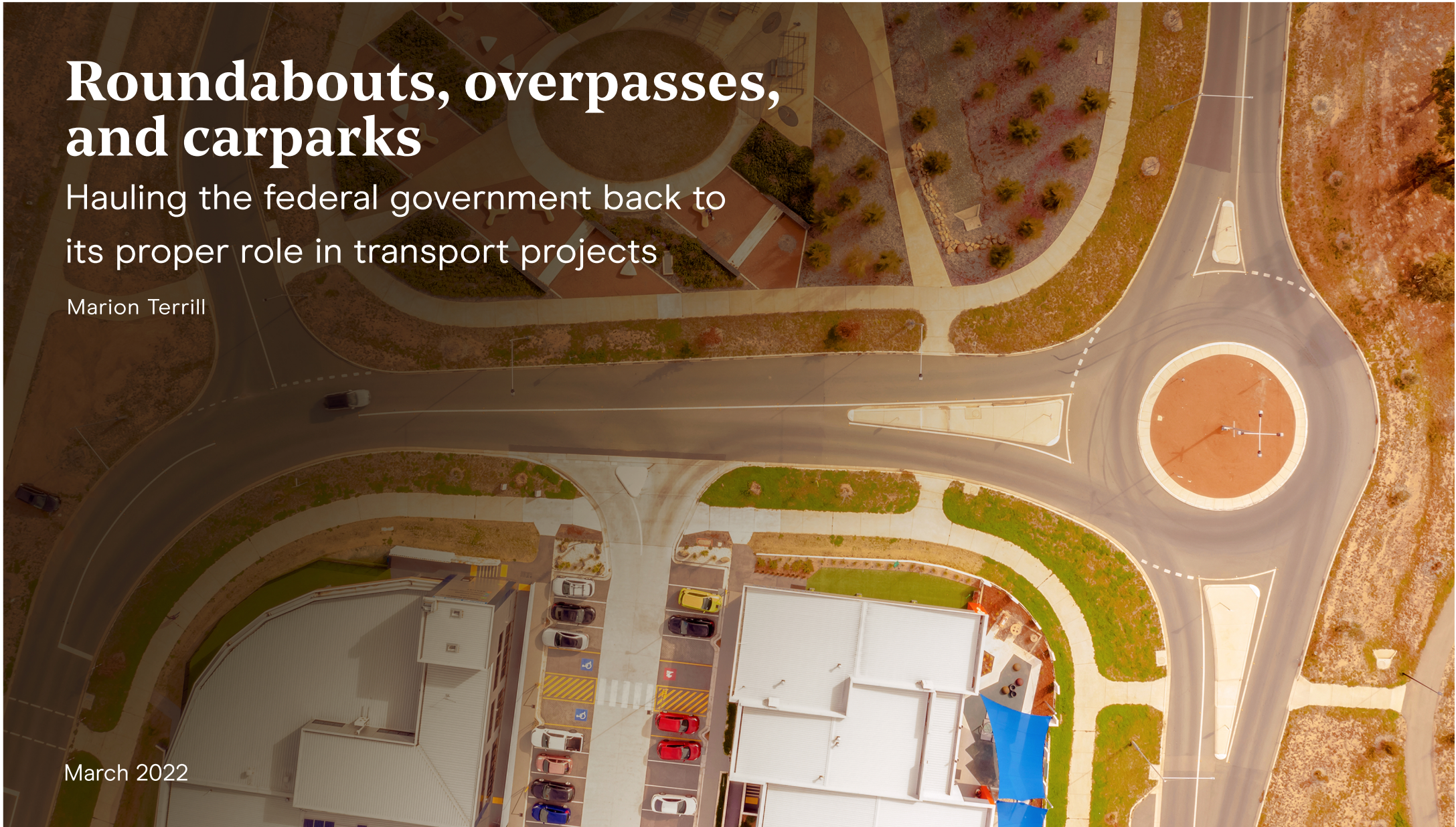


Roundabouts, overpasses, and carparks

Hauling the federal government back to
its proper role in transport projects

Marion Terrill

March 2022



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Overview

The golden sphere for pork-barrelling is surely transport projects. The winners are often concentrated in a single electorate, whereas the losers are taxpayers dispersed across the state or country. The pork-barrelling politicians can tell semi-plausible stories about jobs created and economic opportunities unleashed, and – best of all – there are great hard-hat photo opportunities.

But politicians are not supposed to spend public money to promote their private interest, including their private political advantage. This report shows that avoiding such conflicts of interest would be more straightforward if the federal government stuck to its national role, and did its due diligence before spending public money.

Pork-barrelling happens year-round, but there's more of it during election campaigns, when promises are often particularly poorly thought-through. In the 2019 federal campaign, only one of the Coalition's 71 transport promises valued at \$100 million or more had a business case approved by Infrastructure Australia; for Labor, it was two projects of 61.

Much of what the federal government spends on transport projects is outside the role that it has agreed with the states. The federal government is supposed to focus on nationally significant infrastructure on the National Land Transport Network, while locally-important roads and rail are the responsibility of state and local governments.

Federal pork-barrelling on transport projects favours electorally important states. Queensland and NSW, where federal elections tend to be won and lost, consistently receive more, and Victoria less, than can be explained by population, population growth, size of the road network, share of passenger or freight travel, or what it actually costs the state government to run the transport system.

The federal government compounds this inequity by funnelling much more discretionary transport funding to the most marginal seats, such as Lindsay in Sydney, Higgins in Melbourne, Moreton in Brisbane, Hasluck in Perth, and Boothby in Adelaide. The average marginal urban seat received \$83 million from the Urban Congestion Fund; the average safe Coalition seat received \$64 million, while for safe Labor seats it was \$34 million.

Voters should demand better. Whichever party wins the 2022 federal election should strengthen the transport spending guardrails. The government, whether Coalition or Labor, should require a minister, before approving funding, to consider and publish Infrastructure Australia's assessment of a project, including the business case, cost/benefit analysis, and ranking on national significance grounds. And the next federal government should also stick to its job: no more roundabouts, overpasses, or carparks, just nationally significant infrastructure on the National Land Transport Network.

Recommendations

1. Tighten legal guardrails

Whichever party wins the 2022 federal election should amend the *National Land Transport Act 2014* to:

- Restrict its funding role to roads and rail on the National Land Transport Network.
- Prohibit federal funding for a project worth \$100 million or more before the Minister for Infrastructure has considered Infrastructure Australia's evaluation of the project. The Infrastructure Australia evaluation should include the cost/benefit analysis and a priority ranking relative to other eligible projects, and it should be made public immediately following the decision.
- Prevent the Minister from declaring changes to the National Land Transport Network before Infrastructure Australia has evaluated the national significance of the proposed amendment, and published that evaluation.

2. Take a more responsible approach to infrastructure promises

Ministers and other politicians who make transport promises worth \$100 million or more should specify:

- how developed their cost estimate is;
- the range of possible cost outcomes they envisage could occur on the project; and
- the basis for their views on the project's benefits.

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1 Another election, another round of pork-barrelling

Pork-barrelling – targeting public funds to particular geographic areas for partisan political benefit – is nothing new, especially during federal election campaigns.¹ But it seems to be more overt these days.

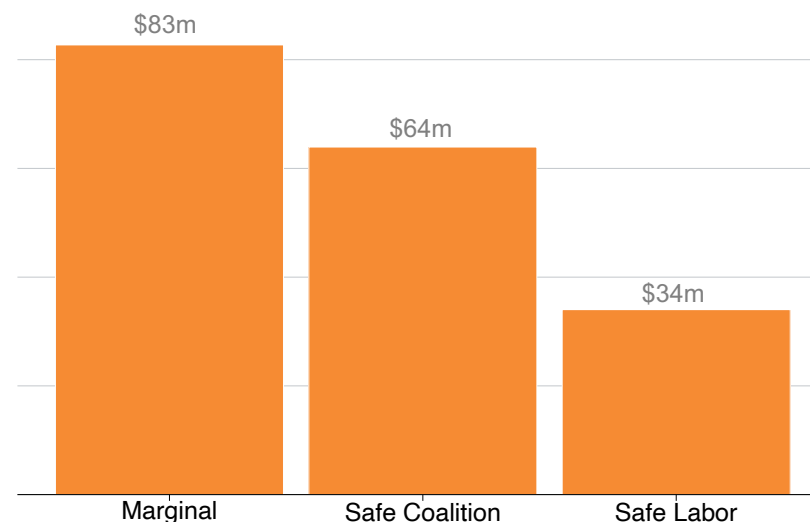
As Coalition Minister for Sport, Bridget McKenzie claimed she performed a ‘reverse pork-barrel’ by sending more money to Labor-held seats than if she’d followed Sport Australia’s recommendations. Deputy Prime Minister Barnaby Joyce doesn’t want a federal anti-corruption commission that could oppose ‘a political decision to bring some parity to people in regional areas’. Nationals MP Damian Drum says his party ‘will not stand by and watch more and more of the discretionary spending finding its way to the cities’. And Finance Minister Simon Birmingham dismissed criticism of commuter carpark pork-barrelling, on the grounds that ‘the Australian people had their chance and voted the Government back in’.

Voters in marginal seats are the beneficiaries of pork-barrelling in transport infrastructure. The most marginal electorates in the capital cities received dramatically more funding than seats safely held by Labor or independents under the \$4.9 billion Urban Congestion Fund – a program where funds are allocated by a process and criteria that are not publicly available (Figure 1.1). As well as wooing voters in marginal seats, where it really counts, the strategy appears to include demonstrating to future voters that the government keeps faith with past voters, in safe government seats.

Politicians do this because they believe it works.²

Figure 1.1: Discretionary spending from the Urban Congestion Fund goes mostly to marginal seats and safe Coalition seats

Average Urban Congestion Fund expenditure on electorates in capital city areas



Notes: Includes all electorates with a majority of their area in the ABS-defined Greater Capital City Area. Marginal electorates have a margin of 6 per cent or less, based on AEC two-party preferred votes. Spending is based on existing and committed UCF expenditure from 2019. When projects span multiple electorates, the full project value is credited to each electorate separately.

Sources: DITRDC (2022), ABS (2021a) and AEC (2019a).

1. Denmark (2000); and Gaunt (1999).

2. Leigh and McAllister (2021). Whether this belief is well-founded is less clear: Bowe (2020) and Leigh (2008).

Labor did it in office, too. In 2010, for example, the Auditor-General found an approval rate of 42 per cent in ALP seats compared to 18 per cent in Coalition seats for funding proposals under the Strategic Projects Component of the Regional and Local Community Infrastructure Fund.³ The scale was smaller back then, but the political bias all too recognisable.

