

**NATIONAL PARTNERSHIP AGREEMENT ON  
IMPLEMENTATION OF MAJOR INFRASTRUCTURE PROJECTS  
IN NEW SOUTH WALES, 2009-2014**

AN AGREEMENT BETWEEN

**THE COMMONWEALTH OF AUSTRALIA**

AND

**NEW SOUTH WALES**

This Memorandum of Understanding provides the basis for a collaborative partnership approach between the Commonwealth and New South Wales for implementing major infrastructure projects.

This Memorandum of Understanding will apply from the date of execution to 30 June 2014.

## PART A PRELIMINARIES

1. The Australian Transport Council's Vision for Australia's Transport Future<sup>1</sup> is:

*Australia requires a safe, secure, efficient, reliable and integrated national transport system that supports and enhances our nation's economic development and social and environmental well-being.*

2. A significant part of realising this vision lies in the implementation of the Nation Building Program and funding for major infrastructure projects.

3. This Memorandum of Understanding (MOU) provides funding directly to New South Wales for major infrastructure projects, including from the Building Australia Fund and under the *Nation Building Program (National Land Transport) Act 2009*. This MOU sets out Commonwealth investment priorities. Many of the Commonwealth's investment priorities closely reflect State and Territory priorities and interests. It is the Commonwealth and State and Territory Governments' joint responsibility to ensure that these investments effectively address the following:

- 3.1 effective and safe operation of the National Land Transport Network through integration of transport and land use planning at a network level; and
- 3.2 supply chain and urban transport priorities.

4. The delivery of the MOU is implemented cooperatively by the Commonwealth and New South Wales in accordance with:

- 4.1 provisions of the *Nation Building Program (National Land Transport) Act 2009* (the Program Act);
- 4.2 provisions of the *Nation-Building Funds Act 2008* (the Funds Act);
- 4.3 this Memorandum of Understanding (MOU); and
- 4.4 the Notes on Administration as issued from time to time.

5. This MOU is not a written agreement between the Commonwealth and New South Wales relating to the provision of Commonwealth funding for any particular project and therefore is not a 'funding agreement' for the purposes of section 4 of the Program Act. It is an agreement for the purposes of indicating the level of funding the Commonwealth intends to provide to New South Wales for major infrastructure investments and the arrangements applying to this funding.

6. Where this MOU or the Notes on Administration are inconsistent with the terms of either the Program Act or the Funds Act, the Parties acknowledge that the terms of the relevant Act will prevail.

7. Funding for New South Wales for projects listed in the Schedules will be provided through National Partnership project payments under the new framework for Commonwealth-State

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<sup>1</sup> Australian Transport Council, Joint Communiqué, 2 May 2008, p.7.

financial relations. To this extent this MOU is a Partnership Agreement and sets out the agreement between the Commonwealth and New South Wales for National Partnership project payments, specifies the amount of funding to be provided by the Commonwealth to New South Wales from acceptance of this variation to 30 June 2014, and arrangements applying to this funding from commencement of this MOU.

8. Nothing in this MOU precludes the Parties from implementing a supplementary agreement for specific parts of the National Land Transport Network. The Commonwealth may also provide funding for land transport purposes to New South Wales outside the terms of this MOU and the Program Act.

#### **Parties to this MOU**

9. This MOU is between:

THE COMMONWEALTH OF AUSTRALIA (the Commonwealth)

and

THE STATE OF NEW SOUTH WALES (New South Wales)

10. In entering this MOU, the Parties recognise the importance of sustaining overall investment in more efficient and better integrated land transport linkages aimed at improving Australia's economic growth and international competitiveness.

11. The Parties are committed to working together cooperatively and actively to implement this MOU.

#### **Term of the MOU**

12. This MOU commences upon acceptance of the Variation by the Parties and will expire on 30 June 2014, or earlier if agreed to in writing by the Parties. This MOU supersedes any bilateral agreement in place between the Commonwealth and New South Wales for the implementation of the AusLink National Land Transport Plan.

