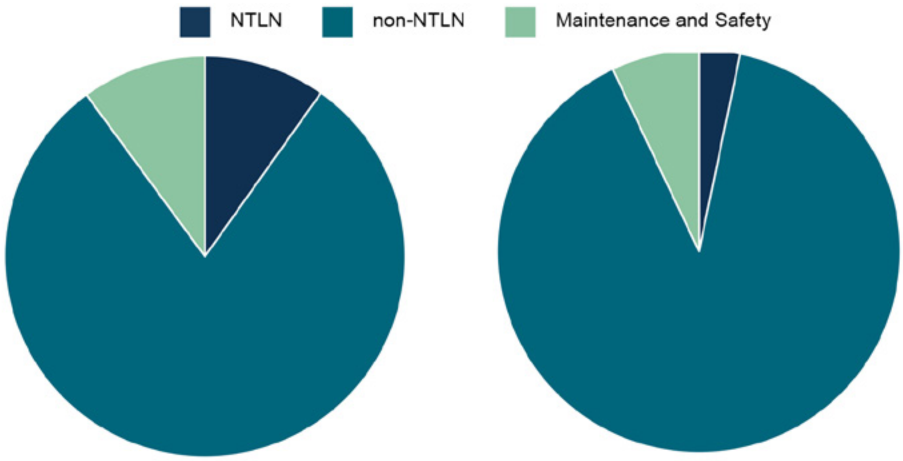
Road and Rail NLTN and Non-NLTN funded projects in the Northern Territory indicated that:

- The Australian Government provided just over 80 per cent of all funding, and
- Over 80 per cent of all funding went to Non-NLTN Road projects.

Appendix Table 11: NT Schedule October Budget 2022–23 – Road and Rail NLTN and Non-NLTN

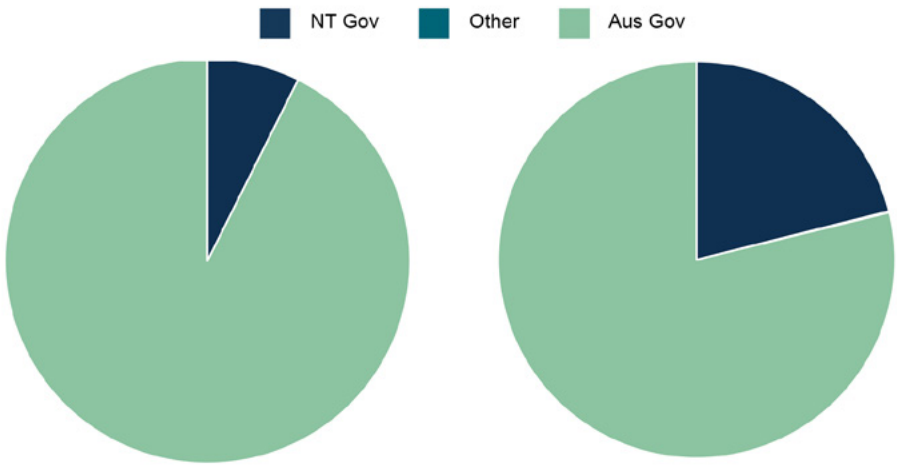
NPA Project Funding	Total Project Cost	Total State Funding	Total Other Funding	Total Australian Government Funding
Value by Type ($m)				
ROAD				
NLTN	310.2	22.9	0.0	287.4
Non-NLTN	2975.2	626.8	3.0	2345.4
Maintenance and Safety	344.1	49.2	0.0	294.9
RAIL				
NLTN	0.3	0.1	0.0	0.3
Non-NLTN	0.0	0.0	0.0	0.0
TOTAL	**3629.9**	**699.0**	**3.0**	**2927.9**
Proportion by Type (%)				
ROAD				
NLTN	8.5%	3.3%	0.0%	9.8%
Non-NLTN	82.0%	89.7%	100.0%	80.1%
Maintenance and Safety	9.5%	7.0%	0.0%	10.1%
RAIL				
NLTN	0.01%	0.01%	0.0%	0.01%
Non-NLTN	0.0%	0.0%	0.0%	0.0%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis



Appendix Figure 34: Proportion of Australian Government Funding by Type for NT NPA Projects

Appendix Figure 35: Proportion of NT Government Funding by Type for NT NPA Projects



Appendix Figure 36: NLTN Project Funding Source

Appendix Figure 37: Non-NLTN Project Funding Source

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Update of impacts of NPA on Commonwealth Grants Commission Implementation of HFE

There is a substantial difference between state size, population and geography, so when the CGC assesses road spending it includes consideration of road length, traffic volume, as well as heavy vehicle use.

As with other areas of HFE, the CGC also accounts for differences in the higher cost of services in remote communities, as well as differences in wage costs.

For State transport the CGC recognises the following:

1. The effects of state urban populations and the characteristics of urban centres in driving urban transport costs,
2. The effect of state populations on non-urban transport spending (an equal per capita assessment), and
3. Differences in wage costs between states (for urban and non-urban transport services) and differential costs in regional areas (for non-urban transport only)[61].

The GST impact of a Commonwealth payment depends on a State's share of the payment relative to its population share (revenue effect) and whether it is assessed to need to spend more or less than the national average (expense effect) on the relevant service.

The CGC calculates the net result variation between states because differences between the States, is as shown in the Table below:

Appendix Table 12: GST impact of total payments under the Land Transport Infrastructure Projects agreement, 2023–24

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
$m								
Revenue effect	388	298	-401	-179	-33	-26	67	-114
Expense effect	-151	-359	193	206	18	-9	-27	128
Net effect	237	-61	-208	27	-15	-34	40	14
$pc								
Revenue effect	47	44	-74	-63	-18	-44	142	-440
Expense effect	-18	-53	36	73	10	-15	-57	493
Net effect	29	-9	-38	10	-8	-59	85	52

Note: Expense effects accord with the directionality of assessed state needs for roads and roads infrastructure, except for Tasmania, where its above average needs for roads expenses are outweighed by its below average needs for transport infrastructure, giving it a negative expense effect.

Source: CGC 2023 Update data, including Commonwealth payments from 2019–20 to 2021–22.[62]

61 CGC communications 14 August 2023

62 Commonwealth Grants Commission (March 2023) GST Revenue Sharing Relativities 2023 Update GST Relativities for 2023–24, pp32–33 https://www.cgc.gov.au/publications/2023-update.

Bias against other non-NLTN policy Initiatives

The CGC notes that when the Commonwealth makes payments to the States for state-type services which the CGC also assesses, then the CGC includes this revenue when assessing how much GST a state requires.

According, if a State or Territory receives above-average per capita amounts of assessed Commonwealth payments, it is assessed to require less GST per capita. Conversely, if a state receives below-average amounts, it is assessed to require more GST per capita.

The 2018 Review highlighted feedback from State Treasuries that indicated that there where Commonwealth funding of NLTN reduces HFE payments, i.e.:

4 50% of payment of construction of NLTN projects included for the purposes of HFE payments.

5. 100% of commonwealth support for off-network projects is included (in HFE calculation)

This remains the situation. This direction Incentivises NLTN and does not support broader policy objectives, for example urban mass transit projects typically not on NLTN.

The CGC notes that the "Treatment of payments relating to investment in the national network are more complex as the network represents both a state service and a national interest. The Commission has decided that payments for the national network should be split, with half of the payment having an impact on GST distribution. Data from DITRDCA enables the Commission to identify on-network and off-network projects and the specific projects mentioned in the terms of reference"[63].

The impact on GST distribution as a result of Commonwealth program payments is highlighted in Table 13, below.

Appendix Table 13: Transport Infrastructure – Changes in the estimated GST distribution due to changes in Commonwealth payments, 2022–23 to 2023–24

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total Effect
				$m					
Infrastructure investment program – National network roads	36	-83	-34	-45	153	-16	-5	-6	189
Building Australia Fund – Rail	-162	32	38	-12	104	1	-3	3	177
Infrastructure investment program – Other roads	104	-68	-46	-20	10	3	3	14	134
Urban Congestion Fund	29	13	2	-39	-12	3	3	2	51
TOTAL IMPACT	**7**	**-106**	**-40**	**-116**	**255**	**-9**	**-2**	**13**	**551**

Source: CGC (March 2023), Extract Table 2–7, p33[64]

[63] Projects off the national road network are assessed to impact GST distribution. Further details can be found Commonwealth Grants Commission (August 2022) Research Paper 5 – The Framework for the treatment of Commonwealth Payments in GST distribution.

[64] Commonwealth Grants Commission (March 2023) GST Revenue Sharing Relativities 2023 Update GST Relativities for 2023–24, pp32–33 https://www.cgc.gov.au/publications/2023-update.

HFE and Maintenance and Safety Funding

Summary of Maintenance and Safety funding

As shown in the below Table, approximately $11.5B is funded for maintenance and safety through the NPA.

The Australian Government funds around 80% of this program.

HFE is illustrated through this program as funding can be a factor of State geographic size and population. Population in this instance might be considered as a proxy of the number of roads requiring maintenance.

Appendix Table 14: Maintenance and Safety Funding 2022–24 Schedules ($m)

	Total Project Cost ($m)	Total State Funding ($m)	Total Other Funding ($m)	Total Australian Government Funding ($m)
	$m			
New South Wales	3357.5	879.2	0.3	2478
Victoria	1360.6	185.8	0	1174.8
Queensland	1770.6	183.2	0.0	1587.4
Western Australia	3193.3	537.2	13.3	2642.9
South Australia	1022.2	146.1	0	876.1
Tasmania	434.2	72.9	0.1	361.2
ACT	63.5	28.3	0	35.3
Northern Territory	344.1	49.2	0	294.9
TOTAL	**11545.95**	**2081.9**	**13.7**	**9450.56**

Source: https://federalfinancialrelations.gov.au/agreements/land-transport-infrastructure-projects-2019-2024; Jacobs analysis

Impact on GST distribution due to maintenance payments only

The CGC notes that payments for road maintenance under the NPA have previously been identified as those which include maintenance activities in the payment title or description, and in recent years these payments have been labelled “National Land Transport Network Road Maintenance funding”[65]. These payments summed to $350 million, $438 million and $263 million in 2019–20, 2020–21 and 2021–22 respectively. The net GST impact of these maintenance payments are shown in Table 14. The expense effects for these payments are assessed using state needs for recurrent roads spending.

65 CGC communications 14 August 2023

Appendix Table 15: GST impact of maintenance payments under the Land Transport Infrastructure Projects agreement, 2023–24

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
$m								
Revenue effect	23	37	-25	-18	-7	0	7	-17
Expense effect	-9	-17	10	11	4	0	-4	6
Net effect	14	20	-15	-7	-2	0	3	-11
$pc								
Revenue effect	3	5	-5	-6	-4	0	14	-65
Expense effect	-1	-3	2	4	2	1	-8	22
Net effect	2	3	-3	-3	-1	0	6	-43

Source: CGC calculation, 2023 Update data, including Commonwealth payments from 2019–20 to 2021–22.