Under two Labor and four Coalition terms of federal government since 2004, there has been a persistent pattern of sending more transport dollars to NSW and Queensland, where federal elections tend to be won and lost (Figure 1.2).

Further back, the Howard Government had its Regional Partnerships Program.⁴ The Keating Government had its Community, Cultural, Recreational, and Sporting Facilities Program.⁵ Fifty years earlier, Liberal MP Bert Kelly famously said of the Ord River irrigation scheme, ‘but there was an election looming, and at each election I can feel a dam coming on’.⁶ Back in 1882, Victorian Railways Minister Thomas Bent brought forward proposals for 825 miles of new railway lines, ‘so spread as to secure the greatest possible number of votes ... in a desperate attempt to secure support for his weakening government’, according to the official history of the State of Victoria.⁷

Given the long and bipartisan history of pork-barrelling, and given that transport infrastructure seems to be electorally popular, the question has to be asked: is it so bad? Isn’t it simply a case of a good local member lobbying successfully for their electorate?

This report argues otherwise, for three reasons.

3. ANAO (2010, pp. 48–49).

4. ANAO (2007).

5. ANAO (1993).

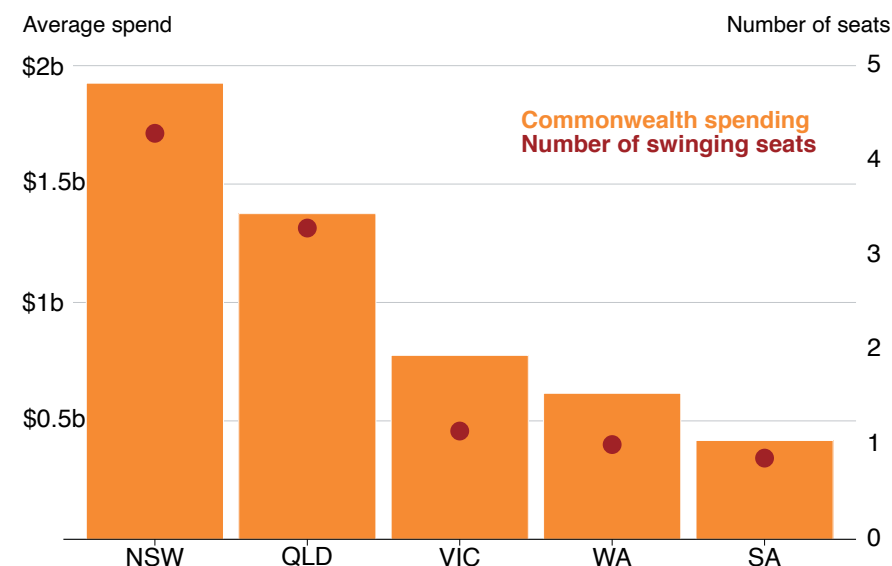
6. Kelly (2011).

7. Centenary Celebrations Council, *Victoria the first century: an historical survey*, Melbourne, 1934, cited in Wettenhall (1961, p. 3).

Figure 1.2: Federal transport money goes mostly to the states with the most marginal federal seats

Average federal government spend between 2004-05 and 2018-19

Average number of extra seats won in each state by the party that made an overall gain at the election (2004 to 2019)



Note: Federal Government road and rail spend is based on total spending since 2004-05.

Sources: BITRE (2020), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016) and AEC (2019a).

First, the process of making election promises for personal or party gain is an arms race: the more one party promises, the more the other promises. Over time, the level of spending on transport has increased, but the quality has not. Most of the promises are poorly considered, premature, and risky (Chapter 2).

Second, government decisions should be made in the public interest, and those making the decisions should not have a private interest, including a private political advantage, in the outcome of the decision. Pork-barrelling sends more money to electorally important states, and is used to woo voters and demonstrate the benefits that go to those in government-held seats (Chapter 3).

Third, much of the transport pork-barrelling is outside the federal government's proper role of supporting nationally significant infrastructure. The federal government spends money on roundabouts, overpasses, carparks, and many other projects that are not nationally significant. The distribution of GST funds is supposed to correct interstate inequities, but cannot address partisan federal government spending within states (Chapter 4).

The federal government should only fund nationally significant projects, and it should make such investment only after due diligence. This report makes the case.

2 Election promises are an arms race

In an election campaign, it seems that the more one side promises, the more the other promises (Section 2.1). Over time, those bigger promises turn into more spending on transport, and a bigger share of that spending committed during election campaigns (Section 2.2).

But most election promises are not properly scrutinised before the election, and once a party has won office, it often implements promises even if those promises are poor choices, and despite the likelihood that they will cost much more than anticipated (Section 2.3).

2.1 Major parties ratchet up each other's election promises

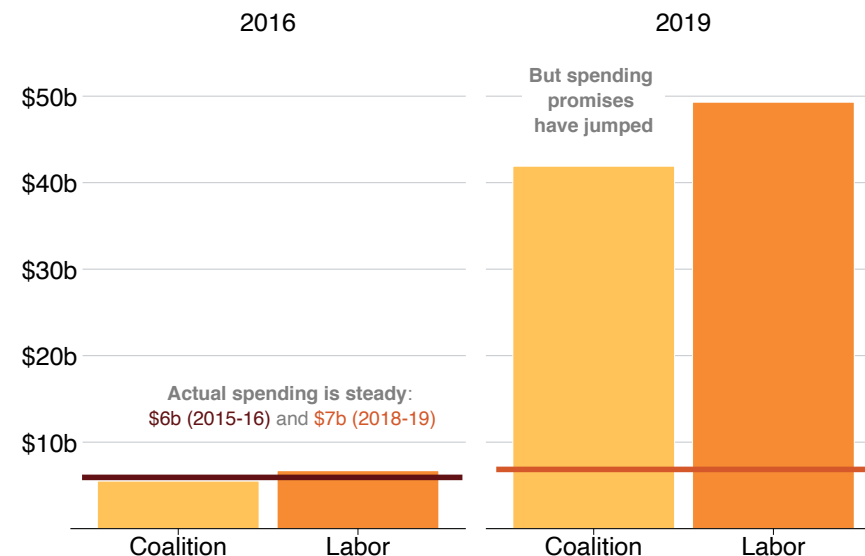
By their promises, political parties seek to differentiate themselves from one another. A larger fraction of the Coalition's promises have been for roads, and Labor's for rail, at the 2016 and 2019 federal elections, and at the state elections in Victoria in 2018 and NSW in 2019.

And the parties highlight their differences with iconic promises: at the 2016 federal election the Coalition promised hundreds of millions of dollars to the Townsville Ring Road and Inland Rail, while Labor made large commitments to Brisbane's Cross River Rail and the AdeLINK tram network extension.

But there's also plenty of overlap: in the 2019 federal election both major parties supported Melbourne Airport Rail Link, Western Sydney Airport Rail, and Adelaide's North-South Corridor.

The most striking similarity, though, is the quantum. Back in 2016, the Coalition promised \$5.4 billion worth of transport projects, compared to Labor's \$6.7 billion. That's about one year's worth of federal spending on transport (Figure 2.1). By 2019, both parties had increased the size of their promises to about six-to-seven years' worth of federal spending on transport, with the Coalition pledging \$42 billion to Labor's

Figure 2.1: Transport election promises jumped from one year's worth of spending in 2016 to about seven years' worth in 2019



Sources: Terrill (2016), Moran and Ha (2019), Commonwealth of Australia (2017) and Commonwealth of Australia (2020a).

\$49 billion. Even with no further commitments, it would take two terms of government to work through such a large suite of election commitments.

In 2019, both parties substantially boosted their promises less than a week before the federal election: the Coalition increased its commitment to Melbourne's East West Link to \$4 billion on the same day as Labor promised \$10 billion for the Melbourne Suburban Rail Loop.

2.2 Election promises now account for a bigger share of federal transport funding

Election promises are not the only transport spending that occurs during a term of federal government. Governments make many further commitments in each budget, mostly as funding contributions to state projects.

Once a project has been announced, it usually ends up being built: more than 80 per cent of projects initially valued at \$20 million or more and announced since 2001 have been seen through to completion.⁸

The impact of ratcheting up election promises is ratcheting up the share of transport spending that is committed during an election campaign. This can be in small, local projects. The number and cost of these projects has been on the rise over recent terms of government – especially in rural and remote areas, which tend to be safer Coalition seats (Figure 2.2).

Rising transport spending can also be seen at the aggregate level. The federal investment has been rising (Figure 2.3 on the following page), although not at the rate that election promises have been rising.

2.3 Election promises are poorly thought-through

The major parties pay lip service to the advice of Infrastructure Australia. Back in 2013, Warren Truss, the Minister who oversaw a major overhaul of the independent advisory body, said the government was determined to reform the way infrastructure decisions were made.⁹ In 2021, Shadow Infrastructure Minister Catherine King said that Labor, if elected, would commission an independent review of Infrastructure Australia to advise on how to reverse its current sidelined status.¹⁰

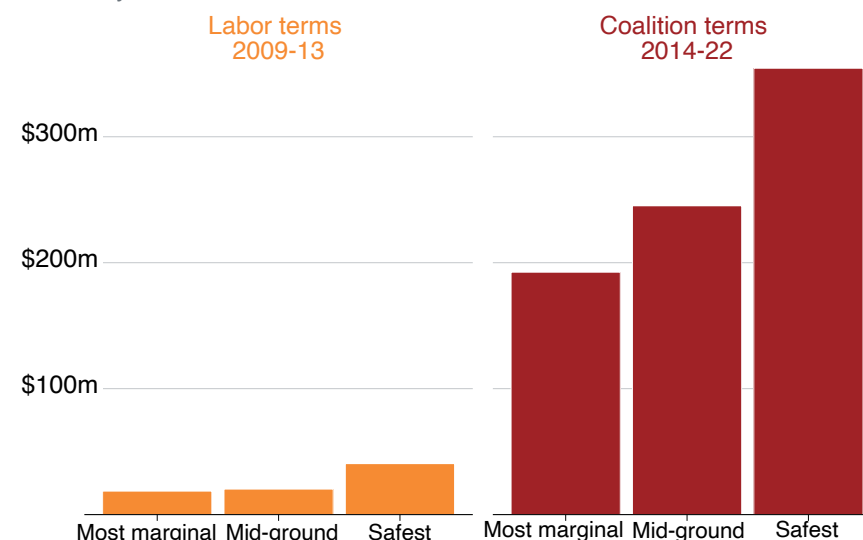
8. Terrill et al (2020, p. 19).