#### **Objectives**

13. This MOU aims to support the transport policy objectives adopted by the Australian Transport Council to achieve its Vision for Australia's Transport Future. These objectives are:

- 13.1 **ECONOMIC:** To promote the efficient movement of people and goods in order to support sustainable economic development and prosperity;
- 13.2 **SAFETY:** To provide a safe transport system that meets Australia's mobility, social and economic objectives with safety for its user;
- 13.3 **SOCIAL:** To promote social inclusion by connecting remote and disadvantaged communities and increasing accessibility to the transport network for all Australians;
- 13.4 **ENVIRONMENTAL:** Protect our environment and improve health by building and investing in transport systems that minimise emissions and consumption of resources and energy;

- 13.5 **INTEGRATION:** Promote effective and efficient integration and linkage of Australia's transport system with urban and regional planning at every level of government and with international transport systems; and
- 13.6 **TRANSPARENCY:** Transparency in funding and charging to provide equitable access to the transport system, through clearly identified means where full cost recovery is not applied.

#### **Outcomes**

14. This MOU will contribute to the following outcomes for Commonwealth funded road and rail network:

- 14.1 increased infrastructure capacity and efficiency;
- 14.2 improved safety and security;
- 14.3 improved transport productivity on nationally strategic and export-oriented freight corridors;
- 14.4 improved reliability of travel on interstate and inter-regional corridors;
- 14.5 consistency with viable long-term economic and social outcomes and with the obligation to current and future generations to sustain the environment; and
- 14.6 consistency with strategic planning and urban transport outcomes.

#### **ROLES AND RESPONSIBILITIES OF EACH PARTY**

15. To realise the objectives and commitments in this MOC, each Party has specific roles and responsibilities, as outlined below.

#### **Arrangements for Project Planning and Delivery**

16. The Commonwealth recognises that primary responsibility for planning, delivery and review of projects specified in the Schedules rests with New South Wales.

17. New South Wales acknowledges the Commonwealth's right to participate in project planning, delivery and review to ensure that its policy objectives and accountability responsibilities are satisfied. New South Wales agrees to cooperate fully with the Commonwealth in the conduct of its participation.

18. The Parties acknowledge that in certain circumstances involving a third Party (or Parties), there may be a need to negotiate an additional agreement(s) related to the project to ensure that the interests of all Parties are adequately recognised. These circumstances include:

- 18.1 New South Wales has chief responsibility for the planning and delivery of a project, but the project substantially affects the responsibilities or operations of a third party (or Parties), such as another State(s) and/or rail track manager(s); or
- 18.2 a third party, such as a local government authority, the Australian Rail Track Corporation and/or another rail track manager(s), has chief responsibility for the planning and delivery of a project in New South Wales.

### **Project Cost Estimation**

19. New South Wales agrees to adopt the principles contained in the Best Practice Cost Estimation Standard prepared for the Commonwealth and to use P50 and P90 values when preparing cost estimates for projects to which this MOU applies. Guidance on the principles and preparation of P50 and P90 estimates are provided in the Notes on Administration.

### **Private Financing**

20. The Commonwealth and New South Wales agree to explore the scope for increased private sector financial participation in meeting future land transport infrastructure requirements in relation to projects to which this MOU applies.

21. The potential for private sector participation should be considered for all projects listed in the Schedules, commensurate with the size and nature of those projects. Further detail is set out in the Notes on Administration.

22. Where the estimated capital cost of a project is greater than \$50 million (which is the threshold agreed by the Council of Australian Governments as part of the Public Private Partnership Guidelines) consideration of public private partnership (PPP) procurement options must be undertaken.

**PART B PROJECTS SUBJECT TO THE NATION BUILDING PROGRAM  
(NATIONAL LAND TRANSPORT) ACT 2009 (SCHEDULE A)**

**Interpretation**

23. The terms used in Part B of this MOU, unless otherwise specified, have the meanings given to them in the Program Act and the Notes on Administration.

24. In this Part:

- 24.1 'Annual Program' means the document provided by the Commonwealth at the time of the Commonwealth Budget setting out a budget for eligible expenditure on the projects listed at the time in Schedule A;
- 24.2 'Commonwealth Minister' means the Minister administering the Program Act as amended from time to time;
- 24.3 'National Land Transport Network' means the National Land Transport Network, as in force from time to time, that is determined by the Commonwealth Minister under Part 2 of the Program Act as amended from time to time;
- 24.4 'Project' means a project listed in Schedule A; and
- 24.5 'Total Project Funding' means the total amount of funding that the Commonwealth agrees to make available for projects specified in Schedule A for the period 1 July 2008 to 30 June 2014. It does not include maintenance funding.

