

Very Fast Train (Route Investigation) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 2 November 1989

(Brought from the Legislative Council)

A BILL

for

An Act to facilitate the investigation of a route for a very fast train and for other purposes.

Very Fast Train (Route Investigation) Act 1989

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose

- 5 1. The purpose of this Act is to facilitate the investigation of a route for a very fast train linking Melbourne with other centres within or outside the State.

Commencement

2. This Act comes into operation on a day or days to be proclaimed.

Definitions

- 10 3. In this Act—
“**Approved person**” means a person to whom a declaration in force under section 6 applies.
“**Owner**”, in relation to land, means any person having an estate or interest in the land.
15 “**Permit**” means a permit that is in force under section 8.

“Survey” has the same meaning as in the *Survey Co-ordination Act 1958*.

Act binds the Crown

4. This Act binds the Crown in right of Victoria and, insofar as the legislative power of Parliament permits, the Crown in all its other capacities. 5

Object of Act

5. The object of this Act is to facilitate the surveying, examining and testing of land so as to allow the thorough investigation of a route for a very fast train linking Melbourne with other centres within or outside the State. 10

PART 2—PERMITS

Approved persons

6. (1) The Minister may, by an Order published in the *Government Gazette*, declare a specified person or persons of a specified class to be an approved person or approved persons for the purposes of this Act. 15

(2) The Minister may not approve any person under this section unless the Minister is satisfied that the person—

(a) has access to technical expertise that is adequate to enable appropriate surveys, examinations and tests to be carried out efficiently; and 20

(b) has available sufficient resources to compensate owners and occupiers of such land as may be affected by those activities.

Applications for permits

7. (1) An approved person may apply to the Minister for a permit to enter land in connection with the investigation of the whole or any part of a proposed route for a very fast train. 25

(2) An application must not be made unless the applicant—

(a) has caused a notice—

(i) declaring that the application is intended to be made; and 30

(ii) identifying the area of land intended to be entered under the permit; and

(iii) requesting any owner or occupier of that land or, in the case of Crown land or land owned or occupied by a public authority, any person who wishes to make a submission to the Minister about whether the permit 35

should be granted or about conditions to be included in the permit to do so within 21 days—

to be published in a newspaper circulating throughout the State and in another newspaper circulating in the locality in which that land is situated; and

(b) has given notice in writing of the application to each person who has an interest in the land or such of those persons as, after diligent inquiry, become known to the applicant.

(3) An application—

(a) must be in a form approved by the Minister; and

(b) together with a fee determined by the Minister, must be lodged with the Director-General of Transport; and

(c) must specify, in a manner approved by the Minister, the area of land intended to be entered under the permit; and

(d) must include such information as the Minister requires; and

(e) may include any other information that the applicant wishes the Minister to consider.

(4) The Minister may, at any time, request further information about an application from an applicant.

(5) The Minister may refuse to further consider an application until any such request has been complied with to the Minister's satisfaction.

Grant or refusal of permits

8. (1) After considering an application for a permit, the Minister may—

(a) grant a permit in respect of the whole or any part of the land to which the application relates; or

(b) refuse the application.

(2) Before granting a permit to enter land, the Minister must take into consideration—

(a) any relevant submission received by the Minister within 21 days of publication of a notice under section 7 relating to the application; and

(b) all information included in the application under section 7 (3) (d) or (e); and

(c) whether any other permit has been granted in respect of the same land; and

(d) whether the grant of the permit would, in the Minister's opinion, result in unreasonable duplication of surveys, examinations or tests; and

(e) any features that, in the Minister's opinion, are special features of the land or of adjacent land—

and may take into consideration any other matters the Minister considers relevant.

Duration of permits

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9. (1) A permit comes into force on the day specified for the purpose in the permit and, unless sooner surrendered or revoked, remains in force—

(a) for such period not exceeding 6 months as is specified in the permit; and

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(b) for any further period for which it is extended under this section.

(2) The Minister may, on written application made by the holder of a permit to the Minister before the permit ceases to be in force, extend the permit from time to time for such period not exceeding 6 months as the Minister thinks fit and specifies in a notice given to the holder.

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(3) A permit cannot be granted or renewed after the seventh anniversary of the commencement of this section.

(4) Any permit that, in the absence of this sub-section, would be in force after the seventh anniversary of the commencement of this section ceases to be in force on that seventh anniversary.

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Conditions of permits

10. (1) A permit is subject to such conditions as the Minister thinks fit and specifies in the permit.

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(2) Despite sub-section (1), if the conditions of a permit have been varied under this section, the permit is subject to those conditions as varied for the time being.

(3) Without limiting the kinds of conditions to which a permit may be subject, conditions of a permit may—

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(a) prohibit or regulate the carrying out of specified activities on the land to which the permit relates by the holder of the permit or anyone authorised by the holder; and

(b) provide for the payment of compensation and the restoration of land by the holder of the permit; and

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(c) require information relating to anything done under the permit on that land by those persons to be submitted by the holder of the permit to the Minister on a periodic or any other basis.

(4) The Minister may, by a written notice given to the holder of a permit, vary the conditions of the permit—

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(a) by adding new conditions; or

- (b) by amending an existing condition; or
- (c) by revoking an existing condition.

Reduction of permit area

5 11. The Minister may, on written application made by the holder of a permit to the Minister, reduce the area of land to which the permit applies by a written notice given to the holder.

Surrender or revocation of permits

12. (1) The holder of a permit may surrender the permit by a written notice given to the Director-General of Transport.