HFE and Mass Transit

Urban transit systems are not included on the NLTN, therefore all funding made towards these systems are impacted by the CGC GST allocations, as noted previously. Non-NLTN Rail projects are weighted towards metropolitan urban mass transit. The Australian Government contributes around 50–60% of funding to Non-NLTN Rail projects, and Non-NLTN Rail project funding makes up around 20% of all Australian Government Funding (see Appendix Table 2).

Funding for Non-NLTN rail projects is significant for a number of states, in particular for NSW, Victoria and Western Australia.

In terms of Urban Transit, buses make a critical contribution to the transport task. This includes in terms of passenger volumes, but also in terms of geographic coverage. For example, in Melbourne over 60% of residents only have access to buses for public transport services[66] (utilising private vehicles to access distant public transport services not included).

Funding for bus services and infrastructure under the NPA is more limited. Further investigations are required to ascertain the amount of NPA funding that impacts bus transport. This may include construction, funding road upgrades that may support more efficient bus movements.

Funding for mass transit can also help to relieve pressure on the road network including on NLTN road infrastructure. In most metropolitan areas NLTN Roads are heavily utilised by commuter traffic. The ability to use mass transit alternatives to NLTN Road can help support the economic development objective of the NLTN. Further, major metropolitan areas make a significant contribution to national GDP, thus investment in transport modes that support agglomeration and efficient movements in metropolitan areas will also be supporting the economic development objectives of the NPA[67].

66 Victorian Government (2017) Plan Melbourne2017–2050 Refresh https://www.planning.vic.gov.au/guides-and-resources/strategies-and-initiatives/plan-melbourne.

67 Commonwealth Government. https://investment.infrastructure.gov.au/resources-funding-recipients/national-partnership-agreement. Accessed August 2023

Appendix 5: Current NPA process description

Project selection process

Typically, the Commonwealth invites submissions for projects from the States twice-yearly in line with Budget and Mid-Year Economic Fiscal Outlook (MYEFO) updates. At other times, the Commonwealth may announce support for a project, often as an election commitment.

Projects that are put forward for funding consideration vary in terms of the information and evidence that accompanies the submission. Some will have business cases, strategic or detailed, already developed by the proponent and others will not. Some will seek funding for business case development as a stand-alone proposal while other may seek business case development and planning in conjunction with construction funding or preparatory works and or land acquisition.

Commitments made by the Commonwealth will be reflected in the Budget or MYEFO papers, along with the Commonwealth's share of the funding, which is also known as a funding split. While the NPA and the Notes on Administration do not prescribe a funding split, traditionally regional projects have been funded on an 80:20 basis where the Commonwealth contributes 80 per cent towards the project. Urban projects are generally funded on a 50:50 cost share arrangement.

Committing funds at a federal Budget or MYEFO does not constitute formal approval by the Commonwealth. The Commonwealth requires the satisfactory completion of a project proposal report (PPR), before it will issue a project approval instrument, which constitutes formal approval under the NLT Act.

A PPR[68] covers key information about the project including project scope, costs, benefits, and risks. The PPR also includes a BCR, which is prepared with reference to the Australian Transport Assessment and Planning (ATAP) Guidelines.

An Indigenous participation plan (IPP) is also required to be submitted at the same time for all eligible projects[69]. Australian or local industry plans are also required.

If the project is valued at $250 million or more then Infrastructure Australia (IA) is required to assess the business case. The assessment from IA is generally required before the delivery phase PPR is submitted to the Commonwealth.

Once the Commonwealth has received the PPR from the State, the Commonwealth assesses it for completeness. The Commonwealth then records their review of the PPR in a Project Assessment Report.

The Commonwealth then briefs the relevant Minister on the project. In briefing the Minister, there are no criteria against which to assess the project for funding, apart from the completeness of the completed PPR. The elements that are considered when briefing the Minister include any advice provided by Infrastructure Australia, whether the project is eligible under the NLT Act, value for money, risks, sensitivities and that the project scope aligns with initial government consideration.

Formal approval for the project is sought from the relevant Commonwealth Minister. Approval is granted through the signing of the project approval instrument.

Once the project approval instrument is signed, the State is notified and the project status in the Commonwealth's Infrastructure Management System (IMS) will show the project status as approved.

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68 Templates available at National Partnership Agreement project templates | Infrastructure Investment Program

69 Eligible projects are construction projects valued at $7.5 million or more. Some projects below $7.5 million are also eligible if they are located in northern Australia and funded under the Roads of Strategic Importance Initiative, or there is high potential for the project to benefit First Nations.

Approving project funding

For projects receiving a Commonwealth contribution of $25 million or more, funding is released at the agreed P50 level. P50 is determined using a probabilistic statistical model that provides a 50 per cent likelihood that the project cost will not be exceeded.

For projects below $25 million, funding is released at the P90 level, which provides a 90 per cent likelihood that the project cost will not be exceed.

The intention is that the P50 and P90 amount is less than the total the Commonwealth has committed, thus building in some contingency to manage cost increases. However, in most cases the funding requested by States is at the P90 level. Additional funding up to the Commonwealth's agreed maximum is only released if there is a demonstrated need.

For projects where the Commonwealth's contribution is capped, the Commonwealth may approve funding up to the amount committed and not generally require estimates at P50 or P90 level. Although in practise this type of capped funding contribution is rarely utilised.

Project oversight

All projects that have received formal approval are required to report monthly to the Commonwealth. States upload progress information into IMS, which is reviewed by the Commonwealth. The Commonwealth requires states to identify between two and four milestone payments per project per year.

The Commonwealth requires funding to be provided to states based on the achievement of milestones. States submit their milestone evidence, which is then reviewed by the Commonwealth. When the Commonwealth is satisfied that the state has met the milestone, the funding will be paid.

Higher risk projects may have additional oversight mechanisms in place, usually through a project board or steering committee meetings.

Once a project has reached physical completion it enters the post-completion phase, which may last for up to 12 months. During the post-completion phase the state must submit to the Commonwealth a PCR. Once the post completion report is accepted by the Commonwealth, the State is notified project is formally closed in IMS.

Treatment of under and over spends

The current arrangements allow states to request approval from the Commonwealth to reallocate under and over spends within the state's program.

For projects that are experiencing cost escalation above the amount the Commonwealth has committed to, states seek an increase in funding support from the Commonwealth at Budget or MYEFO. Decisions on cost increases are reflected in Budget or MYEFO.

Any savings upon completion of a project are divided on a pro-rata basis between the Commonwealth and the state. The current arrangements say that either party may choose to reallocate their share of the savings to other projects.

Appendix 6: First Nations

Indigenous economic participation and cultural heritage requirements

The Indigenous Procurement Policy (IPP) is designed to foster Indigenous entrepreneurship, business development, and economic growth by creating more opportunities for Indigenous Australians to engage in the economy. Previously, Indigenous enterprises had limited involvement in Commonwealth procurement. The IPP seeks to significantly boost their participation by setting annual targets for contract volume and value at both the Commonwealth and Portfolio levels. For FY2021–22, the Infrastructure, Transport, Regional Development and Communications Portfolio exceeded the targets for both the number of contracts (48) and the value of contracts (~$4.5m), procuring a total of 674 contracts at a value of ~$28.3m[70] (not including NPA projects, which are exempt from the Indigenous Procurement Policy as they are not Commonwealth procurements). The policy relates to Commonwealth procurement, with States conducting the procurement of NPA-funded projects and owning the assets. The policy is administered by the National Indigenous Australians Agency (NIAA).

Furthermore, the policy enforces Mandatory Minimum Indigenous Participation Requirements (MMR) for contracts worth $7.5 million or more in 19 designated industries, ensuring Indigenous employment and business engagement. The success of the IPP is evaluated based on the increased number of Indigenous businesses securing contracts, along with the growth in contract volume and value attributed to these enterprises. Since 1 July 2016, 376 contracts valued at $21.6 billion have been subject to MMRs across a number of industry categories including building, construction and maintenance services.

The Commonwealth and States, and the NPA recognises that their transport investments can yield broader benefits for the Australian population, including fostering a competitive infrastructure market that creates employment and contracting opportunities across the supply chain. This encompasses opportunities for Indigenous businesses and job-seekers, contributing to long-term market capacity and public infrastructure delivery. The role of State and Territory Governments under this NPA includes the implementation of and performance reporting against Indigenous participation requirements for projects.

Projects under this NPA receiving $7.5 million or more in Australian Government contributions, are subject to funding conditions including the application of the Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework) which sets out the Indigenous participation requirements. Projects below the contribution threshold are also subject to the framework if they have a strong potential to support Indigenous participation. Projects are also required to comply with other applicable laws, including cultural heritage legislation.

This Framework contributes to meeting the objectives of the IPP as well as the National Agreement on Closing the Gap outcomes and targets (See Appendix 6 for further information).

Indigenous procurement policy and Closing the Gap

The policy plays a crucial role in advancing the objectives of the National Agreement on Closing the Gap outcome areas 7 and 8. Outcome 7 aims to enhance the engagement of Aboriginal and Torres Strait Islander youth (aged 15–24) in employment, education, or training to 67% by 2031. The IPP, by stimulating Indigenous entrepreneurship, business, and economic development, directly contributes to providing more opportunities for Indigenous youth to participate in education and training, aligning with the target's aim to bolster youth engagement in employment and education.

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70 Retrieved 9 August 2023, Indigenous Procurement Policy, National Indigenous Australians Agency, https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp

Additionally, the IPP also supports the aspirations of Closing the Gap outcome area 8, which seeks to strengthen economic participation and development within Aboriginal and Torres Strait Islander communities.

By fostering Indigenous entrepreneurship, the IPP bolsters economic opportunities, which in turn can lead to increased employment prospects for Indigenous individuals aged 25–64. The policy's emphasis on economic growth and business development aligns with the target's objective to enhance economic participation among the Indigenous population, ultimately striving for higher employment rates within this age group by 2031.

Indirectly, the IPP supports other Closing the Gap outcome areas through co-benefits derived from Indigenous economic participation such as boosting levels of social and emotional wellbeing (outcome 14) and securing appropriate and affordable housing (outcome 9) via increasing Indigenous procurement and employment.

State and territory Indigenous procurement policy

Analysis conducted by Inside Policy (2022) found that there are limited policies across jurisdictions that align with the Framework and that they displayed varying levels of maturity with regard to Indigenous economic participation. The analysis showed that most states have some form of procurement policy specifically for, or including, Indigenous business procurement targets, with two states having construction- or infrastructure-specific policies for Indigenous procurement[71]. The procurement polices implemented by the States most closely linked to the Framework are listed in Appendix Table 16.

