

Version No. 011
Road Management Act 2004
Act No. 12/2004

Version incorporating amendments as at 24 September 2004

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Road Management Act 2004

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose and outline¹

- (1) The purpose of this Act is to reform the law relating to road management in Victoria and to make related amendments to certain Acts.
- (2) In outline this Act—
 - establishes a new statutory framework for the management of the road network which facilitates the coordination of the various uses of road reserves for roadways, pathways, infrastructure and similar purposes;
 - sets out certain rights and duties of road users;
 - establishes the general principles which apply to road management;
 - provides for the role, functions and powers of a road authority;
 - provides for the making of Codes of Practice to provide practical guidance in relation to road management;

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- facilitates the making of road management plans as part of the management system to be implemented by a road authority in the performance of road management functions;
 - enables the declaration and discontinuance of roads;
 - provides a new process for the declaration and classification of roads and the re-allocation of management responsibility for roads;
 - provides for a road authority to keep a register of public roads in respect of which the road authority is the coordinating road authority;
 - provides for the construction, inspection, maintenance and repair of public roads;
 - sets out the road management functions of road authorities;
 - sets out the road management functions of infrastructure managers and works managers in providing infrastructure or conducting works;
 - provides for issues relating to civil liability arising out of road management;
 - provides for mechanisms to enforce and administer provisions of the Act;
 - makes related amendments to the **Transport Act 1983**, the **Road Safety Act 1986**, the **Local Government Act 1989** and certain other Acts.
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2. Commencement

- (1) This Part and Divisions 1 and 5 of Part 4 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Part 2, Part 3, Divisions 2, 3 and 6 of Part 4, Divisions 3 and 4 of Part 5, Part 6, Part 7 and Divisions 1, 2, 4 and 5 of Part 8 come into operation on 1 July 2004.
- (3) Subject to sub-section (4), Division 4 of Part 4, Divisions 1 and 2 of Part 5 and Divisions 3 and 6 of Part 8 come into operation on a day or days to be proclaimed.
- (4) If a provision of this Act specified in sub-section (3) does not come into operation before 1 January 2005, it comes into operation on that day.

3. Definitions

- (1) In this Act—

"ancillary area" means an area designated as an ancillary area by the coordinating road authority under section 18;

Example

Any area which is a "park and ride" carpark, rest stop or scenic lookout could be designated as an ancillary area.

"arterial road" means a road which is declared to be an arterial road under section 14;

"authorised officer" means an authorised officer appointed for the purposes of this Act under section 71;

"Code of Practice" means a Code of Practice made under Division 1 of Part 4;

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"controlled access road" means a public road in respect of which a declaration is in force under section 42;

"coordinating road authority" in relation to a road, means the road authority which has coordination functions as determined in accordance with section 36;

"designated road project" means a road project designated by the Minister under section 16 as a designated road project;

"Extension corporation" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"Extension road" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"freeway" means a road declared to be a freeway under section 14;

"infrastructure" means road infrastructure and non-road infrastructure;

"infrastructure manager" means—

- (a) in relation to road infrastructure, the responsible road authority under section 37; or
- (b) in relation to non-road infrastructure, the person or body that is responsible for the provision, installation, maintenance or operation of the non-road infrastructure;

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"land" includes any estate, interest, easement, servitude, privilege or right in or over land and strata above or below the surface of land and easements and rights to use strata above or below the surface of land;

"Link corporation" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"Link road" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"maintenance" of any road and infrastructure includes the execution of all works of any description which are required to keep the road or infrastructure in the state of utility determined in accordance with this Act or any other Act to be appropriate;

"Mitcham-Frankston Freeway" means the Mitcham-Frankston Freeway within the meaning of the **Mitcham-Frankston Project Act 2004**;

S. 3(1) def. of "Mitcham-Frankston Freeway" inserted by No. 39/2004 s. 262(1).

"Mitcham-Frankston Freeway Agreement" means the Agreement within the meaning of the **Mitcham-Frankston Project Act 2004**;

S. 3(1) def. of "Mitcham-Frankston Freeway Agreement" inserted by No. 39/2004 s. 262(1).

"Mitcham-Frankston Freeway Corporation", in relation to a provision of this Act, means the person who, for the time being, is declared under section 10 of the **Mitcham-Frankston Project Act 2004** to be the Freeway Corporation in relation to that provision;

S. 3(1) def. of "Mitcham-Frankston Freeway Corporation" inserted by No. 39/2004 s. 262(1).

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"motor vehicle" has the same meaning as it has in section 3(1) of the **Road Safety Act 1986**;

"municipal road" means any road which is not a State road, including any road which—

- (a) is a road referred to in section 205 of the **Local Government Act 1989**; or
- (b) is a road declared by VicRoads to be a municipal road under section 14(1)(b); or
- (c) is part of a Crown land reserve under the **Crown Land (Reserves) Act 1978** and has the relevant municipal council as the committee of management;

"non-arterial State road" means a State road which is not a freeway or an arterial road;

"non-road infrastructure" means infrastructure in, on, under or over a road which is not road infrastructure;

Note: See the definition of "road infrastructure".

Examples

Non-road infrastructure would include gas pipes, water and sewerage pipes, cables, electricity poles and cables, tram wires, rail infrastructure (including boom gates, level crossings and tram safety zones), bus shelters, public telephones, mail boxes, roadside furniture and fences erected by utilities.

"pathway" means a footpath, bicycle path or other area constructed or developed by a responsible road authority for use by members of the public other than with a motor vehicle but does not include any path—

- (a) which has not been constructed by a responsible road authority; or
- (b) which connects to other land;

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Examples

A footpath or bicycle path constructed on a road reserve by a responsible road authority for use by the general public would be a pathway.

A foot trodden track over roadside land or a path that connects from a roadway or footpath to privately owned land would not be a pathway.

"prescribed" means prescribed by the regulations;

"principal object of road management" means the principal object specified in section 20(1);

"provider of public transport" includes—

- (a) a rail corporation, a train operator or a tram operator under the **Rail Corporations Act 1996**; or
- (b) a person providing a regular passenger service within the meaning of the **Public Transport Competition Act 1995** under the authority of a service contract within the meaning of that Act;

"public highway" means any area of land that is a highway for the purposes of the common law;

"public road" means a public road within the meaning of section 17;

"regulate traffic" means restrict, direct, control or prohibit the passage along a road of persons, vehicles or other kinds of traffic;

"regulations" means regulations made under this Act;

"relevant municipal council", in relation to a road or part of a road, means the municipal council of the municipal district in which the road or the part of the road is located;

"relevant road Minister" means—

- (a) the Minister administering this Act, if the coordinating road authority is VicRoads;
- (b) the Minister administering the **Local Government Act 1989**, if the coordinating road authority is a municipal council;
- (c) the Minister administering the **Docklands Act 1991**, if the coordinating road authority is the Victorian Urban Development Authority;
- (d) subject to paragraph (b), the Minister administering the **Crown Land (Reserves) Act 1978**, if the coordinating road authority has responsibility for roads under that Act;
- (e) the Minister administering the **Forests Act 1958**, if the coordinating road authority has responsibility for roads under that Act;
- (f) the Minister administering the **Land Act 1958**, if the coordinating road authority has responsibility for roads under that Act;
- (g) the Minister administering the **National Parks Act 1975**, if the coordinating road authority has responsibility for roads under that Act;
- (h) if paragraphs (a) to (g) do not apply, the Minister administering the Act under which the road authority has responsibility for roads;

"relevant utility Minister", in relation to a utility, means the Minister of the Commonwealth or of Victoria administering the Act under which the utility performs its functions;

"repair" means the taking of any action to remove or reduce a risk arising from a defect in a roadway, pathway or road-related infrastructure, including—

- (a) reinstating a road to its former standard following works to install any infrastructure;
- (b) reinstating a road to its former standard following deterioration or damage;
- (c) providing a warning to road users of a defect in a roadway, pathway or road-related infrastructure—

but does not include the upgrading of a roadway, pathway or road-related infrastructure;

Examples

Filling in a pothole in a roadway, resurfacing the roadway and erecting a warning sign would be actions to repair the road.

"responsible road authority" in relation to a road, means the road authority which has operational functions as determined in accordance with section 37;

"road" includes—

- (a) any public highway;
- (b) any ancillary area;
- (c) any land declared to be a road under section 11 or forming part of a public highway or ancillary area;

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"road authority" means a person or body specified in or under section 37;

"road infrastructure" means—

- (a) the infrastructure which forms part of a roadway, pathway or shoulder, including—
 - (i) structures forming part of the roadway, pathway or shoulder;
 - (ii) materials from which a roadway, pathway or shoulder is made;
- (b) the road-related infrastructure;

Examples

A bridge, culvert or ford would be a structure forming part of a roadway.

Materials such as asphalt, bitumen, gravel, lane markers and lines would be materials from which a roadway, pathway or shoulder is made.

"road management function" means a function, power or duty conferred or imposed on—

- (a) a road authority by or under—
 - (i) this Act;
 - (ii) the **Road Safety Act 1986**;
 - (iii) the provisions of the **Local Government Act 1989** referred to in section 5(2);
 - (iv) the **Transport Act 1983**;
 - (v) any other Act dealing with the management of roads;
- (b) a utility, infrastructure manager or works manager by or under this Act;

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"road management infringement" means an offence—

- (a) against this Act that is specified in Schedule 8; or
- (b) against the regulations that is specified in the regulations to be a road management infringement;

"road-related infrastructure" means infrastructure which is installed by the relevant road authority for road-related purposes to—

- (a) facilitate the operation or use of the roadway or pathway; or
- (b) support or protect the roadway or pathway;

Examples

A traffic control sign, traffic light, road drain or embankment would be road-related infrastructure.

A noise wall, gate, post or board installed on the road reserve by the relevant road authority for road-related purposes would be road-related infrastructure.

"road reserve" means all of the area of land that is within the boundaries of a road;

"roadside" means any land that is within the boundaries of a road (other than the shoulders of the road) which is not a roadway or a pathway and includes the land on which any vehicle crossing or pathway which connects from a roadway or pathway on a road to other land has been constructed;

Example

Any nature strip, forest, bushland, grassland or landscaped area within the road reserve would be roadside.

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"roadway" means—

- (a) in the case of a public road, the area of the public road that is open to or used by members of the public and is developed by a road authority for the driving or riding of motor vehicles;
- (b) in the case of any other road, the area of the road within the meaning of "road" in section 3(1) of the **Road Safety Act 1986**—

but does not include a driveway providing access to the public road or other road from adjoining land;

"shoulder" means the cleared area, whether or not constructed or sealed, next to a roadway that provides clearance between the roadway and the roadside but does not include any area that is not in the road reserve;

"State road" means a road which—

- (a) is a freeway or arterial road; or
- (b) is declared to be a non-arterial State road under this Act; or
- (c) is the responsibility of a State road authority under another Act;

"State road authority" means a road authority other than a municipal council, the Extension corporation, the Link corporation or the Mitcham-Frankston Freeway Corporation;

"the Agreement" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

S. 3(1) def. of
"State road
authority"
amended by
No. 39/2004
s. 262(2).

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"the Extension Agreement" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"the Integration and Facilitation Agreement" has the same meaning as it has in section 3 of the **Melbourne City Link Act 1995**;

"traffic" includes vehicular, pedestrian and all other kinds of traffic;

"Tribunal" means the Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998**;

"urban area" means, in relation to a road, an area in which—

- (a) a speed limit of 60 kilometres per hour or less applies not being a speed limit which applies only because of a temporary reason such as roadworks or a street event; or
- (b) there are buildings on land next to the road, or there is street lighting, at intervals not exceeding 100 metres for—
 - (i) a distance of at least 500 metres; or
 - (ii) if the length of the road is less than 500 metres, over the length of the road;

"Utilities' Infrastructure Reference Panel" means the Panel established under section 31;

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"utility" means—

- (a) an entity (whether publicly or privately owned) which provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of Victoria or the Commonwealth;
- (b) any person who under the **Pipelines Act 1967** is—
 - (i) permitted to own or use a pipeline; or
 - (ii) licensed to construct or operate a pipeline;
- (c) a provider of public transport;

"VicRoads" means the Roads Corporation established under Part II of the **Transport Act 1983**;

"works" includes any kind of activity conducted on or in the vicinity of a road or proposed road in connection with the construction, maintenance or repair of the road or the installation, maintenance or repair of any infrastructure in, on, under or over a road and without limiting the generality of this definition includes—

- (a) excavating or breaking up the surface of a road;
- (b) erecting a structure in, on or over a road;
- (c) removing or interfering with any structure or marking on a road;

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- (d) planting or removing a tree or other vegetation;
 - (e) tunnelling under a road;
 - (f) connecting a road to a road;
 - (g) installing pipes, drains, cables, poles, buildings, shelters or other structures on a road reserve;
 - (h) erecting any obstruction on a road or otherwise impeding the use of a road for the purpose of conducting any works;

"works and infrastructure management principles" means the principles specified in section 20(2);

"works manager" means any person or body that is responsible for the conduct of works in, on, under or over a road.

Note: This includes all works whether related to road infrastructure or non-road infrastructure.

- (2) A reference to a road authority is to be construed as a reference to the road authority which has, in respect of the relevant part of a road, or in respect of road infrastructure or vegetation in the relevant part of a road, coordination functions in accordance with section 36 or operational functions in accordance with section 37.
 - (3) A reference to a register of public roads is to be construed as a reference to the register of public roads kept by the relevant road authority.
 - (4) A reference to the Minister administering a specified Act is to be construed as a reference to the Minister administering the relevant provisions of the Act.
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4. Object of Act

- (1) The primary object of this Act is to establish a coordinated management system that will promote safe and efficient road networks at State and local levels and the responsible use of road reserves for other legitimate purposes.
- (2) In seeking to achieve the primary object, this Act—
 - (a) sets out general rights of roads users;
 - (b) establishes a system for the management of safe and efficient public roads that best meet the needs and priorities of State and local communities;
 - (c) establishes a system of classification for roads and sets clear principles about the division of responsibilities between State and local road authorities;
 - (d) provides mechanisms for coordinating the placement and maintenance of infrastructure on road reserves, and the carrying out of related works, so as to—
 - (i) minimise interference with road use;
 - (ii) facilitate the effective and efficient provision of utility services;
 - (iii) minimise interference with other infrastructure and the provision of utility services;
 - (e) provides for the keeping of registers of public roads which register those roads which must be constructed, maintained and managed by road authorities;

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- (f) establishes decision-making processes in relation to standards for the construction, inspection, maintenance and repair of State and municipal roads which take into account—
 - (i) the needs and expectations of the relevant communities; and
 - (ii) national, State and local government transport and other policies; and
 - (iii) the available funding within the context of the whole range of responsibilities of road authorities;
 - (g) sets out the powers and duties of road authorities to manage roads, the duties of infrastructure managers which install and maintain infrastructure on roads and the duties of works managers which carry out works on roads;
 - (h) confers adequate operational powers and imposes corresponding accountability on road authorities in relation to the management of roads;
 - (i) enables Codes of Practice to be made that give practical guidance in relation to the exercise of these powers, functions and duties;
 - (j) clarifies the law relating to civil liability for the management of public roads and other roads;
 - (k) provides for the protection of roads against damage and interference.
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s. 5

5. Interpretation and application of Act

- (1) Subject to this section, if there is an inconsistency between this Act and any other Act in relation to the performance of a road management function, the provisions of this Act prevail.
- (2) If a road authority is a municipal council, the provisions of Division 2 of Part 9 and Schedules 1, 10 and 11 of the **Local Government Act 1989** apply and are to be construed for the purposes of this Act as if those provisions formed part of this Act.
- (3) If the road authority is VicRoads, the provisions of the **Transport Act 1983** relating to VicRoads are to be construed as being in addition to and not in derogation from the provisions of this Act.
- (4) This Act applies to infrastructure managers and works managers in relation to the installation of non-road infrastructure on roads despite the provisions of any other Act or law to the contrary.
- (5) The **Building Act 1993** does not apply to, or in respect of, any infrastructure or structure on, over or under, land or a stratum that forms part of a road unless the infrastructure or structure—
 - (a) is installed or constructed on adjacent land and extends over, onto or under the road; or
 - (b) is a building on an ancillary area or roadside.

Examples

The **Building Act 1993** does not apply to structures such as bridges, culverts and tunnels that form part of the road itself.

The **Building Act 1993** does apply to structures such as a hotel balcony or a shop verandah that extends over a footpath, a building that straddles a road or that is beneath an elevated road or bridge or above a road tunnel.

The **Building Act 1993** does apply to structures such as a toilet block, bus shelter, shed or control booth on a roadside area or on an ancillary area.

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- (6) This Act does not affect the application to any roadside area of any other Act or law relating to the management of land.

Example

Section 20(2) of the **Catchment and Land Protection Act 1994** which provides that a land owner must take all reasonable steps to prevent the spread of regionally controlled weeds and established pest animals on a roadside that adjoins the land owner's land is not affected by this Act.

- (7) This Act is subject to the **Melbourne City Link Act 1995**, the Agreement, the Extension Agreement and the Integration and Facilitation Agreement.
- (8) The Link corporation, the Extension corporation or the Link operator, the Extension operator, their delegates or any lessee within the meaning of the **Melbourne City Link Act 1995** must not exercise any power under this Act in a manner that is not consistent with the **Melbourne City Link Act 1995**, the Agreement, the Extension Agreement or the Integration and Facilitation Agreement.
- (8A) This Act is subject to the **Mitcham-Frankston Project Act 2004** and the Mitcham-Frankston Freeway Agreement.
- (8B) The Mitcham-Frankston Freeway Corporation must not exercise any power or carry out any duty under this Act in a manner that is not consistent with the **Mitcham-Frankston Project Act 2004** or the Mitcham-Frankston Freeway Agreement.
- (9) This Act is not intended to affect native title rights and interests.

S. 5(8A)
inserted by
No. 39/2004
s. 263.

S. 5(8B)
inserted by
No. 39/2004
s. 263.

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Part 1—Preliminary

s. 6

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- (10) This Act does not limit the operation of—
- (a) section 37A of the **Transport Act 1983**; or
 - (b) section 245B of the **Transport Act 1983** as proposed to be inserted in that Act by section 4 of the **Transport (Highway Rule) Act 2002**.

6. Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—RIGHTS OF ROAD USERS

7. Purpose of Part

The purpose of this Part is to confer specified rights which are legally enforceable on members of the public using roads.

8. Right of passage

- (1) A member of the public is individually entitled as of right to pass along a road.
- (2) Members of the public are generally entitled as of right to pass along a road.
- (3) The rights conferred by this section extend to a member of the public using any means of public transport along a road.
- (4) The rights conferred by this section do not derogate from any right of passage conferred by the common law.
- (5) Rights of passage conferred by this section or at common law are subject to any restrictions, limitations or conditions which may be specified by or under this Act or any other Act or law.

9. Rights of owners and occupiers of adjoining land

- (1) An owner or occupier of any land which adjoins a road is entitled as of right to access the road from that land.
- (2) Rights of access conferred by this section or at common law are subject to any restrictions, limitations or conditions which may be specified by or under this Act or any other Act or law.

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Part 2—Rights of Road Users

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10. Rights of the public in relation to a public highway

The rights of the public whether under this Act or at common law in relation to a public highway can only be extinguished if the public highway is discontinued as a road in accordance with section 12 or discontinued as a road or permanently closed as a road under a power to discontinue or permanently close a road conferred by or under any other Act.