9. Truss (2013).

10. King (2021).

Figure 2.2: Federal spending on small, local transport projects has grown, especially in safe seats

Average yearly federal expenditure on transport projects worth less than \$10 million, by electorate, since 2009



Notes: Each bar includes a third of all seats. Yearly average spend is calculated by summing total spending during periods (where data is available) and dividing by length of terms for respective governments. The electorate margin is based on an average two-party-preferred margin across five elections between 2007 and 2019. Party seat allocations based on 2019 election outcomes. Transport spending includes funds allocated to projects from 2009-2022. When projects span multiple electorates, the full project value is credited to each electorate separately.

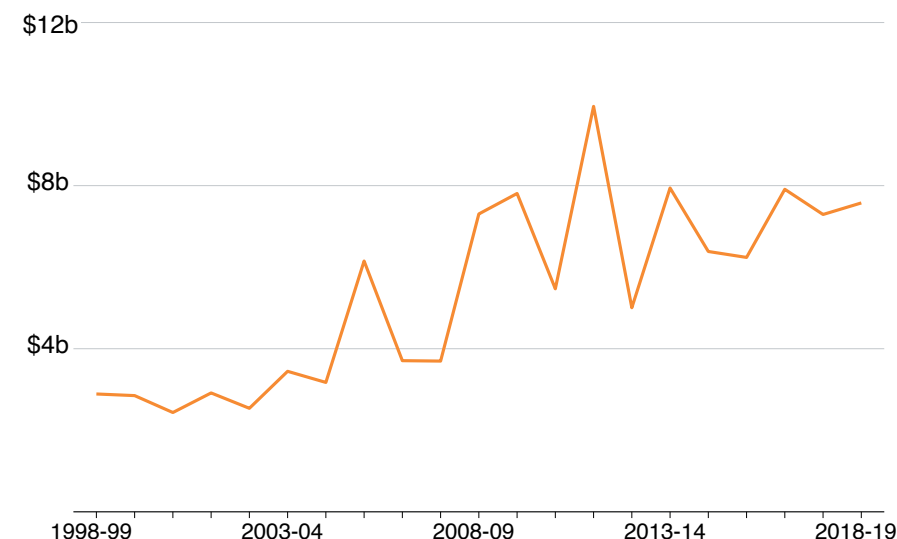
Sources: DITRDC (2022), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016), AEC (2019a) and AEC (2019b).

But in reality the major parties pay little attention to Infrastructure Australia's advice. In the 2016 election campaign, only four of the Coalition's 21 promised projects that were valued at \$100 million or more had a business case approved by Infrastructure Australia; for Labor, it was only one of 28.¹¹ In the 2019 campaign, only one of the Coalition's 71 projects valued at \$100 million or more had an approved business case, while for Labor, it was two projects of 61 (Figure 2.4 on the next page).

Bypassing Infrastructure Australia is not confined to election promises. Of 22 large projects to which the federal government has committed a contribution since 2016, only six had a business case published or assessed by Infrastructure Australia at the time of commitment. A further 14 were listed as 'initiatives' on IA's Priority List, indicating they 'have the potential to address a nationally significant problem or opportunity' but that their assessment had not yet been completed. The remaining two had not appeared on any Infrastructure Australia priority list at the time a state government committed to them.¹²

Politicians should not announce major projects which have yet to be assessed by Infrastructure Australia or a state infrastructure advisory body. It is unwise to specify solutions, let alone scope, cost, or timing, without a realistic idea of what is involved. In the sober assessment of Infrastructure NSW, doing so prematurely may lead to 'disappointment in the community and counterproductive pressure on project delivery teams'.¹³ Infrastructure Australia was set up so that politicians don't need to make premature announcements.

Figure 2.3: Federal transport spending is growing



Note: 2018-19 dollars. 'Transport spending' is the sum of federal expenditure on road and rail.

Sources: BITRE (2011) and BITRE (2020).

11. Terrill (2016, p. 4). Until 2020, the threshold for Infrastructure Australia assessment was that the federal government contribution sought was \$100 million or more.

12. Terrill et al (2020, p. 29).

13. Infrastructure NSW (2020).

Prematurely announced projects are more likely to have a cost overrun.¹⁴ About one-third of projects are announced prematurely, but these projects have been responsible for more than three-quarters of the cost overruns over the past two decades.¹⁵

Not only are prematurely announced projects more common, but they overrun by more, on average, than projects announced through a more orthodox process. Prematurely announced projects exceed their promised cost by an average of 35 per cent; this is more than twice the percentage overrun of projects that had their first cost announced upon or after commitment. And the more premature the announcement, the larger the cost overrun.¹⁶

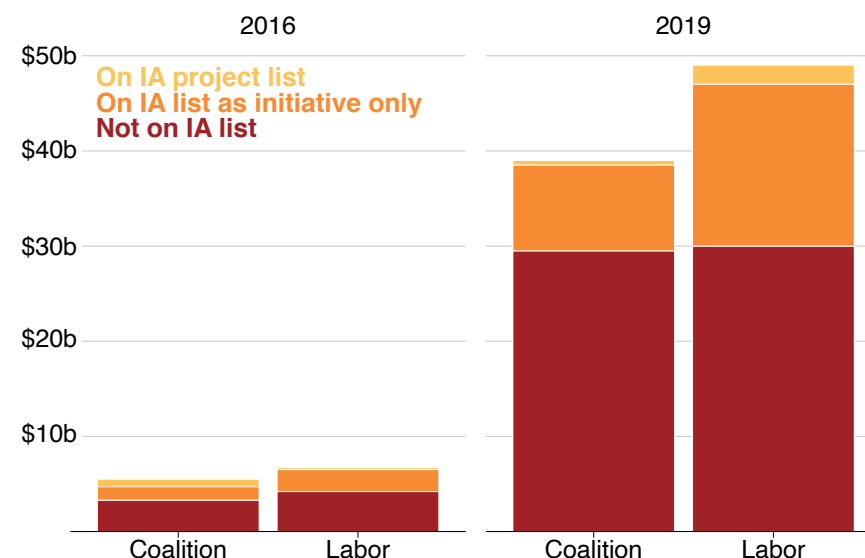
There would be no problem if Australia had a robust process for cancelling projects that, on closer examination, turned out not to be worth building, or not the best option available. But Australia doesn't have such a process. Once a project is promised in an election campaign, that tends to be it. The convention can be summed up in a departmental secretary's response to a critical report by the Auditor-General:

The Department's role is to implement the Australian Government's program of election commitments.¹⁷

Rather than trying to unravel such commitments, this report proposes ways to stop them being made in the first place.

14. Premature announcements are announcements by a government or opposition that they will build a project for a particular cost, despite the fact that the project does not yet have the regulatory and/or financial approvals that constitute a formal commitment and that are needed before it can actually proceed.
15. Terrill et al (2020, p. 19).
16. Ibid (p. 20).
17. This statement was made by the Secretary of the Department of Infrastructure in response to comments in the Auditor-General's report on the commuter carparks component of the Urban Congestion Fund: ANAO (2021, p. 95).

Figure 2.4: Election promises almost always ignore the advice of Infrastructure Australia



Note: This chart includes promises exceeding \$100m; IA does not evaluate projects below this value. As a result, values reported here differ slightly from the value of total promises as depicted in Figure 2.1.

Source: Terrill (2016) and Moran and Ha (2019).

3 Pork-barrelling is against the public interest

The standard the government sets for itself is the public interest. The current and previous prime ministers have specified that decisions should be ‘unaffected by bias or considerations of private advantage’ (Section 3.1). Ministers have established and refined Infrastructure Australia to improve the way infrastructure decisions are made (Section 3.2). But there’s not much the public can do if ministers transgress (Section 3.3).

For most decisions of government, the public cannot determine whether or to what extent bias and considerations of private advantage were in play. But when we can, the results are not edifying. Over the past 15 years, there’s been a systematic preference in transport spending for electorally important states (Section 3.4). And when governments set up discretionary funds, the distribution is very different to the distribution of funds according to transparent criteria based on economic or social merit (Section 3.5).

3.1 The public interest is a core tenet of the ministerial standards

It’s commonplace for prime ministers to pledge that they will govern for all Australians.¹⁸ Ministerial standards are an important articulation of what prime ministers mean by governing for all Australians.¹⁹ The ministerial standards require that ministers ‘ensure that official decisions made by them as ministers are unaffected by bias or irrelevant consideration, such as considerations of private advantage or disadvantage’.²⁰ The standards demand correct application of the rules,

18. For example, Scott Morrison said in 2019: ‘We will govern with strength and we will govern for all Australians’: Morrison (2019).

19. The current ministerial standards are close to identical to those of past prime ministers: Turnbull (2018); Abbott (2013); Gillard (2010); McKeown (2012).

20. Morrison (2018, p. 9).

and that the rules be applied consistently and even-handedly to eligible situations, under a ‘lawful and disinterested exercise of power’.²¹

3.2 Ministers say they want to serve the public interest

In the transport sphere, federal ministers, whether Coalition or Labor, have accepted and endorsed the notion that infrastructure should serve the economic and social goals of the country as a whole.

There is also, at least some of the time, a bipartisan understanding of the value of tying one’s hands to ward off the temptation to pork-barrel.

Infrastructure Australia was established in 2008 and overhauled in 2013, as an independent adviser to government on infrastructure decisions. When introducing the bill to establish Infrastructure Australia, the then-Minister Anthony Albanese spoke of ‘replacing neglect, buck-passing, and pork-barrelling’ with a new and better set of institutions.²² Similarly, when introducing the bill to overhaul Infrastructure Australia six years later, then-Minister Warren Truss asserted that the government was ‘not just getting on with infrastructure deals, we are also determined to reform the way infrastructure decisions are made’.²³

But unfortunately, in practice ministers often fail to take up clear opportunities to make infrastructure decisions in the economic and social interests of the country as a whole. Federal ministers ignore the assessment of relative spending needs and revenue-raising potential of the different states, as undertaken by the Commonwealth Grants

21. Ibid (p. 4).

22. Albanese (2008).

23. Truss (2013).

Commission, and they also ignore the option of setting up programs with objective funding formulas.

3.3 But there's no effective sanction for pork-barrelling

Only the Prime Minister has the authority to judge whether the ministerial standards have been breached. The standards state that ministers will be required to stand aside 'if the Prime Minister regards their conduct as constituting a *prima facie* breach of these Standards'.²⁴ It is in the interests of no prime minister to look too hard for breaches.

There are other legal barriers to pork-barrelling, but none has proven effective.

