

Melbourne City Link (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill, which relate to privacy of tolling records, tolling administration, road administration powers and project land.
- Clause 2 provides that the Bill (except clauses 18(2) and (5)) will come into operation on Royal Assent. Clauses 18(2) and (5) will come into operation on a day to be proclaimed or 31 December 2000 at the latest.
- Clause 3 defines the "Principal Act" as the **Melbourne City Link Act 1995**.

PART 2—AMENDMENTS TO THE PRINCIPAL ACT

- Clause 4 amends the definition section of the Principal Act. Key amendments include—

"authorised police officer" refers to the Chief Commissioner and member of the Police Force of the rank of inspector or above, appointed by the Chief Commissioner, for the purposes of authorising access to restricted tolling information for the purposes of criminal law enforcement.

"Customer service site" refers to land in South Melbourne to be used for customer service offices. The land is shown on the plan numbered LEGL./98-74, lodged with the Central Plan Office of the Department of Natural Resources and Environment. A copy of the plan has been provided to the Parliamentary Library.

"relevant corporation" is a new definition which will simplify references in the Principal Act to the bodies responsible for management and operation of the City Link (the "Link road") and the Exhibition Street Extension (the "Extension road"). In particular, the new definition facilitates the joint tolling of the

City Link and the Exhibition Street Extension. In summary, the Link corporation will operate the Link road, the Extension corporation will operate the Extension road and the Link corporation will manage tolling on both roads unless and until this arrangement is ended by either corporation.

"restricted tolling information" covers the tolling records that are subject to privacy laws. All tolling records which affect personal privacy or are commercially sensitive will be subject to privacy controls—see clause 25, new section 90. Penalties apply to unauthorised use or disclosure of restricted tolling information—see clause 25, new section 90A.

"enforcement agency" is the Government agency or agencies responsible for tolling enforcement. The new definition has the effect of transferring this function from the Roads Corporation to the Chief Commissioner of Police. The function can be reassigned in whole or part by regulations.

- Clause 5 extends the delegation powers of the Link corporation and the Extension corporation to include their powers and functions under section 183B(4) of the **Transport Act 1983**.
- Clause 6 deals with the "Customer service site" in Lorimer Street, South Melbourne, which is to be the site for the Link's Customer Service Centre. Project exemptions in respect of rates, taxes and planning and building controls will not apply to the Customer service site.
- Clause 7 inserts a new section 27A into the Principal Act, which excises a small parcel from Olympic Park for the purposes of a vent shaft for an emergency refuge in the Burnley Tunnel. The details of the reservation being partially revoked are set out in clause 32. The parcel is shown on the plan numbered LEGL./98-76, lodged with the Central Plan Office of the Department of Natural Resources and Environment. A copy of the plan has been provided to the Parliamentary Library.
- Clause 8 repeals section 60(3) of the Principal Act. Clause 10 provides a new mechanism for declaring the Link road.
- Clause 9 inserts a new section 60A into the Principal Act. This section will enable the City Link to be operated on an interim basis in

the period following completion of construction but before the finalisation of surveys and leases.

Clause 10 substitutes section 61 of the Principal Act. This will enable the Minister to publish a notice formally declaring the Link road. The notices will also specify the parts of the road which are to operate as freeways or highways. The declared road will become a declared road for the purposes of the **Transport Act 1983** and a highway for the purposes of the **Road Safety Act 1986**.

Clause 11 substitutes section 62 (2) of the Principal Act. This applies road operation and traffic management laws to the Link road, distinguishing between the parts of the Link which will operate as a freeway and the parts which will operate as a highway.

Clause 12 inserts new definitions into Part 4 of the Principal Act, which deals with tolling. Key definitions include—

"start-up period" is a prescribed period commencing on a prescribed day. Lower penalties for evasion may apply during this period. See clause 20.

"trip" means one continuous trip in one direction on the City Link or Exhibition Street Extension, irrespective of how many toll zones are used.

Clause 13 inserts a new section 69A into the Principal Act. The Bill facilitates joint tolling of the City Link and Exhibition Street Extension, as intended by the relevant Agreements. However, the Agreements also enable separate tolling of the two roads in certain circumstances. The new section 69A therefore enables either the Link corporation or the Extension corporation to terminate joint tolling of the roads by giving at least one month's public notice. The tolling provisions would then apply separately to the two roads.

Clause 14 amends sections 70 and 71 of the Principal Act to enable tolls to be fixed jointly on the City Link and Exhibition Street Extension.

Clause 15 replaces section 73 with new sections 73 to 73E.

New section 73 deals with the offence of toll evasion. It will be an offence to use a vehicle on the City Link or Exhibition Street

Extension if it is not registered with the relevant corporation, unless it is exempted from this registration requirement by the regulations or the vehicle is exempt under the regulations from the payment of tolls. One trip is one offence, irrespective of the number of toll zones used. Only one violation per vehicle can incur a penalty on any one day. It is a defence for a driver to prove that he or she believed, on reasonable grounds, that the vehicle was registered to use the roads.