Appendix Table 16: Australian procurement polices relevant to the Framework

Jurisdiction	Policy	Indigenous-specific	Infrastructure-specific	Framework aligned public reporting
ACT	Aboriginal and Torres Strait Islander Procurement Policy (ATSIPP)	Yes	No	Yes
NSW	Aboriginal Procurement Policy (APP)	Yes	No	Yes
QLD	Queensland Indigenous Procurement Policy (QIPP)	Yes	No	No
QLD	Building and Construction Policy	No (in-part)	Yes	No
NT	Aboriginal Participation on Construction Projects Policy (APCPP)	Yes	Yes	No
NT	Aboriginal Employment Program (AEP)	Yes	No	Yes
NT	Multi-Agency Partnerships (MAPs)	Yes	No	No
VIC	Tharamba Bugheen	Yes	No	Yes
VIC	Social Procurement Framework	No	No	Yes
SA	Industry Participation Policy	No	No	No
WA	Western Australia Aboriginal Procurement Policy	Yes	No	Yes
WA	Gnarla Biddi Aboriginal Engagement Program	Yes	Yes	Yes
TAS	Buy Local Policy	No	No	Yes

71 Indigenous Participation Policies for Infrastructure Projects: Policy Analysis Report 2022, Inside Policy (supplied by DITRDCA, not publicly available)

This misalignment of State policy to the federal Framework has contributed to a lack of public reporting against Indigenous participation requirements for NPA projects. Many of the State and Territory policies were developed and/or implemented prior to the release of the Framework, resulting in objectives and public reporting mechanisms not completely aligned to the Framework. The nature of reporting against metrics and targets (largely misaligned with the Framework) across these policies is also varied, with five not including public reporting requirements.

Cultural heritage management

Indigenous cultural heritage protection requirements in Australian legislation emphasise the recognition, preservation, and management of sites, objects, and practices of significance to Indigenous communities. These requirements aim to safeguard the cultural heritage of Aboriginal and Torres Strait Islander peoples. Legislation typically mandates consultation and collaboration with Indigenous communities when planning projects that could impact culturally significant areas. It also outlines procedures for obtaining permits, conducting assessments, and implementing mitigation measures to ensure that development activities respect and protect Indigenous cultural heritage. This includes the protection and preservation of cultural heritage from development, including construction of land transport infrastructure, where such projects must meet the obligations of cultural heritage laws, such as the Victorian *Aboriginal Heritage Act 2006*.

Aboriginal Victoria, as administrators of the *Aboriginal Heritage Act 2006*, asserts that the protection and management of Aboriginal cultural heritage in the Western Highway Duplication project area aligns with legal requirements[72]. The Act prioritizes Aboriginal self-determination, designating Traditional Owners as guardians of their cultural heritage. This legislation established the Victorian Aboriginal Heritage Council (VAHC) to appoint Registered Aboriginal Parties (RAPs) and oversee cultural heritage matters, reinforced by mechanisms like Cultural Heritage Management Plans (CHMPs) and enforcement measures.

As per the Act, VicRoads were obliged to create a cultural heritage management plan to address impacts on Aboriginal cultural heritage associated with the transport project. An exhaustive assessment of potential cultural sites within the corridor occurred through a three-tier process, involving extensive fieldwork and collaboration with Martang between January 2012 and August 2013[73]. Martang Pty. Ltd., designated by the VAHC as the RAP for the region, approved a CHMP for the Western Highway Duplication in October 2013. Martang's approval of the plan was in line with the Aboriginal Heritage Act's criteria, focusing on harm minimization. Despite concerns about Martang's representation, it was recognized as a Registered Aboriginal Party by the Aboriginal Heritage Council in 2007, highlighting legislative complexities in inclusive representation.

Consultations with Martang during plan development didn't foresee significant cultural values, including potential birthing trees. In response to concerns in 2017, collaborative efforts with Djap Wurrung Elders, Martang, and Eastern Maar Aboriginal Corporation were undertaken, resulting in satisfactory field inspections and consultations confirming cultural heritage protection. Further route adjustments were made to safeguard trees.

[72] Aboriginal Cultural Heritage Management Plan Western Highway Duplication, Aboriginal Victoria, retrieved 10 August 2023, https://www.firstpeoplesrelations.vic.gov.au/aboriginal-cultural-heritage-management-plan-western-highway-duplication

[73] Investigation into the planning and delivery of the Western Highway duplication project 2020, Victorian Ombudsman

Appendix 7: Indigenous Employment and Supplier-use Infrastructure Framework

Overview

DITRDCA's Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework) commenced in 2019 as an addendum to the NPA. The Framework seeks to leverage the Commonwealth's role as an investor in road and rail infrastructure to achieve social and economic benefits for First Nations people, businesses and communities. It imposes targets for employment and supplier spend on individual projects which are:

- funded under the NPA with an Australian Government contribution of $7.5 million or more, or
- carried out in Northern Australia and funded under the Roads of Strategic Importance Program, irrespective of the amount of Australian Government funding, or
- funded under the NPA and with strong potential to produce positive outcomes for Indigenous people, irrespective of project locality or the amount of Australian Government funding.

In 2008, the Australian Government implemented the National Indigenous Reform Agreement, with a target to halve within a decade the gap in employment outcomes between Indigenous and non-Indigenous Australians. This target was not achieved and DITRDCA implemented the Framework in response, seeing an opportunity to leverage Government-funded transport infrastructure as a mechanism to achieve consistent employment and development of skills and capabilities for First Nations people due to the high-value, consistent and predictable pipeline of work.

The outcomes of the Framework contribute directly to target eight of the National Agreement on Closing the Gap (Closing the Gap), 'strong economic participation and development of people and their communities'. It achieves this by ensuring First Nations people and businesses have access to opportunities for meaningful participation in infrastructure projects, and through the provision of workplace and vocational training. The strategies in place for some projects also contribute to target seven of Closing the Gap, 'Youth are engaged in employment or education'.

Four years into its implementation, the Framework has had a mixed effect. As at early August 2023, Indigenous Procurement Plans were approved for 325 projects funded under the NPA, 261 of which were actively under construction. Post Completion Reports had been accepted for 18 of the 325 projects, of which all but one had met or exceeded their agreed targets. But whereas some jurisdictions are thriving and obviously committed to achieving results, others are lagging and in need of further support.

Employment and basic Indigenous supplier targets have had a positive effect, but in the context of the Uluṟu Statement from the Heart and the upcoming referendum on constitutional recognition, these measures are no longer enough on their own. Indigenous businesses, and their owners and managers, must be supported to grow in a field often dominated by much larger, well-established companies. Likewise, particularly in the context of the Australian Skills Guarantee, further training and education opportunities are needed to attract and retain a diverse and dedicated workforce.

Indigenous Participation Plans

IPPs identify a 'project locality' and set out the project proponent's targets for Indigenous employment and supplier spend during the construction phase. An IPP also details how the targets will be met, including plans for engaging with the local market to ensure employment and business opportunities are appropriately advertised.

Targets are based on 'Local Indigenous Working Age Population' (LIWAP), i.e. the proportion of people aged 15–64 resident in the project locality who identify as Indigenous in the most recent Australian Census. Proponents are encouraged to include both an employment and a supplier-use component in their target and it is the combination of the two components that is assessed against LIWAP, despite the two components being distinct from each other in practice. The calculation and implementation of targets is the same across Australia, irrespective of factors such as each project's location and remoteness classification.

An IPP includes the proponent's strategies for achieving their chosen target, including their engagement with known supply-side supports (e.g. Supply Nation, Indigenous land councils and chambers of commerce, Traditional Owners groups, etc.). This is supported by an analysis of Indigenous participation on previous projects in the locality, and a risk assessment. IPPs may also include plans for training and development to be made available for Indigenous personnel.

The Framework sets targets for individual projects based on point-in-time population statistics. It employs a one-size-fits-all approach with no attention required to employment data or local workforce, cultural and socioeconomic considerations. Progress reporting also happens on an individual project basis with limited reaction time when a project is in danger of missing its targets and no safeguards in place to ensure the engagement of First Nations people and businesses is meaningful and not viewed as a compliance exercise. There is a risk that continuing in this vein develops a narrow focus and ignores the bigger picture, rather than allowing for performance to be monitored and managed holistically.

The Commonwealth should consider more of a macro lens on First Nations participation and associated reporting, so that each state's performance is viewed in aggregate. This removes the potential for one 'mega project' to distort the view of potential benefits to the First Nations community; instead, every project contributes to a statewide picture. The opportunity exists to begin a transition even before the expiry of the NPA and current Framework.

Interim Review (2021–22)

In late 2021, DITRDCA undertook an interim review of the Framework, with Inside Policy engaged as an external consultant.

The interim review looked at reporting against (IPPs and jurisdictions' experience in implementing the Framework. The methodology involved a desktop analysis and consultation workshops.

It was recognised that the quality of data through the supply chain worsened in second and third tier procurement, with jurisdictions able to exert less influence to ensure compliance. A further analysis of jurisdictional policies found that while most states had some form of procurement policy specifically for, or including, Indigenous procurement targets, there were currently limited policies across jurisdictions which align with the Framework.

Local relationships were viewed as key to achieving meaningful Indigenous participation, with early engagement critical to ensure Indigenous communities, employment providers and suppliers have clear visibility of opportunities and sufficient time to prepare.

While most jurisdictions described their experience with the Framework as positive and were appreciative of the support provided by DITRDCA, it was found that additional guidance supports would be advantageous.

The interim review made 11 recommendations covering communication, reporting and supplementary work:

- Developing a Framework 'toolkit' for funding recipients, including factsheets and resources,
- Establishing cross jurisdictional Framework structures to support sharing of 'best practice' participation approaches,
- Engage with the Australian Bureau of Statistics on options to develop an accessible, online LIWAP calculator,
- Trial a quarterly Indigenous participation reporting approach,
- Provide jurisdictions clear advice on quality, use and outcomes of Indigenous participation data,
- Explore options for a streamlined reporting tool with NIAA,
- Provide jurisdictions updated information on Australian Government business and employment initiatives,
- Explore options to provide regular Indigenous business outlook for jurisdictions,
- Formalise quarterly engagement with NIAA and Department of Education, Skills and Employment on Framework issues,
- Work with jurisdictions on options to include Australian Government supply-supports in project supplier forums, and
- Explore options for mapping resource of Indigenous suppliers in Local Government Areas, in context of current and future projects.

In addition to these recommendations, the interim review recommended three (3) longer-term policy options for consideration in the further substantive review, and to help inform the next iteration of the Framework:

- Opportunities to expand eligibility of Indigenous participation on infrastructure project beyond direct construction roles,
- Opportunities for rationalising participation targets across regions and programs of work, to support investment in longer term training and skills programs for Indigenous job-seekers, and
- Market analysis to determine the size and capacity of Indigenous business in the road and rail construction supply chain, including whether the Framework's establishment has contributed to the growth of robust and stable Indigenous businesses in the sector.

Reporting

The Framework includes multiple touchpoints for progress reporting.

Once a project with an IPP receives ministerial approval and commences construction, it is subject to regular progress monitoring. Prior to the interim review of the Framework in 2021–22, IPP progress monitoring occurred as part of overall project monitoring on a monthly basis. In 2022, however, in an effort to reduce administrative burden, this was reduced to quarterly with a much more targeted approach to the requested information.

Within 12 months after a project reaches practical completion, a Post Completion Report (PCR) must be submitted to DITRDCA. As well as being the deliverable which triggers the final milestone payment, a PCR also acquits overall progress against the project's IPP targets. This includes details of the hours or full-time equivalent (FTE) worked by Indigenous individuals and the value of contracts awarded to Indigenous suppliers, as well as the factors determining whether or not targets were achieved. The IPP component of a PCR should also include any unforeseen risks, and opportunities which existed for Indigenous people because of the project (e.g. an opportunity for a new business to be established – see Newell and Mitchell Highways Intersection project case study below). The Framework requires that final IPP-related information be reported publicly, e.g. via the proponent's website.