The *Commonwealth Electoral Act 1918* prohibits a person from providing, receiving, or offering any kind of benefit with the intention of influencing the vote of a person at a federal election. But the Act does not prohibit promising to spend public money to advance one's own political advantage – it's fine as long as all the politician is doing is making 'a declaration of public policy or a promise of public action'.²⁵ In 2019-20, the Director of Public Prosecutions prosecuted only one case under the *Commonwealth Electoral Act 1918*.²⁶

Weaker still is the another impediment to pork-barrelling: the *Public Governance, Performance, and Accountability Act 2013*. This Act states that a minister can approve a proposed expenditure only if he or she is satisfied that the expenditure would be an 'efficient, effective, economical, and ethical' use of the money.²⁷

There are no civil or criminal penalties under the Act for breaching the relevant duties. While public servants may face employment-related

sanctions, the same is not true for ministers.²⁸ There's little legal risk for ministers who breach the requirement for efficient, effective, economical, and effective use of public money.

Criminal prohibitions exist, but are little used. A minister can be prosecuted for abuse of public office under the *Criminal Code Act 1995*. The minister would need, in his or her official capacity, to seek to dishonestly obtain a benefit for him or herself or someone else.²⁹ It's not a crime that the Director of Public Prosecutions pursues often; only four charges of abuse of public office were pursued, two summary and two indictable charges, in the most recent year for which statistics are available.³⁰

There is also a common law offence of misconduct in public office, which could be pursued in NSW, Victoria, or South Australia, where common law offences continue to apply. Misconduct in public office can take many forms, including fraud and dishonest conduct, misuse of official information, misuse of public resources, and partiality, or the exercise of a public power for an improper purpose or an improper motive. Misconduct involving misuse or the exercise of a public power for an improper purpose is hard to prove because it turns on the minister's subjective state of mind, rather than the objective merits of his or her actions, although an improper state of mind can be inferred from the actions in question.

It must be proven that the minister (or other public officer) knew that his or her conduct was wrong, or was recklessly indifferent as to whether it was wrong or not. In the words of Justice Mahoney, former President of the NSW Court of Appeal,³¹

Public power has limits in addition to those imposed by the terms on which it is granted... [E]ven where the power derives from an office,

24. Morrison (2018, p. 10).

25. *Commonwealth Electoral Act 1918* (Cwlth), s. 326.

26. Director of Public Prosecutions (2020).

27. *Public Governance, Performance and Accountability Act 2013* (Cwlth), s. 71.

28. *Public Governance, Performance and Accountability Act 2013* (Cwlth), s. 30.

29. *Criminal Code Act 1995*, s. 142.2(1).

30. Director of Public Prosecutions (2018).

31. *Greiner v ICAC* (1992) 28 NSWLR 125, cited in Lusty (2014, p. 357).

for example, the office of Minister, that power must be exercised to achieve only the appropriate public purposes. If a Minister or officer exercises a public power merely to, for example, comply with the wishes of a political party... that exercise of power, though apparently within the terms of the legislation or office, is wrong and may constitute a crime. If he joins with others to do so, he may be guilty of a criminal conspiracy.

Justice Mahoney, in a subsequent article, provided several examples of misuse of public power, including exercising a public power to locate a public facility such as a school in a particular location, not because that was the best place to achieve its purpose, but to attract voters in that area or to avoid alienating voters who might otherwise vote unfavourably.³²

When ministers make little secret of what they're doing and why, it is unclear why the Director of Public Prosecutions does not bring criminal proceedings.

On the other hand, there is plenty of political upside. The louder the media and public criticism of pork-barrelling, the stronger the 'evidence' that ministers are delivering for their communities. Indeed, the criticism arguably *is* the communications strategy: what's the point of spending millions on a local project if the locals don't know about it?³³

3.4 In practice, federal spending favours electorally important states

A useful tool is available to federal ministers making funding allocations to states, in the form of the Commonwealth Grants Commission's distillation of the relative needs of each state to achieve comparable levels of resourcing among comparable populations across the nation.

32. Mahoney, 'The criminal liability of public officers for the exercise of public power' (1996) 3 The Judicial Review 17, cited in Lusty (2014, p. 357).

33. Denniss (2021).

The Commission, in consultation with the states, recommends what proportion of a funding pool would be required to give each state the capacity to deliver services at a similar level; it takes into account differences in the cost of service delivery, and differences in states' capacities to raise their own revenue.

The calculations are complex, but the result simple. To achieve what is known as 'fiscal equalisation', NSW would require 30 per cent of a given funding pool (specifically, of the GST pool), Victoria would require 24 per cent, and Queensland would require 22 per cent. The smaller states of WA, SA, and Tasmania would require 4, 9, and 4 per cent respectively. The ACT would require 2 per cent and the NT 4 per cent.³⁴

One of the main areas of spending and investments by states is roads and transport. The Commonwealth Grants Commission's distillation in this sphere incorporates a wide variety of factors, including population, population growth, the size of the road network, and how much freight and passenger traffic the network supports.

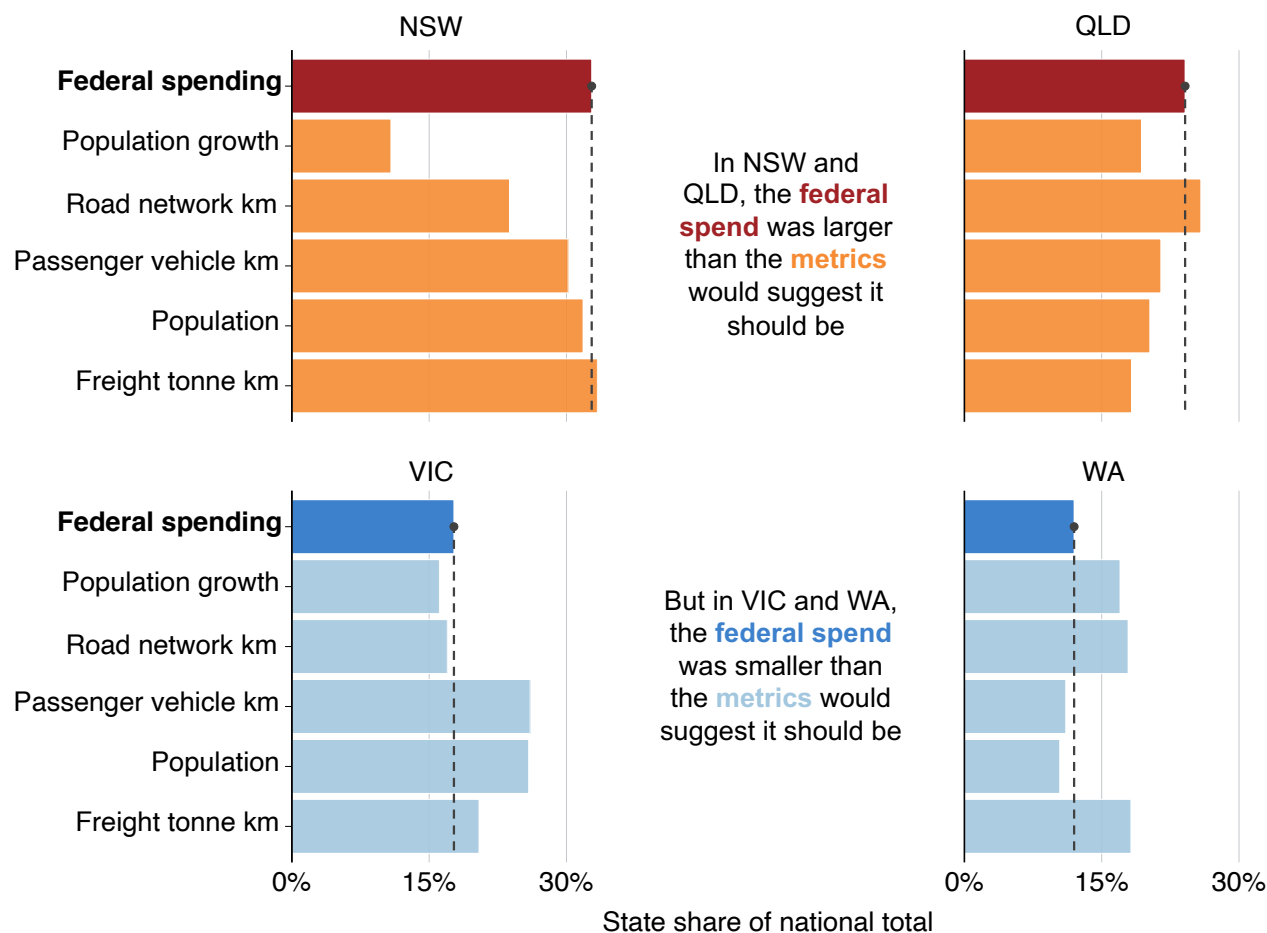
An even-handed treatment of the states by the federal government should allocate a given funding pool of payments for specific projects in proportions that are pretty close to this. A more generous allocation to one state in a given year should be counter-balanced by a lower allocation to that state the next year; even though infrastructure spending is 'lumpy', it should average out over a few years.

But that's not what happens.

34. Commonwealth Grants Commission (2021, p. xii).

Figure 3.1: Queensland and NSW get more federal transport money than would be expected on most measures

Per cent of national total



Notes: Grattan analysis. Federal Government road and rail spend is based on total spending since 1998-99. Passenger vehicle kilometres are based on 2019-20. Freight tonne kilometres are based on 2019-20. Road network kilometres are based on 2018. Population is based on March 2021 figures. Population growth represents the portion of population growth in respective states between March 1998 and March 2021.

Sources: BITRE (2020), ABS (2021b), ABS (2020), Council on Federal Financial Relations (2019), Commonwealth of Australia (2020b) and Commonwealth of Australia (2021).

Over the past 15 years, there has been a consistent pattern of the federal government funding Queensland and NSW more generously than would be expected, and Victoria less generously. Queensland received 24 per cent of the funding for transport infrastructure between 2007-08 and 2020-21, but has shares of the country's population, population growth, freight tonne kilometres, and passenger vehicle kilometres well below 24 per cent. NSW received 33 per cent of the money, but had less than 33 per cent of the country's population, population growth, road network kilometres, and passenger vehicle kilometres (Figure 3.1 on the preceding page).

Queensland is the third largest state in terms of population, with 20 per cent to Victoria's 26 per cent, but received 24 per cent of the federal transport money compared to 18 per cent for Victoria over the period.