**Project Approvals, Funding Conditions and Application of Commonwealth and State/Territory Requirements**

25. The Commonwealth Minister will consider all projects specified in Schedule A to this MOU in accordance with the requirements of the Program Act, and will approve projects that meet the requirements of that Act. The Parties recognise that funding will only be provided to projects which are approved in accordance with the Program Act.

26. Projects which are approved under the Program Act must comply with the mandatory conditions imposed under that Act, with any conditions determined by the Commonwealth Minister under section 27 of that Act, and other Commonwealth and State/Territory laws where applicable. This includes the Building and Construction Industry Occupational Health and Safety Accreditation Scheme established under the provisions of the *Building and Construction Industry Improvement Act 2005*. Further guidance on compliance with other laws and requirements is covered in more detail in the Notes on Administration.

27. New South Wales agrees to adhere to the National Code of Practice for the Construction Industry and the associated Australian Government Implementation Guidelines as applied from time to time and as advised by the Commonwealth.

28. Breaches of any mandatory funding condition specified in the Program Act or in an instrument made under section 27 of that Act may result in funding specified in the project approval instrument for the project being withheld or a refund being sought by the Commonwealth in accordance with section 26 of that Act.

### **Asset Ownership and Maintenance**

29. The Parties recognise that ownership and responsibility for those parts of the National Land Transport Network that are within New South Wales's boundaries will remain with New South Wales.

30. Commonwealth road maintenance funding will be provided to New South Wales on condition that New South Wales:

- 30.1 maintains National Land Transport Network roads within New South Wales to an agreed level of service, which is equal or superior to the current level of service; and
- 30.2 supplies agreed data on the condition and usage of, and maintenance expenditure on, the Network to enable the Commonwealth to meet its accountability and reporting requirements.

### **Notification of Impacts on Network**

31. The Parties recognise that the effective and safe operation of the National Land Transport Network serves both national and State/Territory objectives. Accordingly, the Parties recognise the need to:

- 31.1 integrate transport and land use planning at a network level to ensure the safe and effective operation of the National Land Transport Network, and appropriate interaction between this Network and State/Territory arterial road and local road networks; and
- 31.2 to the degree that it is within their control avoid excessive additions to the traffic load on the National Land Transport Network from State/Territory arterial or local road systems.

32. New South Wales agrees to:

- 32.1 inform the Commonwealth of any proposed amendments to planning schemes or new State/Territory Planning Policies (particularly for metropolitan areas and major regional centres) which might materially affect the operation of the National Land Transport Network so that the Commonwealth has an opportunity to express a view on any proposed amendment or policy; and
- 32.2 make appropriate use of State/Territory Government powers, including under relevant State/Territory legislation, to ensure the impact of any project or planning scheme on the National Land Transport Network is consistent with its intended use in the National Land Transport Network.

### **Acknowledgement and Publicity**

33. In all publications, promotional and advertising materials, public announcements and activities in relation to a project, New South Wales must acknowledge the financial support that New South Wales has received from the Commonwealth, in the manner set out in the Notes on Administration or as approved by the Commonwealth prior to its use.

34. The Commonwealth reserves the right to publicise and report on the funding awarded to New South Wales for a project. The Commonwealth may do this by including New South Wales's name in media releases, general announcements about funding and in annual reports, the amount of the funds given to New South Wales and the title and a brief description of the project.

35. Clauses 33 and 34 apply for the Term of this MOU and for a period of 7 years from the date of its expiration.

### **Performance benchmarks and indicators**

36. Subject to the provision of funding by the Commonwealth, New South Wales is to meet the following performance benchmarks:

- 36.1 efficient implementation and delivery of monthly and annual reporting, in accordance with the Notes on Administration; and
- 36.2 effective delivery of projects listed in Schedule A.

37. Achievement of these performance benchmarks may be assessed for New South Wales with reference to the following performance indicators:

- 37.1 timely completion and provision of audited financial statements and audit reports, other annual reports, and monthly progress reports for projects listed in Schedule A;
- 37.2 projects listed in Schedule A are able to meet targets for completion within estimated costs and timeframes; and
- 37.3 specific transport performance indicators for each project as agreed in writing by the Parties in conjunction with the project proposal and approval process described in the Notes on Administration. The Parties agree that, wherever appropriate and practical, specification of transport performance indicators for each project will have particular regard for the program objectives of improving efficiency, safety and reliability.