A wide range of databases exist pertaining to the First Nations workforce and First Nations businesses. Supply Nation is one of the most common repositories, being publicly accessible and readily searchable, and with its 'registered' and 'certified' categories giving users certainty that any business listed is indeed Indigenous-owned.

The NIAA also has a bespoke system in place to support the Indigenous Procurement Policy, known as the IPP Reporting Solution (IPPRS). Some states, most notably Western Australia, have created their own databases. None of these is connected to any other and therefore it is likely that all governments are operating with blind spots in their understanding of First Nations workforces and businesses. This review also encountered a reluctance or inability to extract stakeholder contact details from several state and territory agencies, as well as the NIAA. This needs to change and a simple solution would be to connect the databases owned by DITRDCA and the NIAA.

In response to the interim report's findings, DITRDCA established an Indigenous Participation Community of Practice (CoP). This is a forum, intended to meet quarterly, through which state and territory agencies are able to share their experiences and lessons learned, and request assistance and problem-solving from other jurisdictions. The CoP met for the second time during the review period and focused mostly on case studies. There is an opportunity to elevate the CoP to be more strategic, particularly through the negotiation of the replacement for the NPA.

Appendix 8: Audit findings analysis

Efficacy of the current NPA

Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements

The Australian National Audit Office (ANAO) in 2018 reviewed multiple National Partnership Agreements (NPA) which included NPA for Land Transport Infrastructure Projects (Land Transport NPA). The ANAO developed the following general conclusions:

- Strong frameworks have been established for designing the monitoring and payment arrangements under the NPAs, but implementation has been mixed.,
- There have been weaknesses in some aspects of the monitoring and payment arrangements particularly specifying outcome measures, obtaining sufficient evidence to verify all milestones have been met and publicly reporting the results achieved,[74]
- The NPAs examined are largely consistent with the principles and design requirements of the Intergovernmental Agreement, but there was mixed adherence to the performance and funding requirements of the Intergovernmental Agreement,
- While listing NPAs on the Council on Federal Financial Relations' website provides transparency of the intent of the agreements, there is no public reporting of performance on that website and there is disparate reporting elsewhere, which weakens transparency and accountability about the value of the agreements, and
- There are mixed results in assessing performance against prescribed performance measures/milestones of NPA with some project milestones being assessed as met without sufficient supporting evidence. This occurred in 31% of the projects examined. [75] Of the five projects under the Land Transport NPA, three were rated as providing strong evidence verifying achievement while two were rated as providing 'some' supporting evidence.[76]

The 17 examined NPAs are consistent with the principles of the Intergovernmental Agreement, reflecting central oversight and common processes.[77] Six however, including the Land Transport NPA, do not have an outcome-focused performance framework with payments linked to progress against outcomes, and outputs based on clear and precise measures of performance such as performance benchmarks or milestones.[78]

The ANAO also notes that public reporting under NPAs in general do not provide adequate accountability and transparency: [79]

- While expected outcomes and outputs for all NPAs are listed on the Council on Federal Financial Relations website, the extent to which outcomes and outputs have been successfully achieved is not reported on the website,
- There is some reporting on performance achieved through agreements on portfolio departments' websites and annual reports, which has typically focused on the major agreements. It is unclear milestones have been met and publicly reporting the results achieved,

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74 ANAO (2018), Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements, Report No.42 2017–18, page 8. Available from https://www.anao.gov.au/sites/default/files/ANAO_Report_2017-2018_42.pdf [accessed August 2023].

75 ibid page 33.

76 ibid page 35.

77 ibid page 20.

78 ibidpage 26.

79 ibid page 30.

- More consistent, centralised public reporting of achievement of outcomes and outputs under all NPAs is required to meet the transparency and accountability objectives of the Intergovernmental Agreement, and
- The Treasury agreed to pursue improved public reporting in consultation with the Department of Prime Minister and Cabinet and states and territories[80]. It is unclear how this has progressed.

Findings specific to the Land Transport NPA are:

- It does not clearly articulate the links between objectives, outcomes and outputs:[81]
  - Outputs are defined in terms of 'successful delivery of land transport infrastructure and planning projects funded under the programme',
  - The State Schedules to the Agreement lists projects under established programs (such as Investment (Road), Investment (Rail) and Black Spot Projects) but do not link these programs in term of outcomes or outputs. Outcomes and outputs are referenced in the agreement as being in the *National Land Transport Act 2014*, but are not explicitly listed in the agreement.
- A revised NPA should see parties considering more clearly defining and logically linking outcomes and outputs with reference to the existing program structure,[82]
- A revised NPA should include a performance measurement framework that clearly outlines the range of performance measures that would be included in the project plans to indicate successful achievement of outputs and outcomes. This would aid transparency and accountability under the agreement,[83]
- Without clear and transparent links between outputs and outcomes, it is not possible to determine the extent to which outcomes have been achieved under the agreement,[84] and
- States are not required to submit monthly progress/performance reports for sub-programs including the Black Spot Program and National Network Maintenance expenditure due to
  - (a) the scale and risk profile of these programs and
  - (b) the administrative burden, particularly for local governments. The ANAO suggests that DITRDCA considers a sampling approach to obtain evidence on a selection of project milestones each year as a way of improving the evidence base without greatly increasing administrative costs and imposts on the States.[85]

Key learnings for improvement for all Australian Government entities are:

- On completion of projects subject to partnership agreements, final payment should not be made until evidence is provided of successful completion,[86]
- Where agreements have outcome measures, entities should ensure that these measures are clearly aligned to well-specified output measures and to suitable performance milestones that are based on valid and reliable data,[87] and
- Where there is consolidated reporting of the objectives and success measures for sets of agreements, such as on a particular website, there should also be consolidated reporting of performance achieved against those objectives and measures.[88]

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80 ANAO (2018), Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements, Report No.42 2017–18, page 32. Available from https://www.anao.gov.au/sites/default/files/ANAO_Report_2017-2018_42.pdf [accessed August 2023].

81 ibid page 27.

82 ibid

83 ibid page 28.

84 ibid page 61.

85 ibid page 37.

86 ibid page 12.

87 ibid

88 ibid

Inquiry into Commonwealth Grants Administration[89]

The Commonwealth Grants Rules and Guidelines (CGRGs) provide for the consistent and transparent standards for the administration of grants across Commonwealth entities. While payments to a State is made for the purposes of the *Federal Financial Relations Act 2009* are not taken to be grants (including NPAs),[90] there are principles generally common to NPAs. Similarly the Black Spot Program and the Heavy Vehicle Safety and Productivity Program, both under the Land Transport NPA, are administered in a more grants-like fashion.[91]

The CGRGs also specify that grants should be open and competitive, allowing a fair opportunity for all eligible applicants to apply.[92] The Inquiry into Commonwealth Grants Administration (2023) has recommended that:

- Competitive, merit-based processes must be adopted by default with program design guidelines or decision-makers required to document appropriately detailed reasons when a non-competitive approach is utilised,[93]
- The role of all stakeholders must be disclosed in the published program guidelines for competitive merits-based grants programs, including any who assess or award grant funding and how advocacy and input from MPs and stakeholders is to be considered,[94] and
- A decision-maker's approval of funding against the recommendations of agency of officials must be:
  - clearly recorded, with any refusal or unreasonable delay by decisionmakers in doing so to be reported to the Minister for Finance at the earliest opportunity, and
  - reported online, including the basis for that approval within three months of announcements being made.[95]

The Department of Finance develops 'good practice' examples of record-keeping templates with an accompanying checklist that give effect to the rules and principles of the CGRGs that all Commonwealth entities be strongly encouraged to use for any grants or 'grants-like' programs. These templates and checklists should prompt both public officials and ministers to clearly document all decisions and decision-making processes throughout the operation of a grants program. The examples to be developed by Department of Finance are likely to influence the current NPA project templates[96].

The DITRDCA presents the highly summarised status of projects through its website[97] including estimated costs and funding arrangements, expected benefits and timetable.

Complementary reviews

Administration of Commuter Car Park Projects within the Urban Congestion Fund[98]

The Urban Congestion Fund (UCF) was established as a sub-program of the Infrastructure Investment Program and UCF projects are funded as Investment Projects funded under the *National Land Transport Act 2014 (*The Act) are governed by the Land Transport NPA. The $660 million National Commuter Car Park Fund (CCPF) is a component of the UCF.

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89 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/Commonwealthgrants

90 Department of Finance (2017), Commonwealth Grants Rules and Guidelines, page 7. Available at https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf [accessed August 2023].

91 JCPAA (2023), Report 495 Inquiry into Commonwealth grants administration, page 30. Available at https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000137/toc_pdf/Report495InquiryintoCommonwealthgrantsadministration.pdf [accessed August 2023].

92 ibid page 5.

93 ibid page 25.

94 ibid

95 ibidpage 26.

96 https://investment.infrastructure.gov.au/resources-funding-recipients/national-partnership-agreement/national-partnership-agreement-project-templates

97 https://investment.infrastructure.gov.au/projects

98 https://www.anao.gov.au/work/performance-audit/administration-commuter-car-park-projects-within-the-urban-congestion-fund

The ANAO found the administration of the commuter car park projects within the Urban Congestion Fund was not effective:

- Existing arrangements generic to infrastructure investment projects were replied upon, rather than a custom program-specific implementation plan, performance indicators or evaluation plan,
- DITRDCA did not develop a plan for implementing the UCF governance arrangements, including for how the UCF principles would be applied to commuter car park projects. It did not develop a plan identifying the avenues through which UCF projects could be identified,
- The potential for research and data to inform program design and project identification was not fully realised (noting that there is mixed evidence on the effectiveness of commuter car parks). While some appropriate analysis of urban congestion in Australia was undertaken by DITRDCA, the extent to which it informed the Fund's design and implementation was limited,
- DITRDCA's approach to identifying and selecting commuter car park projects for funding commitment was not appropriate. It was not designed to be open or transparent,
- DITRDCA did not engage with state governments and councils (in conflict with the NPA) to identify candidate projects. DITRDCA should proactively progress implementation of program arrangements that are agreed by government, such as agreement to engage stakeholders, use an evidence-based process and publicly release materials.[99]
  Early engagement with state governments and proposed council delivery partners would have increased the likelihood that the projects selected would be delivered as intended and in a timely manner,[100]
- Inadequate assessment attention has been given to the eligibility of projects. The assessment guidelines do not address how DITRDCA will assess eligibility, and was not addressed in DITRDCA's project assessment reports,
- Insufficient assessment work has been undertaken by DITRDCA to satisfy itself that projects are eligible for funding under the NLT Act, and record keeping was not compliant with departmental and Australian Government policies. There is little evidence to demonstrate that the selection of commuter car park projects was based on assessed merit against the investment principles or achievement of the policy objective,
- The merits of projects have not been appropriately assessed by DITRDCA to inform its recommendations to the Minister. The design of the UCF did not include the development and Ministerial approval of merit assessment criteria,
- Departmental advice did not contain an assessment against the investment principles or policy objectives and it was not demonstrated that projects were selected on merit. DITRDCA did not seek to establish assessment criteria, and the assessment work has not adequately demonstrated that approved projects will provide value for money,
- DITRDCA has not had sufficiently strong controls in place to establish, for each approved project, clear delivery timelines and links between payments and milestones,
- Clear delivery timelines and milestone payment schedules were not established at project approval stage. DITRDCA advised the Minister that it would establish these after the project was approved, and
- Monthly reporting obtained by DITRDCA from proponents on progress against milestones has not been to a consistent standard.