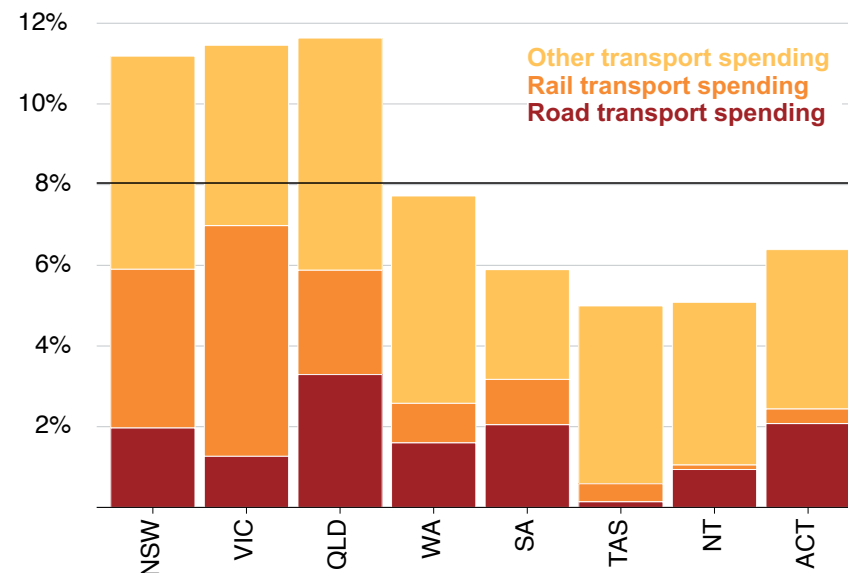
This allocation cannot be explained by any notion that Victoria spends less on transport. NSW, Victoria, and Queensland allocate very similar proportions of their budgets to transport (about 11.5 per cent), considerably above the allocation of the smaller states (less than 8 per cent) (Figure 3.2).³⁵

The resulting inequity is later mitigated, at least in part, by the distribution of the GST; because Victoria receives less tied funding for transport projects, it receives a larger share of the GST pool in the following three years. This mitigation process is considered more fully in Chapter 4.

Why do federal governments persistently spend more in NSW and Queensland than in Victoria? The most persuasive explanation is electoral considerations: NSW and Queensland are the states where federal elections tend to be won and lost (Figure 1.2).

Figure 3.2: Victoria spends as much of its budget on transport as Queensland or NSW

Per cent of state budgets allocated to transport-related expenses, 10-year average



Note: Within-state averages are based on the share of state expenditure on each category, averaged across the years 2010-11 to 2020-21.

Source: ABS (2021c).

35. ABS (2021c).

3.5 For small transport projects, objective and transparent funding criteria make a big difference

By their very nature, many roads and rail lines span two or more electorates. And it's not always the people who live or work right next to a new road or rail line who benefit the most – or at all – from upgraded connections between two suburbs or regions.

But when a small local transport investment can be attributed to a single or small number of electorates, it's generally true that the beneficiaries are readily identifiable.

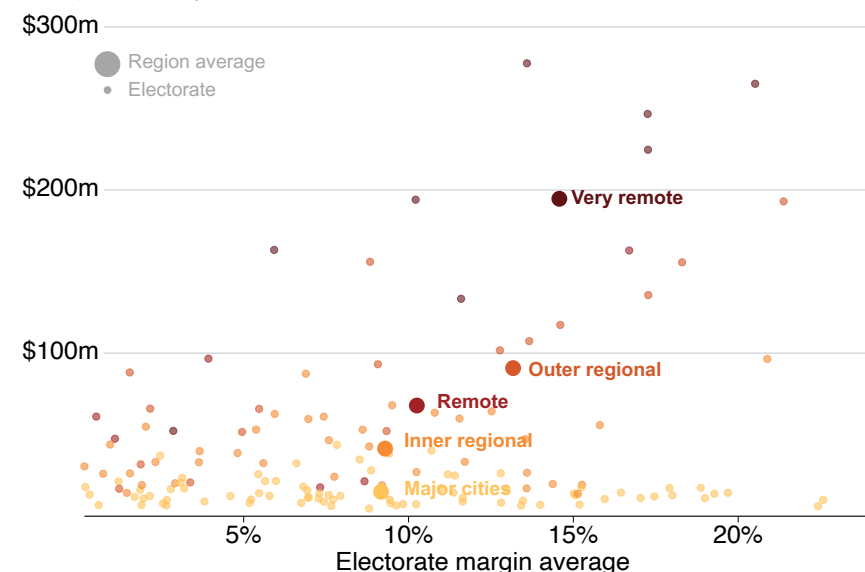
3.5.1 Funding allocations are even-handed where criteria are objective and transparent

Two long-standing transport programs allocate federal funds according to relatively objective criteria: the Black Spot program, and Roads to Recovery.

The Black Spot program helps fund road-safety initiatives. To be eligible for funding, initiatives must be shown to have a benefit-to-cost ratio of at least 2-to-1, and the site must have a history of at least three casualty crashes in the past five years. Eligible applications are considered by a state-based consultative committee, which recommends to the federal minister which projects should be funded.³⁶ The program was worth \$104 million in 2020-21.³⁷

Figure 3.3: Rural areas tend to benefit more from the two programs with the most objective and transparent funding criteria

Federal spending on Black Spot and Roads to Recovery projects worth less than \$10 million, 2009 to 2022



Notes: Two-party preferred data from AEC. Data from Labor term in 2007 and 2008 not available. Electorate margin average based on five elections between 2007 and 2019. Party seat allocations based on 2019 election results. Spending includes funds allocated to projects that have not begun construction at time of writing. When projects span multiple electorates, the full project value is credited to each electorate separately.

Sources: DITRDC (2022), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016), AEC (2019a) and AEC (2019b).

36. Department of Infrastructure, Transport, Regional Development and Communications (2022a).

37. Commonwealth of Australia (2021, p. 78).

Roads to Recovery helps fund maintenance of local roads. The federal government provides funding to all local councils or their equivalents, which are free to decide where to use the money. Allocations are distributed according to a formula based on population and road length, based on recommendations from state grants commissions.³⁸ The program was worth \$592 million in 2020-21.³⁹

Both programs tend to favour rural areas (Figure 3.3 on the preceding page).

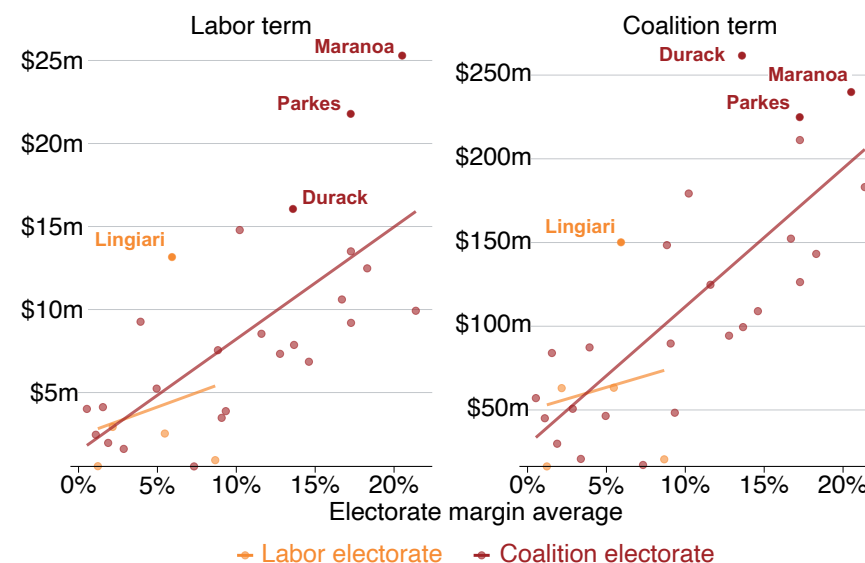
Funding under the Black Spot and Roads to Recovery programs has persisted under Labor and Coalition governments. Under Coalition governments, the funding for these programs has expanded dramatically, from \$283 million in 2013 to \$675 million in 2021.⁴⁰ The average annual allocation over three Coalition terms of government has been nine times that over the preceding two Labor terms.

The pattern of distribution of funds has been remarkably similar under Labor and Coalition governments. For rural and remote seats, the safer their electoral margin, the more funding they have tended to receive (Figure 3.4). Even though these safe rural seats are almost all safe for the Coalition, the share of funding they received under Labor governments was very similar to the share under Coalition governments.

There have been particularly high allocations in geographically large electorates: Parkes in NSW, Maranoa in Queensland, and Durack in WA. These more-remote seats are extremely safely held by Coalition parties.

Figure 3.4: Rural areas are just as likely to benefit under Labor as Coalition governments when funding criteria are objective and transparent

Federal spending in rural and remote electorates on Black Spot and Roads to Recovery projects worth less than \$10 million, 2009 to 2022



Notes: Two-party preferred data from AEC. Data from Labor term in 2007 and 2008 not available. Electorate margin average based on five elections between 2007 and 2019. Party seat allocations based on 2019 election results. Transport spending includes funds allocated to projects that have not begun construction at time of writing. When projects span multiple electorates, the full project value is credited to each electorate separately.

Sources: DITRDC (2022), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016), AEC (2019a) and AEC (2019b).

38. Department of Infrastructure, Transport, Regional Development and Communications (2022b).

39. Commonwealth of Australia (2021, p. 78).

40. The Black Spot component of this total grew from 8 per cent to 21 per cent over the period (based on expected project start dates).

The only Labor-held seat that has attracted a medium share of Roads to Recovery and Black Spot funds is Lingiari, the seat that covers all of the NT outside of Darwin – and that’s occurred under both Labor and Coalition governments.

3.5.2 Funding allocations are highly partisan where criteria are discretionary and opaque

The distribution of the federal government’s Urban Congestion Fund money plays out very differently to the distribution of Black Spot and Roads to Recovery funds.