Note: See clauses 1, 2 and 14 of Schedule 5 as to the vesting of roads and the prevention of adverse possession or easements by long user in roads.

PART 3—THE ROAD SYSTEM

Division 1—Roads

11. Power to declare and name a road

- (1) A road authority may by notice published in the Government Gazette declare a road under this Act over—
 - (a) any land owned by the road authority; or
 - (b) subject to sub-section (2), any land managed by the road authority.
- (2) If the land managed by the road authority is—
 - (a) land reserved under the **Crown Land (Reserves) Act 1978**, the road authority must obtain the written consent of the Minister administering that Act;
 - (b) land administered under the **Forests Act 1958**, the road authority must obtain the written consent of the Minister administering that Act;
 - (c) land administered under the **National Parks Act 1975**, the road authority must obtain the written consent of the Minister administering that Act;
 - (d) freehold land owned by a public authority or any other person, the road authority must obtain the written consent of the public authority or other person;
 - (e) unreserved Crown land, the road authority must obtain the written consent of the Minister administering the **Land Act 1958**.
- (3) Land declared to be a road under sub-section (1) becomes a road from the date of publication of the notice or a later date specified in the notice.

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s. 11

- (4) A road declared under this section is dedicated to the public as a public highway within the meaning of the common law or any Act.
- (5) If VicRoads declares a road under sub-section (1), VicRoads must also make a declaration under section 14(1)(a) or 14(1)(b).
- (6) If a State road authority other than VicRoads declares a road under sub-section (1), the road is a non-arterial State road.
- (7) If a road authority which is a municipal council declares a road under sub-section (1), the road is a municipal road.
- (8) The relevant coordinating road authority may by notice published in the Government Gazette name or change the name of a road.
- (9) The relevant coordinating road authority must in exercising a power under sub-section (8)—
 - (a) act in accordance with the guidelines in force for the time being under the **Geographic Place Names Act 1998**; and
 - (b) advise the Registrar under that Act of the action it has taken under sub-section (8).
- (10) If a road authority—
 - (a) declares a road; or
 - (b) names or changes the name of a road; or
 - (c) creates or discontinues a road—

the road authority must inform the Secretary to the Department of Sustainability and Environment or a person nominated in a notice published in the Government Gazette for the purposes of this section by the Secretary to the Department of Sustainability and Environment.

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Part 3—The Road System

s. 12

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- (11) This section is to be construed as being in addition to, and not in derogation from, any other manner in which land may be dedicated as a public highway by or under any other Act or the common law.
- (12) A notice under this section is not a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

12. Discontinuance of roads

- (1) A road can be discontinued in accordance with this section.
- (2) The relevant coordinating road authority may in accordance with this section discontinue a road, or part of a road, by a notice published in the Government Gazette.
- (3) If a road is discontinued and the land is not Crown land, the land vests in the coordinating road authority.
- (4) Subject to sub-section (11), the coordinating road authority must—
- (a) publish a public notice stating that submissions in respect of the proposed discontinuance of the road specified in the public notice will be considered in accordance with this section; and
 - (b) give a copy of the public notice to each infrastructure manager which is responsible for any infrastructure, of which the coordinating road authority is aware, installed in, on, under or over the road.
- (5) The coordinating road authority must consider any written submission which is received by the coordinating road authority within 28 days after the publication of the public notice under sub-section (4).
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- (6) Any person who has made a written submission to the coordinating road authority and requested that the person be heard in support of the written submission is entitled to appear in person or by a person acting on behalf of that person at a meeting with the coordinating road authority.
 - (7) The coordinating road authority must—
 - (a) fix the day, time and place of the meeting for the purpose of sub-section (6); and
 - (b) give reasonable notice of the day, time and place of that meeting to every person who has lodged a separate submission and in the case of a submission lodged on behalf of a number of persons, to the person specified in the submission as the person to whom notice is to be given.
 - (8) The coordinating road authority must take into consideration all the submissions made under this section.
 - (9) If sub-section (4)(b) applies, the coordinating road authority must have regard to the works and infrastructure management principles.
 - (10) After the coordinating road authority has made a decision, the coordinating road authority must notify in writing—
 - (a) every person who has lodged a separate submission; and
 - (b) in the case of a submission lodged on behalf of a number of persons, to the person specified in the submission as the person to whom notice is to be given—of the decision and the reasons for the decision.
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- (11) Sub-sections (4) to (10) do not apply in respect of a proposed discontinuance if an exemption—
- (a) specified by the regulations applies; or
 - (b) is given by the relevant road Minister by a notice published in the Government Gazette which specifies the specific proposed discontinuance or which specifies a class of cases which includes the proposed discontinuance.

13. Power to fix boundary of road

- (1) The coordinating road authority may fix the boundary of a road by a notice published in the Government Gazette.
- (2) Sub-sections (3) and (4) do not apply to VicRoads if the land affected by the fixing of the boundary is freehold land owned by VicRoads.
- (3) If the road is vested in the Crown, or a body representing the Crown, a coordinating road authority may only exercise this power after it has obtained the approval of the Surveyor-General after he or she has consulted the Surveyor and Chief Draughtsman in the Office of Titles.
- (4) In the case of any other road, a coordinating road authority may only exercise this power after it has obtained the approval of the Surveyor and Chief Draughtsman in the Office of Titles.
- (5) If a coordinating road authority fixes the boundary of a road under this section, the land affected by the fixing of the boundary becomes part of the road without the need for a declaration.
- (6) The fixing of a boundary under this section may be included in the notice in which the declaration under section 11 is made.

- (7) A notice under this section is not a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

14. Power of VicRoads to make declarations in respect of roads

- (1) VicRoads may by a notice published in the Government Gazette—
- (a) declare a road to be a freeway or an arterial road; or
 - (b) declare a road to be a non-arterial State road or a municipal road; or
 - (c) revoke a declaration under this section.
- (2) A declaration under this section—
- (a) may be included in the notice in which the declaration under section 11 is made; and
 - (b) may fix the boundaries of the road in accordance with section 13.
- (3) For the purposes of sub-section (1)(a), VicRoads must consider if the road—
- (a) provides a principal route for the movement of people and goods—
 - (i) between major regions of the State; or
 - (ii) between major centres of population or between major metropolitan activity centres; or
 - (iii) to major transport terminals; or
 - (iv) across or around cities; or
 - (b) is a major route for public transport services; or
 - (c) has State-wide economic or tourism significance; or

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- (d) provides necessary connections between arterial roads.
- (4) Subject to sub-section (6), VicRoads must give a notice in accordance with sub-section (5) to—
- (a) each municipal council in whose municipal district the road is situated;
 - (b) if the relevant road authority is not a municipal council, to the relevant road authority;
 - (c) each infrastructure manager that has infrastructure, of which VicRoads is aware, installed in, on, under or over the road.
- (5) The notice must—
- (a) specify details of the proposed declaration or revocation; and
 - (b) allow at least 28 days after the day on which the notice is given for the making of a submission to VicRoads on the proposed declaration or revocation.
- (6) If VicRoads proposes to make a declaration under this section in respect of a road on land reserved under the **Crown Land (Reserves) Act 1978** or land administered under the **Forests Act 1958** or the **National Parks Act 1975**, VicRoads must consult with the Secretary to the Department of Sustainability and Environment.
- (7) If a municipal council or road authority is aggrieved by the decision of VicRoads after VicRoads has considered any submissions under sub-section (5), the municipal council or road authority may within 21 days of being notified of the decision of VicRoads appeal to the Minister.
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- (8) If VicRoads revokes a declaration made under this section—
- (a) VicRoads must—
 - (i) make a further declaration under subsection (1) in respect of the road; or
 - (ii) specify in the notice of revocation that the road is a non-arterial State road; or
 - (iii) specify in the notice of revocation that the road is a municipal road; or
 - (iv) discontinue the road as a road in accordance with section 12;
 - (b) VicRoads may specify in the notice of revocation that the road ceases to be a public road;
 - (c) VicRoads may specify in the notice of revocation that the classification of the public road has been changed to the classification stated in the notice.
- (9) A notice under this section is not a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

15. Arrangements between road authorities to transfer road management functions

- (1) A road authority may enter into an arrangement with another road authority to transfer a road management function of the road authority that would otherwise apply under section 36 or 37 with respect to a road to the other road authority.
- (2) If a road authority has entered into an arrangement under this section in respect of a public road, the road authority must include the details of the arrangement in its register of public roads.

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- (3) While an arrangement is in force under this section, the road management functions of each road authority which is a party to the arrangement have effect subject to the arrangement.

Example

Specified road management functions in respect of a section of a road or a particular piece of infrastructure may be transferred by agreement from VicRoads to a municipal council or from a municipal council to VicRoads. If this occurs, the road authority to which the road management function is transferred becomes the road authority for the purposes of this Act according to the tenor of the arrangement.

16. Designated road project

- (1) The Minister may determine that a road project is a designated road project.
- (2) A determination under sub-section (1) may—
- (a) specify a road authority to which the designated road project is assigned;
 - (b) specify a public authority or agency which is not a road authority to which the designated road project is assigned;
 - (c) designate a project area for the purposes of the designated road project;
 - (d) specify the period during which the determination under sub-section (1) is to operate.
- (3) If a road authority is specified under sub-section (2)(a), as from the date that the determination has effect, the specified road authority becomes the coordinating road authority and the responsible road authority for—
- (a) the designated road project; and

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- (b) if a project area has been designated under sub-section (2)(c), any roads in the project area.
- (4) If a public authority or agency which is not a road authority is specified under sub-section (2)(b), as from the date that the determination has effect, the specified public authority or agency has for the purposes of this section the road management functions of a road authority and becomes the coordinating road authority and the responsible road authority for—
- (a) the designated road project; and
- (b) if a project area has been designated under sub-section (2)(c), any roads in the project area.
- (5) The Minister must ensure that a copy of the determination under sub-section (1)—
- (a) is published in the Government Gazette; and
- (b) is provided to each road authority which may be affected by the determination.
- (6) A determination under sub-section (1) has effect from the date it is published in the Government Gazette or a later date specified in the determination.
- (7) The road authority to which a designated road project is assigned may enter into an arrangement under section 15.
- (8) If a determination relates to any public roads, the road authority affected by a determination under this section must enter the details of the determination in the register of public roads.
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Division 2—Public Roads

17. What is a public road?

- (1) A road is a public road if it is—
- (a) a freeway; or
 - (b) an arterial road; or
 - (c) declared under section 204(1) of the **Local Government Act 1989**; or
 - (d) declared under section 61 or 93H of the **Melbourne City Link Act 1995**; or
 - (da) declared under section 143 of the **Mitcham-Frankston Project Act 2004**; or
 - (e) a road to which sub-section (3) applies; or
 - (f) a non-arterial State road declared under section 14(1); or
 - (g) a municipal road declared under section 14(1).
- (2) The relevant coordinating road authority for a public road specified in sub-section (1)(a), (1)(b), (1)(c), (1)(d), (1)(da), (1)(f) or (1)(g) must register the public road on its register of public roads.
- (3) Subject to section 14(7), the relevant coordinating road authority must register on its register of public roads a road in respect of which the road authority has made a decision that the road is reasonably required for general public use.

S. 17(1)(da)
 inserted by
 No. 39/2004
 s. 264(1).

S. 17(2)
 amended by
 No. 39/2004
 s. 264(2).

Example

A road set aside as a road in a plan of subdivision registered under the **Subdivision Act 1988** is not a public road for the purposes of this Act unless and until a decision is made under sub-section (3).

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- (4) A road authority must remove a road from its register of public roads if the road authority has made a decision that the road is no longer reasonably required for general public use.
- (5) The removal of a public road from the register of public roads or the non-inclusion of a road on the register of public roads does not affect the status of the road as a public highway or affect the right of public use of the public highway.

18. Ancillary areas in relation to public roads

- (1) Subject to sub-section (2), a coordinating road authority may designate as an ancillary area an area of land owned or managed by the coordinating road authority to be maintained by a responsible road authority as ancillary to a public road.

Example

A scenic lookout or rest stop may be designated as an ancillary area.

- (2) If the land managed by the coordinating road authority is—
 - (a) land reserved under the **Crown Land (Reserves) Act 1978**, the road authority must obtain the written consent of the Minister administering that Act;
 - (b) land administered under the **Forests Act 1958**, the road authority must obtain the written consent of the Minister administering that Act;
 - (c) land administered under the **National Parks Act 1975**, the road authority must obtain the written consent of the Minister administering that Act;

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- (d) freehold land owned by a public authority or any other person, the road authority must obtain the written consent of the public authority or other person;
 - (e) unreserved Crown land, the road authority must obtain the written consent of the Minister administering the **Land Act 1958**.
- (3) A designation under this section must be recorded in the register of public roads.

19. Register of public roads

- (1) A road authority must keep a register of public roads specifying the roads in respect of which it is the coordinating road authority.
- (2) A road authority must ensure that the register of public roads specifies the details in accordance with clause 1 of Schedule 1 of the public roads in respect of which it is the coordinating road authority.
- (3) A road authority may include in the register of public roads the details in accordance with clause 2 of Schedule 1 of the public roads in respect of which it is the coordinating road authority.
- (4) If a public road or part of a public road is discontinued under section 12, the road authority must specify the details in the register of public roads.

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- (5) A road authority must ensure that the register of public roads is available for inspection by members of the public—
- (a) free of charge;
 - (b) during normal business hours;
 - (c) at the place or places determined by the road authority.
- (6) Schedule 1 has effect.
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PART 4—MANAGEMENT OF ROADS

Division 1—Coordination of Road Management

20. Principal object and management principles

- (1) The principal object of road management is to ensure that a safe and efficient network of roads is provided primarily for travel and transport and that road reserves are available for other appropriate uses.
- (2) The following principles apply in respect of the management of works and infrastructure under this Act—
 - (a) the minimisation of road safety hazards;
 - (b) the avoidance or minimisation of damage or disruption to infrastructure on roads;
 - (c) the avoidance or minimisation of disruption to plans for the development of road infrastructure and non-road infrastructure;
 - (d) the avoidance or minimisation of disruption to traffic;
 - (e) the avoidance or minimisation of disruption to the effective and efficient delivery of utility services;
 - (f) the efficient use of resources of road authorities and infrastructure managers and the minimisation of cost to the community of infrastructure and services.

21. Ministers may require information or advice

The Minister or any relevant road Minister may require information or advice from a road authority which the Minister or relevant road Minister requires for the purposes of the administration of this Act.

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Part 4—Management of Roads

22. Power of Ministers to give directions

- (1) If the Minister or a relevant road Minister considers it in the public interest to do so, the Minister or relevant road Minister may, after complying with sub-section (2), direct a road authority—
 - (a) to perform a function or exercise a power of the road authority under this Act; or
 - (b) to perform a function or exercise a power of the road authority under this Act in the manner or subject to the conditions specified in the direction; or
 - (c) not to perform a function or exercise a power of the road authority under this Act.
 - (2) The Minister or the relevant road Minister must before making a direction give the road authority the opportunity to comment on the proposed direction.
 - (3) A direction—
 - (a) must be in writing;
 - (b) may include conditions;
 - (c) may specify the case, class of case, period of time or other circumstance in which the direction is to apply.
 - (4) A road authority must publish a copy or summary of any direction in its annual report.
 - (5) A road authority must give effect to a direction under this section.
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23. Power of Governor in Council to give exemption

- (1) The Governor in Council may by Order in Council published in the Government Gazette exempt from the operation of this Act or of specified provisions of this Act, a person, project, activity, matter or thing or class of person, project, activity, matter or thing specified in the Order in Council.
- (2) An Order in Council under this section—
 - (a) may specify terms and conditions to which the exemption is subject;
 - (b) may specify the period of time during which the exemption is in force;
 - (c) has effect from the date that it is published in the Government Gazette or any later date specified in the Order in Council.
- (3) On or before the 6th sitting day an Order in Council made under this section is published in the Government Gazette, the Minister must ensure that a copy of the Order in Council is laid before each House of the Parliament.
- (4) A failure to comply with sub-section (3) does not affect the operation or effect of the Order in Council but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (5) An Order in Council made under this section may be disallowed in whole or in part by either House of Parliament.
- (6) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order made under this section as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to the Order; and

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- (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (3).

24. Purposes of Codes of Practice

- (1) The main purposes of Codes of Practice are to provide practical guidance—
- (a) by setting out benchmarks of good practice in relation to the performance of road management functions by road authorities and the conduct of works managers, infrastructure managers and providers of public transport;
 - (b) by clarifying or determining how the operational responsibility for different parts or elements of a road reserve is to be allocated between road authorities;
 - (c) to road authorities in determining how to allocate resources, develop policies, set priorities and make road management plans;
 - (d) in relation to the matters specified in section 25.
- (2) A Code of Practice which relates to infrastructure and works on roads must give effect to the works and infrastructure management principles.
- (3) A Code of Practice may establish principles giving practical guidance for determining—
- (a) the boundary between a "roadway", "pathway", "roadside" or "shoulder" in any particular case;
 - (b) which road authority is responsible for road related infrastructure.

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Part 4—Management of Roads

s. 25

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- (4) A Code of Practice cannot—
- (a) impose a duty on any person; or
 - (b) direct how any matter or thing is to be done;
or
 - (c) create an enforceable legal right; or
 - (d) impose any liability or penalty.

25. What can a Code of Practice include?

- (1) A Code of Practice may contain any matter or thing which gives guidance to a road authority, infrastructure manager or works manager for the purposes of this Act in relation to—
- (a) the performance of road management functions;
 - (b) the standards which may be adopted or developed;
 - (c) the conduct of works under this Act or section 99A of the **Road Safety Act 1986**;
 - (d) the interchange and storage of road information.
- (2) Without limiting the generality of sub-section (1), a Code of Practice may provide for any matter or thing which gives guidance—
- (a) to a road authority in planning and managing risk identification and inspection functions;
 - (b) to a road authority in planning and managing routine maintenance and repair functions, including—
 - (i) consideration and prioritisation of tasks;
 - (ii) routine maintenance programs;
 - (iii) measures to reduce the risk of accidents until repairs are completed;
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- (c) to a road authority in planning and managing the development and implementation of a road management plan, including—
- (i) contents of a road management plan;
 - (ii) considerations to be taken into account in developing a road management plan;
 - (iii) consultation with infrastructure managers, works managers, providers of public transport, the local community and members of the public;
 - (iv) monitoring the implementation of a road management plan;
 - (v) periodic review and revision of a road management plan;
- (d) to a road authority, infrastructure manager, works manager or provider of public transport in planning and managing responsibilities relating to—
- (i) the manner in which works on roads should be carried out;
 - (ii) situations that would constitute an emergency situation in which works could be carried out without the prior consent of the coordinating road authority;
 - (iii) good engineering practice or relevant industry standards in relation to a specified type of infrastructure or works;
 - (iv) consultation processes to facilitate consultation between road authorities, infrastructure managers, works managers and providers of public transport and with persons who may be affected by proposed works;
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- (v) processes for consultation and exchanging information, including information about forward works programs and the coordination of works on infrastructure;
- (e) to a coordinating road authority, as to the manner in which functions should be coordinated and the process for the giving or withholding of consent to proposed infrastructure or works and determining appropriate conditions subject to which the consent may be given.