### **Implementation Plan**

38. The Parties will agree to a 5 year Implementation Plan under this MOU, which will set out the proposed funding allocations and timelines for each project listed in Schedule A. The Implementation Plan will include key information for each project including start date, planning completion, construction commencement, construction completion and project close. The Implementation Plan will be updated annually.



39. The Parties agree to manage the projects in Schedule A and the associated annual cashflow requirements in accordance with the processes below and as set out in the Notes on Administration.

- 39.1 New South Wales will provide to the Commonwealth, no later than 28 February each year, an expenditure budget for each project in Schedule A for each of the remaining years covered by Schedule A or to completion of the project whichever is later;
- 39.2 the Commonwealth will provide to New South Wales each year, at the time of the Commonwealth Budget, an Annual Program setting out a budget for eligible expenditure by New South Wales on the projects listed at the time in Schedule A;
- 39.3 the Annual Program will, to the extent possible within Commonwealth Budget constraints, reflect the New South Wales Government funding requirements for the projects listed in Schedule A and be in accordance with proposed project timetables;
- 39.4 New South Wales will, in light of the announced New South Wales Government budget and on receipt of the advice of the Annual Program from the Commonwealth, provide to the Commonwealth an indicative funding commitment to individual projects in Schedule A; and
- 39.5 the indicative funding commitment by New South Wales will reflect, to the extent possible, the funding requirements of the projects listed in Schedule A and the agreed project timetables determined for projects.

40. This process will commence in 2009.

#### **Phasing of Contributions**

41. The Parties acknowledge that nothing in this MOU obliges either Party to make any payments on its contribution to a project in advance of the other or in advance of costs being incurred. Recognising that flexibility is required in planning project cash flows, if either Party contributes in excess of, or less than, the annual amount required by this MOU, then the relevant amount will be credited or debited for reconciliation over the life of each project. The objective is to ensure that project cash flows allow the most cost effective project delivery.

#### **Reporting**

42. New South Wales agrees to comply with the reporting requirements as set out in the Notes on Administration and any conditions contained in a determination to the project approval instruments issued under the Program Act in accordance with guidance provided in the Notes on Administration.

43. New South Wales agrees at the conclusion of each project to provide a financial acquittal and a completion report summarising performance and outcomes including performance against scope, schedule, budget and quality. The completion report should articulate lessons learnt and any opportunities for improvement in current practices including organisational

strategies, business, project planning and delivery. The Notes on Administration provide guidance on these reports.

#### **Project Evaluation**

44. The Parties agree to cooperate in the joint evaluation of projects so as to facilitate both performance review of this MOU and continuous improvement of investment decision making. Evaluation of projects completed under this MOU will, in particular, focus on establishing the extent to which project performance indicators have been achieved, and reviewing the accuracy of demand forecasts and cost estimates used in the assessment of the project prior to commencement.

45. The Notes on Administration provide guidance on project evaluation.

#### **Commonwealth Contribution**

46. Subject to the other parts of this MOU, the Commonwealth agrees to make available to New South Wales Total Project Funding of up to \$6036.48 million for projects specified in Schedule A for the period 1 July 2009 to 30 June 2014. This total funding amount is to be applied only to projects set out at Schedule A unless the Commonwealth agrees in writing that it may be applied to other projects. It does not include maintenance funding.

47. The Commonwealth may, at its discretion, increase Total Project Funding and, if it does so, the Commonwealth will advise New South Wales of the adjustment in writing and seek New South Wales's agreement to any conditions that apply in writing. This correspondence will form an amendment to this MOU.

48. Funds for individual projects specified in Schedule A will not become available until a project is approved in accordance with the Program Act.

49. Annual road maintenance funding will be determined each year, in part, by application of a formula based on lane length, total traffic volumes and heavy vehicle traffic volumes on the National Land Transport Network.

#### **New South Wales Contribution**

50. New South Wales agrees to contribute funding from its own revenue for the projects, and on the terms, specified in Schedule A. For the purposes of this MOU, own revenue includes all Commonwealth general revenue assistance including GST revenue but does not include Commonwealth National Partnership payments to and through New South Wales.

51. New South Wales agrees to maintain expenditure from its own source revenue on the National Land Transport Network and agrees to supply agreed data to enable the Commonwealth to meet its accountability and reporting requirements. The Notes on Administration provide guidance on the type and form in which the data is to be provided by New South Wales to the Commonwealth.