The \$4.9 billion Urban Congestion Fund has attracted considerable interest since the Auditor-General published a report in 2021 on the \$660 million commuter carparks component of the fund. The report found that the process of allocation ‘included canvassing the Member of the House of Representatives for 23 electorates, as well as Coalition Senators or candidates for six electorates then held by the Australian Labor Party or Centre Alliance’.⁴¹

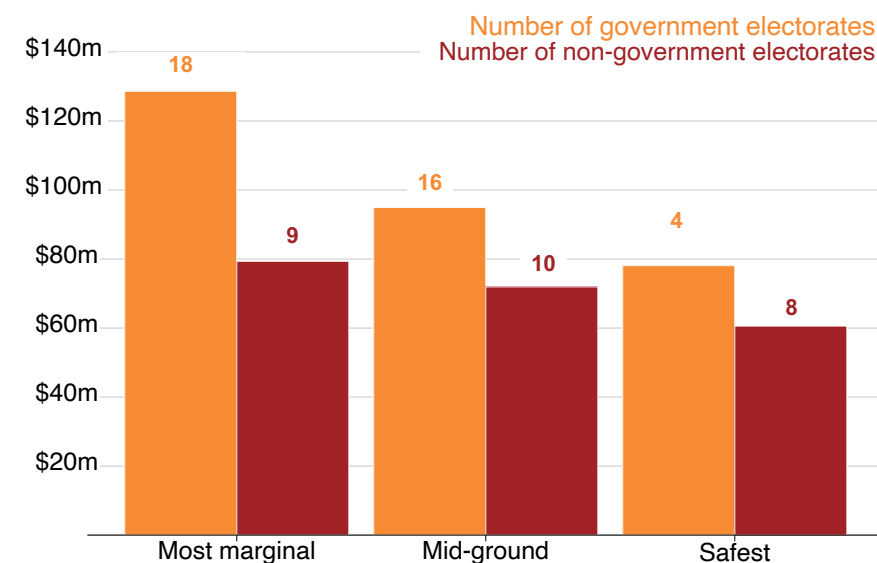
There are no criteria on the Urban Congestion Fund website to guide the allocation of the program’s funds. It is the clearest case of a slush fund on the federal government’s transport books.

Marginal seats clearly get a bigger share of the funds than safe seats (Figure 3.5). And seats held by a Coalition member attract a bigger share of the funds than seats held by Labor, the Greens, other minor parties, or independents. Ten per cent of the funds go to electorates outside the greater capital city boundaries, at the same time as numerous congested urban electorates get no funds.

In contrast, under the urban component of the Black Spot and Roads to Recovery programs, under both Labor and Coalition governments,

Figure 3.5: Discretionary funds go mainly to marginal electorates, especially if they’re in government hands

Average federal spend on Urban Congestion Fund projects



Notes: Includes all available data on UCF funding and commitments. Electorates are classified as ‘most marginal’, ‘mid-ground’ or ‘safest’ based on their two-party-preferred margin; each category includes a third of all Australian electorates. Electorates receiving UCF funding are over-represented in the ‘most marginal’ category. When projects span multiple electorates, the full project value is credited to each electorate separately.

Source: DITRDC (2022), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016), AEC (2019a) and AEC (2019b).

41. ANAO (2021, p. 10).

funding has been about as likely to go to safe seats as to marginal seats. And the allocation of urban funds under those programs has been largely neutral as whether it went to a seat held by a government or a non-government member, again under both Labor and Coalition governments (Figure 3.6).

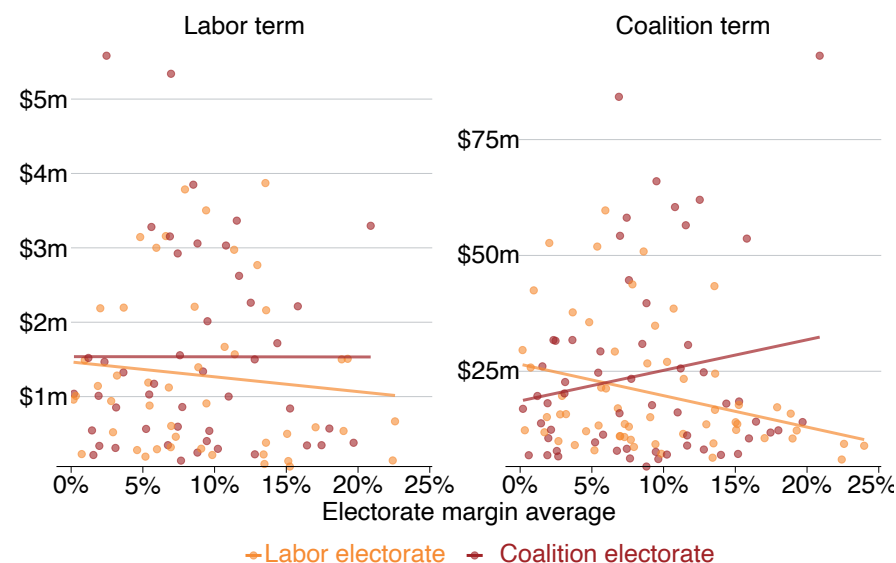
The Urban Congestion Fund is the clearest case of a slush fund, but that's not to say there isn't plenty of discretion in other programs too. The Infrastructure Investment Program is the largest funding program, and most of what it funds are large projects such as major urban freeway upgrades, or substantial rail investments such as the \$5.25 billion Sydney Airport railway or \$5 billion Melbourne Airport Rail. About one third of the program funds since 2009 have been contributions of \$10 million or less.⁴²

Similarly, the Roads of Strategic Importance program, for key freight routes, assesses proposals according to modelling, the Infrastructure Australia Audit, and states' assessments and plans. This appears relatively evidence-based, but it should be noted that the program appears to overlap in part but not entirely with another network with ostensibly the same purpose – the National Land Transport Network. This program entails a mix of large and small funding allocations.

The examples cited in this chapter of the allocation of aggregate transport funding among the states, and the difference in allocation of small grants according to how discretionary its criteria are, are just the examples that we can see. Most of the decisions that governments take are difficult to analyse, but it should not be assumed therefore that there is no 'bias or considerations of private advantage'.

Figure 3.6: Funding allocation tends to be even-handed if criteria are objective and transparent

Federal spending in urban electorates on Black Spot and Roads to Recovery projects worth less than \$10 million, 2009 to 2022



Notes: Two-party preferred data from AEC. Data from Labor term in 2007 and 2008 not available. Electorate margin average based on five elections between 2007 and 2019. Party seat allocations based on 2019 election results. Transport spending includes funds allocated to projects that have not begun construction at time of writing. When projects span multiple electorates, the full project value is credited to each electorate separately.

Sources: DITRDC (2022), AEC (2004), AEC (2007), AEC (2010), AEC (2013), AEC (2016), AEC (2019a) and AEC (2019b).

42. Grattan analysis.

4 Why is the federal government funding carparks anyway?

The deal that federal and state governments have agreed is that there's a federal funding role when it comes to nationally significant infrastructure.

Spending on commuter carparks is egregiously partisan (Section 4.1). And commuter carparks simply are not the federal government's turf – however important they may be to a local community, small local projects such as train-station carparks don't pass a test of national importance (Section 4.2).

But weak law enables federal funding of all sorts of projects that fail a national significance test, and also allows funding commitments that lack even the rudiments of due diligence (Section 4.3). And the fiscal equalisation process that mitigates inequities between states is powerless to correct within-state inequities arising from federal government favouritism of one local area over another.

4.1 The Federal Government is funding tiny local projects all over the country

The Auditor-General's 2021 report on commuter carparks highlighted just how fraught it can become when the federal government encroaches on the turf of a state or local government.⁴³

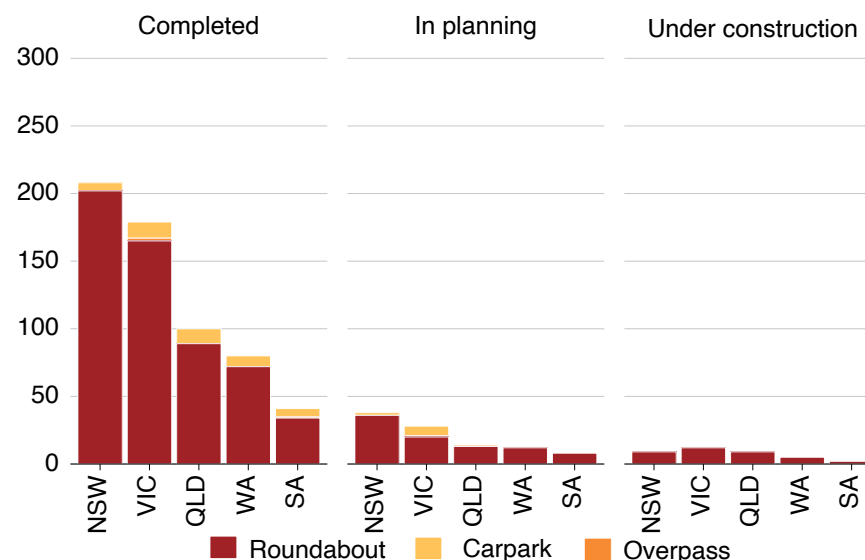
The \$15 million commuter carpark approved by the Morrison Government for Mitcham in suburban Melbourne was aborted in May 2021 because, according to Assistant Treasurer Michael Sukkar, the Victorian Government determined that it was unable to construct it.⁴⁴

43. ANAO (2021).

44. Karp (2021).

Figure 4.1: Federal governments have funded very small local projects all across the nation

Number of projects that have received federal funding since 2009 that are not part of the National Network



Notes: Reported projects are more than 100 metres from road and rail National Networks. Investment in some projects includes work additional to roundabouts, carparks, and/or overpasses.

Source: DITRDC (2022).

Funding was also withdrawn from some other projects ‘where the Victorian Government or relevant local council has advised that the project cannot be delivered ... or where there were no feasible site or design options’, according to the Minister for Urban Infrastructure, Paul Fletcher.⁴⁵ A further four train-station carparks in suburban Melbourne were abandoned in March 2022, one because the station is to be merged with one nearby, and the other three due to community opposition.⁴⁶

The commuter carparks funded through the Urban Congestion Fund attracted public attention, but they are by no means the only small local projects that have been funded by the federal government. In the past 13 years, the federal government has funded nearly 800 roundabouts, overpasses, and carparks that are not connected to National Network roads or rail (Figure 4.1 on the preceding page).

There are numerous such local projects all over the country (Figure 4.2 on the next page).

Important as many of these projects may be to their local community, it is difficult to see why they should attract federal money.

4.2 The federal government’s job is nationally significant infrastructure

The principle governing the carve-up of responsibilities between the federal and state governments is that decisions should be taken as close as possible to the people affected, by the most local level of government equipped to do so. This principle, known as ‘subsidiarity’, applies to the large suite of specific purpose payments that the federal government makes to the states – including payments for transport infrastructure.

For transport infrastructure, the federal government’s role is clear. It is governed by an intergovernmental agreement with the states, and by its own *National Land Transport Act 2014*.

The Act is the legislative mechanism by which the federal government contributes funding to states for transport infrastructure. The Act lays out the various programs for funding, principally the Infrastructure Investment Program. It also defines the National Land Transport Network, comprising key existing and proposed road and rail connections that connect capital cities, major centres of commercial activity, and/or inter-modal transfer facilities, such as ports.⁴⁷ By way of illustration, the relevant roads in Sydney are the M2, M4, M5, M7, King George’s Road, and WestConnex. A full list of roads and rail is in the *National Land Transport Determination 2020*.⁴⁸

The intergovernmental agreement on federal financial relations sets out the principles that guide federal government involvement in making payments for specific purposes, towards national aims. The agreement is designed to recognise that the states have primary responsibility for many areas of service delivery, including transport infrastructure, but that coordinated action is necessary in some situations to address Australia’s economic and social challenges.

