

PARLIAMENT OF VICTORIA

Melbourne City Link (Amendment) Act 1996

Act No.

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PARLIAMENT OF VICTORIA

Initiated in Assembly 29 May 1996

A BILL

to amend the **Melbourne City Link Act 1995** and the **Melbourne City Link Authority Act 1994** and for other purposes.

**Melbourne City Link (Amendment) Act
1996**

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to amend the **Melbourne City Link Act 1995** and the **Melbourne City Link Authority Act 1994**.

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2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

PART 2—MELBOURNE CITY LINK ACT 1995

3. Definitions

In section 3 of the **Melbourne City Link Act 1995**, in the definition of "the Agreement", omit "under Part 2".

No. 107/1995

4. Variation of the Agreement

(1) In section 15 of the **Melbourne City Link Act 1995**, for sub-section (1) substitute—

"(1) Any 2 or more of the persons who are parties to the Agreement, or any part of it, may, from time to time, by agreement in writing and, if the State is not one of those persons, with the consent of the Minister, vary all or any of the provisions of the Agreement that affect those persons.

(1A) All or any of the provisions of the Agreement may be varied from time to time in accordance with the terms of the Agreement.

(1B) The Minister must cause to be published in the Government Gazette a notice of an agreement under sub-section (1) or a variation under sub-section (1A), specifying the place or places at which a person may inspect the agreement or a statement of the variation.

(1C) An agreement or variation under sub-section (1) or (1A) comes into operation—

(a) when the notice under sub-section (1B) is published in the Government Gazette;
or

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(b) if a later day is specified in the agreement or in the statement of the variation, on that later day."

(2) In section 15 of the **Melbourne City Link Act 1995**—

(a) in sub-section (2)—

(i) for "an agreement under sub-section (1)" **substitute** "each agreement under sub-section (1) and a statement of each variation under sub-section (1A) as published under sub-section (1B)";

(ii) after "of the agreement" **insert** "or variation";

(b) in sub-section (3)—

(i) for "under this section" **substitute** "or variation referred to in sub-section (1) or (1A)";

(ii) after "of the agreement" **insert** "or the statement of the variation".

(3) In section 15 of the **Melbourne City Link Act 1995**, for sub-section (4) **substitute**—

(4) If an agreement or variation referred to in sub-section (1) or (1A) is revoked wholly or in part under sub-section (3)—

(a) a provision of the Agreement that had been cancelled or revoked by the agreement or variation, or by the part of the agreement or variation that is revoked, is revived as from the beginning of the day on which the amendment or variation, or part, was revoked; and

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- (b) a provision of the Agreement that had been varied (otherwise than by cancellation or revocation) by the agreement or variation, or by the part of the agreement or variation that is revoked, takes effect without that variation as from the beginning of the day on which the amendment or variation, or part, was revoked as if the variation had not been made.
- (5) The Minister must cause to be published in the Government Gazette a notice of the revocation of an amendment or variation, or part of an amendment or variation.
- (6) In this section, "vary" includes amend, add to, substitute, cancel or revoke.'
- (4) An agreement in writing purporting to be an agreement referred to in section 15 of the **Melbourne City Link Act 1995** that is laid before each House of the Parliament before 1 June 1996 is deemed to be an agreement in writing between the parties to the Agreement within the meaning of that Act as in force before that date, whether or not all those parties are parties to the agreement in writing.

5. New section 31A inserted

After section 31 of the **Melbourne City Link Act 1995** insert—

"31A. Roads deemed to be declared roads

- (1) An Order under section 26, 28 or 31 may specify that any part of the land which is the subject of the Order which was a declared road within the meaning of the **Transport Act 1983** immediately before the publication

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of the Order is to be deemed to be a declared road of a kind specified in the Order.

(2) The Governor in Council may, by Order published in the Government Gazette, specify that any reserved project land which was a declared road within the meaning of the **Transport Act 1983** immediately before it became reserved project land is to be deemed to be a declared road of a kind specified in the Order.

(3) Any land which is specified in an Order in accordance with sub-section (1) or (2) is deemed to be a declared road within the meaning of the **Transport Act 1983** of the kind specified in the Order from the date of publication of the Order until the date of termination of any licence issued in respect of that land under section 56.

(4) For the avoidance of doubt it is declared that this section has effect in addition to and not in derogation of the deemed reservation of the land under this Division.

(5) This section has effect despite any provision in any other Act to the contrary."

6. New Division 2A inserted in Part 3 of Melbourne City Link Act 1995

After Division 2 of the **Melbourne City Link Act 1995** insert—

'Division 2A—Entry into possession of surrendered or divested land

32A. Interpretation

In this Division—

"reservation date" in relation to land means the date on which the land became reserved project land;

"reserved project land" means land which is deemed under Division 2 to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being in particular, the purposes of the Project.

32B. Application

This Division applies to reserved project land whether it became reserved project land before or after the commencement of section 6 of the **Melbourne City Link (Amendment) Act 1996**.

32C. Power to enter into possession

Subject to this Division, the Authority may enter into possession of reserved project land.

32D. Entry into possession

- (1) The Authority must diligently endeavour to obtain agreement with the occupier of reserved project land as to the terms on which the Authority will enter into possession of the land.
- (2) Subject to this Division, if reserved project land or part of reserved project land is used, at the reservation date, by a person as the principal place of residence or business of that person, the Authority must not enter into possession of—
 - (a) the part of the land so used; or

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(b) if the whole of the land is so used, that land—

before the end of 3 months after the reservation date and unless the Authority has given 7 days' notice in writing of its intention to enter into possession to the person in occupation of the land.