26. Power to apply, adopt or incorporate

- (1) A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) wholly or partially or as amended by the Code of Practice; or
 - (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (2) If a Code of Practice has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken not to have been so amended.

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- (3) Without limiting the generality of sub-section (1), a Code of Practice may apply, adopt or incorporate by reference any benchmarks, standards or technical references.

27. Codes of Practice as evidence

- (1) A Code of Practice is admissible in evidence in any proceedings to which this Act or section 99A of the **Road Safety Act 1986** applies.
- (2) For the purposes of proceedings to which this Act or section 99A of the **Road Safety Act 1986** applies—
- (a) evidence that a road authority, infrastructure manager or works manager has complied with a Code of Practice is admissible evidence that the road authority, infrastructure manager or works manager has complied with the relevant duty in respect of which the Code of Practice applies;
 - (b) evidence that a road authority, infrastructure manager or works manager has not complied with a Code of Practice is admissible evidence that the road authority, infrastructure manager or works manager has not complied with the relevant duty in respect of which the Code of Practice applies;
 - (c) evidence that the making of a policy, adoption of a standard or the performance or non-performance of a specific function by a road authority, infrastructure manager or works manager was consistent with a Code of Practice is admissible evidence that the making of the policy, adoption of the standard or the performance or non-performance of the specific function was not unreasonable;

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- (d) evidence that the making of a policy, adoption of a standard or the performance or non-performance of a specific function by a road authority, infrastructure manager or works manager was inconsistent with a Code of Practice is admissible evidence that the making of the policy, adoption of the standard or the performance or non-performance of the specific function may be unreasonable;
 - (e) evidence that the decision to give or withhold consent by a road authority, being a decision of a type to which section 25(2)(e) applies, conforms with a Code of Practice is admissible evidence that the decision is a reasonable decision;
 - (f) evidence that the decision to give or withhold consent by a road authority, being a decision of a type to which section 25(2)(e) applies, does not conform with a Code of Practice is admissible evidence that the decision is not a reasonable decision;
 - (g) evidence that a condition imposed by a road authority, being a condition of a type to which section 25(2)(e) applies, or that a requirement to rectify works under clause 19 of Schedule 7, conforms with a Code of Practice is admissible evidence that the condition is a reasonable condition or that the requirement is a reasonable requirement;

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- (h) evidence that a condition imposed by a road authority, being a condition of a type to which section 25(2)(e) applies, or that a requirement to rectify works under clause 19 of Schedule 7, does not conform with a Code of Practice is admissible evidence that the condition is not a reasonable condition or that the requirement is not a reasonable requirement.
- (3) If in relation to any matter arising in any proceedings to which this Act or section 99A of the **Road Safety Act 1986** applies, a Code of Practice applies, adopts or incorporates by reference any relevant benchmarks, standards or technical references, the Code of Practice is admissible in the proceedings as evidence of greater weight than other expert or documentary evidence which may be led in the proceedings in relation to that matter.

28. Making of Codes of Practice

- (1) Subject to this section, the Minister may make a Code of Practice for a road authority or a class of road authorities specified in the Code of Practice.
- (2) Before the Minister makes a Code of Practice, the Minister must consult with the relevant road Ministers.
- (3) Before the Minister makes a Code of Practice which includes any matter or thing relating to utility infrastructure or related works, the Minister must consult with the relevant utility Ministers and with the Utilities' Infrastructure Reference Panel.
- (4) Before the Minister makes a Code of Practice which is for all road authorities which are municipal councils, the Minister must consult with the Municipal Association of Victoria.

29. Availability of Codes of Practice

- (1) Upon the making of a Code of Practice, the Minister must cause—
 - (a) a copy of the Code of Practice; and
 - (b) a notice specifying—
 - (i) the date of commencement of the Code of Practice; and
 - (ii) the place where copies of the Code of Practice may be obtained—

to be published in the Government Gazette.

- (2) There must be published with a notice under sub-section (1) or a notice of an amendment under section 26(2), a notice stating that the Code of Practice, any incorporated document or any amendment to an incorporated document, as the case may be, may be inspected at the office of the road authority specified in the notice.
- (3) A Code of Practice or a provision of a Code of Practice comes into operation at the beginning of the day specified in the notice under sub-section (1) which must be a day that is later than the day on which the Government Gazette is published.

30. Tabling and disallowance

- (1) On or before the 6th sitting day after notice of the making of a Code of Practice is published in the Government Gazette, the Minister must ensure that a copy of the Code of Practice is laid before each House of the Parliament.
- (2) A failure to comply with sub-section (1) does not affect the operation or effect of the Code of Practice but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.

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- (3) A Code of Practice may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a Code of Practice as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to the Code of Practice; and
 - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (1).
- (5) A reference to a Code of Practice in this section includes a reference to any amendment to a Code of Practice.

31. Utilities' Infrastructure Reference Panel

- (1) There is established a Utilities' Infrastructure Reference Panel.
- (2) The Utilities' Infrastructure Reference Panel consists of 15 members appointed by the Minister of whom—
 - (a) one is a nominee of the Minister administering the **Transport Act 1983**;
 - (b) one is the Chief Executive of VicRoads or a nominee of the Chief Executive of VicRoads;
 - (c) one is the President of the Municipal Association of Victoria or a nominee of the President of the Municipal Association of Victoria;
 - (d) one is a person selected by the Minister administering the **Transport Act 1983** as a representative of road users;
 - (e) one is a nominee of the Minister administering the **Local Government Act 1989**;

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- (f) one is a nominee of the Minister administering the **Electricity Industry Act 2000**;
 - (g) one is a nominee of the Minister administering the **Electricity Safety Act 1998**;
 - (h) one is a nominee of the Minister administering the **Gas Industry Act 2001**;
 - (i) one is a nominee of the Minister administering the **Gas Safety Act 1997**;
 - (j) one is a nominee of the Minister administering the **Pipelines Act 1967**;
 - (k) one is a nominee of the Minister administering the **Rail Corporations Act 1996**;
 - (l) one is a nominee of the Minister administering the **Water Industry Act 1994**;
 - (m) one is a nominee of the Minister for Information and Communication Technology, in relation to any person or body providing a service under the authority of the Telecommunications Act 1997 of the Commonwealth;
 - (n) one is the person who is the Department Head of the Department of Sustainability and Environment or his or her nominee;
 - (o) one is the Chairperson of the Essential Services Commission established under the **Essential Services Commission Act 2001** or his or her nominee.
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- (3) The person appointed under sub-section (2)(a) is the Chairperson of the Utilities' Infrastructure Reference Panel.
- (4) The Minister may determine—
 - (a) the term of the appointment of a member, being the period not exceeding 2 years specified in the instrument of appointment;
 - (b) any remuneration and travelling and other allowances payable to a member;
 - (c) any other terms and conditions of appointment of the member.
- (5) The Utilities' Infrastructure Reference Panel may regulate its own procedure.

32. Functions of the Utilities' Infrastructure Reference Panel

The functions of the Utilities' Infrastructure Reference Panel are—

- (a) to provide advice to the Government of Victoria on the effective coordination of the use of road reserves by utilities consistent with the principal object of road management;
- (b) to act as the vehicle for consultation with, and obtaining advice from, relevant stakeholders, including utilities and community organisations, in relation to their use of road reserves;
- (c) to provide information and advice to the Minister in relation to the making of Codes of Practice dealing with matters under Schedule 7 and whether proposed Codes of Practice are consistent with the works and infrastructure management principles;

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- (d) to provide information and advice to the Minister in relation to the making of regulations dealing with matters under Schedule 7 and whether proposed regulations are consistent with the works and infrastructure management principles;
- (e) to provide advice on any other matter referred to the Utilities' Infrastructure Reference Panel by the Minister.

Division 2—General Functions and Powers of Road Authorities

33. Role of a road authority

A road authority must in performing road management functions have regard to the principal object of road management and the works and infrastructure management principles.

34. General functions

- (1) A road authority has the following general functions—
 - (a) to provide and maintain, as part of a network of roads, roads for use by the community served by the road authority;
 - (b) to manage the use of roads having regard to the principle that the primary purpose of a road is to be used by members of the public and that other uses are to be managed in a manner which minimises any adverse effect on the safe and efficient operation of the road and on the environment;
 - (c) to manage traffic on roads in a manner that enhances the safe and efficient operation of roads;

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- (d) to coordinate the installation of infrastructure on roads and the conduct of other works in such a way as to minimise, as far as is reasonably practicable, adverse impacts on the provision of utility services;
 - (e) to undertake works and activities which promote the functions referred to in paragraphs (a), (b) and (c) and to undertake activities which promote the function in paragraph (d).
- (2) The general functions conferred on a road authority under sub-section (1) are not to be construed as limiting any other functions conferred on a road authority by or under this Act or any other Act.
- (3) In seeking to achieve its functions, a road authority should—
- (a) consult with the community and disseminate information in relation to the exercise of those functions;
 - (b) take steps as are reasonably practicable to ensure the structural integrity and safety of public roads in accordance with this Act.

35. Powers of a road authority

- (1) Subject to this Act, a road authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.
- (2) The generality of sub-section (1) is not limited by the conferring of specific powers on a road authority by or under this Act or any other Act.
- (3) Schedules 1 to 7 do not limit the functions or powers conferred on a road authority by or under this Act or any other Act.

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(4) If a road authority has specific powers under any other Act, this section—

- (a) is to be construed as being in addition to those powers; and
- (b) is not to be construed as overriding any requirements, restrictions, limitations or conditions to which the specific powers are subject.

Note: If a road authority is a municipal council it has the powers specified in Division 2 of Part 9 and Schedules 1, 10 and 11 of the **Local Government Act 1989**.

36. Which road authority is the coordinating road authority?

Subject to sections 15 and 16, the coordinating road authority is—

- (a) if the road is a freeway or arterial road, VicRoads;
- (b) if the road is a non-arterial State road, the relevant responsible road authority under section 37(1)(c) or 37(1)(d);
- (c) if the road is a municipal road, the municipal council of the municipal district in which the road or part of the road is situated.

37. Which road authority is the responsible road authority?

(1) Subject to sections 15 and 16 and sub-sections (1A) and (2), the responsible road authority is—

- (a) if the road is a freeway, for the whole of the road reserve, VicRoads;
- (b) if the road is an arterial road—
 - (i) for the part of the roadway used by through traffic, VicRoads; and

S. 37(1)
 amended by
 No. 39/2004
 s. 265(1).

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- (ii) for any part of the roadway not used by through traffic, the municipal council of the municipal district in which that part is located; and
 - (iii) for any service road, the municipal council of the municipal district in which the service road is located; and
 - (iv) for the median strip between the roadway and the service road, the municipal council of the municipal district in which the median strip is located; and
 - (v) for any pathway, other than a pathway on a freeway road reserve, the municipal council of the municipal district in which the pathway is located; and
 - (vi) for the roadside in an urban area, the municipal council of the municipal district in which the road is located; and
 - (vii) for the roadside in an area that is not an urban area, VicRoads; and
 - (viii) which is not located in a municipal district, the person or body specified for the purposes of sub-paragraphs (ii) to (vi) by the Minister in a notice published in the Government Gazette;
- (c) if the road is a non-arterial State road, the person or body prescribed in respect of the non-arterial State road or in respect of a class of roads in which the non-arterial State road is included; or
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- (d) if the road is a non-arterial State road and no person or body is prescribed in respect of the non-arterial State road—
 - (i) if VicRoads declares by a notice published in the Government Gazette that VicRoads is the responsible road authority in respect of the non-arterial State road, VicRoads; or
 - (ii) if the non-arterial State road is on land administered under the **Crown Land (Reserves) Act 1978**, the **Forests Act 1958**, the **Land Act 1958**, the **National Parks Act 1975** or the **Alpine Resorts (Management) Act 1997**, the person or body specified in or in accordance with that Act in respect of the non-arterial State road; or
 - (iii) if sub-paragraphs (i) and (ii) do not apply, the Crown;
 - (e) if the road is a municipal road, the municipal council of the municipal district in which the road or part of the road is situated;
 - (f) if the area is an ancillary area of a road, the responsible road authority for the road of which the area is an ancillary area.
- (1A) The Mitcham-Frankston Freeway Corporation is the responsible road authority for the Mitcham-Frankston Freeway.
 - (2) In relation to road-related infrastructure on a road, the responsible road authority is—
 - (a) subject to paragraph (b), the responsible road authority for the roadway or pathway to which the road-related infrastructure relates; or

S. 37(1A)
inserted by
No. 39/2004
s. 265(2).

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- (b) if a road authority other than the responsible road authority specified in paragraph (a) has responsibility under any other Act for the road-related infrastructure, that road authority.

Example

VicRoads would be the responsible road authority for speed signs and traffic lights on an arterial road even though the speed signs are located on a roadside for which the municipal council would be the responsible road authority. However, a municipal council would be the responsible road authority for a parking meter installed on the arterial road in the exercise of powers under the **Local Government Act 1989**.

- (3) A Code of Practice may include guidelines relating to principles for ascertaining—
- (a) which road authority is responsible where parts of a road which are allocated to different road authorities abut; and
 - (b) which matters are the responsibility of which road authority where different parts of a road are allocated to different road authorities and there are areas between those parts.
- (4) A declaration for the purposes of sub-section (1)(d)(i) may be included in the notice under which a declaration under section 11 or 14 is made.

38. Exercise of functions and powers

- (1) In exercising the functions and powers conferred on a road authority by or under this Act or any other Act, the road authority must have regard to—
- (a) the principal object of road management;
 - (b) the works and infrastructure management principles;
 - (c) the rights of road users;

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- (d) the need to exercise the functions and powers within its overall policy and budgetary context;
 - (e) policies and priorities in relation to transport, the environment and other matters determined by the Government of Victoria;
 - (f) any relevant Code of Practice;
 - (g) any other law affecting the management of roads;
 - (h) any roadside management plan developed to protect flora and fauna;
 - (i) any matters arising from consultation with the community, utilities and other stakeholders.
- (2) Without limiting the generality of the principles specified in sub-section (1), a road authority should—
- (a) determine policies and priorities for the construction and maintenance of roads after considering—
 - (i) the priorities and social and economic needs of the community and of road users and the special needs of any sector of the community and, in the case of VicRoads, also the needs of the national and State road networks;
 - (ii) any relevant environmental, economic, social or financial policies or objectives determined by the Government of Victoria;
 - (iii) the volume and nature of road usage;
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- (b) manage its road network in cooperation with other road authorities, utilities, providers of public transport, government agencies, community organisations and the private sector;
 - (c) seek to ensure—
 - (i) the efficient and effective management and use of the road network and infrastructure to meet the needs of the community and road users;
 - (ii) the most efficient use of the resources available for road management;
 - (iii) that the public road network and infrastructure are as safe for users as is reasonably practicable;
 - (d) in the case of a coordinating road authority, coordinate the development and use of the road reserve generally, including the carrying out of works and the installation of infrastructure on roads so as to—
 - (i) ensure the safety of road users and the community;
 - (ii) minimise disruption and inconvenience to road users;
 - (iii) protect the environment;
 - (iv) protect the physical integrity of the road and infrastructure in the road reserve;
 - (e) facilitate the appropriate use of the road reserve for non-road infrastructure and the effective and efficient delivery of utility services.
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39. Road authority may make a policy or policy decision relating to road management functions

- (1) Without limiting the decision making processes of a road authority, a road authority may make a policy or policy decision relating to the performance of a road management function.
- (2) For the purposes of this Act, a decision made by a road authority is a policy decision if having regard to the broad range of activities of the road authority the decision is based substantially on factors or constraints which are financial, economic, political, social or environmental.
- (3) Without limiting the generality of sub-section (2), a policy decision includes decisions about—
 - (a) the circumstances in which a road management function is to be performed;
 - (b) the manner in which a road management function is to be performed;
 - (c) the standard to be achieved in performing a road management function.
- (4) A road authority is to be taken to have made a policy or policy decision relating to a road management function if the road authority has made a road management plan that includes provisions relating to the performance of that road management function.
- (5) For the purposes of any proceedings, unless a policy or policy decision made by a road authority is so unreasonable that no road authority in that road authority's position acting reasonably could have made that policy or policy decision, any decision or standard which is a policy or policy decision relating to the exercise of a road management function by the road authority is to be taken to satisfy the statutory duty and any

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common law duty of the road authority in relation to the exercise of that road management function.

Note: Section 27 enables a relevant Code of Practice to be used as evidence of the reasonableness of a road management plan.

- (6) For the avoidance of doubt, the power of a road authority to make a policy or policy decision is subject to any direction given to the road authority by the relevant road Minister in accordance with section 22.

Division 3—Specific Powers and Duties of Road Authorities

40. Statutory duty to inspect, maintain and repair public roads

- (1) Subject to Part 6, a road authority has a statutory duty to inspect, maintain and repair a public road—
- (a) to the standard specified in the road management plan for that public road or a specified class of public roads which includes that public road; or
 - (b) if paragraph (a) does not apply, to the standard specified in a policy in respect of that public road; or
 - (c) if no standard is specified for that public road or in relation to a particular matter, to a reasonable level having regard to the matters specified in paragraphs (a) to (e) of section 101(1).

Note: Section 101 sets out principles for determining whether there is a duty of care and if there is a duty of care, the standard of care.

- (2) The statutory duty imposed by sub-section (1) does not create a duty to upgrade a road or to maintain a road to a higher standard than the standard to which the road is constructed.

S. 40(1)(c)
amended by
No. 39/2004
s. 266.

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- (3) The statutory duty to inspect applies to any part of a public road which is—
- (a) a roadway;
 - (b) a pathway;
 - (c) a shoulder;
 - (d) road infrastructure.
- (4) The statutory duty to inspect does not apply to—
- (a) a road which is not a public road; or
 - (b) any roadside or other area of a public road that has not been developed by a road authority for use by the public as a roadway or pathway; or
 - (c) non-road infrastructure which is installed in the road reserve.
- (5) A road authority has a discretionary power to inspect, maintain or repair a road which is not a public road but this Act is not to be construed as imposing a duty to do so.

Example

A road authority has a duty to maintain its roadways and pathways on a public road for use by vehicles and pedestrians. However, a road authority is not under a duty to maintain roadside bushland for public use and is not responsible for maintaining non-road related infrastructure such as poles, cables and pipes which are the responsibility of the relevant utility or infrastructure manager.

Note 1: A road authority may have a duty under other Acts in relation to the management of land in the road reserve. See also section 5(6).

Note 2: See clause 6 of Schedule 7 as to the maintenance of non-road infrastructure.

41. Power to determine standard of construction, inspection, maintenance and repair

- (1) The relevant road authority may determine the standard to which the relevant road authority will construct, inspect, maintain and repair roadways, pathways, road infrastructure and road related infrastructure.
- (2) Without limiting the generality of this section, the relevant road authority may determine—
 - (a) in relation to construction, the nature of the construction of any roadway, pathway, road infrastructure or road related infrastructure;
 - (b) in relation to inspection, the inspection of specified matters at specified intervals;
 - (c) in relation to maintenance—
 - (i) the maintenance programs;
 - (ii) the maintenance work to be performed in the course of regular maintenance;
 - (iii) the standard to which the maintenance is to be performed;
 - (d) in relation to the repair of defects reported or found on inspection—
 - (i) the matters which are to be treated as defects which require repair or a warning;
 - (ii) the circumstances in which intervention action is to be taken with respect to repair needs for defects;
 - (iii) the type of intervention action to be taken;
 - (iv) the period of time within which the intervention action is to be taken;

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- (v) the priority to be given to the intervention action.
- (3) For the purposes of sub-section (2), "intervention action" includes any action to conduct repairs, erect warning signs or reduce or remove a risk.
- (4) In determining standards under this section, a relevant road authority must have regard to—
- (a) the principal object of road management; and
 - (b) the works and infrastructure management principles; and
 - (c) any relevant direction made under section 22; and
 - (d) any relevant Code of Practice; and
 - (e) any relevant policy or policy decision under section 39.