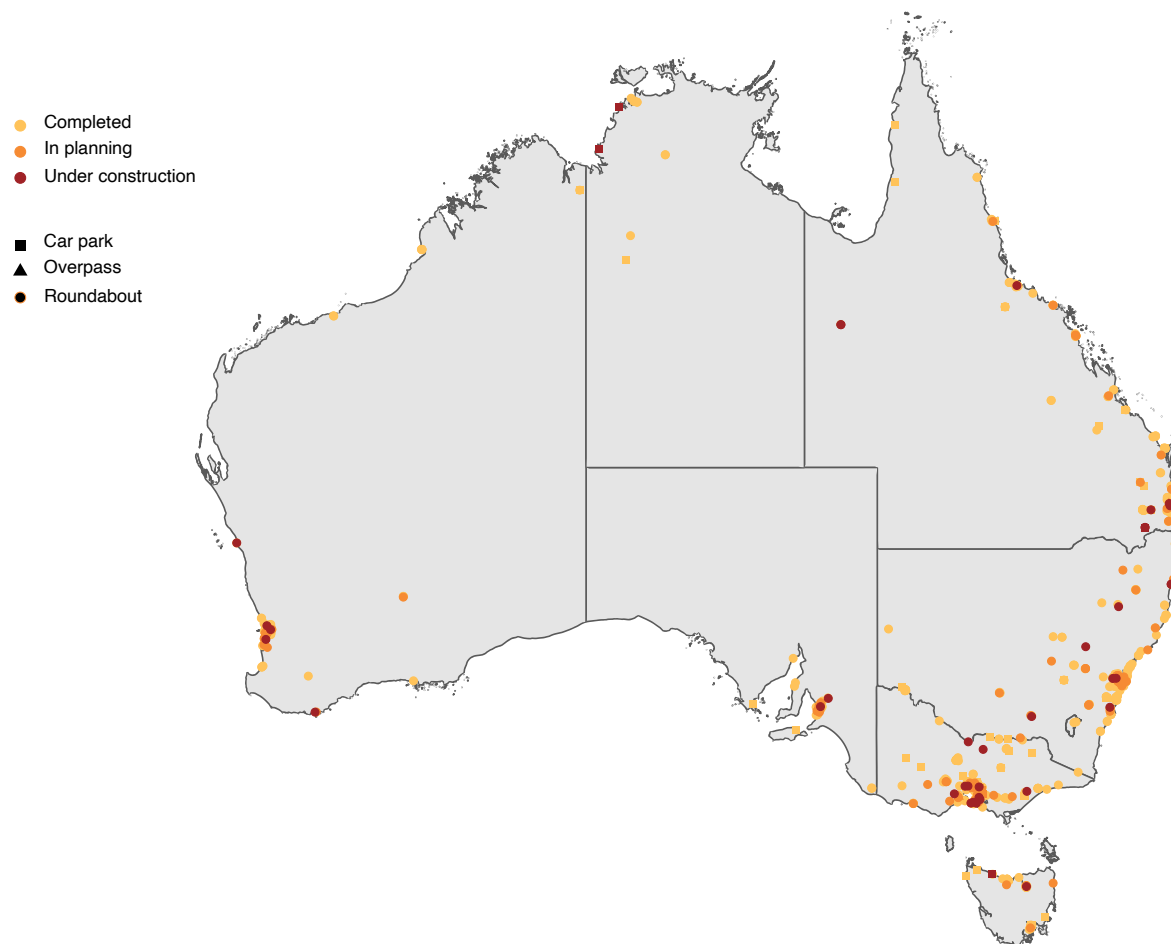
45. Ibid.

46. Wright and Curtis (2022).

47. *National Land Transport Act 2014* (Cwlth), s. 5(2).

48. *National Land Transport Determination 2020* (Cwlth).

Figure 4.2: The federal government has contributed to many small, off-network road and rail infrastructure projects since 2009



Note: The most up-to-date road and rail networks are depicted.

Source: DITRDC (2022).

The national partnership principles specify the circumstances where federal support for a state project may be warranted. These are where the project:⁴⁹

- is closely linked to a current or emerging national objective or expenditure priority of the federal government – for example, addressing Indigenous disadvantage;
- has ‘national public good’ characteristics – where the benefits of the involvement extend nationwide;
- has ‘spillover’ benefits that extend beyond the boundaries of a single state or territory;
- has a particularly strong impact on aggregate demand or sensitivity to the economic cycle, consistent with the federal government’s macro-economic management responsibilities; or
- addresses a need for harmonisation of policy between the states and territories to reduce barriers to the movement of capital and labour.

In the transport context, these principles are embodied in the National Land Transport Network. The National Network is the federal government’s clearest statement of which roads and rail lines are important not only to the state where they are located but nationally, either through having ‘national public good’ characteristics, or because they provide spillover benefits beyond the state in which they are located.

4.3 You could drive a truck through the federal law

The *National Land Transport Act 2014* replaced the *Nation Building Program (National Land Transport) Act 2009*. The new Act updated

the names of some funding programs, collapsed different funding categories into one, and introduced scope to fund transport research. It was ‘non-controversial’, according to the Senate Committee that considered the Bill.⁵⁰

Nonetheless, the then-Shadow Minister for Infrastructure, Anthony Albanese, proposed amendments that would have required the minister, before approving funding for a \$100-million-plus project, to consider Infrastructure Australia’s project evaluation, including a cost/benefit analysis and Infrastructure Australia’s view on the priority of the project compared to other proposed projects, and to publish these details.⁵¹ But when Labor’s amendments were defeated, the Senate passed the essentially unamended Bill,⁵² with Labor Senator Doug Cameron stating:

We support this motion. We support... infrastructure development... We hope that the Government meets the commitment that it gave to the Australian public about accountability and transparency.⁵³

The passage into law of this Bill highlights a dilemma politicians face. Most people want to be able to tell heroic or at least respectable stories about their motivations,⁵⁴ and so it was that the debate on a supposedly non-controversial bill took 14 hours of parliamentary time, with a large number of long speeches highlighting the importance of infrastructure to the electorates and regions of individual members and senators. It was all about high-minded public interest, not grubby politicking.

50. Senate Rural and Regional Affairs and Transport Legislation Committee (2014, p. 1). Opposition Senators noted that the Bill did ‘not represent ambitious change’, being ‘more in the manner of a pedestrian re-arrangement and updating of certain aspects of the existing Act’ (p. 15).

51. Albanese (2014, p. 2).

52. The Senate did accept an amendment to add a single word to the Bill: *National Land Transport Act 2014*, Schedule of the amendment made by the Senate, 28 August 2014.

53. Commonwealth, *Parliamentary debates*, Senate, 28 August 2014, p. 5847.

54. Blattman (2022).

49. Council on Federal Financial Relations (2009, Paragraph E21).

Yet, in the end, the Parliament passed an Act that is weak, in two important ways. First, it leaves wide open what kind of projects the federal government can fund, and second, it facilitates negligent processes. The following sections explain.

4.3.1 Weak law permits projects that aren't nationally significant

The National Land Transport Network, as described in the Act, is the federal government's clearest statement of what it considers to be nationally significant roads and rail.

In June 2020, the federal government added some major roads and one rail link to the National Network – but did not add much in the way of coherence. For instance, in Melbourne, the as-yet-unbuilt North East Link and West Gate Tunnel road projects, worth \$15.8 billion and \$10 billion respectively, have been added, but the National Network continues to exclude large portions of key arteries, including the Eastern, Tullamarine, and Calder Freeways, and all of Hoddle Street-Punt Road.

In Sydney, the Northern Road connecting the as-yet-unbuilt Western Sydney Airport has been added, but not the Eastern Distributor from the existing airport to the city, over the harbour, and up through the north shore. And even before the latest additions, Tasmania's roads included a spur to Burnie and one to Georgetown, neither of which meet the conditions of being capital cities, major centres of commercial activity, or inter-modal transfer facilities.

The Act seems to present no impediment to the minister adding roads and rail of little national significance to the National Network.⁵⁵ There are numerous off-network projects funded all over the country (Figure 4.3 on the following page). About a fifth of all federal funding to

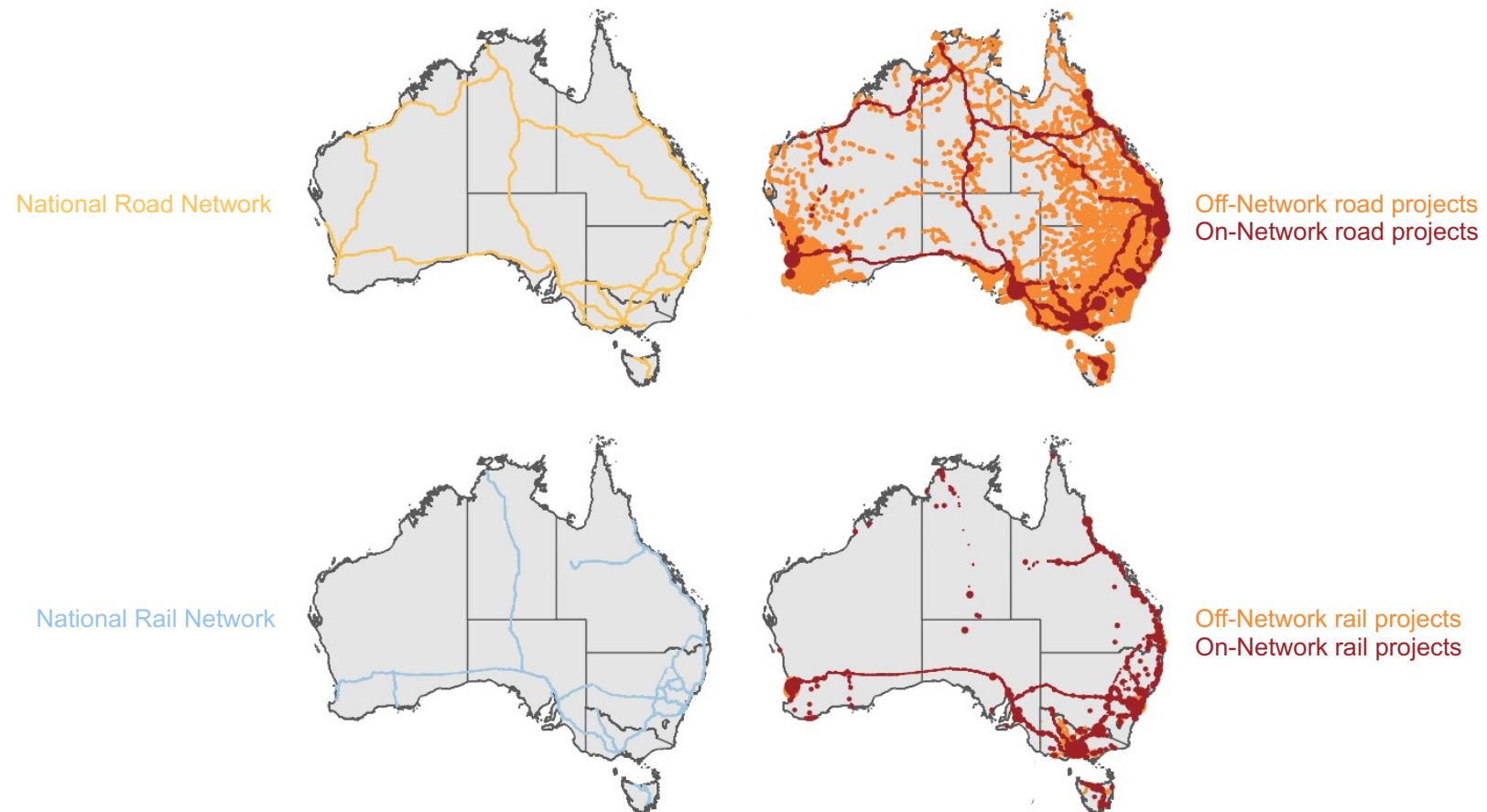
the states for transport infrastructure is for roads and rail that are not on the National Network.