### **Eligible Project Costs**

52. Commonwealth funding may only be directed towards meeting eligible costs in relation to a project. The Parties agree that for purposes of this Part, and unless otherwise agreed in writing at the time of defining the project scope or subsequently, 'eligible project costs' include:

- 52.1 direct costs, such as planning, public consultation, environmental assessment, design, land acquisition, construction and traffic management of the project;
- 52.2 costs of meeting any conditions imposed on the project under Commonwealth or State/Territory law;
- 52.3 costs of project public recognition and publicity including any ceremonies connected to progress on the project; and
- 52.4 the costs of, or arising from, any legal action relating to projects in Schedule A that is not due to New South Wales failing to properly administer tender processes and supervise and manage relevant contracts.

53. Unless agreed otherwise in writing at the time of defining the project scope or subsequently, 'eligible project costs' do not include:

- 53.1 any component of the oversight and network administration costs of any State agency;
- 53.2 the cost of artworks or elaborate aesthetic features associated with a project; or
- 53.3 any costs associated with sections of road or rail that might be bypassed by a project and cease to be part of the National Land Transport Network.

### **Variations to Projects and Funding**

54. The Parties recognise that project particulars may vary as project proposals are further developed and refined, or if there are variations to a project's scope, cost or timing.

#### Increases in Project Costs

55. The Parties agree that variations in the cost and the timing of delivery of a project will be managed as follows:

- 55.1 The Commonwealth's funding contribution to a number of projects is capped at a specified dollar amount as set out in Schedule A. Generally this is for packages of works or where the Commonwealth is making an initial contribution to a project and costs can be contained within the funding limit. In other instances where the Commonwealth's funding contribution is capped, New South Wales will fund the remainder of the project's cost.
- 55.2 For projects that are listed in Schedule A as Nation Building Program projects, where the Commonwealth's funding is not capped at a specific dollar amount, subject to consideration, the Commonwealth will provide 50 per cent towards further funding requirements capped at the P90 pre-tender cost estimate.
- 55.3 For projects that are listed in Schedule A as Continuing (AusLink) projects, where the Commonwealth's funding contribution is not capped at a specific dollar amount, subject to consideration, the Commonwealth will consider providing additional funding for the projects in accordance with the conditions specified for each project.

56. The Parties note that where the Commonwealth increases its contribution to an individual project as set out in clauses 55.2 or 55.3, or during the period to 30 June 2014, this increased Commonwealth funding will need to be offset from within the Total Project Funding being made available to New South Wales in that period. This offset may be achieved by changes in the delivery timetable or decreases in the Commonwealth funding contribution for projects in Schedule A.

57. Before any consideration is given to increasing funding for projects, the Parties will reconsider the scope and construction design being proposed for a project to reduce project costs. Such reconsideration will include, in particular, the likely implications of the proposed change for the objectives identified for a project and the project's costs and benefits.

58. As a last resort in the event of project costs significantly exceeding the current cost estimate, both Parties reserve the right to withdraw funding for a project prior to awarding the construction contract. Payments to affected tenderers that are necessary in the event of either Party withdrawing funding from a project will be shared by the Parties and agreed on a case by case basis.

59. In the case of the Commonwealth, the Commonwealth may choose to reallocate the funding to another project or projects in New South Wales or in another State or Territory. In the case of New South Wales, New South Wales may choose to allocate the funding to other projects that may not be on the National Land Transport Network.

#### Treatment of Project Cost Savings

60. Where the final project cost to government is less than the amount(s) which the Commonwealth, or in the case of a jointly funded project the Commonwealth and New South Wales, have agreed to make available, the savings (including savings resulting from private sector participation in the project) will be treated in the following way:

- 60.1 for fully funded Commonwealth projects the savings will be applied, as agreed between the Parties, as a Commonwealth contribution to another project or projects listed in Schedule A; and
- 60.2 for projects to which each Party has committed a specified funding contribution, the savings will be divided on a pro-rata basis and be respectively applied, as agreed between the Parties, to another project or projects included in Schedule A.

#### Project Delays

61. In the event that the Parties are unable to agree on a timetable for a project or if significant delays occur against the agreed timetable for preparing the project for construction (for reasons that are within the control of the State), the Parties reserve the right, prior to the construction contract being awarded, to review their funding contributions and to reallocate that funding:

- 61.1 in the case of the Commonwealth to another project or projects including in another State or Territory; and
- 61.2 in the case of New South Wales to other projects that may not be on the National Land Transport Network.