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[99] ANAO (2021), Administration of Commuter Car Park Projects within the Urban Congestion Fund, Report No.47 2020–21 page 38. Available from https://www.anao.gov.au/sites/default/files/ANAO_Report_2015-2016_14.pdf [accessed 6 August 2018].

[100] ibid page 38.

The ANAO has recommended:

- When establishing funding programs for inclusion in the Infrastructure Investment Program, an implementation plan, performance indicators and an evaluation strategy is developed specific to the funding program.
- Funding programs propose merit criteria that will be used to assess whether projects represent an efficient, effective, economical and ethical use of public money and are subsequently eligible for approval under the Act.
- When providing advice on whether funding should be approved for funding candidates under the Act that have been identified through a non-competitive process, DITRDCA identify relevant benchmarks against which to assess whether the proposal represents value for money and is appropriate for approval.
- Consultation with project delivery partners before making decisions on project selection or funding enables such decisions to be better informed as to likely project costs, risks, feasibility, and delivery timeframes. At a minimum, such consultation should occur prior to decisions being publicly announced to ensure that the intended delivery partner will undertake the project and provide any required co-contributions.
- Where a project crosses into state jurisdiction, such as relates to state-controlled transport infrastructure, then prior consultation with the state/territory government is important to inform decision-making, including to identify the highest priority projects.

Approval and Administration of Commonwealth Funding for the East West Link Project[101]

When proposed the East West Link project was one of the largest transport infrastructure projects planned in Australia. A $1.5 billion Commonwealth contribution to the East West Link project was announced as a commitment by the Coalition during the 2013 Federal election campaign. As part of the 2014 Budget process, $1.5 billion of Commonwealth funding for stage one of the East West Link was approved by the then Prime Minister. Also approved was a further $1.5 billion for stage two, in response to funding requests made by the then Victorian state government in early 2014. On 30 June 2014, $500 million of the stage one funding and $1 billion of the stage two funding was paid to Victoria.

On 12 December 2014, the incoming Victorian Government announced the immediate suspension of work on the East West Link project. Three days later the project's business cases and related documents were publicly released by the Premier. In February 2015, Victoria notified the Commonwealth of the project's cancellation. None of the Commonwealth funding paid in June 2014 had been spent. This funding has also not been returned to the Commonwealth.

The ANAO has found:

- Neither stage of the East West Link project had proceeded fully through the processes that have been established to assess the merits of nationally significant infrastructure investments prior to the decisions by Government to approve $3 billion in Commonwealth funding and to pay $1.5 billion of that funding in 2013–14. The inclusion of a project in this program reflects a commitment to the objectives of the project but does not obviate the need for Ministerial approval of a specific project proposal to achieve those objectives,
- Approval is required both under the land transport legislation and the financial management framework. The approval of funding had been given by, the then Prime Minister, before the Department of Infrastructure and Regional Development (DIRD) had analysed the finalised Project Proposal Report for stage one and before Infrastructure Australia had assessed the full business case,

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[101] https://www.anao.gov.au/work/performance-audit/approval-and-administration-commonwealth-funding-east-west-link-project#:~:text=As%20part%20of%20the%202014,state%20government%20in%20early%202014.

- DIRD provided clear advice to Government that the $1.5 billion was being paid in advance of project needs and proposed an alternative payment approach that aligned payments with project progress,
- None of the $1.5 billion in advance payments had been spent by Victoria prior to the cancellation of the East West Link project. Interest earned on the advance payments to the end of October 2015 is estimated to have been more than $49 million,.
- DIRD also provided timely advice to Ministers when it became evident that there was an increased risk that stage one may not proceed. This advice resulted in better management of the risks associated with the $500 million advance payment for that stage being used for project cancellation costs,
- The risk management approach involved varying the project approval instrument for stage one to more clearly set out the scope of the project that Commonwealth funding could be used for, and exclude Commonwealth funding from being used as payment for any penalties, legal costs or court ordered costs that may be incurred should stage one be delayed or cancelled,
- No such action was able to be taken in respect to the $1 billion advance payment made for stage two. This was because it was not possible to clearly specify the project scope in the approval documentation because significant project development work still needed to be undertaken in order for a business case to be prepared,
- The non-legally binding nature of the agreements signed with the Victorian Government meant the Commonwealth was unable to rely on those documents to require the advance payments to be returned when the project was cancelled. The question raised is that can payments made in advanced by legally binding,
- In September 2015, the Treasury obtained legal advice on how Victoria could be required under the federal financial relations framework to repay the $1.5 billion in advance payments. The advance payments had not, as of October 2015, been recovered from Victoria, and
- The ANAO has not made any recommendations in relation to entity advisory processes given the audit found that the funding decisions had been informed by well-considered departmental advice, and that Infrastructure Australia's assessment processes had been bypassed.

Suburban Rail Loop and Melbourne Airport Rail

The Victorian Auditor-General's Office (VAGO) audit of major transport infrastructure business cases projects assessed the Suburban Rail Loop (SRL) rail and precinct development project the Melbourne Airport Rail (MAR) project.

Business cases for both projects came after the government made funding commitments to the projects.[102,103,104] Business cases also did not meet the requirements set out in the Victorian Government's own investment decision-making guidelines.[105] They do not support fully informed investment decisions because their content was not sufficient or timely:[106]

- Government's decision-making on the SRL program since 2018 has not followed the standard investment development process, where departments first develop a comprehensive business case to inform a government investment decision. Instead, the SRL project development and delivery are progressing in parallel,[107]

[102] VAGO (2022), Quality of Major Transport Infrastructure Project Business Cases, page 3. Available from https://www.audit.vic.gov.au/sites/default/files/2022-09/20220921%20Business%20Cases_0.pdf? [accessed August 2023]

[103] ibid page 28.

[104] ibid page 45.

[105] The Victorian High Value High Risk (HVHR) guidelines, templates and technical guides to inform government decision-making throughout the investment life cycle. https://www.vic.gov.au/high-value-high-risk-framework

[106] VAGO (2022), Quality of Major Transport Infrastructure Project Business Cases, page 2. Available from https://www.audit.vic.gov.au/sites/default/files/2022-09/20220921%20Business%20Cases_0.pdf? [accessed August 2023]

[107] ibid page 26.

- Departmental advice supported MAR government decision-making, but the business case was too late to be consistent with the guidelines,[108] and
- The decision to adopt a program-level business case approach for SRL project was not supported with a preliminary and full business case for the entire project.[109] Government submissions have instead been prepared for specific components/stages, which creates risks that the advice is not sufficiently comprehensive on the investment rationale for either the significant individual components or the entire SRL project.[110]

There is no clear definition of how the proposed benefits flow from the identified problems and root causes, urgency for intervention, how some of the benefits are a direct consequence of a project, and do not immediately point to the need for a transport-related intervention.[111]

- The SRL business case does not clearly identify how the proposed benefits flow from the identified problems and how some of the benefits are a direct consequence of the project,[112]
- The high-level problems described in the MAR business case lacked sufficient supporting evidence. The options development and assessment in the business case is not sufficiently comprehensive because it was narrowed based on high-level early assessments that lacked rigour and transparency,[113] and
- The SRL and MAR economic analyses lack transparency and are not consistent with key elements of relevant guidance.[114,115]

The business cases lacked sufficient analysis of alternative project options (with real scope differences) and lacked an assessment of the value for money the projects could provide under different scenarios.[116, 117]

- SRL assessed two program options in the business case and supporting economic analysis which have the same scope and only differ in their delivery timelines. A wider range of options should be required given the size and complexity of the SRL project, giving greater confidence that the recommended program is the best value-for-money solution,[118] and
- The MAR decision-making and business case development approach involved the Australian and Victorian governments progressively agreeing key investment decisions on the project, including selecting a heavy rail solution and route. The business case did not seek to re-prosecute or re-evaluate these commitments and decisions but assessed options to deliver on government commitments.[119]

Gateway Reviews did not reconsider previous government decisions:

- The combined SRL Gateway Review stages lack evidence to show due consideration was given to affordability, options assessment or value-for-money requirements.[120]
  It acknowledged previous government decisions on the project and tailored its approach to focus on project implementation and governance,[121] and

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108 VAGO (2022), Quality of Major Transport Infrastructure Project Business Cases, page 41. Available from https://www.audit.vic.gov.au/sites/default/files/2022-09/20220921%20Business%20Cases_0.pdf? [accessed August 2023

109 ibid page 8.

110 ibid page 29.

111 ibid page 5.

112 ibid page 33.

113 ibid page 46.

114 ibid page 35.

115 ibid page 51.

116 ibid page 1.

117 ibid page 34.

118 ibid page 32.

119 ibid page 48.

120 ibid page 10.

121 ibid page 30.

- The MAR Gateway Review acknowledged previous government decisions including route selection, and tailored its approach to largely focus on project implementation and governance. As a result, the review report did not include substantive findings on key questions, such as affordability and options assessment.[122]

Deliverability has not been appropriately assessed prior to the beginning of procurement:

- SRL funding has been committed and major works procurement packages has commenced prior completion of a deliverability assessment,[123] and
- The MAR deliverability assessment of the business case was not completed before the government funded it.[124] The deliverability assessment could then inform government deliberations on the business case's merits and whether it should be submitted to the Australian Government. [125]

In their report the Victorian Auditor-General's Office (VAGO) note that Government agencies did not agree with most of the audit's findings:

- The guidelines are typically followed for projects with a narrower scope and influence,[126]
- MAR is very large scale and complex project and that SRL is much more than a typical transport project because it includes an unprecedented, city-shaping and multi-generational program of integrated and precinct development works,[127] and
- The guidelines are not a statutory instrument, and their rigid application is not suitable for SRL or MAR.[128]

The disagreement suggests that, to ensure investment decision-making is robust and transparent, mega-projects require tailored guidance that align with its unique characteristics.

NSW Independent Commission Against Corruptionfindings

Inadequate reporting and other accountability arrangements

NSW ICAC inquiry into misuse of public funds allocated to non-government organisations[129] is an example of issues in funding from the Federal government through a mechanism other than NPAs.

A local community-based environmental protection group received funds, administered through a NSW public agency, from various NSW government departments and the federal government. The group's final report to the agency indicated that all funds had been expended and that the outcomes of the project had been met. More than a year later, the same group wrote to the agency seeking approval to transfer $250,000 left-over from the project to a new project. The group advised the NSW agency that it had received Federal Government approval for the re-allocation, subject to the agency's agreement. An agency enquiry did not find any improper conduct, but it exposed inadequate reporting and other accountability arrangements.