In the rare event of a compelling reason for the federal government to go beyond its core role of funding the National Network, to fund small local projects, it would require much more careful and effective negotiation with the state, and possibly the local, government, in advance of an announcement than occurred with the commuter carpark decision.

55. *National Land Transport Act 2014* (Cwlth), s. 5(3).

Figure 4.3: Federal governments have funded lots of off-network investment all over the country

Federal investment and planned investment in transport infrastructure since 2009



Notes: The National Road Network and National Rail Network are both part of the National Land Transport Network. This chart includes the predecessor programs to the National Land Transport Network: AusLink and the Nation Building Program. The most up-to-date road and rail networks are depicted.

Source: DITRDC (2022).

4.3.2 Weak law facilitates negligent processes

The key weakness in how the Act determines projects be funded is that there's no requirement for the minister, when deciding to approve funding for a project, to consider the merits of that project. The minister is free to decide to spend hundreds of millions of dollars, or even billions, without any requirement to take into account the most basic analysis such as a business case, cost/benefit analysis, or assessment of the relative ranking of that project with other candidates for public funds.

That's how it comes about that federal governments have allocated substantial public funds, before an assessment had been completed by Infrastructure Australia, to projects in NSW ranging from Sydney's M12 Motorway and the North South Metro Rail Link to the Princes Highway upgrade (Albion Park Rail Bypass). They've done it in Victoria for the Monash Freeway upgrade (Stage 2), and Melbourne Airport Rail Link. They have done it in Queensland for the Bruce Highway between Woondum and Curra, and the M1 Pacific Motorway between Eight Mile Plains and Daisy Hill, and between Varsity Lakes and Tugun. They have done it in WA on the Thornlie Line Extension and the Yanchep Rail Extension, the Bunbury Outer Ring Road stages 2 and 3, and the Tonkin Highway Corridor upgrades. It's happened in SA for the North South Corridor between the Torrens River and Darlington and in Tasmania on the new Bridgewater Bridge.⁵⁶

Not only were most of these projects committed to before Infrastructure Australia had completed an assessment, most of them are not nationally significant, according to the federal government's criteria.

The Act offers other escape hatches to the minister, too. While it requires a state government authority receiving funding to call for public tenders in most circumstances, the Act also allows an exemption to

be granted where, in the minister's opinion, 'the work will contribute to employment in a region'⁵⁷ – a condition that no project could possibly fail.

Similarly, it's a requirement of receiving funding under the Roads to Recovery program that the payment is spent on the construction or maintenance of roads, and that it's properly accounted for – unless, that is, the federal minister decides to exempt the body or person receiving the funding from such a requirement.⁵⁸

4.4 Fiscal equalisation can fix interstate but not intrastate inequities

The Australian federation has a mechanism to enable each state to provide an equivalent level of public services to its residents, regardless of which state they live in and regardless of federal government attempts to favour one state over another. This process, known as 'horizontal fiscal equalisation', is effected through the distribution of GST revenue among the states.

The distribution of GST revenue takes account of states' different abilities to raise revenue, such as mineral royalties, land values and property transactions, and payroll taxes. It also takes account of states' different costs of service provision, including socio-demographic characteristics, wage pressures, population dispersion or density, and rates of population growth.⁵⁹

The goal is 'reasonable' fiscal equalisation; that is, equalising to the fiscal capacity of NSW or Victoria, whichever is the fiscally stronger.⁶⁰

57. *National Land Transport Act 2014* (Cwlth), s. 24(1)(v).

58. *National Land Transport Act 2014* (Cwlth), s. 90-91.

59. Commonwealth Grants Commission (2021, p. xi).

60. This goal was introduced in 2019-20, replacing the previous goal of full equalisation, or equalising to the fiscally strongest state: Commonwealth Grants Commission (2020, Volume 2, Part A, Chapter 4).

56. Terrill et al (2020, p. 30).

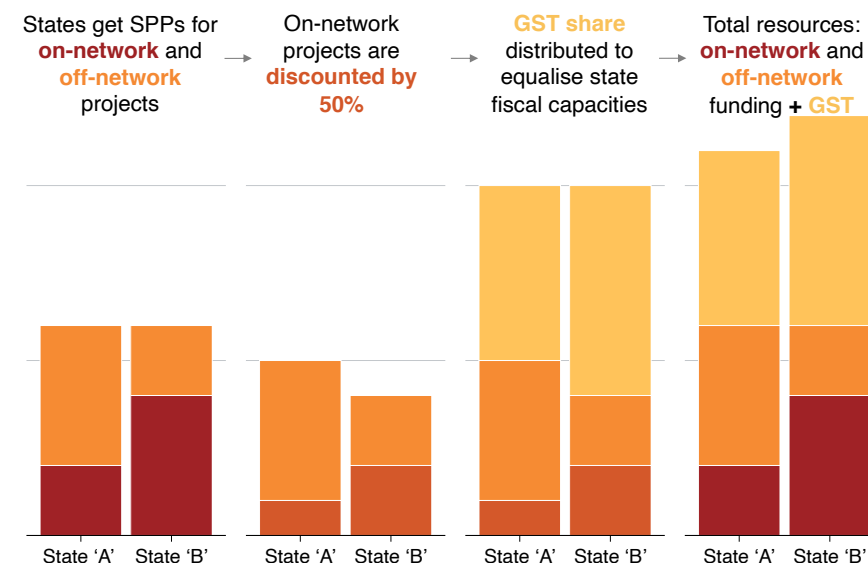
To achieve fiscal equalisation, the Commonwealth Grants Commission recommends to the federal treasurer the GST distribution relativities, which reflect how much GST revenue each state should receive compared to what it would receive under an equal-per-capita distribution. In practice, NSW and Victoria, as the largest states, tend to sit close to the average; the Northern Territory, with a large Indigenous and remote population, receives a significant share; and Western Australia, with volatile mining royalties, receives a fluctuating share.

When it comes to transport, there's a recognition that some roads and rail lines are nationally significant – that they have national objectives, or, in the language of the intergovernmental agreement on federal financial relations, 'national public good' characteristics or 'spillover benefits' beyond the boundary of a single state.⁶¹ Only half the value of the federal contribution to these projects is included in determining the distribution of the GST pool (Figure 4.4). This treatment strikes a balance between recognising that payments for transport infrastructure provide budgetary support to a state, but that other states benefit too where that infrastructure is important to the national economy.⁶²

It's unsurprising that state governments and local members push to get their roads and rail onto the National Land Transport Network. The biggest advantage to a state in having a road or rail link classified as part of the National Network is the favourable GST treatment. Further reasons include access to a pool of maintenance funding, which was worth \$263 million in 2021-22;⁶³ and, historically at least, a more favourable funding split between federal and state funders for National Network projects than for other projects.

Horizontal fiscal equalisation ensures that the Tasmanian or Victorian Government is able to provide the same level of public services as the

Figure 4.4: States have reason to prefer their federal funding to come in the form of support for National Network projects



Notes: SPPs = Specific Purpose Payments. SPPs are grants the federal government makes to the states to support projects. SPPs are not exclusive to transport projects; they are also made in areas such as health and education. This is an illustrative diagram; it is not based on specific states.

61. Council on Federal Financial Relations (2009, Paragraph E21).

62. Commonwealth Grants Commission (2020, Chapter 5, 12–13).

63. *National Land Transport Act 2014* (Cwlth). Figures extracted from specific state and territory national partnership agreements.

South Australian or Queensland Government. But what about within states?

This is where horizontal fiscal equalisation cannot go. When the Federal Government decides to use a discretionary program to spend well above the Perth average in that city's most marginal seat of Hasluck, or above the Adelaide average in marginal Boothby,⁶⁴ these disparities are not the business of fiscal equalisation by the Commonwealth Grants Commission.

Significant disparities in new infrastructure funding may be correcting past inequities, but they are at least as likely to be creating new ones. If the federal government decides to spend selectively on highly localised infrastructure, it leaves the state government with the task of correcting imbalances, or potentially wearing the blame for imbalances (Figure 4.5).

It seems that federal governments have been alive to this characteristic of fiscal equalisation. When the state and federal government are of the same political party, the federal government is typically less inclined to curtail that state's autonomy.

For as long as federal law is so weak, there is no reason to imagine any change in federal spending patterns. There's no mechanism to constrain the federal government to spending on nationally significant infrastructure. And there's no mechanism to constrain the federal government from spending large sums of public money without even basic analysis to understand what they are signing the taxpayer up to.

Figure 4.5: Federal spending from the Urban Congestion Fund creates winners and losers within states
Electorate-level expenditure



Notes: Each city includes all electorates that fall within the ABS Greater Capital City boundary. Electorates that straddle the boundary are included if the majority of their area is within the Greater Capital City area. Electorate-level spending includes all Urban Congestion Fund funding spent and formally committed. When projects span multiple electorates, the full project value is credited to each electorate separately. Source: DITRDC (2022).

64. Grattan analysis.

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