

Melbourne City Link (Miscellaneous Amendments) Bill

Circulation Print

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purposes of the Bill. These include—
- to repeal certain provisions of the **Melbourne City Link Act 1995** ("the Act") and to make miscellaneous amendments to tolling and other provisions. Most of the provisions to be repealed facilitated construction of the Project. The Report of the Audit Review of Government Contracts recommended the repeal of redundant provisions after the construction phase of the Project is concluded;
 - to repeal the **Melbourne City Link Authority Act 1994**. The Bill provides machinery for the wind-up of the Melbourne City Link Authority ("the Authority");
 - to make amendments to other Acts and any other necessary provisions.
- Clause 2 deals with commencement arrangements. Part 1 and clause 43 will come into operation on the day following Royal Assent. Part 1 deals with preliminary matters. Clause 43 has the effect of retaining in the Act the provisions that enable warning letters to be sent to toll defaulters. Otherwise, these provisions would be repealed on 31 December 2000.
- Other provisions of the Act will come into operation on days to be fixed by proclamation, with any unproclaimed provisions coming into operation on 31 December 2002.
- Clause 3 repeals section 1 (b) of the Act, which states that one purpose of the Act was to give the Melbourne City Link Authority powers in relation to land. This will be redundant with the repeal of the relevant substantive provisions.

The clause also substitutes paragraph (c) of section 1.
The change reflects the fact that the provisions of the Act relating to Project construction are being repealed by this Bill.

- Clause 4 amends or repeals definitions set out in section 3 of the Act. The repeals and amendments are consequential on proposed repeals of or amendments to substantive provisions of the Act as proposed by the Bill.
- Clause 5 repeals section 4 (a) of the Act, which states that one purpose of that Act was to authorise and facilitate construction of the Melbourne City Link Project.
- Clause 6 repeals the following redundant provisions of the Act—
- section 5, which deals with the application of the **Crown Land (Reserves) Act 1978** to strata of Project land;
 - section 7, which established the "Project area". The Project area defined the geographic scope of certain land provisions, such as powers over compulsory acquisition of land;
 - section 8, which enables the Project area to be amended by Order in Council;
 - section 9, which deals with the interpretation of the plans of the Project area.
- Clause 7 amends sections 15, 15B and 15D of the Act to require that copies be sent to the Government Printer of amending agreements and other variations to the three Agreements ratified by the Act. This will facilitate preparation of reprints of those Agreements.
- Clause 8 inserts new sections 18A and 18B into the Act.
- Proposed new section 18A deals with reprinting of the three Agreements that have been ratified by the Act. Those Agreements are—
- the Melbourne City Link Agreement, a copy of which is in Schedule 1 to the Act;
 - the Integration and Facilitation Agreement, a copy of which is in Schedule 5 to the Act; and

- the Extension Agreement, a copy of which is in Schedule 6 to the Act.

The copies in the Schedules are of the Agreements in their original form. They are out of date as each of the Agreements has been amended several times.

New section 18A will require the Government Printer to reprint the Agreements as amended whenever the Act is reprinted. The reprints of the Agreements will have similar evidentiary status to reprints of the Act itself. The existing Schedules will be repealed by clause 37.

Proposed new section 18B will enable the Secretary to the Department of Infrastructure to certify copies of the Exhibits, amendments and variations to the three Agreements. Certified copies will be admissible as evidence in legal proceedings.

- Clause 9 repeals Divisions 1 to 7 of Part 3 of the Act. These deal with matters related to the acquisition, compensation, use and management of Project land. They will become redundant when construction is completed.
- Clause 10 repeals sections 55, 56, 58 and 59 of the Act, which will be redundant from completion of construction. Those sections deal with the management of Project land and its use for construction works.
- Clause 11 amends section 60 of the Act to remove certain preconditions for leasing land to Transurban. This will facilitate the leasing of Crown land that may be required to manage the roadways and ancillary works. The clause also clarifies that leases may include land or strata that are part of the bed and banks of the River Yarra or Moonee Ponds Creek, despite section 175A of the **Water Industry Act 1994**.
- Clause 12 repeals section 60A of the Act. That section applies provisions of the Act relating to leased land (such as road management provisions) on an interim basis pending finalisation of the leases of the roadways and ancillary works. The section will be redundant after the leases are actually granted.