#### **Recording Variations in Commonwealth Project Funding**

62. Where there is a variation to a project approval instrument issued under the Program Act reflecting variations in Commonwealth project funding, this will be confirmed in writing with New South Wales and be recorded in the Annual Program provided by the Commonwealth to New South Wales each year at the time of the Commonwealth Budget.

63. Where circumstances such as project cost increases, savings, delays or cancellations give rise to the possible need for action, the Parties agree to consult to ensure that alternative actions are explored and considered and that both Parties are aware of any consequences resulting from particular courses of action.

64. If, after consultation, either Party proposes to take action to vary or withdraw its financial assistance for a project, the Party concerned will formally advise the other Party in writing of its intention to take such action. The matter will then be subject to a 30 day period during which the other Party can make further submissions or the Parties can agree to reconvene discussions prior to the decision being formally advised in writing and/or publicly announced.

## **PART C**

### **OTHER MAJOR INFRASTRUCTURE PROJECTS (SCHEDULE B)**

#### **Interpretation**

65. The terms used in this Part, unless otherwise specified, have the meanings given to them in the *Nation Building Funds Act 2008* and the Notes on Administration.

66. In this Part:

- 66.1 'Building Australia Fund' projects means the projects specified in Schedule B;
- 66.2 'Total Project Funding' means the total amount of funding that the Commonwealth agrees to make available for projects specified in Schedule B for the period from the date of execution to 30 June 2014 inclusive;
- 66.3 'Project Plan' means a plan prepared for the purposes of clause 74 of this MOU;
- 66.4 'Project' means a project specified in Schedule B;
- 66.5 'Notes on Administration' means the Notes on Administration as issued from time to time; and
- 66.6 'Commonwealth funding' means funding provided for the purposes and conditions of the projects set out in Schedule B.

#### **Conditions of Funding**

67. Subject to any specific condition identified for a project in Schedule B, Commonwealth funding is provided to New South Wales for a project on condition that New South Wales:

- 67.1 acknowledges that Commonwealth funding for each specified project is capped at the amount set out for that project in Schedule B and that financial risk above the Commonwealth funding for a project in Schedule B rests with New South Wales;
- 67.2 meets all agreed milestones for the project;
- 67.3 agrees to maintain to a proper standard all infrastructure and assets constructed using Commonwealth funding provided to New South Wales;
- 67.4 agrees to ensure there is no substitution of capital effort from its own source revenue;
- 67.5 gives effect to each commitment made by New South Wales about a project specified in Schedule B, including any commitment in relation to contributions to be made by New South Wales to the project, including any made in project proposals for the project;
- 67.6 supplies data on the condition and usage of, and maintenance expenditure on, the asset on request by the Commonwealth (where relevant to projects in Schedule B), to enable the Commonwealth to meet its accountability and reporting requirements; and
- 67.7 complies with all other provisions and obligations in relation to the projects as set out in this Part.

68. New South Wales agrees to:

- 68.1 inform the Commonwealth of any proposed amendments to planning schemes or new State/Territory Planning Policies (particularly for metropolitan areas and major regional centres) which might materially affect the operation of the relevant project in Schedule B so that the Commonwealth has an opportunity to express a view on any proposed amendment or policy; and
- 68.2 make appropriate use of State/Territory Government powers, including under relevant State/Territory legislation, to ensure the impact of any project or planning scheme on the relevant project in Schedule B is consistent with its intended use.

#### **Acknowledgement and Publicity**

69. In all publications, promotional and advertising materials, public announcements and activities in relation to a project, New South Wales must acknowledge the financial support that New South Wales has received from the Commonwealth, in the manner set out in the Notes on Administration or as approved by the Commonwealth prior to its use.

70. The Commonwealth reserves the right to publicise and report on the project for which funding is awarded to New South Wales. The Commonwealth may do this by including New South Wales's name in media releases, general announcements about funding and in annual reports, the amount of the funds given to New South Wales and the title and a brief description of the project.

71. Clauses 69 and 70 apply for the Term of this MOU and for a period of 7 years from the date of its expiration.

#### **Performance benchmarks and indicators**

72. Subject to the provision of funding by the Commonwealth to New South Wales for projects specified in Schedule B, New South Wales is to meet the following performance benchmarks:

- 72.1 effective delivery of projects listed in Schedule B in accordance with agreed milestones; and
- 72.2 efficient implementation and delivery of monthly and quarterly reporting, in accordance with the Notes on Administration.