New section 73A enables the registration of vehicles to use the City Link and Exhibition Street Extension. It also enables the cancellation or suspension of registration.

New section 73B deals with the registration of vehicles for tolling purposes on an ongoing basis. It also facilitates the making of tolling agreements between the relevant corporation and its customers. The relevant corporation may require a tolling agreement as a condition of registration. Such a tolling agreement may be for a fixed or indefinite period. It may specify other terms, such as conditions of use and procedures for settling tolling disputes. An agreement may also specify the procedure for cancellation or suspension of that agreement and the vehicle's tolling registration.

New section 73C allows for temporary registration for a specified period of up to 27 hours. This will enable the sale of "day-passes" authorising use of the City Link and Exhibition Street Extension on a nominated day (ending at 3 a.m. the following day).

New section 73D requires the relevant corporation to provide certain information to a person who registers a vehicle to use a toll zone. The purpose is to ensure that the person registering a vehicle is provided sufficient details to be able to prove registration in case of dispute. It will be an offence for a relevant corporation to fail to give the required information.

New section 73E provides that the relevant corporation cancels or suspends a vehicle's registration in accordance with the terms of a tolling agreement, the cancellation or suspension only takes effect if notice of the cancellation or suspension is given in accordance with the tolling agreement or by service of a written notice in accordance with the section.

- Clause 16 substitutes section 75 of the Principal Act. The section makes it an offence to obtain registration by fraudulent or collusive means.
- Clause 17 amends section 76 of the Principal Act. It replaces the existing requirement for Courts to order evaders to pay evaded tolls and administrative costs to the relevant corporation with a requirement to pay the costs only. The clause also inserts references to the relevant corporation.
- Clause 18 alters the enforcement process for toll evasion.
- Clause 19 amends the provisions of the Principal Act dealing with the service of infringement notices. Information may be sent with infringement notices about the obligations of users with respect to tolls. Prescribed costs are not to be included in an infringement notice.
- Clause 20 enables the infringement notice penalty for toll evasion to be reduced during the start-up period.
- Clause 21 substitutes section 86 of the Principal Act, which deals with the application of the PERIN procedure under the **Magistrates' Court Act 1989** to the infringement notices for tolling fines.
- Clause 22 amends sections 87 and 89 of the Principal Act in relation to the production of evidence generated by the tolling scanners or from tolling records for use in legal proceedings relating to tolling.
- Clause 23 substitutes section 88 of the Principal Act. The effect is that evidence generated by the tolling system may be used in evidence on a similar basis to existing red light and speed camera legislation.
- Clause 24 makes a number of minor and consequential amendments relating to the joint tolling arrangements for the City Link and Exhibition Street Extension.
- Clause 25 inserts a new Division 3 into Part 4 of the Principal Act, which will establish a revised privacy regime for tolling records.
- New section 90 defines the term "**restricted tolling information**". This term covers tolling records of the relevant agency which contain private or commercially sensitive information.
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New section 90A prohibits the toll road operators, enforcement agency and any other person who obtains restricted tolling information from using or disclosing that information except as specifically permitted by the Bill. Unauthorised use or disclosure will be an offence carrying a fine of up to \$10 000. The circumstances in which use or disclosure of restricted tolling information is authorised include administration of the tolling system, where the relevant person consents, to avert an imminent and serious threat to a person's life or health and in the course of legal proceedings.

New section 90B deals with Police Force access to and use of tolling records for the purposes of enforcement of the criminal law, being enforcement activities relating to indictable offences. Access is conditional on the Chief Commissioner or a senior officer of the Police Force, appointed by the Chief Commissioner for the purpose, certifying that access is reasonably necessary for the purposes of criminal law enforcement. This is similar to the arrangements applying under the Commonwealth Telecommunications Act 1997 in respect of Police access to telephone account records.

New section 90C requires the Police to keep records of authorised access to restricted tolling information, as required by the Ombudsman for the purposes of monitoring by the Ombudsman.

New section 90D enables restricted tolling information to be used by a court, the sheriff, an agent of the State or a law enforcement agency for the purposes of making, enforcing and executing Court orders and judgements relating to tolling. Once information has been obtained for this purpose, it may also be used in relation to other orders and judgements.

New section 90E requires the relevant agencies to keep certain records of uses or disclosures for the purposes of monitoring. Failure to do so will be an offence.

New section 90F deals with the effect of non-compliance by members of the police force with the new Division.

New section 91 authorises the Roads Corporation and its staff and agents to disclose information to the enforcement agency for the purposes of tolling enforcement. It also clarifies that the privacy regime established by this Bill will apply to information

from motor registration records under the **Road Safety Act 1986** instead of the privacy regime under that Act.