- Clause 13 substitutes section 61 (1), which deals with the formal declaration of the Link road. The effect of the substitution is to remove references to declaration of roads over land not yet leased. This will be redundant when the leases are actually issued.
- Clause 14 repeals section 63 of the Act, which deals with agreements under Part 9 of the **Planning and Environment Act 1987** in relation to the use or development of land. Section 63 will be redundant when Project land transactions are completed.
- Clause 15 amends section 64 of the Act. The effect is to remove provisions excluding certain Acts from land used for construction of the City Link. Those exemptions will be redundant when construction is complete.
- Clause 16 inserts a new section 64A into the Act. This will clarify that any remaining Project reservations may be revoked in accordance with the **Crown Land (Reserves) Act 1978**.
- Clause 17 repeals sections 65 and 66 of the Act and the heading to Division 10 of Part 3, which will be redundant after construction is completed. Section 65 enabled Ministerial Orders to be made exempting land or buildings from the operation of the **Heritage Act 1995**. Section 66 exempted Project land acquisitions from the operation of the **Cultural and Recreational Lands Act 1963**. The Division heading will be redundant when the repeals proposed by clauses 18 and 19 take effect.
- Clause 18 and 19 repeal sections 67 and 68 of the Act respectively. These are land provisions that will be redundant when Project land transactions are completed.
- Clause 20 inserts a new sub-section (4) into section 72 of the Act. The new sub-section provides that, if a vehicle owner nominates another person as the actual driver (and therefore as the person liable to pay the toll), that nomination may be used as evidence. This is similar to existing “owner-onus” provisions in respect of infringement notices.
- Clause 21 amends section 73C of the Act to enable regulations to be made to extend the time in which a late day pass may be purchased.

Currently, section 73C provides that late day passes may be sought up to noon on the day following a trip on a toll zone.

Clause 22 amends section 77 of the Act to extend, and clarify the operation of, the existing mechanisms by which Transurban City Link Ltd., as the "relevant corporation" for tolling purposes, may request the enforcement agency to send material to City Link users. Under privacy laws, Transurban does not have direct access to motor registration records and may not know the identity of a vehicle owner. Transurban may request the enforcement agency to send either or both of—

- a notice about the Act's tolling registration requirements. These may be sent to vehicle owners. This option which was to expire on 31 December 2000, will now expire on 1 July 2001;
- a request for payment to the person who appears to be liable to pay it. The Act currently provides that the vehicle owner is liable unless the owner nominates another person as the driver.

Clause 23 amends section 78 to retain, and clarify the operation of, the existing mechanisms that enable the enforcement agency to send by post the material described in the notes above relating to clause 22. The enforcement agency may send this material at its discretion and if requested to do so by Transurban. See also clause 43.

Clause 24 inserts new paragraphs (aa) and (ab) into section 90A (2) of the Act. Section 90A (2) of the Act specifies when "restricted tolling information" may be used or disclosed, unauthorised use or disclosure being an offence.

The new paragraph (aa) will enable the Police to obtain access to restricted tolling information for use in investigating the loss, theft or misuse of e-TAGs. Police may already obtain and use such information for serious criminal investigations, but must keep an audit trail of the handling of the information as required by section 90C of the Act. The practical effect of the proposed amendment will be to allow Police to handle cases of lost and stolen e-TAGs without having to keep an audit trail of the kind required for serious criminal investigations. All Police access to and handling of restricted tolling information remains subject to

monitoring and investigation by the Ombudsman under Division 3A of Part 4 of the **Ombudsman Act 1973**.

The new paragraph (ab) will enable restricted tolling information to be used in the enforcement of laws relating to the transport of dangerous goods or waste by road. For example, use of the City Link tunnels by vehicles carrying placard loads of dangerous goods is already restricted for safety reasons.

The proposed amendment would permit use of restricted tolling information to detect illegal use of the tunnels and to take enforcement action.

Clause 25 inserts a new section 93 (3). Under the amendment, records held by a relevant corporation in relation to non-payment of tolls will not have to be destroyed after 2 years if they are required for legal proceedings already commenced.

Clause 26 repeals the following provisions of the Act—

- Section 93B, which established the "Extension Project Area". The Extension Project Area defined the geographic scope of certain provisions relating to the Exhibition Street Extension Project, such as land acquisition powers. The provision will be redundant on finalisation of land transactions.
- Division 2 of Part 4A (sections 93C to 93F) of the Act. This Division deals with powers to obtain land for the purposes of the Exhibition Street Extension Project, and will be redundant on completion of construction.
- Section 93GA of the Act. That section applies provisions of the Act relating to leased land (such as road management provisions) to the Extension road on an interim basis pending finalisation of the leases of the roadways and ancillary works. The section will be redundant after the leases are actually granted.

Clause 27 substitutes section 93H (1), which deals with the formal declaration of the Extension road. The effect of the substitution is to remove references to declaration of roads over land not yet leased. This will be redundant when the leases are actually issued.