122 VAGO (2022), Quality of Major Transport Infrastructure Project Business Cases, page 44. Available from https://www.audit.vic.gov.au/sites/default/files/2022-09/20220921%20Business%20Cases_0.pdf? [accessed August 2023]

123 ibid page 30.

124 ibid page 41.

125 ibid page 45.

126 ibid page 3.

127 ibid page 3.

128 ibid page 62.

129 Source: https://www.icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/grants-programs – Misuse of public funds allocated to NGO

The agency introduced several measures to improve the management of grants, including:

- prohibiting its own staff from being office bearers in groups who receive project funds,
- withholding 10% of project funds until it has received a detailed final report,
- requesting final project reports in a standardised format, and
- requiring groups that receive project funding to have a dedicated bank account for that project and to submit quarterly reports on the project.

NPA's Infrastructure Management system (IMS) requires project status information in a series of free text fields in IMS and a post completion report. The NPA could on completion of projects, final payment should not be made until evidence is provided of successful completion.

Report on investigation into pork barrelling in NSW

The NSW ICAC review was undertaken into this program in addition to the ANAO audit. This review was part of the ICAC, *Report on investigation into pork barrelling in NSW* (Operation Jersey)[130]. This is another example of issues in funding from the Federal government through a mechanism other than NPA. The scope of this investigation included:

- the Stronger Communities Fund – Tied Grants Round Program (Round 2)
- the Regional Cultural Fund established in 2017
- the Community Sport Infrastructure Grant Program established 2018 (a federal grant program).

One of the key recommendations of this report was recommendation 21 "the NSW Government considers requiring the Auditor-General to conduct regular performance audits in relation to high-risk grants or grant schemes, including those that involve a high risk of pork barrelling."

The NPA does not have a mechanism for the Auditor-General to conduct regular performance audits in relation to high-risk projects.

NSW Audit Office

Transport 2021

The NSW Audit Office Transport 2021[131] report is regarding a range of projects that are funded by the NSW State government and in collaboration with the Federal government through a range of mechanisms including the NPA.

Some of the key audit observations were:

- The number of findings reported to management increased from 56 in 2019–20 to 73 in 2020–21.
- Thirty-seven per cent were repeat findings. Many repeat issues related to information technology controls around user access management and payroll processes.
- These included deficiencies in the monitoring of privileged user access to key financial systems, review of user access to key financial systems and segregation of duties between preparer and reviewer for new employee hires.
- Six new high risk issues were identified in 2020–21, an increase of three compared to last year.
- One high risk issue related to conflicts of interests not being declared by all officers involved in the land acquisition process at Transport for NSW

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[130] https://www.icac.nsw.gov.au/media-centre/media-releases/2022-media-releases/icac-finds-pork-barrelling-could-be-corrupt-recommends-grant-funding-guidelines-be-subject-to-statutory-regulation

[131] https://www.audit.nsw.gov.au/our-work/reports/transport-2021

The key recommendation included:

- Transport for NSW needs to significantly improve its processes to ensure all key information is identified and shared with the Audit Office.
- Transport agencies should implement a process to ensure conflicts of interest declarations are completed for land acquisitions and applied consistently across the cluster.

The NPA does not have a mechanism for regular performance audits to be conducted.

Queensland Audit Office

Improving grants management

The Queensland Audit Office investigations into improving grants management[132] provides an example of issues in funding from the Federal government through a mechanism other than NPA.

There are two recommendations regarding ensuring open access to information from grants/funding were available and included on a dashboard. It was found that grants that are paid on behalf of other entities, for example Australian Government grants, were not able to appear on the dashboard. This means that reviews by the Queensland Audit Office does not consider Australian Government grants/funding.

To allow this recommendation to be fully released, there could be changes to the NPA to allow for State and Territory Audit Offices to also review Australian Government funded projects.

Tasmanian Audit Office

There were not any recent Tasmanian audit finds that were relevant to this review.

Northern Territory AuditorGeneral's Office

Review of Effective Enrolment

The NT government undertook a review of the effective enrolment funding mechanisms[133]. This funding is a combination of federal funding and Territory funding. This review provides another example of issues in funding from the Federal government through a mechanism other than NPA.

A review undertaken by Deloitte concluded that the effective enrolment methodology has limitations both as a resource prioritisation mechanism and an incentive, with impacts on equity within the system. As such, the Review finds that alternative enrolment-based methodology options should be considered. A key finding from this review is that appropriate measures need to be utilised to ensure funding mechanism achieve the outcomes they are targeting.

The NPA can include a performance measurement framework that clearly outlines the range of performance measures that would be included in the project plans to indicate successful achievement of outputs and outcomes.

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132 https://www.qao.qld.gov.au/sites/default/files/2022-07/Improving%20grants%20management%20%28Report%202%20%E2%80%93%202022%E2%80%9323%29_0.pdf

133 https://education.nt.gov.au/__data/assets/pdf_file/0004/1173064/review-of-effective-enrolment-final-report.PDF

Victoria Auditor-General's Office

Integrated Transport Planning

The VAGO undertook a review of integrated transport planning in Victoria[134]. This review provides an example of issues in funding from a combination of State and Commonwealth funding through mechanisms including NPA**.**

The *Transport Integration Act 2010* (the Act) requires DoT to prepare and periodically revise the transport plan for Victoria. The Act seeks integrated planning and management of the many transport modes, networks and services that make up the state's transport system, so they best meet user needs.

The report made seven recommendations to DoT, including:

- improved transparency for the current transport plan,
- establishing completion timelines for plans in development,
- focusing on governance and leadership to deliver integrated transport planning, and
- advice to government on transport investment priorities needing to reflect the results of integrated planning.

The NPA can request from each State and Territory for evidence how these projects support transport integration and support the wider long-term vision.

Major Projects Performance

Victorian Auditor-General Office undertook a review into major projects performance[135] This is an example of issues in funding from a combination of State and Federal government funding through mechanisms including NPA.

The audit found the Victorian Department of Treasure and Finance (DTF) and public sector entities' reporting to Parliament and the public about major projects performance is not timely, relevant or sufficient. DTF collects useful project data from entities and provides clear performance reports about some major projects to the government. DTF does not use this data to holistically report on major projects to the Parliament and the public.

Key recommendations relevant to the NPA include:

- Develop a repository of lessons learnt from major capital projects, including analyses of key themes from Gateway reviews, benefits realisation studies and Project Assurance Reviews, and make this resource available to project teams across the public sector, and
- Require state and territories to improve their capacity to analyse capital project trends and be able to better manage projects[136].

The NPA can request from each State a summary of "lessons learnt" from projects as part of the project post completion reports.

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[134] https://www.audit.vic.gov.au/report/integrated-transport-planning

[135] There were a range of recommendation made for improvements to the Victorian systems and processes. These can be found here: https://www.audit.vic.gov.au/report/major-projects-performance?section=33948--2-dashboards-and-analysis&show-sections=1#33948--2-dashboards-and-analysis

[136] Source: https://www.audit.vic.gov.au/report/major-projects-performance?section=33948--2-dashboards-and-analysis&show-sections=1#33948--2-dashboards-and-analysis

Major Projects Performance Reporting 2022

This is an example of issues in funding from a combination of State and Commonwealth funding through mechanisms including NPA. The audit found that there have been several significant increases in total estimated investment (TEI) without explanations or justifications proved.

Key recommendations relevant to the NPA include:

- Having clear processes to capture if there are any increases in TEI and the reasons for the increase.
- To share the reasons for increase in TEI with the Commonwealth government and all States and Territories, so that lessons learnt can be applied to all project nationwide.

These recommendations could be included in the Monthly Reporting process and PCRs.

Managing Major Projects

This is an example of issues in funding from a combination of State and Commonwealth funding through mechanisms including NPA. This audit found Major Projects Victoria (MPV) is not able to demonstrate that it operates and manages infrastructure projects effectively, efficiently or economically. The concerning finding that poor oversight by the Department of Business and Innovation (DBI) and the lack of effective internal controls have contributed to poor governance standards and a lack of organisational integrity and accountability—contrary to the behaviours expected in the *Public Administration Act 2004*.

The report found that DBI and MPV are failing to comply with the following acts:

- *Public Administration Act 2004,*
- *Public Records Act 1973,*
- *Project Development and Construction Management Act 1994,* and
- *Financial Management Act 1994.*

Key recommendations relevant to the NPA include:

- When departments are not complying with acts take appropriate action to give the requirement/act the necessary legislative force,
- review its recruitment practices involving ex-employees so that, as a minimum, perceived and potential conflicts of interest are managed, and value-for-money obtained,
- review its records management processes and practices against the requirements of the *Public Records Act 1973* and associated standards and policies, and implement changes as appropriate,
- establish a project review mechanism so that lessons from each project are identified, assessed, incorporated into practices as appropriate, and communicated,
- define what an original approved budget is and consistently apply it to all projects, and
- strengthen financial management system controls so that original budgets cannot be altered, and so there is a clear audit trail of changes.[137]

[137] Source: https://www.audit.vic.gov.au/report/major-projects-performance-reporting-2022?section=34207--2-exploring-major-project-data&show-sections=1#34207--2-exploring-major-project-data

Major Infrastructure Program Delivery Capability

Victorian Auditor-General Office tabled its review into Major Infrastructure Program Delivery Capability in 2021. This is an example of issues in funding from a combination of State and Federal government funding through mechanisms including NPA.

Key recommendations relevant to the NPA include:

- to the extent possible, collect and collate comprehensive, accurate, quantitative information, research and analysis to annually estimate and monitor the size and timing of resource shortages and risks across the government pipeline.
- ensures that the employment demand modelling includes the distribution of skills across occupations and industries.
- make the aggregated information on resource shortages and risks available to departments and delivery agencies to inform their decisions and advice to the government about major infrastructure investments and actions needed to build and support resources, and
- engage regularly with the construction and associated industries about the resources needed to deliver the government pipeline.[138]

Western Australia – Office of the Auditor General

There were no recent Western Australian office of the Auditor General findings that were relevant to this review.

South Australia – Auditor-General's Department

There were no recent South Australian audit finds that were relevant to this review.

[138] https://www.audit.vic.gov.au/report/major-infrastructure-program-delivery-capability

Appendix 9: Overview of the Review of Inland Rail

The Australian Government commissioned an Independent Review to assess the governance and program delivery approaches of the Inland Rail Program. The success of Inland Rail is integral to Australia meeting its growing freight requirements, making improvements to several road safety outcomes and decarbonising the economy, and the Review considered the reasons for the program being significantly late and being over budget. The Review also provided the Australian Government with an assessment of options for the new Inland Rail intermodal terminals to be built in Melbourne and Brisbane.

The Review identified a lack of certainty in Australian Rail Track Corporation Limited (ARTC) about the final completion date and final cost of the project. It also found a breakdown in appropriate project governance due to a lack of a substantive chief executive for an extended period and that the ARTC lacked management experience and other in-house capability deliver freight rail operations or major infrastructure projects.