Examples

The relevant road authority may determine that a road is to be constructed—

- with an unmade roadway or a sealed roadway;
- if sealed, with a seal of a particular thickness or quality;
- with sealed shoulders or unsealed shoulders;
- with kerbs or drains or without kerbs and drains;
- with or without pathways for pedestrians or cyclists.

The relevant road authority may determine for the purposes of its duty to maintain public roads that—

- a particular class of roadway is to be inspected for potholes at specified intervals;
- footpaths are to be inspected for cracks at specified intervals;
- a defect such as a crack in a footpath is to be repaired if it reaches a particular size;

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- a schedule be developed of priorities and targets for intervention action having regard to the relative risks of defects of various kinds and in various locations.

Note: Codes of Practice under this Act may give practical guidance about the exercise of these powers.

- (5) A standard determined under this section may be determined—
- as a policy or policy decision under section 39;
 - in a road management plan.

42. Declaration of a public road as a controlled access road

- (1) A co-ordinating road authority may by notice published in the Government Gazette declare—
 - a part or all of a public road for which it is responsible to be a controlled access road; or
 - a part or all of a class of public road for which it is responsible to be controlled access roads.
- (2) A co-ordinating road authority may by notice published in the Government Gazette amend or revoke a declaration under sub-section (1).
- (3) Schedule 2 has effect.

43. Specific road construction, repair and maintenance powers of State road authorities

- (1) Without limiting any other powers of a State road authority, the powers include the specific road construction, repair and maintenance powers set out in Schedule 3.
- (2) Schedule 3 has effect.

44. Specific traffic management powers of State road authorities

- (1) Subject to the **Road Safety Act 1986** and any regulations made under that Act, but without limiting any other powers of a State road authority, the powers include the specific traffic management powers set out in Schedule 4.
- (2) Schedule 4 has effect.

Example

A State road authority, other than VicRoads, must obtain the consent of VicRoads before exercising a power under Schedule 4 which if exercised under a regulation made under the **Road Safety Act 1986** in respect of a major traffic control item would require the consent of VicRoads.

45. Specific road property provisions, powers and duties

- (1) Without limiting any other powers or duties of a State road authority, the powers and duties include the specific road property powers and duties set out in Schedule 5.
- (2) Schedule 5 has effect.

46. Specific protection of roads and adjoining land powers of State road authorities

- (1) Without limiting any other powers of a State road authority, the powers include the specific powers with respect to protection of roads and adjoining land set out in Schedule 6.
- (2) Schedule 6 has effect.

Division 4—Infrastructure and Works on Roads

47. Purpose of Division

The purpose of this Division is to give effect to the works and infrastructure management principles.

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48. Specific duties and powers in relation to infrastructure and works on roads

- (1) Without affecting any other duties, an infrastructure manager or works manager has the duties set out in Part 1 of Schedule 7.
- (2) The duties set out in Part 1 of Schedule 7 apply to a person who is responsible for a non-road activity to which section 99B of the **Road Safety Act 1986** applies in relation to the use of the road for the event as if the person were a works manager.
- (3) Without limiting any other powers of a coordinating road authority, a coordinating road authority has the powers set out in Part 2 of Schedule 7.
- (4) A relevant responsible road authority must comply with the requirements of the coordinating road authority made in the exercise of the powers set out in Part 2 of Schedule 7.
- (5) Schedule 7 has effect.

Division 5—Road Management Plans

49. The making of a road management plan is voluntary

A road authority may develop and publish a road management plan in accordance with this Division.

50. Purposes of a road management plan

The purposes of a road management plan are having regard to the principal object of road management and the works and infrastructure management principles—

- (a) to establish a management system for the road management functions of a road authority which is based on policy and

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operational objectives and available resources; and

- (b) to set the relevant standard in relation to the discharge of duties in the performance of those road management functions.

51. Standards may be included in a road management plan

Subject to section 39 but without limiting section 41, a road authority may determine standards by incorporating the standards in a road management plan.

52. Contents of a road management plan

- (1) A road management plan—
 - (a) may set relevant standards or policies in relation to the discharge of duties in the performance of road management functions;
 - (b) may include details of the management system that a road authority proposes to implement in the discharge of its duty to inspect, maintain and repair public roads for which the road authority is the coordinating road authority or the responsible road authority;
 - (c) may specify the relevant policies and priorities adopted by the road authority;
 - (d) must include any matters that a relevant Code of Practice specifies should be included in a road management plan.
- (2) A road management plan relating to the Link road or the Extension road—
 - (a) must be consistent with the **Melbourne City Link Act 1995**, the Agreement, the Extension Agreement and the Integration and Facilitation Agreement; and

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S. 52(2A)
inserted by
No. 39/2004
s. 267.

- (b) must facilitate the performance of obligations and duties under the **Melbourne City Link Act 1995**, the Agreement, the Extension Agreement and the Integration and Facilitation Agreement.
- (2A) A road management plan relating to the Mitcham-Frankston Freeway—
 - (a) must be consistent with the **Mitcham-Frankston Project Act 2004** and the Mitcham-Frankston Freeway Agreement; and
 - (b) must facilitate the performance of obligations and duties under the **Mitcham-Frankston Project Act 2004** and the Mitcham-Frankston Freeway Agreement.
- (3) A road management plan is not a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

53. Power to apply, adopt or incorporate

- (1) A road management plan may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority, person or body whether—
 - (a) wholly or partially or as amended by the road management plan; or
 - (b) as formulated, issued, prescribed or published at the time the road management plan is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.

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- (2) Subject to sub-section (3), if a road management plan has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the road authority causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken not to have been so amended.
 - (3) Sub-section (2) does not apply in respect of the amendment of any document, code, standard, rule, specification or method which has been incorporated in a Code of Practice.

54. Procedure for making or amending a road management plan

- (1) Before a road authority makes or amends a road management plan, it must comply with the following procedure.
 - (2) If a road authority proposes to make a road management plan, the road authority must give a notice stating—
 - (a) the purpose and general purport of the proposed road management plan;
 - (b) where a copy of the proposed road management plan can be obtained or inspected;
 - (c) that any person who is aggrieved by the proposed road management plan may make a submission on the proposed road management plan to the road authority within the period specified in the notice.
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- (3) The road authority must allow at least 28 days after the day on which a notice is given under sub-section (2) for the making of submissions.
- (4) A notice under this section must be—
 - (a) published in the Government Gazette;
 - (b) published in a daily newspaper generally circulating in the area in which the roads to which the road management plan applies are situated;
 - (c) given in any other manner prescribed for the purposes of this section.
- (5) A road authority must in accordance with the regulations conduct a review of its road management plan at prescribed intervals.
- (6) A road authority may amend its road management plan in accordance with the regulations.
- (7) If a road management plan is amended in accordance with sub-section (6), the road authority must incorporate the amendments into the road management plan.

55. Availability of road management plan

- (1) Upon the making of a road management plan, the road authority must cause notice of—
 - (a) the making of the road management plan; and
 - (b) the place where copies of the road management plan may be inspected or obtained—

to be published in the Government Gazette and in a newspaper generally circulating in the area in which the roads to which the road management plan is to apply are situated.

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- (2) There must be published with a notice under subsection (1) or a notice of an amendment under section 53(2), a notice stating that the Code of Practice, any incorporated document or any amendment to an incorporated document, as the case may be, may be inspected at the office of the road authority specified in the notice.

Division 6—Development Contributions

56. Development contribution

- (1) A State road authority that intends to undertake the construction of a new public road which will benefit adjacent land may, by notice in writing, require the owner of the land to meet or contribute to the present day cost of the road construction.
- (2) If a proposal for the subdivision of land is referred to a road authority under the **Planning and Environment Act 1987**, the State road authority may, by notice in writing, require the owner of the land to meet or contribute to the present day cost of the construction of a public road that is required because of the proposed subdivision.
- (3) The amount of the payment required from an owner of land must be assessed by the State road authority to be fair and reasonable, taking into account the benefit to that land relative to the benefit to other land.
- (4) The notice must specify—
- (a) the amount of the payment required; and
 - (b) how the amount of the payment was determined; and
 - (c) the reason why the payment is required; and
 - (d) the construction work that will be provided; and

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- (e) when the construction work will be completed; and
 - (f) the land in relation to which payment is required; and
 - (g) if payments are required in relation to a group of parcels of land, the amounts required in relation to each parcel and how the amounts were apportioned; and
 - (h) the right of the owner to object and apply for a review under section 57; and
 - (i) in the case of a notice under sub-section (1), that details of the proposal are available for inspection, free of charge, at the road authority's office during normal business hours.
- (5) In the case of a notice under sub-section (1), the State road authority must ensure that details of the proposal are available for inspection, free of charge, at the State road authority's office during normal business hours.
- (6) The State road authority must ensure that payments received under this section are applied towards the cost of the road construction within the prescribed period of time.

57. Review of required payments

- (1) An owner who is required to make a payment under section 56 may object in writing to the State road authority on any of the grounds specified in sub-section (2) within—
- (a) 1 month after receipt of the notice; or
 - (b) any longer time allowed by the State road authority and specified in the notice.

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- (2) The grounds are—
- (a) that the land of the owner will not benefit from the construction of the new public road;
 - (b) if there are several parcels of land that will benefit, that the basis of distribution of the cost between the owners of those parcels of land is unreasonable;
 - (c) that the amount is excessive;
 - (d) that the proposed works are excessive or are inappropriate;
 - (e) if there are several parcels of land that will benefit, that any owner who has been required to pay should not be required to do so, or that any owner who has not been required to pay should be required to do so;
 - (f) in the case of a notice under section 56(1), any other grounds.
- (3) A State road authority must, within 2 months after receipt of an objection, notify the person of its decision on the objection.
- (4) An owner may apply to the Tribunal for review of the State road authority's decision on the owner's objection on any of the grounds specified in paragraphs (a) to (f) of sub-section (2).
- (5) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.
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58. State road authority may require further payment or refund excess

- (1) A State road authority that has required payments under section 56 from the owners of any land may—
 - (a) if the total amount collected is not enough to meet the costs in respect of which the payments were required, require further payments from the owners of those lands; and
 - (b) if the total amount collected is more than enough to meet those costs, refund the excess to the owners of those lands.
- (2) The provisions of sections 56(4), 56(5), 57 and 59 apply in relation to any further payments required, as if they were payments originally required under section 56, except that in the case of payments required by a notice under section 56(1)—
 - (a) the State road authority may require further payments of not more than 20 per cent of the amount specified in that notice, if those further payments are necessary to meet the cost of the road construction; and
 - (b) the cost of those further payments must be fairly distributed over the group of parcels of land that is to receive the benefit, if there is such a group.

59. When payment is due

- (1) The date by which payment must be made is—
 - (a) if there have been no objections, any date that is set by the State road authority and that is after the expiry of 1 month after the receipt of the notice, or of any longer time allowed by the road authority and specified in the notice; or

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- (b) if each person to whom a notice was issued agrees in writing not to object, any date that is set by the State road authority and that is after the date of the last of those agreements; or
- (c) if there are objections, or if any person to whom a notice was issued does not agree in writing not to object, any date that is set by the State road authority and that is after each person who objected, or who did not agree in writing not to object, has been notified by the State road authority of its decision on any objections made.
- (2) The due date for payment of any further payments required under section 58(1)(a) is the date that is specified in the notice requiring the further payment being a date that is not earlier than 14 days after the date of the notice.
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PART 5—PROTECTION OF ROADS

Division 1—Offences

60. Offences in relation to unauthorised access to roads

- (1) A person must not construct an access point to a freeway without the written consent of VicRoads under clause 1 of Schedule 2.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) A person must comply with the conditions to which the written consent of VicRoads under clause 1 of Schedule 2 is subject.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (3) A person must not construct or change a physical means of entry or exit for traffic between adjacent land and a controlled access road without first obtaining a decision under clause 2 of Schedule 2 which authorises the construction or change.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

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- (4) A person must comply with the conditions to which a decision under clause 2 of Schedule 2 is subject.

Penalty: In the case of a natural person,
 10 penalty units;

In the case of a body corporate,
 50 penalty units.

61. Offence to fail to comply with direction

- (1) A person must comply with a direction issued to the person under clause 3 of Schedule 6 within the time specified in the direction.

Penalty: In the case of a natural person,
 10 penalty units;

In the case of a body corporate,
 50 penalty units.

- (2) It is a defence to a prosecution for an offence under this section if the person proves that the person had a reasonable excuse for the failure to comply.

62. Obstruction of road

- (1) Subject to sub-section (2), a person must not obstruct the use of a road by persons or vehicles lawfully entitled to use the road.

Penalty: In the case of a natural person,
 10 penalty units;

In the case of a body corporate,
 50 penalty units.

- (2) Sub-section (1) does not apply if the obstruction—
- (a) is authorised or permitted by or under this Act or any other Act; or
 - (b) arises out of a lawful and reasonable use of the road.

63. Interference with a road

- (1) Subject to sub-section (2), a person must not conduct any works in, on, under or over a road without the written consent of the coordinating road authority to the conduct of the proposed works.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) Sub-section (1) does not apply if—
- (a) the person is required to conduct the works by specific requirements specified in or under any other Act and the works are conducted in accordance with those requirements; or

Example

A person who is required to keep a tree clear of an electric line under section 86 of the **Electricity Safety Act 1998** is not required to obtain written consent from VicRoads to carry out that requirement although the person is conducting works.

- (b) the person is a public body and has obtained a consent under section 99(1) or 99(4) of the **Melbourne City Link Act 1995**; or

- (ba) the person is a Utility and is acting in accordance with—
- (i) an approved Utility agreement within the meaning of the **Mitcham-Frankston Project Act 2004**; or
- (ii) a determination under Division 8 of Part 8 of the **Mitcham-Frankston Project Act 2004**; or

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- (iii) a direction under section 165, 166, 173, 174 or 175 of the **Mitcham-Frankston Project Act 2004**; or
 - (c) an exemption under section 23 applies; or
 - (d) an exemption in accordance with the regulations applies; or
 - (e) the works are conducted in an emergency by, or with the authority of, the relevant infrastructure manager.

Examples

Sub-section (1) will not apply if the works are conducted by a utility in relation to an emergency.

Sub-section (1) will not apply if the works are conducted in the exercise of emergency powers under the **Emergency Management Act 1986**.

64. Failure to give notice

- (1) An infrastructure manager or works manager must comply with clause 13 of Schedule 7.

Penalty: In the case of a natural person,
5 penalty units;

In the case of a body corporate,
25 penalty units.

- (2) It is a defence to a prosecution for an offence under this section if the person proves that the person had a reasonable excuse for the failure to comply.

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65. Compliance with conditions of written consent

- (1) A person must comply with the conditions to which a written consent under clause 16 of Schedule 7 is subject.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) It is a defence to a prosecution for an offence under this section if the person proves that the person had a reasonable excuse for the failure to comply.

Division 2—Controls on Advertising, Signs and Bills on Roads and Road Infrastructure

66. Written consent required for placing of specified things on a road or road infrastructure

- (1) Subject to sub-section (2), a person must not without the written consent of the relevant coordinating road authority—
- (a) place any structure, device or hoarding for the exhibition of an advertisement or place any advertisement for exhibition on or over a road; or
 - (b) place any sign or bill on or over a road or on a pole, bus shelter, traffic sign, tree or other object or infrastructure on a road reserve.

Penalty: 10 penalty units.

- (2) Sub-section (1) does not apply if the placing of the structure, device, hoarding, advertisement, sign or bill is authorised or permitted by or under this Act or by or under any other Act.

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67. Advertiser must disclose name of distributor

- (1) This section applies to a person who commissions the making of a sign or bill that is placed on or over a road or on a pole, bus shelter, traffic sign or other object or infrastructure on a road reserve.
- (2) The person must give the relevant coordinating road authority the name and address of the person who was responsible for distributing the sign or bill in a particular area.
- (3) The person must comply with sub-section (2) within 7 days after receiving a written request for the information from the relevant coordinating road authority.

Penalty: 10 penalty units.

68. Distributor must disclose name of depositor

- (1) A person who engages another person (whether as an employee or as an agent) to place a sign or bill on or over a road or on a pole, bus shelter, traffic sign or other object or infrastructure on a road reserve within an area must give the relevant coordinating road authority the name and address of that other person.
- (2) The person must do this within 7 days after receiving a written request for the information from the relevant coordinating road authority.

Penalty: 10 penalty units.

69. Person must remove structure, device, hoarding, advertisement, sign or bill if requested to do so

- (1) A person must remove any structure, device, hoarding, advertisement, sign or bill placed by that person in contravention of section 66 if requested to do so by an authorised officer.

Penalty: 10 penalty units.

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- (2) If the request is not complied with, an authorised officer may—
- (a) remove and sell the structure, device, hoarding, advertisement, sign or bill and apply the proceeds of the sale towards the reimbursement of expenses incurred in connection with the removal or sale; or
 - (b) obliterate the structure, device, hoarding, advertisement, sign or bill.

70. Court may order removal of structure, device, hoarding, advertisement, sign or bill

- (1) If a court convicts a person of an offence under section 66, 67, 68 or 69, the court may—
- (a) instead of, or in addition to, any other penalty, order the person to remove the structure, device, hoarding, advertisement, sign or bill placed by the person within a specified time and under the supervision of a person nominated by the court; or
 - (b) in addition to any other penalty, order the person to pay a sum of compensation for the removal of the structure, device, hoarding, advertisement, sign or bill to the relevant coordinating road authority.
- (2) The following provisions apply to an order under sub-section (1)(a)—
- (a) the court may also order that if the person contravenes the order, that person must pay a fine of not more than 10 penalty units;
 - (b) if the person complies with the order, the person nominated by the court to supervise must send to the person a statement to that effect;

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- (c) if the person contravenes the order, the court may, on application by the person nominated to supervise, issue a summons requiring the person to show cause why the fine referred to in paragraph (a) should not be imposed;
 - (d) on hearing the summons, the court may make any order under this Act which it considers appropriate in respect of the person who contravened the order.
- (3) The compensation specified in an order under sub-section (1)(b) to be paid to the relevant coordinating road authority is to be treated as a debt due to that coordinating road authority.

Division 3—Authorised Officers

71. Authorised officers

- (1) Subject to this section, VicRoads may by instrument appoint an officer or employee of VicRoads to be an authorised officer for the purposes of this Act.
- (2) Subject to this section, a State road authority may by instrument appoint—
 - (a) an employee employed under the **Public Sector Management and Employment Act 1998**; or
 - (b) an officer or employee of a public body established by or under any Act—
 to be an authorised officer for the purposes of this Act.
- (3) Subject to this section, if the relevant road authority is a municipal council, the municipal council may by instrument appoint an officer or employee of the municipal council to be an authorised officer for the purposes of this Act.