- Clause 26 substitutes section 92(2) of the Principal Act so that inspections of tolling records will cover the records to be required by this Bill.
- Clause 27 repeals section 93G(3) of the Principal Act. Clause 29 provides a new mechanism for declaring the Extension road.
- Clause 28 inserts a new section 93GA into the Principal Act. This section enables the Exhibition Street Extension to be operated on an interim basis in the period following completion of construction but before the finalisation of surveys and leases.
- Clause 29 substitutes section 93H of the Principal Act. This enables the Minister to publish a notice formally declaring the Extension road. The declared road will become a highway for the purposes of the **Road Safety Act 1986** and a declared road for the purposes of the **Transport Act 1983**.
- Clause 30 inserts new sections 114A and 114B into the Principal Act.
- New section 114A will authorise the relevant corporation to remove vehicles in certain circumstances. This is particularly necessary to enable removal of vehicles from hazardous locations, such as the tunnels.
- New section 114B will authorise the relevant corporation to remove abandoned property.
- Clause 31 amends the regulation making powers under section 118 of the Principal Act. The main amendments allow regulations to be made prescribing the method for the production of evidence from the tolling system for use in legal proceedings and exempting vehicles from registration.
- Clause 32 inserts new Division headings into Part 4 of the Principal Act.
- Clause 33 inserts a new Item 2 into Schedule 4 of the Principal Act. The Schedule specifies the Order in Council that reserved Olympic Park and which will be partially revoked by clause 7, proposed new section 27A.

PART 3—AMENDMENTS TO THE OMBUDSMAN ACT 1973

Clause 34 amends the definition of "principal officer" in the **Ombudsman Act 1973**.

Clause 35 amends section 13 of the **Ombudsman Act 1973** to confer jurisdiction on the Ombudsman to monitor Police compliance with the proposed new requirements in relation to Police use of tolling records for criminal law enforcement. The Ombudsman must review the records at least twice a year.

Clause 36 inserts a new Division 3A into Part IV of the **Ombudsman Act 1973**, dealing with investigations relating to the use of tolling records.

New section 22A contains relevant definitions.

New section 22B authorises the Ombudsman and authorised employees to enter Police premises where records containing restricted tolling are held and to inspect and copy those records.

New section 22C requires the Police to provide reasonable assistance to the Ombudsman in carrying out the Ombudsman's monitoring functions.

Clause 37 inserts a new section 25A requiring the Ombudsman to report to the Minister at least annually on the results of the monitoring. A copy of each report will also be sent to the Attorney-General and the Chief Commissioner of Police.

PART 4—AMENDMENTS TO THE TRANSPORT ACT 1983

Clause 38 inserts new sections 56A(9) and (9A) into the **Transport Act 1983**. These deal with the application of certain road administration provisions of that Act to the parts of the City Link which are to operate as a freeway and the parts which are to operate as a State highway.

Clause 39 amends the provisions of the **Transport Act 1983** relating to the licensing of tow truck drivers. The amendments will enable the Minister to authorise the issuing of new tow truck licences as necessary to enable the performance of functions under the **Melbourne City Link Act 1995** and relevant Agreements.

Clause 40 amends section 183B of the **Transport Act 1983** to exempt tow truck drivers acting under the authority of the operators of the City Link or the Exhibition Street Extension from the need to have job allocations to tow accident damaged vehicles from those roads. The exemption only applies if the vehicle is towed to a depot approved by the Tow Truck Directorate.

Clause 41 inserts a new section 183C into the **Transport Act 1983**. Where an accident damaged vehicle is towed from the City Link or Exhibition Street Extension to an approved depot, tow truck drivers will require a job allocation to tow the vehicle from that depot.

PART 5—AMENDMENTS TO OTHER ACTS

Clause 42 amends section 5 of the **Impounding of Livestock Act 1994** to confer on the operators of the City Link and the Exhibition Street Extension the powers of a highway authority to remove stray animals.

Clause 43 inserts a new section 13A into the **Impounding of Livestock Act 1994** to require the operators to deliver impounded animals to the nearest pound.

Clause 44 amends the **Magistrates' Court Act 1989** in several respects. Section 124B is amended to enable contracts under that section to deal with the provision of administrative services in support of the functions of the Police Force as the tolling enforcement agency under the **Melbourne City Link Act 1995**. The other amendments deal with the service of PERIN Court process in relation to tolling infringements.

Clause 45 inserts a new section 9AA into the **Road Transport (Dangerous Goods) Act 1995**. This section will empower the WorkCover Authority, as the "Competent Authority" for the transport of dangerous goods in Victoria, to prohibit or regulate the transport of dangerous goods (as defined in that Act) on particular routes, through particular areas or at particular times. It is intended to use this power to regulate or prohibit the use of the City Link tunnels by certain vehicles. However, the section confers a general power not limited to the City Link.