- Clause 28 amends section 96(3) of the Act by repealing an obsolete reference to the Project area.
- Clause 29 repeals section 97 of the Act, which conferred powers on the "Independent Reviewer" (appointed under the Agreement) to make emergency orders in relation to the carrying out of works during the construction phase of the Melbourne City Link Project. The provision will become redundant on completion of construction.
- Clause 30 repeals section 101 of the Act, which empowered the Governor in Council to direct agencies in relation to the performance of their functions in relation to the Project area or the Extension project area. With completion of construction and the abolition of the Project area and Extension project area by this Bill, this provision will be redundant.
- Clauses 31 and 32 repeal references to "licensed land" and related terms in sections 103 and 104 of the Act. These references relate to construction licences and will be redundant when construction is completed.
- Clause 33 repeals sections 105 to 114 of the Act, which relate to the security of construction sites. They will become redundant when construction is complete.
- Clause 34 amends sections 115 and 116 of the Act. The amendment is consequential on the winding up of the Authority. Section 115 presently enables the Chief Executive Officer of the Authority to issue certain evidentiary certificates. The effect of the amendment will be that certificates issued under section 115 will be admissible as evidence in legal proceedings if issued before the date of winding-up of the Authority, by the Chief Executive Officer of the Authority.
- Section 116 (2) is to be repealed. It specifies who may bring proceedings for non-tolling offences under the Act. The provisions which create those offences are to be repealed by this Bill.
- Clause 35 inserts a new section 116A into the Act. This new section will specify how notices under the Act may be served. The provision is similar in terms and effect to section 93 of the **Road Safety Act 1986**, which deals with the service of notices under that Act.

Section 116A will not apply in respect of notices under three provisions of the Act that already prescribe specific service processes, namely sections 73E, 80 and 80A.

Clause 36 substitutes Part 6 (section 119) of the Act. The existing provision has already become redundant. The new section 119 will provide that the repeal, by clause 37, of the Schedules that contain the three Agreements is not intended to affect the status of those Agreements.

Clause 37 repeals the Schedules to the Act (other than Schedule 2) for the following reasons—

- Schedule 1: This contains a copy of the Melbourne City Link Agreement in its original form. The Schedule does not accurately reflect the current form of the Agreement because of amendments that have been made since it was first executed. While the original version of the Agreement will be deleted, future reprints of the Act will include a reprint of the Agreement showing amendments (see clause 8, new section 18A);
- Schedules 3 and 4: These contain detailed land descriptions of parcels previously excised from Melbourne and Olympic Park Land for the purposes of the Project. This Bill will repeal the provisions of the Act that made those excisions, making the Schedules redundant;
- Schedules 5 and 6: These contain copies of the original versions of the Integration and Facilitation Agreement and the Extension Agreement respectively. They are to be repealed for the same reasons as the Melbourne City Link Agreement (see notes on repeal of Schedule 1).
- Schedule 7: This contains a plan showing the strata of underground land that was reserved for Project purposes by the operation of section 30A of the Act. With the repeal of that section, the Schedule will be redundant.

Clause 38 repeals the **Melbourne City Link Authority Act 1994**.

- Clause 39 makes transitional arrangements in relation to the Melbourne City Link Authority. The Authority will be abolished and its rights, obligations, property and assets will transfer to the State. References in any document to the Authority or its Chief Executive Officer must be construed as references to the State or the Secretary to the Department of Infrastructure respectively.
- Clause 40 repeals the item in Schedule 1 to the **Borrowing and Investment Powers Act 1987** that specifies the borrowing and investment powers of the Authority.
- Clause 41 substitutes the definition of "Olympic Park land" in section 4 to the **Melbourne and Olympic Parks Act 1985**. The new definition includes the additional land to be included in Olympic Park by operation of clause 42.
- Clause 42 inserts a new section 31B into the **Melbourne and Olympic Parks Act 1985** to include certain surplus Project land in the Olympic Park reservation. The land is shown on the plan numbered LEGL./00-24, which is lodged in the Central Plan Office of the Department of Natural Resources and Environment. A copy of this plan has been provided to the Parliamentary Library. Copies are available to the public from the Land and Survey Information Centre, Department of Natural Resources and Environment, Ground Floor, 456 Lonsdale Street, Melbourne, 3000.
- Clause 43 repeals sub-sections (2) and (5) of section 18 of the **Melbourne City Link (Amendment) Act 1998**. Those provisions repeal sections 77 (1) (a) and 78 (1) of the Act. They are due to come into operation on 31 December 2000. The effect of that repeal would be to remove from the Act the provisions that enable notices about the Act's tolling registration requirements to be sent to the owners of vehicles used on a toll zone without tolling registration. See also notes to clauses 22 and 23 about the proposed rewording of these provisions.
- Clause 44 makes a statute law revision to section 259 of the **Melbourne and Metropolitan Board of Works Act 1958** to simplify a reference to the Bolte Bridge.

Clause 45 amends sections 56A and 56B of the **Transport Act 1983** to remove cross-references made redundant by the proposed repeal of provisions of the Act. The amendments also provide that the declaration of the Link road and the Extension road do not extinguish property rights by operation of clause 13 of Schedule 5 to the **Transport Act 1983**. This includes rights under the leases of the roads or rights in strata above or below the roads.