73. Achievement of these performance benchmarks may be assessed for New South Wales with reference to the following performance indicators:

- 73.1 timely completion and provision of audited financial statements and audit reports, and monthly progress reports for projects listed in Schedule B;
- 73.2 projects listed in Schedule B are able to meet targets for completion within estimated costs and timeframes; and
- 73.3 specific milestones for each project as agreed in writing by the Parties in conjunction with the agreed Project Plan described in clause 34 and the Notes on Administration.

#### **Project Plan**

74. For each project specified in Schedule B the Parties will agree to develop a Project Plan. The Project Plan will cover the period of funding and will include (but not be limited to):

- 74.1 a summary of the specified project, including locational references;
- 74.2 the timelines for the project including start date, planning completion, construction commencement, construction completion and project close;
- 74.3 the proposed funding allocations;
- 74.4 agreed detailed milestones to which payments will be linked, and the cost estimates for these milestones based upon P90 values; and
- 74.5 identification of the major risks and proposed mitigation strategies to successful delivery of the specified project.

The Project Plan must be updated at least annually, or as required. Further information on the requirements of the Project Plan is set out in the Notes on Administration.

75. The Parties agree to manage the projects in Schedule B and the associated annual cashflow requirements in accordance with the processes below and as set out in the Notes on Administration. New South Wales will provide to the Commonwealth, no later than 2 February each year, an expenditure budget linked to agreed milestones for each project in Schedule B for each of the remaining years covered by Schedule B or to completion of the project whichever is later.

76. This process will commence in 2009.

#### **Phasing of Contributions**

77. The Parties acknowledge that nothing in this Part obliges either Party to make any payments on its contribution to a project in advance of the other or in advance of costs being incurred in accordance with the Project Plan. Recognising that flexibility is required in planning project cash flows, if either Party contributes in excess of, or less than, the annual amount required by this Part, then the relevant amount will be credited or debited for reconciliation over the life of each project. The objective is to ensure that project cash flows allow the most cost effective project delivery.



78. New South Wales agrees to use and deal with any interest earned on Commonwealth funding received by the State for a specific project for that specific project as agreed with the Commonwealth.

79. New South Wales agrees to comply with the reporting requirements as set out in the Notes on Administration.

80. New South Wales agrees at the conclusion of each project to provide a financial acquittal and a completion report summarising performance and outcomes including performance against scope, milestones, budget and quality. The completion report should articulate lessons learnt and any opportunities for improvement in current practices including organisational strategies, business, project planning and delivery. The Notes on Administration provide guidance on these reports.

#### **Project Evaluation**

81. The Parties agree to cooperate in any joint evaluation of projects.

#### **Commonwealth Contribution**

82. Subject to the other parts of this MOU and to available appropriations, the Commonwealth agrees to make available to New South Wales Total Project Funding capped at \$2160 million for the projects specified in Schedule B for the period from date of execution to 30 June 2014. This total funding amount is to be applied only to the nominated projects set out at Schedule B and comprises amounts capped for each individual nominated project.

#### **New South Wales Contribution**

83. New South Wales agrees to contribute funding from its own revenue for the projects, and on the terms, specified in Schedule B. For the purposes of this Part, own revenue includes all Commonwealth general revenue assistance including GST revenue but does not include Commonwealth National Partnership payments to and through New South Wales.

#### **Eligible Costs**

84. Commonwealth funding may only be directed towards meeting the eligible costs of each project set out in Schedule B. Subject to any specific limitation in relation to a particular project set out in Schedule B, eligible costs include capital expenditure relating to the creation or development of infrastructure. Expenditure which is of a recurrent nature relating to running costs cannot be financed from the Commonwealth funding.

#### **Variations to Projects and Funding**

85. The Parties recognise that project particulars may vary as project proposals are further developed and refined, or if there are variations to a project's scope, cost or timing.

### **Treatment of Project Cost Savings**

86. Where the final project cost to government is less than the amount(s) which the Commonwealth, or in the case of a jointly funded project the Commonwealth and New South Wales, have agreed to make available, the savings (including savings resulting from private sector participation in the project) will be treated in the following way:

- 86.1 for fully funded Commonwealth projects the Commonwealth will consider the application of the savings, as agreed between the Parties and subject to statutory and other limitations, as a Commonwealth contribution to another project or projects listed in Schedule B; and
- 86.2 for projects to which each Party has committed a specified funding contribution, the savings will be divided on a pro-rata basis and, subject to statutory and other limitations, be respectively applied, as agreed between the Parties, to another project or projects included in Schedule B.