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S. 71(5A)
inserted by
No. 39/2004
s. 269.

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- (4) An authorised officer appointed under sub-section (1) may exercise the powers of an authorised officer in respect of the Link road as if VicRoads were the responsible road authority if—
- (a) the Link corporation has so requested; or
 - (b) there is a written arrangement with the Link corporation.
- (5) An authorised officer appointed under sub-section (1) may exercise the powers of an authorised officer in respect of the Extension road as if VicRoads were the responsible road authority if—
- (a) the Extension corporation has so requested;
or
 - (b) there is a written arrangement with the Extension corporation.
- (5A) An authorised officer appointed under sub-section (1) may exercise the powers of an authorised officer in respect of the Mitcham-Frankston Freeway as if VicRoads were the responsible road authority if—
- (a) the Mitcham-Frankston Freeway Corporation has so requested; and
 - (b) there is a written arrangement with the Mitcham-Frankston Freeway Corporation.
- (6) A person must not be appointed as an authorised officer under this section unless the person has completed appropriate training or qualifications as determined by the relevant road authority making the appointment.

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72. Authorised officer's identity card

- (1) The relevant road authority must issue an identity card to each authorised officer.
- (2) An identity card must—
 - (a) set out the name of the authorised officer and contain a photograph of the authorised officer to whom it is issued;
 - (b) set out the name of the relevant road authority which has appointed the authorised officer;
 - (c) contain information about the complaints process under section 87.

73. Production of identity card

- (1) Subject to sub-section (2), an authorised officer must produce their identity card for inspection—
 - (a) before exercising a power under this Act other than a requirement made by post; and
 - (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.

- (2) It is not necessary for an authorised officer to comply with a request to produce their identity card that is made by a person to whom the authorised officer has already produced their identity card before or during the exercise of a power under this Act.

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74. General powers of authorised officers

- (1) Subject to sub-section (2), for the purposes of the administration of this Act and the regulations, an authorised officer may exercise the powers conferred by or under this Act and the regulations to ascertain whether the provisions of this Act or the regulations have been, or are being, complied with.
- (2) Unless an authorised officer is of the opinion that it is necessary to do so because of an emergency, an authorised officer must not enter any privately owned property unless—
 - (a) the owner has given consent; or
 - (b) the authorised officer has given the owner reasonable notice of the intention to enter at a reasonable time.

75. Power to enter upon any land

- (1) Subject to this section, an authorised officer may exercise any power conferred by this Act on a road authority to enter upon any land.
- (2) Unless an authorised officer is of the opinion that it is necessary to do so because of an emergency, an authorised officer must not enter any privately owned property unless—
 - (a) the owner has given consent; or
 - (b) the authorised officer has given the owner reasonable notice of the intention to enter at a reasonable time.
- (3) A road authority or an authorised officer must in exercising any power to enter upon any land—
 - (a) cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land; and

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- (b) remain upon the land only for such period as is reasonably necessary; and
 - (c) remove from the land on the completion of the occupation of the land all plant, machinery, equipment, goods or buildings brought onto, or erected on, the land other than any of those things that the owner or occupier agrees may be left on the land; and
 - (d) leave the land, as nearly as possible, in the condition in which it was immediately before the land was occupied; and
 - (e) use best endeavours to co-operate with the owner and occupier of the land.

76. Power to obtain name and address

If an authorised officer believes, on reasonable grounds, that a person has contravened, or is contravening, this Act or the regulations, the authorised officer may require the person to state the person's name and residential address.

77. Requirement to assist authorised officer during entry

To the extent that it is reasonably necessary to determine compliance with this Act, an authorised officer exercising a power of entry under this Act who produces his or her identity card for inspection by the occupier of the land or an agent or employee of the occupier may require that person to give reasonable assistance to the authorised officer.

78. Assistance of member of police force

Any member of the police force may assist an authorised officer in exercising a power under this Act.

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79. Offence for failure to give name and address

A person must not, without reasonable excuse, refuse or fail to comply with a requirement under section 76.

Penalty: 10 penalty units.

80. Refusal or failure to comply with requirement or direction

A person must not, without reasonable excuse, refuse or fail to comply with any lawful requirement or direction of an authorised officer under this Act.

Penalty: 60 penalty units.

81. Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Act, if the giving of the information or the doing of that other thing would tend to incriminate the person.

82. Offence to give false or misleading information

A person must not give information to an authorised officer under this Act that the person believes to be false or misleading in any material particular.

Penalty: 60 penalty units.

83. Offence to hinder or obstruct authorised officer

A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this Act.

Penalty: 60 penalty units.

84. Offence to impersonate authorised officer

A person who is not an authorised officer must not, in any way, impersonate an authorised officer.

Penalty: 60 penalty units.

85. Entry to be reported to the relevant road authority

- (1) If an authorised officer exercises a power of entry under this Act, the authorised officer must report the exercise of the power to the relevant road authority within 7 days after the entry.
- (2) The report must include all relevant details of the entry including particulars of—
 - (a) the time and place of the entry; and
 - (b) the purpose of the entry; and
 - (c) the things done while on the premises, including details of things seized, copies made and extracts taken; and
 - (d) the time of departure from the premises.

86. Register of exercise of powers of entry

The relevant road authority must keep a register containing the particulars of all matters reported to the relevant road authority under section 85.

87. Complaints

- (1) Any person may complain to the relevant road authority about the exercise of a power by an authorised officer under this Act.
- (2) The relevant road authority must—
 - (a) investigate any complaint made to the relevant road authority; and
 - (b) provide a written report to the complainant on the results of the investigation.

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88. Service of documents

- (1) A written requirement by an authorised officer under this Act may be given personally or by registered post to a person—
 - (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an authorised officer under this Act may send that document or information to the relevant road authority by registered post.

89. Confidentiality

- (1) An authorised officer must not, except to the extent necessary to carry out the authorised officer's functions under this Act, give to any other person, whether directly or indirectly, any information acquired by the authorised officer in carrying out those functions.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or

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- (d) with the written authority of the relevant road authority; or
 - (e) with the written authority of the person to whom the information relates.

Division 4—Enforcement

90. Power to serve road management infringement notice

- (1) An authorised officer may serve a road management infringement notice on a person whom the authorised officer has reason to believe has committed a road management infringement specified in Schedule 8 or in the regulations.
- (2) A road management infringement notice may be served—
 - (a) by personally serving the road management infringement notice on the alleged offender; or
 - (b) by sending the road management infringement notice by post addressed to the alleged offender's latest known address.
- (3) Schedule 8 has effect.

91. Form of notice

A road management infringement notice must—

- (a) be in the prescribed form; and
- (b) state the penalty specified in Schedule 8 or in the regulations for the offence; and
- (c) state that if the amount of the penalty is tendered at the place referred to in the notice the matter will not be brought before the Magistrates' Court unless the notice is withdrawn before the end of the period

specified in the notice as the time for payment of the penalty.

92. Withdrawal of road management infringement notice

- (1) The authorised officer may withdraw a road management infringement notice at any time within 28 days after the notice is served by serving a withdrawal notice on the alleged offender.
- (2) A withdrawal notice must—
 - (a) be served in the prescribed manner;
 - (b) contain the prescribed particulars;
 - (c) be signed by the authorised officer.
- (3) A road management infringement notice may be withdrawn even if the appropriate penalty has been paid.
- (4) If a withdrawal notice is served, the relevant road authority must refund the amount of any penalty paid on the road management infringement notice before it is withdrawn.

93. Payment of penalty

- (1) If the person pays the penalty shown on the road management infringement notice within the time shown in the notice or, if the authorised officer allows, at any time before the service of the summons in respect of the offence—
 - (a) further proceedings may not be taken in respect of the offence; and
 - (b) no conviction is to be recorded against the person for the offence.

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- (2) A penalty paid under this section must be applied as if the offender had been convicted of the offence in the Magistrates' Court on a charge filed by the authorised officer who served the infringement notice.

94. Infringement notice not to prejudice further proceedings

- (1) If—
- (a) a person served with a road management infringement notice has not paid the penalty within the time specified in the road management infringement notice; or
 - (b) a road management infringement notice is withdrawn—

proceedings may still be taken or continued for the alleged offence.

- (2) If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the road management infringement notice and a conviction is imposed by the Magistrates' Court, the conviction must not be taken to be a conviction for any purpose except in relation to—
- (a) the making of the conviction itself; and
 - (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

95. Enforcement of infringement penalty

Payment of the infringement penalty may be enforced in accordance with Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** if—

- (a) the road management infringement notice is an infringement notice within the meaning of Schedule 7 to that Act; and

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- (b) the infringement penalty has not been paid within the time specified in the road management infringement notice; and
- (c) the road management infringement notice has not been withdrawn; and
- (d) proceedings have not been taken under section 94.

96. Institution of proceedings for offences

- (1) Legal proceedings for offences against this Act or the regulations can only be instituted by—
 - (a) a member of the police force; or
 - (b) a person authorised for that purpose by the relevant road authority.
- (2) A certificate given by the relevant road authority and signed by the Chief Executive (however described) of the relevant road authority to the effect that a specified person has been authorised by the relevant road authority to take proceedings for offences against this Act is admissible in evidence and, in the absence of evidence to the contrary, is proof.

PART 6—CIVIL LIABILITY

Division 1—General

97. Definitions

In this Part—

"exercise" in relation to a function includes perform a duty;

"function" includes a power, authority or duty;

"negligence" means a failure to exercise reasonable care.

98. Effect of this Part

This Part is not to be construed as derogating from any duty or liability that a person other than a road authority, infrastructure manager or works manager has under any other Act or at common law.

Division 2—Negligence

Pt 6 Div. 2
 (Heading and
 ss 99–106)
 inserted by
 No. 39/2004
 s. 270(1).²

99. Application of Division

This Division applies to any claim for damages resulting from negligence in relation to the performance or non-performance of a road management function, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.

S. 99
 inserted by
 No. 39/2004
 s. 270(1).³

100. Application of Part XII of Wrongs Act 1958

This Division is to be construed as being in addition to and not in derogation of Part XII of the **Wrongs Act 1958**.

S. 100
 inserted by
 No. 39/2004
 s. 270(1).⁴

S. 101
inserted by
No. 39/2004
s. 270(1).⁵

101. Principles concerning performance of road management functions

- (1) In determining whether a road authority, infrastructure manager or works manager has a duty of care or has breached a duty of care in respect of the performance of a road management function, a court is to consider the following principles (amongst other relevant things including the principles specified in section 83 of the **Wrongs Act 1958**)—
 - (a) the character of the road and the type of traffic that could reasonably be expected to use the road;
 - (b) the standard of maintenance and repair appropriate for a road of that character used by traffic of that type;
 - (c) the state of repair in which a reasonable person would have expected to find a road or infrastructure of that character;
 - (d) whether the road authority, infrastructure manager or works manager knew, or could reasonably be expected to have known, the condition of the road or infrastructure at the time of the relevant incident;
 - (e) in the case where the road authority, infrastructure manager or works manager could not have reasonably been expected to repair the road or infrastructure or take other preventative measures before the relevant incident, whether the road authority, infrastructure manager or works manager did display, or could be reasonably expected to have displayed, appropriate warnings.

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s. 102

- (2) Sub-section (1) applies to the Mitcham-Frankston Freeway Corporation as if the reference to the principles specified in section 83 of the **Wrongs Act 1958** were excluded.

102. Limitations on liability of road authority

S. 102
inserted by
No. 39/2004
s. 270(1).⁶

- (1) Subject to this section, a road authority is not liable in any proceeding for damages, whether for breach of the statutory duty imposed by section 40 or for negligence, in respect of any alleged failure by the road authority—
- (a) to remove a hazard or to repair a defect or deterioration in a road; or
 - (b) to give warning of a hazard, defect or deterioration in a road.
- (2) Sub-section (1) does not apply if, at the time of the alleged failure, the road authority had actual knowledge of the particular risk the materialisation of which resulted in the harm.
- (3) For the purposes of sub-section (2), the road authority is to be taken to have had actual knowledge of the particular risk if it is proven in the proceedings that the deterioration in the road had been reported in writing to the road authority under section 115.
- (4) This section does not affect any liability of a road authority arising out of a breach of the duty to inspect a public road imposed by section 40.

103. Policy defence

S. 103
inserted by
No. 39/2004
s. 270(1).⁷

For the purposes of any proceeding to which this Division applies, an act or omission which is in accordance with a policy—

- (a) determined by the relevant road Minister under section 22 does not constitute a wrongful exercise or failure unless the policy is so unreasonable that no Minister in that Minister's position acting reasonably could have made that policy;
- (b) determined by the relevant road authority under section 39 does not constitute a wrongful exercise or failure unless the policy is so unreasonable that no road authority in that road authority's position acting reasonably could have made that policy.

Note 1: One of the ways in which a road authority may determine a policy with respect to its road management functions is by a road management plan: see section 52.

Note 2: Section 27 enables a relevant Code of Practice to be used as evidence of the reasonableness of a road management plan.

S. 104
inserted by
No. 39/2004
s. 270(1).⁸

104. Liability where duty to perform and discretionary power to remedy

For the purposes of proceedings relating to a claim arising out of a failure to exercise a road management function, if a person has a duty in relation to a matter and another person has a discretionary power to take remedial action in relation to that matter, only the person with the duty is liable in the proceedings.

Example

If particular infrastructure is not maintained in a safe condition and the relevant infrastructure manager has breached a duty to maintain that infrastructure under clause 6 of Schedule 7, the infrastructure manager would be liable in the proceedings not the coordinating road authority having a discretionary power to require that infrastructure manager to take remedial action.

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s. 105

105. Defence to prove that reasonable care was taken

S. 105
inserted by
No. 39/2004
s. 270(1).⁹

- (1) In any proceeding against a road authority for damages resulting from a failure to maintain a public road it is a defence to prove that the road authority had taken such care as in all the circumstances was reasonably required to ensure that the relevant part of the public road was not dangerous for traffic.
- (2) In any proceeding against an infrastructure manager or works manager for damages resulting from a failure to maintain non-road infrastructure it is a defence to prove that the infrastructure manager or works manager had taken such care as in all the circumstances was reasonably required to ensure that the relevant non-road infrastructure was not dangerous for traffic.
- (3) For the purposes of the defence referred to in sub-section (1), a road authority is to be taken to have established the defence if the road authority proves to the satisfaction of the court that—
 - (a) the road authority had a policy which addressed the matter which was a cause of the incident giving rise to the action; and
 - (b) the road authority complied with the relevant part of the policy.

Note 1: One of the ways in which a road authority may determine a policy with respect to its road management functions is by a road management plan: see section 52.

Note 2: Section 27 enables a relevant Code of Practice to be used as evidence of the reasonableness of a policy or road management plan.

- (4) The defence referred to in sub-section (1) or (2) does not prejudice any other defence or the application of the law relating to contributory negligence.

s. 106

S. 106
inserted by
No. 39/2004
s. 270(1).¹⁰

106. Matters which may be considered to constitute contributory negligence

If the issue of the contributory negligence of a person, other than the road authority or an infrastructure manager, is raised in any proceeding relating to a claim of negligence in relation to the performance of a road management function in respect of a road or infrastructure on a road, the court must consider whether any matter specified in section 17A(1) of the **Road Safety Act 1986** was a relevant factor.

Division 3—Other Liability

Pt 6 Div. 3
(Heading and
ss 107–111)
inserted by
No. 39/2004
s. 270(1).¹¹

107. Liability of road authority

A road authority does not have a statutory duty or a common law duty to perform road management functions in respect of a public highway which is not a public road or to maintain, inspect or repair the roadside of any public highway (whether or not a public road).

S. 107
inserted by
No. 39/2004
s. 270(1).¹²

108. Road authority is not liable as an occupier

- (1) For the avoidance of doubt, it is hereby declared that for the purposes of section 14B of the **Wrongs Act 1958**—
 - (a) a road authority is not an occupier of a road; and
 - (b) a road is not premises.
- (2) This section does not affect any liability arising under the **Wrongs Act 1958** in relation to any building on the road reserve.

S. 108
inserted by
No. 39/2004
s. 270(1).¹³

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s. 109

109. Liability in relation to fencing

Despite any Act or rule of law to the contrary, neither the Crown nor a road authority is liable for any damage that may be caused by reason of any public highway not being fenced in or fenced off.

Note: See clause 4 of Schedule 5.

S. 109
inserted by
No. 39/2004
s. 270(1).¹⁴

110. Limits in relation to liability for property damages

(1) In this section—

"property damages" means any claim for damage to property or for economic loss caused by the condition of a road or infrastructure but does not include any damage or loss arising out of personal injury or death;

Example

Property damages would include a windscreen cracked by a loose stone or damage to a tyre caused by a pothole but would not include damage to a vehicle caused by an unsecured temporary barrier.

"tar damage" means damage to a vehicle caused by tar, asphalt, bitumen or bituminous compounds;

"threshold amount" means the amount of \$1000 as varied under section 111;

"vehicle" has the same meaning as in the **Road Safety Act 1986**.

(2) For the purposes of the definition of "property damages" in sub-section (1), "the condition of a road or infrastructure" does not include machinery, plant, tools or other equipment or materials of a road authority, infrastructure manager or works manager used for the construction, installation or maintenance of roads or infrastructure.

S. 110
inserted by
No. 39/2004
s. 270(1).¹⁵

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Example

"The condition of a road or infrastructure" would not include graders, excavators, temporary barriers, shovels, stockpiles of gravel or sand and pipes or poles that have not yet been installed.

- (3) A road authority is not liable for property damages where the value of the damage is equal to or less than the threshold amount.
- (4) The amount which may be recovered against a road authority in a claim for property damages which exceeds the threshold amount is to be reduced by the threshold amount.
- (5) A road authority is not liable for tar damage if the road authority has—
 - (a) closed the road to traffic during works and for a reasonable period after the tar was applied; and
 - (b) covered the portion of the road to which the tar was applied with gravel or stones or other appropriate material before re-opening the road to traffic.
- (6) For the purposes of determining a reasonable period under sub-section (5), regard may be had to—
 - (a) any relevant Code of Practice;
 - (b) any relevant road management plan;
 - (c) any policy;
 - (d) the matters specified in paragraphs (a) to (e) of section 101(1).

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s. 111

111. Indexation provision

S. 111
inserted by
No. 39/2004
s. 270(1).¹⁶

- (1) The amount that is to apply for the purposes of section 110 is to be varied, in respect of the financial year beginning on 1 July 2005 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

"A" is the amount referred to in section 110.

"B" is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year.

"C" is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

- (2) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount is deemed to have been calculated in accordance with this section if the calculation is made—
- (a) if the amount is less than \$1000, to the nearest whole \$1; or
 - (b) if the amount is \$1000 or more, to the nearest whole \$10.
- (3) If an amount is varied in accordance with this section, section 110 and this section have effect as if a reference to the amount were a reference to the amount as so varied.

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- (4) If the variation of an amount to which this section applies by operation of this section has the effect of reducing the amount—
- (a) the variation is deemed not to have taken effect, except for the purposes of the application of this sub-section; and
 - (b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.
- (5) The Minister must cause a notice to be published in the Government Gazette specifying the amount as varied for the purposes of section 110 in respect of the relevant financial year.