The Review recommended that the Commonwealth review governance processes and the skills of the current ARTC board, and to reassess costs and design solutions to so that the Inland Rail Program is appropriately scoped and to address significant cost pressures.

After considering the recommendations of the Review, the Australian Government issued a new interim Statement of Expectations (SOE)[139] for the ARTC in response to the Review findings. The interim SOE identifies how the ARTC will address identified skills limitations, particularly in its leadership, and that a subsidiary will be established to govern the Inland Rail project moving forward.

On June 2023, the Australian Government announced that Inland Rail Pty Ltd has been established as the subsidiary of the ARTC with its own dedicated board of directors who were selected for their skills, knowledge and experience with nationally significant freight projects[140]. The interim SOE sets expectations that the ARTC will now engage with shareholder departments to negotiate appropriate amendments to:

- The constitution of the ARTC subsidiary,
- The Equity Financing Agreement for the Inland Rail project, and
- The Inland Rail project development agreement.

[139] The interim SOE was issued on 23 June 2023, and is available in full from: https://www.infrastructure.gov.au/department/media/publications/australian-rail-track-corporation-interim-statement-expectations

[140] The press release entitled 'Inland Rail – A new way forward' is available from https://minister.infrastructure.gov.au/c-king/media-release/inland-rail-new-way-forward

Appendix 10: Constitutional matters

Introduction

The following appendix details the Constitutional requirements of the Commonwealth, State/Territory governments and Local Governments regarding funding arrangements for land transport infrastructure projects.

The Constitution establishes areas of legislative responsibilities at the State/Territory and Commonwealth levels. Critically, under the Constitution the States are responsible for construction and maintenance of land transport infrastructure. While the Commonwealth has no legislative responsibility in many areas of land transport within the states, it may choose to use a section 96 grant. The grants are given to the states conditionally by the Commonwealth. Conversely, the Commonwealth is able to directly make laws regarding land transport in the territories.

The Constitution makes no mention of local government and hence creates no clear channel for the Commonwealth to provide funds for local government. Funds to be used in projects that are under the jurisdiction of local governments will usually pass through state governments first under the standard constitutional arrangement.

Additionally, the Constitution allows the Commonwealth to enter into treaties with international partners that may guide spending at a local level to meet any commitments that have been made. Principally, this includes Australia's commitment under the Paris Agreement, where in Australia has made commitments to reduce carbon emissions.

Constitutional Provisions

Australia's Commonwealth of Australia Constitution Act (the Constitution) establishes Australia's national government (i.e., the Commonwealth), providing the foundations of Australia's federal legal system. The following section details some of the provisions of the constitution relevant to land transport.

Chapter I – The Parliament, Part V – Powers of the Parliament

Key sections under Section 51 detail some of the legislative powers of parliament that relate to land transport. These have been reproduced below.

51. Legislative powers of the Parliament

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (v) postal, telegraphic, telephonic, and other like services;
- (xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
- (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
- (xxxiv) railway construction and extension in any State with the consent of that State.

Section 52(i) confers on the Commonwealth the power to legislate with respect to territories including the Australian Capital Territory and the Northern Territory and any other Commonwealth Territories.

52. Exclusive powers of the Parliament

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;

(ii) matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;

(iii) other matters declared by this Constitution to be within the exclusive power of the Parliament.

Chapter IV – Finance and Trade

This chapter relevantly deals with financial and trade relationships between the Commonwealth and the States. Key to this review is the use of s96 – Financial assistance to States, which has long been used by the Commonwealth to grant transport funding to the states.

Outline of the *National Land Transport Act 2014*

The object of the 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'[141]. As set out in clause 2 of the NPA, a purpose of the NPA is to govern 'Commonwealth funding provided for land transport infrastructure Projects administered under the *National Land Transport Act 2014'*[142].

Treaties

Treaties refer to an international agreement concluded in written form between two or more States[143] (or international organisations) and that is governed by international law. As such the signatory of a treaty commits to international legal rights and obligations.

Australia is a party to a large number of treaties; The Commonwealth may choose to specifically fund projects that serve to implement treaty obligations.

Australia has entered in to numerous treaties that both directly and indirectly relate to National Land Transport, and where the NPA may assist in meeting Australia's commitments under those agreements.

Relevant Land Transport Treaties

Current (August 2023) In force treaties relating to land transport have been listed below.

- Convention on Road Traffic; Final Act; Protocol Concerning Countries or Territories at Present Occupied; Protocol on Road Signs and Signals (Australian accession 1954), and
- Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles (Australian accession 2008).

[141] *National Land Transport Act 2014* (legislation.gov.au)
[142] land_transport_infrastructure_np.pdf (federalfinancialrelations.gov.au)
[143] State refers to nation states, under one government

Environmental Protection and Climate Change Treaties

As part of global efforts for environmental conservation and mitigation of the effects of climate change, Australia has entered into a variety of international agreements targeted towards emissions reduction. Most recently, Australia has ratified the 2015 Paris Agreement. Consistent with obligations under these agreements, The Government may direct land transport funding towards methods and technologies that reduce Australia's total emissions.

While mention of these international commitments is largely absent from the NPA, Climate is mentioned in section 19 under Objectives for co-funded transport infrastructure investment. The relevant part of this section is reproduced below.

Section 19

The Commonwealth and States recognise that their collective transport investments have the potential to enable broader outcomes that benefit the Australian people including:

(b) taking account of climate and disaster resilience and environmental sustainability in infrastructure planning and delivery.

Paris Agreement

The key international treaty driving Australia's international climate obligations is the 2015 Paris Agreement, that entered in to force for Australia 9 December 2016.

Under the Paris Agreement, there is a global commitment to

– holding the increase in the global average temperature to well below 2°C above pre-industrial levels,
– pursuing efforts to limit temperature increase to 1.5°C above pre-industrial levels,
– As a signatory, Australia must write and submit their emissions reductions commitments as a National Determined Contributions document (NDC). The most recent NDC was submitted in 2022[144] in which Australia has committed to a reduction of greenhouse gas emissions 43% below 2005 levels by 2030 and reaffirmed its commitment to achieving Net Zero by 2050, and
– Relating to land transport, the NDC flags that Australia's investment will include work towards electrification of vehicles, renewable energies, introducing declining emissions baselines for Australia's major emitters under the Safeguard mechanism, a National Electric Vehicle Strategy, increased reporting requirements and a commitment to reduce the emissions of Commonwealth Government agencies (excluding defence and security agencies) to net zero by 2030.

Other key international treaties that include commitments to Climate Change include

United Nations Framework Convention on Climate Change[145]

The United Nations Framework Convention on Climate Change entered into force generally and for Australia 21 March 1994. The ultimate objective of the Convention is to stabilize greenhouse gas concentrations 'at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system'.

[144] Australian Government (2022) Australia's National Determined Contribution Communication 2022. Available at https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf [accessed August 2023]

[145] United Nations (1992) United Nations Framework Convention on Climate Change. Available at https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf [accessed August 2023]

Doha Amendment to the Kyoto Protocol[146]

From 2013–20 Australia worked towards emissions targets under the Doha Amendment to the Kyoto Protocol. The legally binding commitment from Australia was to limit average annual emissions over this period to 99.5% of 1990 levels.

[146] United Nations (2012) Doha Amendment to the Kyoto protocol. Available at http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2020/18.html?stem=0&synonyms=0&query=%222016%20atnif%2024%22%20or%20%22Doha%20Amendment%20to%20the%20Kyoto%20Protocol%20(Doha,%208%20December%202012)%22 [accessed August 2023]

Glossary

Abbreviation/ Term	Full Name	Description
2-pass process	n/a	Projects require two distinct approvals before being officially confirmed as on the pipeline. 1. Outlines realistic options to deliver the project. The first pass approval is intended to provide sufficient level of information on the benefits, costs and risks of the project, to enable an informed in-principle decision on the investment. 2. Will provide a fully developed business case for the proposal that received in-principle approval. The second pass approval is intended to provide further detail on the business case that contains risk mitigation strategies, detailed cost estimates, appropriate funding options, and prove assurance that the planning, consideration, and consultation required for successful implementation has been undertaken.
Active transport	n/a	Involves walking, cycling and other physical modes of travel to work, school, parks, cafes, shops, a friend's house or other destinations.
ANAO	Australian National Audit Office	Specialist public sector practice providing a full range of audit and assurance services to the Parliament and Commonwealth public sector entities and statutory bodies.
ARCCECE	Australian Research Council Centre of Excellence of Climate Extremes	An international research consortium of five Australian universities and a network of outstanding national and international partner organisations supported by the Australian Research Council, to lead vital climate science and predictions, train climate science leaders and prepare Australia for future climate extremes.
ARTC	Australian Rail Track Corporation	A Commonwealth owned organisation responsible for standardising interstate railway.
ATAP	Australian Transport Assessment and Planning Guidelines	Provide a comprehensive framework for planning, assessing and developing transport systems and related initiatives. They are a key part of processes for ensuring that proposals to improve transport systems in Australia: • Achieve jurisdictional objectives • Provide maximum net benefit and value for money to the community. Users of the Guidelines include government departments and agencies, private firms, individuals, industry bodies and consultants
BCR	Benefit Cost Ratio	An indicator showing the relationship between the relative costs and benefits of a proposed project, expressed in monetary or qualitative terms.
BITRE	Bureau of Infrastructure and Transport Research Economics	A part of the DITRDCA, BITRE provides economic analysis, research and statistics on infrastructure and transport to inform both Australian Government policy development and wider community understanding.
BRP	Bridges renewal program	A sub-program being delivered as part of the IIP under part 7 of the NLT Act. Funds projects which upgrade or replace bridges. Projects are nominated by state, territory and local governments, and are reviewed by the Department.
Budget	n/a	Contains estimates of federal government income and spending for the upcoming fiscal year and also recommends funding levels for the federal government.
CCP	Commuter Car Parks	Was a $660 million commuter car park fund for the delivery of 47 car parks near train stations.

