

Very Fast Train (Route Investigation) Bill

EXPLANTORY MEMORANDUM

Outline

The object of this Bill 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.

The proposed Act will enable the issue of permits authorising the entry of land to carry out survey and other exploratory work. A permit may be issued by the Minister if agreement is unable to be reached with owners and occupiers of land for such work to be carried out without a permit.

Compensation for any loss or damage incurred by owners or occupiers as a consequence of such exploratory work may be dealt with by voluntary agreements. If agreement cannot be reached compensation will be determined by application of the *Land Acquisition and Compensation Act* 1986. This will enable appropriate compensation to be claimed if land has been entered under the authority of a permit.

The proposed Act complements the provisions of the *Very Fast Train (Route Investigation) Act* 1989 enacted by the New South Wales Parliament and will ensure route investigation for a very fast train is to be generally dealt with in the same manner as in that State with the following exceptions—

where a permit is applied for in respect of Crown land or land owned or occupied by a public authority, the applicant must by published notice request any person to make a submission to the Minister about granting of a permit or any permit conditions; and

personal written notice must be given by applicants for permits to landholders advising of a permit application; and

permit holders or former permit holders must give personal written notice to landholders of the granting of a permit, changes to permit conditions, reductions in the area subject to a permit and surrender or revocation of a permit; and

the proposed Act expressly does not affect the operation of the *Archaeological and Aboriginal Relics Preservation Act* 1972 or the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984.

PART 1—PRELIMINARY

Purpose

Clause 1 provides that the purpose of the 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

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Definitions

Clause 3 defines certain expressions for the purposes of the Act

Act binds the Crown

Clause 4 provides that the Act binds the Crown.

Object of Act

Clause 5 provides that the object of the 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.

PART 2—PERMITS

Approved persons

Clause 6 enables the Minister to declare persons as “approved persons” for the purposes of the Act. Only persons with adequate technical expertise to carry out surveys and having sufficient financial resources to pay compensation can be approved.

Application for permits by approved persons

Clause 7 allows approved persons to apply for permits. Applicants must advertise their intention to apply and must supply certain particulars in their applications. The clause ensures that applicants identify any land intended to be entered and must by public notice request owners and occupiers of that land, or if the land is Crown or public land, any person, to make a submission to the Minister about granting of a permit or permit conditions. Personal notice must also be given in writing to persons with an interest in the land consistent with requirements in the *Land Acquisition and Compensation Act 1986*. The Minister may defer consideration of an application until any further information requested is supplied.

Minister may grant or refuse permits

Clause 8 empowers the Minister to grant or refuse permits. A permit may be granted for all or part of the land to which an application relates. The Minister must take into account certain matters before granting a permit, such as submissions received under *clause 7*, whether unreasonable duplication of surveys may result, any features of the land or of adjacent land which the Minister considers are special features and any other matters the Minister considers relevant.

Duration of permits

Clause 9 fixes 6 months as the maximum term for a permit, but extensions for further periods of up to 6 months may be granted. No work will be able to be carried out under permit later than 7 years after the commencement of the section.

Conditions of permits

Clause 10 provides that a permit is subject to such conditions as the Minister thinks fit and specifies in any permit. The carrying out of work under the authority of a permit is subject to those conditions which may be varied during the currency of a permit. Conditions which may be imposed by the Minister may include the prohibition or regulation of specified activities on land and provision for payment of compensation and restoration of land.

Reduction of permit area

Clause 11 allows the Minister to reduce the area to which a permit applies, at the request of the holder of a permit.

Surrender or revocation of permits

Clause 12 provides for the voluntary surrender of a permit. The Minister may revoke a permit for any reason the Minister thinks sufficient or if the Act or the regulations or a condition of the permit have been contravened.

Rights conferred by permits

Clause 13 declares the rights to be conferred by permits. A permit authorises its holder (and other persons authorised by the holder) to enter land and to carry out surveys, examinations and tests or to use the land for access to other land. Entry to dwellings is not authorised, and notice of intention to enter any land must be given in accordance with the regulations.

Notice to owners of land

Clause 14 provides that the holder or former holder of a permit must give written notice to persons with an interest in land to which a permit applies that a permit has been granted in respect of the land, that the conditions of a permit have changed, that an area subject to a permit is reduced or that a permit has been surrendered or revoked. These requirements are broadly consistent with notice requirements in the *Land Acquisition and Compensation Act 1986*.

Restriction on exercise of rights

Clause 15 preserves restrictions imposed by other laws on a person who is exercising the rights conferred by a permit. The only exceptions are that anything authorised by a permit is not prohibited by the provisions of any planning scheme and that the *Environment Effects Act 1978* does not apply to activities under a permit.

Contravention of condition of permit

Clause 16 creates an offence when a condition of a permit is contravened by the holder of the permit or contravened by anyone authorised by the holder to enter land. The penalty for the offence is 400 penalty units (presently \$40 000).

Interference with authorised activities

Clause 17 creates an offence when a person prevents another person from doing something authorised to be done by a permit or hinders or obstructs another person who is doing such a thing authorised to be done by a permit or hinders or obstructs another person who is doing such a thing. The penalty for the offence is 50 penalty units (presently \$5000).

PART 3—COMPENSATION

Agreements for compensation

Clause 18 allows owners and occupiers of land to enter into agreements relating to the payment of compensation or the performance of work in respect of any loss or damage suffered because of the activities of a permit holder or a person authorised to enter land by any such holder.

Liability for compensation

Clause 19 entitles owners and occupiers of land to compensation for loss or damage suffered (including loss of minerals or stone) as a result of anything done or omitted to be done by a permit holder or a person authorised to enter land by any such holder.

Determination of claim for compensation

Clause 20 provides that where agreement on compensation cannot be reached, the amount of compensation payable shall be determined as if it were a claim arising under the *Land Acquisition and Compensation Act 1986*. That Act provides amongst other things for—

- a requirement that a claim for compensation must be made within two years of last being upon the land in question (section 47 (2))
- claims for compensation to be determined by the Land Valuation Board of Review (if the amount in dispute does not exceed \$50 000) or the Supreme Court of Victoria for larger claims or if the claim raises questions of unusual difficulty or general importance (section 81)
- the Board or the Court may award costs in compensation proceedings as it thinks fit (section 91)
- the Board or the Court may inspect land (section 95).

PART 4—MISCELLANEOUS

Delegation

Clause 21 allows the Minister to delegate functions of the Minister to the Director-General of Transport or any other person prescribed by regulations under the Act.

Application of certain Acts

Clause 22 provides that nothing in the 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.

Regulations

Clause 23 empowers the making by the Governor in Council of regulations for the purposes of the Act.