Division 4—Liability of Persons Other Than Road Authorities

112. Right to recover for damage to road

- (1) This section applies if a road authority incurs extraordinary expenses in repairing a road that has been damaged as a result of the passage of extraordinary traffic or excessive mass along the road.
- (2) The road authority may recover damages in any court of competent jurisdiction from any person who was responsible for causing the traffic or weight to pass along the road.

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s. 113

- (3) Nothing in this section enables a road authority to recover damages from—
- (a) the Link corporation in respect of damage to a road arising because of the operation or effect of the Link road; or
 - (b) the Extension corporation in respect of damage to a road arising because of the operation or effect of the Extension road; or
 - (ba) the Mitcham-Frankston Freeway Corporation in respect of damage to a road arising because of the operation or effect of the Mitcham-Frankston Freeway; or
 - (c) another road authority in respect of damage to a road arising because of the operation or effect of a road for which the road authority is responsible.

S. 112(3)(ba)
 inserted by
 No. 39/2004
 s. 271.

113. Duty of owner or occupier of adjoining land

An owner or occupier of land adjoining a road has a duty of care to the relevant road authority, infrastructure managers, works managers and road users—

- (a) not to do anything on or in relation to the land which affects; or
- (b) not to allow the condition of the land to affect—

the support the land provides to the road to the extent that the stability of the road, the safety of road users or the condition of any infrastructure on the road is affected.

Division 5—Claims Procedure

114. Purpose of Division

The purpose of this Division is to facilitate a process for—

- (a) notifying the responsible road authority in relation to the condition of a public road which may require repair;
- (b) enabling condition reports to be prepared for use in legal proceedings;
- (c) the gathering of information for the analysis of the causes of accidents and the planning and implementation of road management and safety measures.

115. Notice of incident

- (1) If a person proposes to commence a proceeding in a court based on a claim in relation to an incident arising out of the condition of a public road or infrastructure, the person must give written notice of the incident to the responsible road authority within the prescribed period of the incident occurring.
- (2) In sub-section (1), "**prescribed period**" means—
 - (a) the period of 30 days; or
 - (b) a longer period as may be prescribed either in respect of all cases or a specified case or class of cases.
- (3) A notice under sub-section (1) must include the prescribed particulars so as to enable the responsible road authority to prepare a condition report under section 116.

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Part 6—Civil Liability

s. 116

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- (4) If a person fails to give notice under this section and a report is not prepared under section 116, a court may in any proceeding based on a claim in relation to an incident arising out of the condition of a public road or infrastructure take the failure into account in deciding the weight to be given to evidence about that condition at the time of the incident having regard to—
- (a) the reason why notice was not given;
 - (b) the length of the delay;
 - (c) the extent of any prejudice caused to the road authority in the proceeding;
 - (d) any other matter relevant in the interests of justice in the proceeding.

116. Preparation of condition report

- (1) Within 14 days of receiving a notice of an incident under section 115, the responsible road authority may cause an inspection to be carried out of the condition of the part of the public road or infrastructure specified in the notice.
 - (2) Despite anything to the contrary in this Act, if a road authority considers it to be appropriate for the purposes of this section, the road authority may cause an inspection to be carried out of the condition of any road or infrastructure.
 - (3) The responsible road authority may cause a report of the inspection to be prepared which includes—
 - (a) a statement of the condition of the relevant part of the road or infrastructure and where appropriate photographs showing the condition of the site of the incident;
 - (b) a reference to any relevant road management plan, policy or policy decision relating to the construction, maintenance or repair of the road or infrastructure;
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s. 116

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- (c) a summary of, or any reference to, any records relating to the condition of the road or infrastructure from inspections and reports;
 - (d) a summary of inspections, maintenance and repairs of that part of the road or infrastructure conducted in the period of 12 months before the incident;
 - (e) any other matters prescribed for the purposes of this section.
- (4) In the case of report prepared under sub-section (1), a copy of the report must be provided to the person who gave the notice under section 116 as soon as is reasonably practicable.
- (5) A copy of a report certified by the road authority is admissible as evidence of the matters specified in the report in any legal proceeding in relation to an incident arising out of the condition of a road or infrastructure.
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PART 7—GENERAL

117. Power of Ministers to delegate

- (1) The Minister may by instrument delegate to any person any function or power of the Minister under this Act or under the regulations other than this power of delegation.
- (2) A relevant road Minister may by instrument delegate to any person any function or power of the relevant road Minister under this Act or under the regulations other than this power of delegation.

118. Power of road authority to delegate

- (1) A road authority may by instrument delegate to any person any function or power of the road authority under this Act or any other Act or under the regulations other than this power of delegation.
- (2) A road authority may by instrument delegate to another road authority any function or power of the road authority under this Act or any other Act or under the regulations including, subject to sub-section (3), this power of delegation.
- (3) A road authority to which a function or power has been delegated under sub-section (2), may, subject to and in accordance with the instrument of delegation under sub-section (2), by instrument delegate to another person that function or power.
- (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation under sub-section (3) as if it were a delegation.

- (5) The power conferred by sub-section (2) is not affected by any requirement under this Act or any other Act or under the regulations that the road authority making the delegation must consult with, or consider any report or advice from, the road authority to which the function or power is to be delegated.

119. Power of VicRoads to perform road management functions on roads

- (1) Subject to this section, VicRoads may perform any road management function under this Act on any road—
- (a) for the purposes of facilitating road safety and traffic management in relation to access to or from a freeway or arterial road; or
 - (b) in relation to a project assigned to VicRoads by the Minister.
- (2) Before performing a road management function in accordance with this section, VicRoads must consult the relevant responsible road authority.

120. Power of road authority to perform road management functions on arterial road

- (1) Subject to this section, a road authority other than VicRoads may exercise any road management functions under this Act on an arterial road for the purposes of facilitating road safety and traffic management in relation to access to or from the arterial road.
- (2) Before performing a road management function in accordance with this section, the road authority must obtain the consent of VicRoads to the proposed exercise of the power.

121. Agreement to conduct additional works

- (1) A road authority may enter into an agreement with the owner or occupier of land adjacent to a road or the developer of nearby land or any other person for the performance of works on a road which may benefit that person.
- (2) An agreement under this section may include provisions relating to—
 - (a) payment for the conduct of the works;
 - (b) future arrangements in respect of ongoing maintenance and risk allocation.
- (3) An agreement under this section is enforceable.
- (4) If a road authority is the responsible authority under the **Planning and Environment Act 1987**, provisions of an agreement for the purposes of this section may be incorporated into an agreement under section 173 of that Act.

122. Power to charge fees

- (1) If authorised under the regulations, a road authority may charge and recover reasonable fees for—
 - (a) considering an application for an approval, permit or consent;
 - (b) carrying out an inspection in connection with an application for an approval, permit or consent;
 - (c) issuing an approval, permit or consent;
 - (d) issuing a certificate.
- (2) The amount of a fee must not exceed the amount prescribed or determined in accordance with the regulations.

123. Power to charge for services

- (1) A road authority may charge for any service the road authority provides under this Act.
- (2) Without limiting the generality of sub-section (1), the services for which a road authority may charge include—
 - (a) supplying a service, product or commodity;
 - (b) giving information.
- (3) A road authority can not charge for services in a manner that is inconsistent with the regulations.

124. Evidentiary provisions

In any proceedings a certificate purporting to be issued by the Chief Executive (however described) of a road authority certifying—

- (a) that a specified location, area or road was or was not at a specified time or period a road or public road or of a specified classification; or
- (b) that a specified location or area did or did not at a specified time or period form part of a road or public road in respect of which the road authority was the responsible road authority or coordinating road authority; or
- (c) that a specified road is or is not registered on the register of public roads of the road authority; or
- (d) that a specified location or area was or was not at a specified time or period a roadway, pathway, roadside or ancillary area; or

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- (e) as to a specified matter or thing that—
- (i) was or was not at a specified time or period recorded on the register of public roads or other records of the road authority; or
 - (ii) can be determined or calculated from the register of public roads or other records of the road authority; or
- (f) that a specified document is a condition report; or
- (g) that a specified document is an extract from a register of public roads or other records of the road authority; or
- (h) that a specified document is a road management plan; or
- (i) that a specified document contains or sets out a policy or policy decision determined in accordance with section 39—

is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

125. Resolution of disputes

- (1) Any dispute arising under this Act between 2 or more road authorities is to be determined by the relevant road Minister or his or her nominee or the relevant road Ministers or their joint nominees.
- (2) Any dispute arising under this Act between a road authority and a utility is to be determined by the relevant road Minister and the relevant utility Minister or their joint nominees having regard to the works and infrastructure management principles.

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- (3) Any dispute arising under this Act between a road authority and a provider of public transport is to be determined by the relevant road Minister and the Minister administering the **Transport Act 1983** or their joint nominees.
- (4) A Code of Practice may provide for mechanisms, processes and procedures which may be adopted for the purposes of this section.

126. Review of decision

- (1) A person who is affected by a decision made under clause 2 of Schedule 2 may within 28 days of the day on which the decision is made apply to the Tribunal for review of the road authority's decision.
- (2) A person who is affected by a decision referred to in clause 5(3) of Schedule 2 may within 28 days of the day on which the notice is published under clause 5 of Schedule 2 apply to the Tribunal for review of the road authority's decision.
- (3) In determining an application for review under sub-section (1), the Tribunal must take into account any relevant policy which applies under clause 3 of Schedule 2.

127. Compensation payable by a road authority in certain circumstances

- (1) This section applies in addition to any other provision of this Act relating to compensation payable by a road authority if the effect of the construction of a freeway or a decision under Schedule 2 is that existing access to any land is denied.

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s. 127

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- (2) Compensation is not payable under this section if—
- (a) there is adequate existing alternative access to the land; or
 - (b) the road authority provides, or agrees to provide, adequate alternative access to the land; or
 - (c) if a policy was in force under clause 3 of Schedule 2 before a proposed development of the land had commenced and the need for access which has been denied relates to the proposed development; or
 - (d) the road authority has instituted compulsory acquisition procedures under the **Land Acquisition and Compensation Act 1986**; or
 - (e) a claim for compensation is not served on the road authority within one year of the completion of the construction or the making of the decision.
- (3) For the purposes of determining whether alternative access to the land is adequate, no regard is to be had as to which stream of traffic has access to the land.
- (4) Compensation is to be determined on the basis of the diminution in the value of the land to which access is denied as a direct result of the loss of access to that land.
- (5) Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986**, with any necessary modifications, apply to the determination of compensation under this section as if the claim were a claim under section 37 of that Act.
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128. Abrogation of obsolete common law road classifications

The distinction at common law between carriageways, footways and bridleways as it applies in relation to roads on Crown land or freehold land vested in a Commonwealth public authority, a State public authority or a municipal council is abrogated by virtue of this section.

129. Partial abrogation of "ratione tenure" rule

- (1) The Crown or a road authority is not liable for the maintenance of a road on Crown land or freehold land owned by the road authority only by reason of tenure over the land.
- (2) This section does not limit the operation of section 40.

130. Obstruction of navigable rivers

Subject to compliance with any requirement under any Act, a bridge or tunnel constructed across navigable waters by a road authority as part of a public road is a lawful obstruction at common law of the navigable waters.

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132. Regulations

- (1) 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.
- (2) Without limiting the generality of sub-section (1), the regulations may make provision for or with respect to—

S. 129
inserted by
No. 39/2004
s. 272(1).¹⁷

S. 131
repealed by
No. 39/2004
s. 273.

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Part 7—General

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- (a) excluding or removing persons, animals or vehicles from roads or other property owned or occupied by a road authority;
 - (b) prohibiting or regulating parking on a road or road reserve;
 - (c) prescribing the persons permitted to leave vehicles standing on a road, road reserve or ancillary area and the periods for which and the conditions under which the vehicles may be left standing;
 - (d) the placing by persons of refuse, rubbish or other materials on a road, road reserve or ancillary area or other property owned or occupied by a road authority and the recovery from those persons of the cost of removal of the refuse, rubbish or other materials;
 - (e) excavations on, or digging up of, a road reserve or ancillary area and the recovery of the cost of rectification;
 - (f) noise and other emissions from a road or road reserve;
 - (g) regulating the conduct of persons in or on a vehicle on a road or on premises owned or occupied by a road authority;
 - (h) preventing interference with or damage to a roadway, pathway, road reserve, ancillary area or infrastructure on a road;
 - (i) the removal of dead animals or of vehicles abandoned or left standing on a road and the recovery of the cost of removal and regulating the storage and disposal of vehicles abandoned or left standing and the passing of title therein;
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- (j) prohibiting or regulating the use of a road by vehicles having a specified mass or dimension (including axle load) or of a specified type or having specified characteristics;
 - (k) the protection of roads and infrastructure on roads;
 - (l) regulating or prohibiting the construction of hoardings or the placing and exhibition of advertisements on or in the vicinity of roads;
 - (m) keeping a roadway or pathway clear of vegetation and other things which may interfere with the use of the roadway or pathway;
 - (n) regulating or prohibiting the complete or partial removal of, or damage to, a plant growing in a road reserve or the seeds of the plant;
 - (o) prohibiting or regulating the taking or riding of an animal on a road or road reserve;
 - (p) preventing a municipal council from sealing, or causing to be sealed, a plan of subdivision of land abutting an existing or proposed freeway or controlled access road except with the written consent of VicRoads;
 - (q) the manner of entering, crossing or leaving a freeway or controlled access road;
 - (r) preventing obstructions and removing vehicles on a freeway or arterial road and the recovery of the cost of prevention or removal;
 - (s) prohibiting climbing, or prohibiting or regulating jumping or rappelling, on, from or onto, a bridge on or over a freeway or arterial road;
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- (t) regulating the use of road reserves and requiring the payment of charges approved by the Minister to be paid by persons using road reserves or facilities provided on road reserves;
 - (u) regulating or prohibiting specific types of traffic on a freeway, including regulating or prohibiting the movement of vehicles and activities associated with vehicles or the carriage of specified goods by vehicles;
 - (v) generally any matter relating to the control, management and proper use of roads;
 - (w) specifying an offence under the regulations to be a road management infringement and stating the penalty for that road management infringement.
- (3) Subject to sub-sections (4) and (5), regulations made under this Act may provide for—
- (a) exemptions from requirements under this Act to obtain consent from a coordinating road authority;
 - (b) exemptions from requirements under this Act to give notice to a coordinating road authority;
 - (c) restrictions on the powers of a coordinating road authority to impose conditions on any consent;
 - (d) the variation of the period within which notice of completion of works is to be given under clause 13 of Schedule 7;
 - (e) a period of business days for the purposes of clause 17 of Schedule 7.
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- (4) The objective of Regulations to be made under this Act for the purposes of sub-section (3) is to—
- (a) establish a process for the exercise of powers in respect of the management of infrastructure and works on road reserves which is consistent with the works and infrastructure management principles;
 - (b) provide for the exemption from consent requirements of classes of infrastructure and works which do not have significant impacts on road safety, traffic or other infrastructure.
- (5) The Minister must ensure that there is consultation with the Utilities' Infrastructure Reference Panel before regulations are made under this Act for the purposes of sub-section (3).
- (6) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
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- (7) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a road authority or a relevant road Minister; and
 - (e) so as to confer powers or impose duties in connection with the regulations on a road authority; and
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- (f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
 - (g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from specified provisions of this Act and any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (h) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (8) If under sub-section (7)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.
- (9) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
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- (d) scales of fees according to the value of goods or services provided for the fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (10) If under sub-section (9)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (11) For the purposes of this section and any regulations made under this section, "road" includes a road which is being constructed.
- (12) Subject to sub-section (13), regulations made under this section may revoke the Transport (Roads and Property) Regulations 1993 (S.R. No. 268/1993).
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- (13) If the Transport (Roads and Property) Regulations 1993 have not been revoked before 20 December 2004, the Transport (Roads and Property) Regulations 1993 are revoked on 1 January 2005 and section 5 of the **Subordinate Legislation Act 1994** does not apply to the Transport (Roads and Property) Regulations 1993.

133. Application of regulations to Link road and Extension road

- (1) Regulations which may be made under this Act in respect of a freeway may be made in respect of the Link road or the Extension road in accordance with this section.
- (2) For the purpose of this section—
- (a) a reference in section 132 to a road is to be construed as a reference to the Link road or the Extension road;
 - (b) a power which may be conferred on VicRoads to recover damages is to be taken to enable power to be conferred on the Extension corporation or the Link corporation to recover damages;
 - (c) a reference to the property of VicRoads is to be construed as a reference to the property of the Extension corporation or the Link corporation;
 - (d) a discretionary power which may be conferred on VicRoads may be conferred on the Extension corporation or the Link corporation.

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133A. Application of regulations to Mitcham-Frankston Freeway

S. 133A
inserted by
No. 39/2004
s. 274.

- (1) Regulations which may be made under this Act in respect of a freeway may be made in respect of the Mitcham-Frankston Freeway in accordance with this section.
- (2) For the purpose of this section—
 - (a) a reference in section 132 to a road is to be construed as a reference to the Mitcham-Frankston Freeway;
 - (b) a power which may be conferred on VicRoads to recover damages is to be taken to enable power to be conferred on the Mitcham-Frankston Freeway Corporation to recover damages;
 - (c) a reference to the property of VicRoads is to be construed as a reference to the property of the Mitcham-Frankston Freeway Corporation;
 - (d) a discretionary power which may be conferred on VicRoads may be conferred on the Mitcham-Frankston Freeway Corporation.

134. Application of Act in respect of the Link road and Extension road

- (1) This Act applies in respect of the Link road and the Extension road in accordance with this section.
- (2) Subject to this section—
 - (a) the Link corporation has in respect of the Link road; and

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- (b) the Extension corporation has in respect of the Extension road—
- the functions and powers of a responsible road authority under this Act.
- (3) VicRoads has the functions and powers of a coordinating road authority—
- (a) in respect of the Link road if so requested by the Link corporation; and
- (b) in respect of the Extension road if so requested by the Extension corporation.
- (4) The functions and powers of an authorised officer appointed by VicRoads extend—
- (a) in respect of the Link road if so requested by the Link corporation in accordance with an arrangement between the Link corporation and VicRoads; and
- (b) in respect of the Extension road if so requested by the Extension corporation in accordance with an arrangement between the Extension corporation and VicRoads.
- (5) Sections 14, 18, 37, 42, 118, 121 and 122, clauses 2 and 3 of Schedule 2 and clauses 1, 2, 5, 8, 9, 11 and 12 of Schedule 5 do not apply to the Link road or the Extension road.
- (6) Section 96 applies to the Link road and the Extension road as if VicRoads were the relevant road authority.
- (7) Section 124 applies in respect of a certificate issued by the Chief Executive Officer of the Link corporation or the Chief Executive Officer of the Extension corporation as if—
- (a) a reference to a road authority were a reference to the Link corporation or the Extension corporation;
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- (b) a reference to a road of a type administered by a road authority were a reference to the Link road or the Extension road.
- (8) Clause 16 of Schedule 7 applies to the Link road and the Extension road as if a reference to a coordinating road authority were a reference to the Minister administering the **Melbourne City Link Act 1995**.
- (9) The function of carrying out permanent works on, and permanent improvements to and maintenance of, a freeway conferred on VicRoads is conferred on the Link corporation in respect of the Link road.
- (10) The function of constructing, improving and maintaining local access roads to serve a freeway conferred on VicRoads is, subject to the consent of VicRoads, conferred on the Link corporation in respect of the Link road.
- (11) The function of constructing, inspecting, maintaining and repairing an arterial road which is conferred on VicRoads is conferred on—
- (a) the Link corporation in respect of that part of the Link road which operates as an arterial road; and
 - (b) the Extension corporation in respect of the Extension road.
- (12) The power to—
- (a) cause to be removed, destroyed or blocked a means of access to a freeway constructed, formed or laid out without the consent of the road authority; and
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- (b) cause to be erected and maintained fences, posts or other obstructions along a freeway or along or across an entrance, approach or means of access to a freeway for the purpose of preventing access to a freeway—

which is conferred on VicRoads in relation to a freeway is conferred on the Link corporation in respect of the Link road.