10 (2) The Minister may, for such reason as the Minister thinks sufficient, revoke a permit by a written notice given to the holder of the permit.

15 (3) Without limiting the Minister's powers to revoke a permit, the Minister may revoke a permit by a written notice given to the holder if—

- (a) the holder or any person authorised to enter land by the holder contravenes this Act or the regulations; or
- (b) a condition of the permit is contravened.

20 (4) Proceedings may be taken against a person for an offence under section 16 relating to the contravention of a condition of a permit whether or not the permit has been revoked or has otherwise ceased to be in force since the contravention occurred.

Rights conferred by permits

25 13. (1) Subject to its conditions, a permit authorises the holder of the permit, and any other persons authorised by the holder in accordance with the conditions of the permit, to enter the area of land to which it applies for the time being—

30 (a) to undertake on that land such surveys, examinations and tests (including the drilling of bore holes, the sinking of shafts and the cutting of trenches), to take from that land such samples for examination and to carry out on that land such investigations as the holder of the permit considers necessary for the purpose of ascertaining the suitability of the land—

- 35 (i) as a route for a very fast train; or
- (ii) as a site for any structure or work the use of which may be incidental to the operation of a very fast train; or
- (iii) as a means of access to any such route or site; or
- 40 (b) to use that land as a means of access to other land specified in the permit so that activities of the kind described in paragraph (a) may be carried out on the other land.

(2) A person is not authorised by a permit—

- (a) to enter a building or the curtilage of a building; or
- (b) to enter any land, unless the prescribed written notice of the person's intention to enter the land has been given in accordance with the regulations.

Notice to owners of land

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14. Where—

- (a) a permit is granted under this Act; or
- (b) the conditions of a permit are changed; or
- (c) the area of a permit is reduced; or
- (d) a permit is surrendered or revoked—

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the holder, or former holder, of the permit must cause notice in writing of the grant (together with particulars of the duration of the permit and its conditions), the change in conditions, the reduction of the area or the surrender or revocation, as the case requires, to be given to each person who has an interest in the land or such of those persons as after diligent inquiry, become known to the holder or former holder.

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Application of other Acts

15. (1) The provisions of a planning scheme do not restrict, prohibit or otherwise apply to anything authorised to be done under a permit under this Act.

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(2) The *Environment Effects Act 1978* does not apply to anything authorised to be done under a permit under this Act.

(3) Except as provided in sub-sections (1) and (2), nothing in this Act allows the holder of a permit under this Act or a person authorised under this Act to enter land to disregard the provisions of any Act or law that prohibit or regulate the exercise of any right conferred by this Act or the permit or authority.

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Contravention of condition of permit

16. (1) The holder of a permit must not contravene a condition to which the permit is subject.

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(2) A person authorised by the holder of a permit to enter land to which the permit relates must not contravene a condition of the permit.

(3) The holder of a permit is guilty of an offence if—

- (a) a person authorised by the holder to enter land to which the permit relates contravenes a condition of the permit; and
- (b) the holder directed or permitted the person to contravene the condition.

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Penalty: 400 penalty units.

Interference with authorised activities

17. (1) A person must not, without reasonable excuse—

(a) prevent another person from doing something the other person is authorised to do by a permit; or

5 (b) hinder or obstruct another person who is attempting to do something the other person is authorised to do by a permit.

Penalty: 50 penalty units.

(2) A person is not guilty of an offence under this section—

10 (a) of preventing another person from entering land under the authority of a permit; or

(b) of hindering or obstructing another person who is attempting to enter land under the authority of a permit—

15 unless the other person, before being so prevented, hindered or obstructed, produced for inspection by the person alleged to have committed the offence a notice in the prescribed form issued by the holder of the permit and confirming the other person's authority to enter the land.

PART 3—COMPENSATION

Agreements for compensation

20 18. (1) An owner or occupier of land may enter into a written agreement with the holder or former holder of a permit for or with respect to the payment of compensation, or the carrying out of work, (or both) by or on behalf of the holder or former holder in respect of
25 any loss or damage that the owner or occupier may suffer or may have suffered as a result of anything done or omitted—

(a) by the holder or former holder; or

(b) by a person authorised to enter land by the holder or former holder.

30 (2) With the written consent of the holder or former holder of a permit, an agreement under this section may be entered into on behalf of the holder or former holder by any person.

Liability for compensation

35 19. Each owner or occupier of land is entitled to be paid compensation by the holder or former holder of a permit for any loss or damage (including loss of minerals or stone) suffered by the owner or occupier as a result of anything which was done or omitted—

(a) by the holder or former holder; or

(b) by a person authorised to enter land by the holder or former holder—

40 while exercising or performing (or purporting to exercise or perform) any power, authority, duty or function conferred or imposed by the permit.

Determination of claim for compensation

20. The amount of compensation payable under section 19 shall be determined, in default of agreement, as if it were a claim arising under section 48 (1) of the *Land Acquisition and Compensation Act 1986* and, for that purpose—

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- (a) this section is the special Act; and
- (b) the holder or former holder of a permit, as the case requires, is the Authority.

PART 4—MISCELLANEOUS

Delegation

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21. The Minister may delegate to—

- (a) the Director-General of Transport; or
- (b) a prescribed person or a person of a prescribed class—

any of the powers, authorities, duties or functions conferred or imposed on the Minister by this Act or the regulations, other than this power of delegation.

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Application of certain Acts

22. Nothing in this Act affects the operation of the *Archaeological and Aboriginal Relics Preservation Act 1972* or of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* of the Commonwealth.

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Regulations

23. The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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