Abbreviation/ Term	Full Name	Description
CFFR	Council on Federal Financial Relations	Is responsible for overseeing the financial relationship between the Commonwealth and state and territory governments.
CGRGs	Commonwealth Grants Rules and Guidelines	The CGRGs establish the Commonwealth grants policy framework, contain the key legislative and policy requirements, and explain the better practice principles of grants administration. They apply to grants administration performed by ministers, accountable authorities, officials and third parties who undertake grants administration on behalf of the Commonwealth.
CHMPs	Cultural Heritage Management Plans	A written report prepared by a Heritage Advisor. It includes results of an assessment of the potential impact of a proposed activity on Aboriginal cultural heritage.
COAG	Council of Australian Governments	Peak intergovernmental forum in Australia that initiates, develops and monitors policy reform of national significance and the future wellbeing of all Australians which require co-operative action by Australian governments.
Cost escalation	n/a	Annual index measuring price movements in construction components such as wages, material cost and equipment hire rates. Projects funded under the IIP are required to include an agreed escalation allowance in the calculation of total project cost.
COVID-19	Coronavirus Disease 2019	The disease or illness caused by infection with the SARSCoV-2 virus.
DIRD	Department of Infrastructure and Regional Development	Previous name for DITRDCA
Election commitment	n/a	Public statements made by party leaders that pledge their political party will take action if they were to form government.
ERC	Expenditure Review Committee	Considers new expenditure and revenue proposals during and between Budget updates, including gender responsive budgeting. Decisions of the ERC require the endorsement of the Cabinet.
FFAS	Federation Funding Agreement Schedule	Funding agreement replacing NPAs.
FFR Act	Federal Financial Relations Act 2009	Provides a standing appropriation for the Commonwealth to provide financial support for the delivery of services by the states: • the provision of GST, to be used by the states for any purpose • national specific purpose payments, to be spent by the states on certain service delivery sectors • national health reform payments, to be spent by the states in accordance with the National Health Reform Agreement • payments relating to housing, homelessness and housing affordability matters, to be spent by the states in accordance with specified agreements.
HFE	Horizontal fiscal equalisation	Financial transfers between the Australian Government and the state and territory governments through division of GST under advice of the Commonwealth Grants Commission.
HVSPP	Heavy Vehicle Safety and Productivity Program	A sub-program being delivered as part of the IIP under part 3 of the NLT Act. Funds projects which improve the productivity and safety outcomes of heavy vehicle operations. Projects are nominated by state, territory and local governments, and are reviewed by the Department.

Abbreviation/ Term	Full Name	Description
IA	Infrastructure Australia	Independent statutory body providing independent research and advice to all levels of government.
IGA FFR	Intergovernmental Agreement on Federal Financial Relations	Aims to improve the quality and effectiveness of government services by providing the states with increased flexibility in the way they deliver services to the Australian people, clarify the roles and responsibilities of each level of government and improve accountability for the outcomes achieved. Contains National Agreements that define the objectives, outcomes, outputs and performance indicators. It also clarifies the roles and responsibilities that guide the Commonwealth and the states in the delivery of services in key sectors.
IIP	Infrastructure Investment Program	The program of funds allocated to projects for the Commonwealth's investment in land transport infrastructure under the NLT Act. Not to be confused with the $120 billion infrastructure investment pipeline, which includes a number of non-IIP programs and projects such as LRCI and equity investments (Inland Rail, Western Sydney Airport and National Intermodal Corporation)
IMS	Infrastructure Management System	The system used to manage Project payments and reporting.
Indigenous Participation CoP	Indigenous participation Community of Practice	An avenue for facilitating open dialogue between states and territories to share in their experiences in delivering infrastructure projects with IIPs.
Intermodal	n/a	Involves using multiple modes of transportation (e.g., rail, ship, aircraft, and truck), without any handling of the freight itself when changing modes.
IPP	Indigenous Participation Plan	Sets out an employment and supplier-use participation target within the project's locality, and a plan to engage relevant Indigenous stakeholders.
IPPRS	Indigenous Procurement Policy Reporting Solution	Designed to support Commonwealth agency staff to manage and report on contracts that are subject to the requirements of the Indigenous Procurement Policy (IPP)
ITMM	Infrastructure and Transport Minister Meeting	The forum for Commonwealth, state and territory ministers with responsibility for infrastructure and transport to meet and consider infrastructure and transport issues. Part of the National Cabinet governance structure.
ITSOC	Infrastructure and Transport Senior Officials Committee	Supports ITMM by considering and providing advice on proposals before ITMM consideration, approving items on behalf of ITMM that are outside ITMM's key priorities (excluding those required by legislation) and considering industry views to inform ITMM
LIWAP	Local Indigenous Working Age Population	Based on ABS Census data
LRCI	Local Roads and Community Infrastructure	A program which provides funds to councils for use on local roads and community infrastructure. Despite providing funding for roads, it is not part of the IIP as it was established under the Financial Framework (Supplementary Powers) Act, not the NLT Act. LRCI is a terminating program.
LTIGWG	Land Transport Infrastructure Governance Working Group	A working group between the Commonwealth and the States to collaborate on the design and implementation of the Statement and Frameworks to effectively inform future Commonwealth infrastructure investment priorities.

Abbreviation/ Term	Full Name	Description
MMR	Mandatory Minimum Indigenous Participation Requirements	Minimum levels of Indigenous employment and supplier use that must be met over the life of the contract. MMR targets apply to either the contract awarded (contract-based) or a contractor's Australian-based organisation (organisation-based).
MYEFO	Mid-Year Economic and Fiscal Outlook	Part of the Budget decision-making process to provide an update on the economic environment and for allocating public resources to the Government's policy priorities, usually occurring in the middle of a financial year or end of the calendar year.
National Cabinet	n/a	A forum for the Prime Minister, Premiers and Chief Ministers to meet and work collaboratively.
NDC	National Determined Contributions document	A country's self-defined national climate action plan to cut emissions and adapt to climate impacts, required under the Paris Agreement.
NGO	Non-government organisation	Non-profit organisations that set up and operate independently from local, state or international governments
NIAA	National Indigenous Australians Agency	Works in partnership to enable the self-determination and aspirations of First Nations communities. They lead and influence change across government to ensure Aboriginal and Torres Strait Islander peoples have a say in the decisions that affect them.
NLT Act	National Land Transport Act 2014	Provides the mechanism for approval and payment of Commonwealth funding aimed at improving the performance of land transport infrastructure across Australia.
NLTN	National Land Transport Network	The National Land Transport Network is a network of nationally important road and rail infrastructure links and their intermodal connections. The Network is determined by the Minister under Part 2 of the NLT Act.
NoA	Notes on Administration	The administrative requirements to support the implementation of Projects under this Agreement, as updated from time to time
NSW ICAC	NSW independent Commission Against Corruption	An independent organisation to protect the public interest, prevent breaches of public trust and guide the conduct of public officials in the NSW public sector.
P50	n/a	Probabilistic statistical model that provides a 50 per cent likelihood that the project cost will not be exceeded
P90	n/a	Probabilistic statistical model that provides a 90 per cent likelihood that the project cost will not be exceed.
Pandemic	n/a	The wide and rapid spread of a new disease, often a respiratory virus. COVID-19 was declared a pandemic by the WHO on 11 March 2020.
PC	Productivity Commission	The Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.
PCR	Project Closure Report/ Post Completion Report	Summarises the results of a project
Pipeline	n/a	The Australian Government's commitment to a 10-year $120 billion infrastructure pipeline, while ensuring land transport infrastructure projects we deliver are nationally significant, and nation-shaping projects.

Abbreviation/ Term	Full Name	Description
PPR	Project Proposal Report	Under the NPA, states and territories are required to provide a Project Proposal Report, which sets out the information required for DITRDCA and the Australian Government to assess projects and approve the release of funding.
R2R	Roads to Recovery sub-program	A sub-program being delivered as part of the IIP under part 8 of the NLT Act. All councils receive a fixed annual allocation of funds based on population and local road length. Councils decide what projects to spend their funding on, within eligibility criteria set by the Commonwealth and requirements for councils to maintain own source roads funding to mitigate potential cost shifting.
ROSI	Roads of Strategic Importance Program	An initiative that established funding and broad principles to identify and fund IIP projects that improve key freight routes and which help connect regional businesses to local and international markets. ROSI is a category of projects in the IIP, but not normally considered a sub-program.
RR	Remote Roads Upgrade Pilot Program	A pilot program which targets road improvements for regional communities, and addresses significant deficiencies on key regional and rural roads that limit community access, pose safety risks and impact the economic development of the surrounding area.
Schedule	n/a	Each state has a separately agreed Schedule under the NPA which indicates the levels of funding the Australian Government intends to provide for land transport infrastructure investments. These schedules are updated following the Federal Budget each year, and as required.
Shovel ready	n/a	At the stage where workers can be employed and construction can begin.
SoE	Statement of Expectations	Through issuing a Statement of Expectations, Ministers are able to provide greater clarity about government policies and objectives relevant to a statutory authority, including the policies and priorities it is expected to observe in conducting its operations.
States	States and Territories	Australia's states and territories
TEI	Total estimated investment	The sum of the historical cost in such asset and the estimated incremental investment for such asset.
The Commission/ CGC	The Commonwealth Grants Commission	Provides advice to the Australian Government on the distribution of GST revenue among the states and territories.
The Department/ DITRDCA	The Department of Infrastructure, Transport, Regional Development, Communications and the Arts	The Australian Government department which manages the IIP.
The Framework	The Indigenous Employment and Supplier-Use Infrastructure Framework	Applies to new road and rail construction projects and sets out a whole-of-government approach to increase opportunities for Indigenous job-seekers and businesses' participation in the delivery of Australian Government-funded land transport infrastructure projects.
The IPS	Infrastructure Policy Statement for Land Transport Infrastructure	A document currently being developed by the Australian Government that is intended to guide infrastructure investment decisions.

Abbreviation/ Term	Full Name	Description
The National Agreement/ Closing the Gap	The National Agreement on Closing the Gap	The objective of the National Agreement on Closing the Gap is to enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians.
The Network Determination	National Land Transport Network Determination 2022	The legislation under which the Minister determines the National Land Transport Network.
The NPA	National Partnership Agreement on Land Transport Infrastructure Projects 2019–2024	An agreement between the Commonwealth and jurisdictions for the delivery of land transport infrastructure projects. The NPA governs Commonwealth funding administered under the NLT Act. The current NPA covers the period 2019–2024 and is due to expire in July 2024. A review of the current NPA is underway, ahead of negotiating the new NPA with states and territories in late 2023 and early 2024.
The Review	Independent Review of the National Partnership Agreement on Land Transport Infrastructure Projects 2019–2024	An independent review is required under Part 6, Clause 72 of the NPA, to be completed approximately 12 months prior to the expiry of the NPA on 30 June 2024.
Strategic Review of the IIP	The Strategic Review of the Infrastructure Investment Program	An independent Strategic Review of the Infrastructure Investment Program, which will provide advice to the Government as to whether federally funded infrastructure projects meet government policy objectives and deliver benefits for Australians.
ToR	Terms of Reference	The terms of reference for this NPA Review.
UCF	Urban Congestion Fund	Established in the 2018–19 Budget, the stated objective of the UCF was to 'support projects to remediate pinch points, improve traffic safety and increase network efficiency for commuter and freight movements in urban areas'.
VAGO	Victorian Auditor-General's Office	An independent officer of the Victorian Parliament to provide assurance to Parliament and the Victorian community about how effectively public sector agencies are providing services and using public money.
VAHC	Victorian Aboriginal Heritage Agency	Created as part of the Aboriginal Heritage Act 2006. The VAHC appoints Registered Aboriginal Parties to manage and protect Cultural Heritage on their country. 11 Traditional Owners, chosen by the Minister for Aboriginal Affairs, form the VAHC. All members live in Victoria and have knowledge of Aboriginal Cultural Heritage.
VFI	Vertical Fiscal Imbalance	The difference between the shares of revenue collection and of expenditure among various tiers of governments

ISBN: 978-1-922879-06-6

Final Report of the Independent Review of the National Partnership Agreement on Land Transport Infrastructure Projects, September 2023, digital and print.

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Land Transport Infrastructure Division, Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Email: LTIDCommunications@infrastructure.gov.au