134A. Application of Act in respect of the Mitcham-Frankston Freeway and Freeway Corporation

- (1) This Act applies in respect of the Mitcham-Frankston Freeway in accordance with this section and section 134B.
- (2) Subject to this section, the Mitcham-Frankston Freeway Corporation is, in respect of the Mitcham-Frankston Freeway, the co-ordinating road authority for the purposes of sections 19, 48(3) and 63(1) and clauses 7 and 13 and Part 2 of Schedule 7.
- (3) Subject to sub-section (2) and section 134B, VicRoads has the powers and functions of a co-ordinating road authority in respect of the Mitcham-Frankston Freeway if so requested by the Mitcham-Frankston Freeway Corporation.
- (4) The functions and powers of an authorised officer appointed by VicRoads extend in respect of the Mitcham-Frankston Freeway if so requested by the Mitcham-Frankston Freeway Corporation in accordance with an arrangement between the Mitcham-Frankston Freeway Corporation and VicRoads.
- (5) A direction to the Mitcham-Frankston Freeway Corporation under section 22 must not be inconsistent with the **Mitcham-Frankston Project Act 2004** or the Mitcham-Frankston Freeway Agreement.

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- (6) A Code of Practice under section 28 in its application to the Mitcham-Frankston Freeway Corporation must not be inconsistent with the **Mitcham-Frankston Project Act 2004** or the Mitcham-Frankston Freeway Agreement.
 - (7) A determination under section 41 must not be inconsistent with the **Mitcham-Frankston Project Act 2004** or the Mitcham-Frankston Freeway Agreement.
 - (8) Section 66 does not apply to the Mitcham-Frankston Freeway if the placing of the structure, device, hoarding, advertisement, sign or bill is permitted under the **Mitcham-Frankston Project Act 2004** or the Mitcham-Frankston Freeway Agreement.
 - (9) Section 96 applies to the Mitcham-Frankston Freeway as if VicRoads were the relevant road authority.
 - (10) Sections 11, 12, 13, 14, 15, 18, 36, 38(1)(d), 39, 105(3), 118, 119, 120, 123 and 127 and clauses 2 and 3 of Schedule 2 and clauses 1, 2, 3, 5, 8, 9, 11 and 12 of Schedule 5 do not apply to the Mitcham-Frankston Freeway or the Mitcham-Frankston Freeway Corporation.
 - (11) Clauses 1, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of Schedule 4 apply to the Mitcham-Frankston Freeway Corporation in respect of the Mitcham-Frankston Freeway as if the Mitcham-Frankston Freeway Corporation were the responsible State road authority.
 - (12) Clause 10(1) of Schedule 5 applies to the Mitcham-Frankston Freeway as if the reference to infrastructure did not include road-related infrastructure installed in accordance with the Mitcham-Frankston Freeway Agreement.
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(13) The power to—

- (a) cause to be removed, destroyed or blocked a means of access to a freeway constructed, formed or laid out without the consent of the road authority; and
- (b) cause to be erected and maintained fences, posts or other obstructions along a freeway or along or across an entrance, approach or means of access to a freeway for the purpose of preventing access to a freeway—

which is conferred on VicRoads in relation to a freeway is conferred on the Mitcham-Frankston Freeway Corporation in respect of the Mitcham-Frankston Freeway.

134B. Application of Schedule 7 in respect of the Mitcham-Frankston Freeway

- (1) Schedule 7 applies in respect of the Mitcham-Frankston Freeway as modified by this section.
- (2) Clause 8 applies as if after sub-clause (4) there were inserted—
 - "(5) Sub-clause (1) does not apply to the carrying out of routine maintenance and inspection work.
 - (6) For the purposes of this clause, work is not routine maintenance and inspection work if it requires traffic management measures in order to be conducted safely."
- (3) Clause 14 applies as if after sub-clause (1) there were inserted—
 - "(1A) The Mitcham-Frankston Freeway Corporation must have regard to the principles specified in this clause in the provision of road infrastructure."

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- (4) Clause 14 applies as if for sub-clause (2) there were substituted—
- "(2) The Mitcham-Frankston Freeway must be managed as far as is reasonably practicable in such a way as to minimise any adverse effects on—
- (a) the use of the Mitcham-Frankston Freeway by members of the public; and
 - (b) the provision of services by a Utility."

(5) Clause 14(3) applies as if after paragraph (g) there were inserted—

"(h) minimise any damage to non-road infrastructure;

 - (i) minimise any risk to the property of Utilities;
 - (j) ensure that the non-road infrastructure is reinstated as nearly as practicable to the condition existing before the works necessary for the provision of the road infrastructure were conducted."

(6) Clause 16(5) applies as if the reference to the works and infrastructure management principles were a reference to clause 14(2).

(7) Clause 16 applies as if after sub-clause (8) there were inserted—

"(8A) Conditions to which a consent is given under this section must not require an applicant to compensate the Mitcham-Frankston Freeway Corporation for economic loss or to pay any form of penalty."

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(8) Clause 17 applies as if after sub-clause (4) there were inserted—

"(4A) A Code of Practice applying to the Project within the meaning of the **Mitcham-Frankston Project Act 2004** must not be inconsistent with that Act or the Mitcham-Frankston Freeway Agreement."

135. Transitional and savings provisions

Schedule 9 has effect.

PART 8—AMENDMENT OF OTHER ACTS

Division 1—Transport Act 1983

136. New sections 15A and 15B inserted

After section 15 of the **Transport Act 1983**
insert—

'15A. Trading name

Despite anything to the contrary in the
Business Names Act 1962 or any other Act
or law, the Roads Corporation may carry on
business under the name "VicRoads".

15B. Extra territoriality

Subject to any directions given, and
conditions imposed, by the Minister, the
Roads Corporation may also perform its
functions and exercise its powers outside
Victoria and outside Australia.'

137. Consequential amendments

- (1) In section 2(1) of the **Transport Act 1983**, the definitions of "ancillary works", "bridge", "declared road", "Extension road", "forest road", "freeway", "hoarding", "Link road", "main road", "maintenance", "metropolitan bridge", "permanent improvements", "permanent works", "State highway", "stock route", "tourists' road" and "West Gate Bridge" are **repealed**.
- (2) In section 9E(1) of the **Transport Act 1983**—
 - (a) for "After consultation with the Roads Corporation and any relevant municipal council" **substitute** "Subject to the **Road Management Act 2004**";

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- (b) in paragraph (a), for "any road" **substitute** "any public road within the meaning of the **Road Management Act 2004**";
 - (c) in paragraph (b), for "such a road" **substitute** "that public road".
- (3) In section 9F(1) of the **Transport Act 1983**—
 - (a) for "After consultation with the Roads Corporation and any relevant municipal council" **substitute** "Subject to the **Road Management Act 2004**";
 - (b) for "any road" **substitute** "any public road within the meaning of the **Road Management Act 2004**".
 - (4) In section 9I(1) of the **Transport Act 1983**—
 - (a) for "The" **substitute** "Subject to the **Road Management Act 2004**, the";
 - (b) **omit** ", after consultation with the Roads Corporation or any relevant municipal council,".
 - (5) In section 9J(1) of the **Transport Act 1983**—
 - (a) for "The" **substitute** "Subject to the **Road Management Act 2004**, the";
 - (b) in paragraph (a) **omit** "after consultation with the Roads Corporation and any relevant municipal council,".
 - (6) In section 16 of the **Transport Act 1983**—
 - (a) in sub-section (1)(a), after "network" **insert** "in accordance with the **Road Management Act 2004**";
 - (b) in sub-section (2), after "**1986**" **insert** ", the **Road Management Act 2004**".
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- (7) Section 41 and Schedule 4 of the **Transport Act 1983** are **repealed**.
 - (8) Sections 42, 44 and 48 of the **Transport Act 1983** are **repealed**.
 - (9) In section 56(2) of the **Transport Act 1983**, paragraphs (v) to (ya) are **repealed**.
 - (10) Sections 56A and 56B of the **Transport Act 1983** are **repealed**.
 - (11) Section 249A of the **Transport Act 1983** is **repealed**.
 - (12) In Schedule 5 of the **Transport Act 1983**, clauses 1 to 17 and 21 to 27 are **repealed**.
 - (13) In clauses 18(1) and 18(1A) of Schedule 5 of the **Transport Act 1983**, for "a State highway, main road or tourists' road" **substitute** "an arterial road".
 - (14) In clause 18(1A) of Schedule 5 of the **Transport Act 1983**, for "any State highway, main road or tourists' road" **substitute** "any arterial road".
 - (15) In clause 20(a) of Schedule 5 of the **Transport Act 1983**, for "State highways or main roads or sections of State highways or main roads " (where twice occurring) **substitute** "arterial roads or sections of arterial roads".
 - (16) In clause 20(d) of Schedule 5 of the **Transport Act 1983**, for "State highway or main road or section of any State highway or main road " **substitute** "arterial road or section of any arterial road".
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Division 2—Road Safety Act 1986

138. New section 17A inserted

After section 17 of the **Road Safety Act 1986**
insert—

'17A. Obligations of road users

- (1) A person who drives a motor vehicle on a highway must drive in a safe manner having regard to all the relevant factors, including (without limiting the generality) the—
 - (a) physical characteristics of the road;
 - (b) prevailing weather conditions;
 - (c) level of visibility;
 - (d) condition of the motor vehicle;
 - (e) prevailing traffic conditions;
 - (f) relevant road laws and advisory signs;
 - (g) physical and mental condition of the driver.
- (2) A road user other than a person driving a motor vehicle must use a highway in a safe manner having regard to all the relevant factors.
- (3) A road user must—
 - (a) have regard to the rights of other road users and take reasonable care to avoid any conduct that may endanger the safety or welfare of other road users;
 - (b) have regard to the rights of the community and infrastructure managers in relation to road infrastructure and non-road infrastructure on the road reserve and take reasonable care to avoid any conduct that may damage

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road infrastructure and non-road infrastructure on the road reserve;

- (c) have regard to the rights of the community in relation to the road reserve and take reasonable care to avoid conduct that may harm the environment of the road reserve.
- (4) In sub-section (3), "infrastructure manager", "non-road infrastructure", "road infrastructure" and "road reserve" have the same meanings as in section 3(1) of the **Road Management Act 2004**.'

139. New section 68A inserted

After section 68 of the **Road Safety Act 1986**
insert—

"68A. Unauthorised use of freeway

- (1) A pedestrian must not without a reasonable excuse use any part of a freeway other than—
 - (a) a pathway on the road reserve of the freeway; or
 - (b) in accordance with a sign erected on the freeway by the Corporation; or
 - (c) while engaged in the conduct of works to which the Corporation has consented; or
 - (d) as authorised in writing by the Corporation.

Penalty: 5 penalty units.

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- (2) Unless authorised in writing by the Corporation, a person must not cause or permit an animal to be on any part of a freeway other than a pathway on the road reserve of the freeway.

Penalty: 5 penalty units.

- (3) Unless authorised in writing by the Corporation, a person must not cause or permit agricultural machinery to be on any part of a freeway.

Penalty: 5 penalty units.

- (4) Unless authorised in writing by the Corporation, a person must not cause or permit—

(a) any road construction or maintenance machinery; or

(b) any machinery related to the maintenance of non-road infrastructure—

to be on any part of a freeway.

Penalty: 5 penalty units.

- (5) In sub-section (4), "non-road infrastructure" has the same meaning as in section 3(1) of the **Road Management Act 2004**."

140. Consequential amendment

After section 1(a) of the **Road Safety Act 1986** insert—

- "(ab) to set out the general obligations of road users in relation to responsible road use; and".

Division 3—Other Amendments to Road Safety Act 1986

141. New sections 99A and 99B inserted

After section 99 of the **Road Safety Act 1986**
insert—

'99A. Conduct of works or activities on a highway

- (1) This section applies to any person conducting, or proposing to conduct on a highway—
 - (a) any works within the meaning of section 3(1) of the **Road Management Act 2004**; or
 - (b) any non-road activity within the meaning of section 99B.
- (2) A person to whom this section applies must ensure that the works or non-road activities are conducted in a manner that is safe for road users and persons engaged in carrying out the works or non-road activities.
Penalty: 60 penalty units.
- (3) Without limiting the generality of subsection (2), the person to whom this section applies must—
 - (a) have in operation a traffic management plan;
 - (b) give appropriate warnings to road users;
 - (c) engage appropriately trained and qualified persons to carry out the works or manage the non-road activities or direct traffic;

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- (d) give appropriate directions to the persons engaged in carrying out the works or non-road activities.
- (4) A traffic management plan must—
 - (a) comply with the prescribed requirements; and
 - (b) be prepared in accordance with any requirements of the coordinating road authority under the **Road Management Act 2004**.
- (5) The Minister administering the **Road Management Act 2004** may issue a Code of Practice in accordance with that Act for the purposes of this section.

99B. Non-road activities on highways

- (1) Subject to this Act and the regulations, a road authority within the meaning of the **Road Management Act 2004** may issue a permit to a person to conduct a non-road activity on a highway.
- (2) For the purpose of conducting the non-road activity authorised by a permit, the road authority may authorise the closure of the highway to all traffic or to particular types of traffic for the period specified in the permit.
- (3) A permit may be issued subject to—
 - (a) any terms, conditions or limitations which the road authority considers appropriate; and
 - (b) the payment of a fee fixed in accordance with this Act.

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- (4) The Minister may, on the application of a person proposing to conduct a non-road activity on a highway, by notice published in the Government Gazette declare that specified provisions of the Act and of the regulations do not apply with respect to the non-road activity specified in the notice to be conducted on a highway or part of a highway specified in the notice during the period specified.
 - (5) A notice under sub-section (1) may declare that the highway or part of the highway specified in the notice is not a highway under this Act for all purposes or specified purposes during the specified period.
 - (6) A person to whom a permit is issued is responsible for the use of the highway for the non-road activity.
 - (7) The Minister may by instrument of delegation delegate to any person any of the powers of the Minister under this section.
 - (8) In this section, "**non-road activity**" means an activity to be conducted on a road which will significantly interfere with the normal use of a road by road users in accordance with this Act and the regulations but does not include any activity to be conducted on a road by a member of the police force or of any emergency services agency arising out of the performance of a function or exercise of a power of that member.

Example

A non-road activity would include the use of a road for the shooting of a film, a bicycle event, a street festival or a street market.'

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142. Consequential amendments

- (1) In section 95(1) of the **Road Safety Act 1986**, for "sub-section (8)" **substitute** "sub-sections (8) and (9)".
- (2) After section 95(8) of the **Road Safety Act 1986** **insert**—
 - "(9) The Minister must ensure that there is consultation with the Utilities' Infrastructure Reference Panel established under the **Road Management Act 2004** before regulations are made under this Act for the purposes of items 74 to 77 of Schedule 2."
- (3) After item 73 of Schedule 2 of the **Road Safety Act 1986** **insert**—

"Traffic management plans

 74. The making and contents of traffic management plans.
 75. The circumstances in which traffic management plans must be made.
 76. The types of warnings to be given for the purposes of section 99A(3)(b).
 77. The training and qualifications of persons for the purposes of section 99A(3)(c)."

Division 4—Local Government Act 1989

143. Amendment of section 3

- (1) In section 3(1) of the **Local Government Act 1989**—
 - (a) in the definition of "public highway", after paragraph (b) **insert**—
 - "(c) which is a public road under the **Road Management Act 2004**";

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(b) in the definition of "road", after paragraph (c) **insert**—

"(ca) a public road under the **Road Management Act 2004**; and".

(2) In section 3(2)(b) of the **Local Government Act 1989**, after "**1983**" **insert** ", the **Road Management Act 2004**".

144. Sections 202, 203 and 207F repealed

Sections 202, 203 and 207F of the **Local Government Act 1989** are repealed.

145. Amendment of section 205

(1) In section 205(1)(c) of the **Local Government Act 1989**, for "declared roads within the meaning of the **Transport Act 1983**" **substitute** "freeways and arterial roads within the meaning of the **Road Management Act 2004**".

(2) For section 205(2) of the **Local Government Act 1989** **substitute**—

"(2) This section is subject to the **Road Management Act 2004**".

146. Section 207 substituted

For section 207 of the **Local Government Act 1989** **substitute**—

"207. Powers of Councils over traffic

Subject to the **Road Safety Act 1986** and any regulations made under that Act, but without limiting any other powers of a Council as a road authority, the powers include the specific traffic management powers set out in Schedule 11.

Example

A Council must obtain the consent of VicRoads before exercising a power under Schedule 11 which if exercised under a regulation made under the **Road**

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Safety Act 1986 in respect of a major traffic control item would require the consent of VicRoads."

147. Consequential amendments

- (1) **Insert** the following heading to section 208 of the **Local Government Act 1989**—
"Transport Act 1983, Road Management Act 2004 and Road Safety Act 1986".
- (2) In section 208(1) of the **Local Government Act 1989**, after **"Transport Act 1983"** insert
 ", the **Road Management Act 2004**".
- (3) In section 208(2) of the **Local Government Act 1989**, after **"Transport Act 1983,"** insert
 "the **Road Management Act 2004**".
- (4) Clause 8(2) of Schedule 11 of the **Local Government Act 1989** is **repealed**.
- (5) In clauses 9(4) and 10(3) of Schedule 11 of the **Local Government Act 1989**, for "a declared road within the meaning of the **Transport Act 1983**" **substitute** "a freeway or an arterial road within the meaning of the **Road Management Act 2004**".

Division 5—Miscellaneous Amendments

148. New section 3A inserted in Alpine Resorts (Management) Act 1997

After section 3 of the **Alpine Resorts (Management) Act 1997** insert—

"3A. Application of Road Management Act 2004

- (1) A road under this Act is a road for the purposes of the **Road Management Act 2004** but is a public road for the purposes of that Act only if the road is a public road

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within the meaning it has in section 3(1) of the **Road Management Act 2004**.

- (2) The relevant road authority for the purposes of the **Road Management Act 2004** is, subject to any regulations for the purpose of section 37(1)(c) of the **Road Management Act 2004**—
- (a) the person or body nominated for the purposes of this section in a notice published in the Government Gazette by the Minister administering this Act; or
 - (b) if no notice is published, the relevant Board."

149. Business Franchise (Petroleum Products) Act 1979

In section 13(3) of the **Business Franchise (Petroleum Products) Act 1979** for "Transport Act 1983" substitute "**Road Management Act 2004**".

150. Casino Control Act 1991

In section 128K(5)(d) of the **Casino Control Act 1991**, for "a declared road (within the meaning of the **Transport Act 1983**)" substitute "a freeway or an arterial road (within the meaning of the **Road Management Act 2004**)".