### **Consultation**

87. Where circumstances such as project savings, delays or cancellations give rise to the possible need for action, the Parties agree to consult to ensure that alternative actions are explored and considered and that both Parties are aware of any consequences resulting from particular courses of action.

88. If, after consultation, either Party proposes to take action to vary or withdraw its financial assistance for a project, the Party concerned will formally advise the other Party in writing of its intention to take such action. The matter will then be subject to a 30 day period during which the other Party can make further submissions or the Parties can agree to reconvene discussions prior to the decision being formally advised in writing and/or publicly announced.

## **PART D GOVERNANCE ARRANGEMENTS**

### **Principal Contact Officers**

89. The Principal Contact Officer for each Party is authorised to act for that Party in relation to this MOU, and is the first point of contact for the other Party in relation to any disputes arising under this MOU.

For the Commonwealth, the Principal Contact Officer is:

Executive Director  
Nation Building-Infrastructure Investment  
Department of Infrastructure, Transport, Regional Development and Local  
Government

For New South Wales, the Principal Contact Officer is:

Director  
Major Infrastructure  
New South Wales Roads and Traffic Authority

### **Dispute Resolution**

90. To prevent the escalation of a matter which could jeopardise either Party's adherence to this MOU, the Parties agree to advise and consult with each other to ensure that alternative actions and their consequences are considered. The Principal Contact Officers for each Party will attempt to resolve any dispute, in the first instance.

91. If the dispute cannot be resolved between the Principal Contact Officers, it may be escalated to be dealt with by the chief executive officers of the relevant Commonwealth and State/Territory agencies or their delegate(s).

92. If the matter in dispute cannot be resolved by the chief executive officers or their delegate(s), it may be referred by a Party to the Ministers responsible for this MOU.

### **Non-adherence**

93. Breaches of the terms of this MOU may result in Commonwealth funding specified in this MOU being withheld.

### **Variation of the MOC**

94. Any Party proposing variations will notify the other Party, and variations to the MOU will be made with the written agreement of the Parties.

**SCHEDULE A – Projects in New South Wales being funded as part of the Nation Building Program 2008-09 to 2013-14**

As in existing MOU.

**SCHEDULE B – Building Australia Fund Projects in New South Wales**

Project	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	Total Cth \$m	State/Terr Contribution \$m	Project Total \$m	Specific Conditions
	\$m	\$m	\$m	\$m	\$m	\$m				
Hunter Expressway	153	35	300	493	303	162	1,451	0	1,589	Funding is to be used for the construction of 40 kilometres of dual carriageway linking the F3 and the New England Highway near Branxton.
Kempsey Bypass (Frederickton) (Pacific)	100	40	124	131	223	618	618	0	618	Funding is to be used for the construction of 14.5 kilometres of a four-lane divided highway on the east of Kempsey and Frederickton, approximately 2.2 kilometres of bridging over the Maulay River floodplain; grade separated interchanges at South Kempsey and Frederickton; and the retention of the existing Pacific Highway as a local road.
West Metro (Next Steps)	91						91	0	91	Funding is to be used only for the engineering and design work for the development of the project.

**SIGNATURES**

Dated this 4 day of June 2009

The Parties have executed this MOU as follows:

Signed for and on behalf of the  
Commonwealth of Australia by

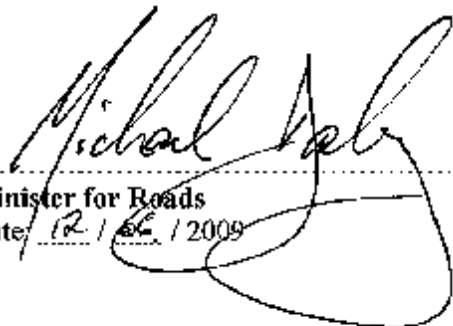


.....  
**[Minister for Infrastructure, Transport, Regional Development and Local Government**

Signed for and on behalf of the  
State of New South Wales by



.....  
**Minister for Transport**  
Date: 12/06/2009



.....  
**Minister for Roads**  
Date: 12/06/2009