(3) A person referred to in sub-section (2) is not liable for the payment of rent in respect of the occupation by that person of that part of the reserved project land which is used as the principal place of residence or business of that person during the period specified in that sub-section.

(4) Sub-section (2) does not apply if—

(a) the Governor in Council certifies that having regard to—

(i) the urgency of the case or any other exceptional circumstances;
and

(ii) the public interest—

it is not practicable for the Authority to delay entry into possession of the reserved project land until after the end of the period referred to in sub-section (2); or

(b) the Authority and the person in occupation of the reserved project land have, with the consent of the Minister, entered into an agreement in relation to the time of entry into possession of the reserved project land by the Authority.

(5) If, at the reservation date, reserved project land is not used by any person as the principal

place of residence or business of that person, the Authority may enter into possession of the land at any time after the reservation date after giving 7 days' notice in writing of its intention to enter into possession to the person in occupation of the land.

- (6) The period of occupation of the reserved project land after the reservation date (including the period referred to in sub-section (2)) may be extended by agreement in writing between the Authority and the person in occupation of the reserved project land.
- (7) An agreement under sub-section (6) must provide for the payment of rent by the person in occupation of the relevant land to the Authority.
- (8) If a person continues to occupy reserved project land after the period referred to in sub-section (2) or the reservation date (as the case may be) and an agreement has not been entered into under sub-section (6) in respect of that occupation, that person is to be taken to be in possession of the land in pursuance of a tenancy determinable at will by the Authority and is liable to pay to the Authority a fair market rent in respect of that continued occupation.
- (9) If a person referred to in sub-section (2) ceases of the person's own accord to occupy the reserved project land before the end of the period referred to in that sub-section, the entitlement of that person under this Division to occupy the land without payment of rent to the Authority also ceases.

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- (10) A certificate under sub-section (4)(a) must specify the date on which the Authority is to take possession.
 - (11) The Authority must serve a copy of the certificate under sub-section (4)(a) on the person in occupation of the land.
 - (12) The person whose period of occupation of the reserved project land was abridged under sub-section (4)(a) is entitled to claim compensation under Division 3 for any loss or damage which is incurred as a direct, natural and reasonable consequence of that abridgment and for which the person could not otherwise make a claim under that Division.
 - (13) The compensation payable pursuant to sub-section (12) may be paid to—
 - (a) the person who is entitled to claim the compensation; or
 - (b) the constituted attorney of that person.

32E. *Recovery of rent*

Any rent payable to the Authority under section 32D may be recovered as a debt due to the Authority in any court of competent jurisdiction.

32F. *Proceedings where refusal to give up possession*

- (1) If the Authority is entitled under this Division to enter into possession of reserved project land and the occupier of the land or any other person—
 - (a) refuses to give up the possession of the land; or

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- (b) hinders the Authority from entering on and taking possession of the land—
the Authority may issue its warrant under this section to the sheriff.
- (2) A warrant issued under this section authorises the sheriff to—
- (a) enter onto the land specified in the warrant; and
 - (b) deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land; and
 - (c) use such force as is reasonably necessary to execute the warrant.
- (3) On receipt of a warrant issued under this section, the sheriff must deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land.
- (4) The costs incurred in the issuing and execution of a warrant must be paid by the person refusing to give up possession.
- (5) The amount of the costs and the amount of any rent owed by that person must be deducted and retained by the Authority from the compensation (if any) payable under this Part to that person.
- (6) If no compensation is payable to that person or if the compensation payable is less than the amount of the costs and rent (if any) then payment of the amount in excess of the compensation must if not paid on demand be enforced by a warrant to seize property.
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(7) On application by the Authority, a magistrate must issue a warrant for the purposes of sub-section (6).

(8) In this section, "sheriff" means the sheriff or a deputy sheriff under the **Supreme Court Act 1986**.

32G. Residential Tenancies Act 1980 not to apply

Nothing in the **Residential Tenancies Act 1980** applies to or in relation to any matter provided for or any proceedings under this Division.

32H. Giving of notice

(1) Any notice or other document which the Authority is required to give to any person under this Division may be served on that person personally or by post.

(2) If the whereabouts of a person on whom the Authority is required to serve the notice or document is not known to the Authority, the notice or document may be served—

(a) by publication of a copy in a newspaper circulating generally throughout the State; and

(b) by affixing it in a prominent place on the land to which it relates.

32I. Minor misdescription not to invalidate notice

The validity of any notice under this Division is not affected by any misdescription in it of the land or of any interest in the land if sufficient information appears on the face of the notice to identify the land or interest affected.'

7. Compensation

In section 37 of the **Melbourne City Link Act 1995** after "this Division" insert "or section 32D".

8. Schedule 2

In Schedule 2 to the **Melbourne City Link Act 1995**—

- (a) in clause 1.4(a) for "and no transfer or transmission of a Unit may be registered if the allotment or registration" **substitute** "if the allotment";
 - (b) in clause 1.4(h)—
 - (i) **omit** "or approving or rejecting any transfer or transmission of Units, ";
 - (ii) **omit** ", transferee, transmittee".
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PART 3—MELBOURNE CITY LINK AUTHORITY ACT 1994

9. *Delegation powers*

In section 21 of the **Melbourne City Link Authority Act 1994**, for "person or body" **substitute** "person, or class of persons or body or to the holder of any office or position".

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NOTES

By Authority, Government Printer for the State of Victoria.