151. Catchment and Land Protection Act 1994

- (1) In section 3 of the **Catchment and Land Protection Act 1994**, in paragraph (f) of the definition of "land owner", for "a declared road within the meaning of the **Transport Act 1983**" substitute "a freeway or an arterial road within the meaning of the **Road Management Act 2004**".

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- (2) In sections 20(3)(a) and 21(3)(a) of the **Catchment and Land Protection Act 1994**, for "a declared road within the meaning of the **Transport Act 1983**" substitute "a freeway or an arterial road within the meaning of the **Road Management Act 2004**".

152. Chinatown Historic Precinct Act 1984

- (1) After section 15(12) of the **Chinatown Historic Precinct Act 1984** insert—

"(12A) The Council has in relation to the precinct the same responsibilities as it has as a road authority under the **Road Management Act 2004** in relation to a road within the meaning of that Act and all powers and rights in relation to roads conferred or given to a Council as a road authority by that Act or any regulations made under that Act may upon the recommendation of the Committee be exercised by the Council in relation to the precinct."

- (2) In section 15(15) of the **Chinatown Historic Precinct Act 1984**—

- (a) after "**1986**" insert ", the **Road Management Act 2004**";
 (b) for "either" substitute "any".

153. Commonwealth Games Arrangements Act 2001

In sections 44A(2) and 45(2)(a) of the **Commonwealth Games Arrangements Act 2001** for "**Transport Act 1983**" substitute "**Road Management Act 2004**".

154. Crown Land (Reserves) Act 1978

After section 3 of the **Crown Land (Reserves) Act 1978** insert—

"3A. Application of Road Management Act 2004

- (1) A road on reserved Crown land under this Act is a road for the purposes of the **Road Management Act 2004** but is a public road for the purposes of that Act only if the road is a public road within the meaning it has in section 3(1) of the **Road Management Act 2004**.
- (2) The relevant road authority for the purposes of the **Road Management Act 2004** is, subject to any regulations for the purpose of section 37(1)(c) of the **Road Management Act 2004**—
 - (a) if the committee of management for the reserve is a municipal council, the municipal council; or
 - (b) if paragraph (a) does not apply—
 - (i) the person or body nominated for the purposes of this section in a notice published in the Government Gazette by the Minister administering this Act; or
 - (ii) if no notice is published, the relevant committee of management for the reserve; or
 - (iii) if neither sub-paragraph (i) nor (ii) applies, the Secretary to the Department of Sustainability and Environment."

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155. Electricity Safety Act 1998

In section 84(6) of the **Electricity Safety Act 1998** for "road declared to be a road by the Minister administering the **Transport Act 1983** under Schedule 5 to the **Transport Act 1983** (other than a main road)" **substitute** "freeway or arterial road within the meaning of the **Road Management Act 2004**".

156. Fences Act 1968

In section 19(4) of the **Fences Act 1968**, after "**1983**" insert "or the **Road Management Act 2004**".

157. New section 3A inserted in Forests Act 1958

After section 3 of the **Forests Act 1958** insert—

"3A. Application of Road Management Act 2004

- (1) A road under this Act is a road for the purposes of the **Road Management Act 2004** but is a public road for the purposes of that Act only if the road is a public road within the meaning it has in section 3(1) of the **Road Management Act 2004**.
- (2) The relevant road authority for the purposes of the **Road Management Act 2004** is, subject to any regulations for the purpose of section 37(1)(c) of the **Road Management Act 2004**—
 - (a) the person or body nominated for the purposes of this section in a notice published in the Government Gazette by the Minister administering this Act; or
 - (b) if no notice is published, the Secretary to the Department of Sustainability and Environment."

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158. Amendment of Forests Act 1958

- (1) In section 18(b)(ii) of the **Forests Act 1958**, for "main roads and State highways within the meaning of the **Transport Act 1983**" substitute "freeways and arterial roads within the meaning of the **Road Management Act 2004**".
- (2) In section 77(1) of the **Forests Act 1958**, for "main roads and State highways within the meaning of the **Transport Act 1983**" substitute "freeways and arterial roads within the meaning of the **Road Management Act 2004**".
- (3) In section 77(4) of the **Forests Act 1958**, for "**Transport Act 1983**" substitute "**Road Management Act 2004**".
- (4) After section 77(6) of the **Forests Act 1958** insert—
 - "(7) Sub-sections (5) and (6) are not subject to the **Road Management Act 2004** and prevail over that Act to the extent of any inconsistency."
- (5) In section 99(29) of the **Forests Act 1958**, for "and the **Transport Act 1983**" substitute ", the **Transport Act 1983** and the **Road Management Act 2004**".

159. Impounding of Livestock Act 1994

In the **Impounding of Livestock Act 1994**—

- (a) in section 3, the definition of "declared road" is **repealed**;
- (b) in section 5(2)(c), for "declared road" substitute "freeway or an arterial road within the meaning of the **Road Management Act 2004**".

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160. Land Act 1958

After section 3 of the **Land Act 1958** insert—

"3A. Application of Road Management Act 2004

- (1) A road under this Act (other than a road to which section 400 applies) is a road for the purposes of the **Road Management Act 2004** but is a public road for the purposes of that Act only if the road is a public road within the meaning it has in section 3(1) of the **Road Management Act 2004**.
- (2) The relevant road authority for the purposes of the **Road Management Act 2004** is, subject to any regulations for the purpose of section 37(1)(c) of the **Road Management Act 2004**—
 - (a) the person or body nominated for the purposes of this section in a notice published in the Government Gazette by the Minister administering this Act; or
 - (b) if no notice is published, the Secretary to the Department of Sustainability and Environment.
- (3) Nothing in the **Road Management Act 2004** is to be construed as requiring that a road which is specified to be an unused road under section 400 must be opened to the public or maintained."

161. Amendment of the Land Act 1958

- (1) In section 22A(6) of the **Land Act 1958**, after "**1983**" insert "or the **Road Management Act 2004**".
- (2) In sections 134A(5)(d), 138A(5)(d) and 339A(6)(d) of the **Land Act 1958**, for "a declared road within the meaning of the **Transport Act 1983**" substitute "a freeway or an arterial road within the meaning of the **Road Management Act 2004**".

162. Melbourne City Link Act 1995

- (1) In section 3 of the **Melbourne City Link Act 1995**, before the definition of "authorised police officer" insert—

' "**arterial road**" has the same meaning as in the **Road Management Act 2004**;'.
- (2) In section 3 of the **Melbourne City Link Act 1995** the definition of "State highway" is repealed.
- (3) In sections 12(1)(c), 12(1A)(c) and 12C(1)(e) of the **Melbourne City Link Act 1995** after "**1983**" insert "or under the regulations made under section 132 of the **Road Management Act 2004**".
- (4) In section 61(2) of the **Melbourne City Link Act 1995**, for "a State highway" substitute "an arterial road".
- (5) After section 61(2) of the **Melbourne City Link Act 1995** insert—

"(2A) A declaration made under sub-section (2) before the commencement of section 162 of the **Road Management Act 2004** stating that a road or part of a road is to be treated as a freeway or a State highway is to be construed as stating that a road or part of a

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road is to be treated as a freeway or an arterial road."

- (6) In sections 61(4)(a) and 93H(3)(a) of the **Melbourne City Link Act 1995**, for "a declared road within the meaning of the **Transport Act 1983**" substitute "an arterial road within the meaning of the **Road Management Act 2004**".
- (7) In sections 61(5) and 93H(4) of the **Melbourne City Link Act 1995**, for "**Transport Act 1983**" substitute "**Road Management Act 2004**".
- (8) In sections 62(1) and 93I(1) of the **Melbourne City Link Act 1995** before ", on and" insert "or the **Road Management Act 2004** or the regulations under that Act".
- (9) In section 90 of the **Melbourne City Link Act 1995** before ", the Agreement" insert ", the **Road Management Act 2004** and the regulations under that Act".
- (10) After section 90A(2)(ab)(ii) of the **Melbourne City Link Act 1995** insert—
 - "(iia) any provision of the **Road Management Act 2004**, or regulations made under that Act; or".
- (11) In section 90A(3) of the **Melbourne City Link Act 1995** before ", the Agreement" insert ", the **Road Management Act 2004** and the regulations under that Act".
- (12) In section 90E(2)(b) of the **Melbourne City Link Act 1995** before ", the Agreement" insert ", the **Road Management Act 2004** and the regulations under that Act".

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163. Metropolitan Fire Brigades Act 1958

In section 3(1) of the **Metropolitan Fire Brigades Act 1958**, in paragraph (a) of the definition of "private street", for "a declared road under the **Transport Act 1983**" substitute "a freeway or an arterial road within the meaning of the **Road Management Act 2004**".

164. National Parks Act 1975

After section 4 of the **National Parks Act 1975** insert—

"4A. Application of Road Management Act 2004

- (1) A road under this Act is a road for the purposes of the **Road Management Act 2004** but is a public road for the purposes of that Act only if the road is a public road within the meaning it has in section 3(1) of the **Road Management Act 2004**.
- (2) The relevant road authority for the purposes of the **Road Management Act 2004** is, subject to any regulations for the purpose of section 37(1)(c) of the **Road Management Act 2004**—
 - (a) the person or body nominated for the purposes of this section in a notice published in the Government Gazette by the Minister administering this Act; or
 - (b) if no notice is published, the Secretary to the Department of Sustainability and Environment."

165. Amendment of the National Parks Act 1975

- (1) After section 27(3) of the **National Parks Act 1975** insert—
 - "(4) This section is not subject to the **Road Management Act 2004** and prevails over that Act to the extent of any inconsistency."
- (2) In section 37A(5)(a) of the **National Parks Act 1975** for "a tourist road pursuant to or for the purposes of the **Transport Act 1983**" substitute "an arterial road within the meaning of the **Road Management Act 2004**".
- (3) In sections 37A(5)(b) and 37A(5)(c) of the **National Parks Act 1975** for "a declared road under the **Transport Act 1983**" substitute "an arterial road within the meaning of the **Road Management Act 2004**".
- (4) In section 48(4)(b) of the **National Parks Act 1975** for "has not been declared or proclaimed under the **Transport Act 1983** or having been so declared or proclaimed" substitute "is not a freeway or an arterial road within the meaning of the **Road Management Act 2004** or is a freeway or arterial road within the meaning of that Act which".
- (5) After section 48(4) of the **National Parks Act 1975** insert—
 - "(4A) The amendment of sub-section (4)(b) by section 165(4) of the **Road Management Act 2004** does not affect the operation of any notice published under sub-section (4)(b) as in force before the commencement of that amendment."

166. Planning and Environment Act 1987

In sections 35(4)(b) and 44(1)(c) of the **Planning and Environment Act 1987**—

- (a) for "**Transport Act 1983**" substitute "**Road Management Act 2004**";
- (b) for "declared road" substitute "freeway or an arterial road".

167. Victorian Civil and Administrative Tribunal Act 1998

- (1) In section 52(4) of the **Victorian Civil and Administrative Tribunal Act 1998**, after paragraph (f) in the definition of "planning enactment" **insert**—

S. 167(1) inserted by No. 39/2004 s. 276(1).¹⁸

- "(fa) section 57 of the **Road Management Act 2004**;
- (fb) section 126 and Schedule 2 of the **Road Management Act 2004**;
- (fc) section 132 of the **Road Management Act 2004** and regulations made under that section;"

- (2) In clause 2 of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998**, after paragraph (f) in the definition of "planning enactment" **insert**—

- "(fa) section 57 of the **Road Management Act 2004**;
- (fb) section 126 and Schedule 2 of the **Road Management Act 2004**;
- (fc) section 132 of the **Road Management Act 2004** and regulations made under that section;"

* * * * *

S. 168 repealed by No. 39/2004 s. 277.

169. Victorian Plantations Corporation Act 1993

In section 14(6) of the **Victorian Plantations Corporation Act 1993** for "declared road within the meaning of the **Transport Act 1983**" **substitute** "freeway or an arterial road within the meaning of the **Road Management Act 2004**".

Division 6—Other Amendments

170. Electricity Industry Act 2000

- (1) In section 93(1)(d) of the **Electricity Industry Act 2000**, before "may enter" **insert** "subject to the **Road Management Act 2004**".
- (2) After section 93(5) of the **Electricity Industry Act 2000** **insert**—
 - "(6) The entitlement to compensation under sub-section (2) is not affected by—
 - (a) anything to the contrary in the **Road Management Act 2004**; or
 - (b) any right conferred by, or any obligation or duty imposed under, the **Road Management Act 2004**.
 - (7) An access code issued by the Commission under this section must not confer any right or power, or impose any obligation or duty, which is inconsistent with the **Road Management Act 2004**.
 - (8) An access code has no effect to the extent of any inconsistency under sub-section (7)."

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171. Electricity Safety Act 1998

After section 86(9) of the **Electricity Safety Act 1998** insert—

"(9A) Despite section 63 of the **Road Management Act 2004**, it is not necessary for a responsible person under section 84(4), 84(5) or 84(7) to obtain the written consent of the coordinating road authority under the **Road Management Act 2004** in respect of any action necessary to keep the whole or any part of a tree clear of an electric line if the action is required under section 84 or under a notice under this section."

172. Gas Industry Act 2001

(1) In section 149(1) of the **Gas Industry Act 2001** after "Subject" insert "to the **Road Management Act 2004** and subject".

(2) Section 149(2) of the **Gas Industry Act 2001** is **repealed**.

(3) In section 149(3) of the **Gas Industry Act 2001** paragraphs (a) and (b) are **repealed**.

(4) For section 149(8) of the **Gas Industry Act 2001** substitute—

"(8) A land access code issued by the Commission under this section must not confer any right or power, or impose any obligation or duty, which is inconsistent with the **Road Management Act 2004**.

(9) A land access code has no effect to the extent of any inconsistency under sub-section (8)."

173. Pipelines Act 1967

After section 32(1) of the **Pipelines Act 1967**
insert—

"(1A) Where a pipeline runs along or crosses over or under a bridge or road within the meaning of the **Road Management Act 2004**, the pipeline must at the expense of the licensee be constructed subject to and in accordance with the **Road Management Act 2004**."

174. Rail Corporations Act 1996

- (1) In section 62(1) of the **Rail Corporations Act 1996** for "After consultation with the Roads Corporation and any relevant municipal council" **substitute** "Subject to the **Road Management Act 2004**".
- (2) After section 62(2) of the **Rail Corporations Act 1996** **insert—**
 - "(2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.
 - (2B) A direction has no effect to the extent of any inconsistency under sub-section (2A)."
- (3) In section 63(1) of the **Rail Corporations Act 1996** for "After consultation with the Roads Corporation and any relevant municipal council" **substitute** "Subject to the **Road Management Act 2004**".
- (4) After section 63(2) of the **Rail Corporations Act 1996** **insert—**
 - "(2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.
 - (2B) A direction has no effect to the extent of any inconsistency under sub-section (2A)."

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- (5) In section 66(1) of the **Rail Corporations Act 1996**—
- (a) for "A" **substitute** "Subject to the **Road Management Act 2004**, a";
 - (b) **omit** ", after consultation with the Roads Corporation or any relevant municipal council,".
- (6) After section 66(2) of the **Rail Corporations Act 1996** **insert**—
- "(2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.
 - (2B) A direction has no effect to the extent of any inconsistency under sub-section (2A)."
- (7) In section 67(1) of the **Rail Corporations Act 1996**—
- (a) for "A" **substitute** "Subject to the **Road Management Act 2004**, a";
 - (b) in paragraph (a) **omit** "after consultation with the Roads Corporation and any relevant municipal council,".
- (8) After section 67(2) of the **Rail Corporations Act 1996** **insert**—
- "(2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.
 - (2B) A direction has no effect to the extent of any inconsistency under sub-section (2A)."
-

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175. Section 137 of the Water Act 1989 substituted

For section 137 of the **Water Act 1989**
substitute—

"137. Works on a road

Subject to the **Road Management Act 2004**,
 an Authority may—

- (a) in relation to a road within the meaning of the **Road Management Act 2004**, enter upon any public or private land or road for the purpose of carrying out any works that the Authority is empowered to carry out; and
- (b) temporarily close to traffic the road or any part of it, if it is necessary to do so for the carrying out of works under paragraph (a)."

176. Section 148 of the Water Act 1989 amended

(1) In section 148(1) of the **Water Act 1989**, for "A"
substitute "Unless sub-section (6) applies, a".

(2) After section 148(5) of the **Water Act 1989**
insert—

- '(6) Sub-section (1) does not apply in respect of a road authority if it is necessary for the road authority to do anything referred to in that sub-section for the purpose of constructing a road or conducting maintenance or repair works on a road.
- (7) For the purposes of sub-section (6), the road authority is subject to any directions given to the road authority by an Authority which are reasonably necessary—

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- (a) to ensure the safety of any works of the Authority; or
 - (b) to prevent an interruption of the water supply.
- (8) Any dispute arising between a road authority and an Authority in relation to any directions given under sub-section (7) is to be determined in accordance with section 125 of the **Road Management Act 2004**.
- (9) In this section—
"road authority" has the same meaning as it has in section 3(1) of the **Road Management Act 2004**.'

177. Section 62 of the Water Industry Act 1994 substituted

For section 62 of the **Water Industry Act 1994** substitute—

"62. Works on a road

Subject to the **Road Management Act 2004**, a licensee may—

- (a) in relation to a road within the meaning of the **Road Management Act 2004**, enter upon any public or private land or road for the purpose of carrying out any works that the licensee is empowered to carry out; and
- (b) temporarily close to traffic the road or any part of it, if it is necessary to do so for the carrying out of works under paragraph (a)."

178. Section 66 of the Water Industry Act 1994 amended

- (1) In section 66(1) of the **Water Industry Act 1994**, for "A" **substitute** "Unless sub-section (6) applies, a".
- (2) After section 66(5) of the **Water Industry Act 1994 insert**—
 - '(6) Sub-section (1) does not apply in respect of a road authority if it is necessary for the road authority to do anything referred to in that sub-section for the purpose of constructing a road or conducting maintenance works on a road.
 - (7) For the purposes of sub-section (6), the road authority is subject to any directions given to the road authority by the licensee which are reasonably necessary—
 - (a) to ensure the safety of any works of the licensee; or
 - (b) to prevent an interruption of the water supply.
 - (8) Any dispute arising between a road authority and a licensee in relation to any directions given under sub-section (7) is to be determined in accordance with section 125 of the **Road Management Act 2004**.
 - (9) In this section—

"road authority" has the same meaning as it has in section 3(1) of the **Road Management Act 2004**.'

179. Further transitional and savings provisions

Schedule 10 has effect.

SCHEDULES

SCHEDULE 1

REGISTERS OF PUBLIC ROADS

1. Matters which must be included in a register of public roads

The register must include—

- (a) the name of each public road or, if a road is unnamed, a description which enables the particular road to be easily identified;
- (b) if a road becomes a public road after 1 July 2004, the date on which the road became a public road;
- (c) if a public road ceases to be a public road, the date on which the road ceased to be a public road;
- (d) the classification, if any, of the public road;
- (e) the reference of any plan or instrument made on or after 1 July 2004 that fixes or varies the boundaries of a public road;
- (f) any ancillary areas;
- (g) a reference to any arrangement under which road management functions in respect of any part of a public road or ancillary area is transferred to or from another road authority;
- (h) in relation to the Link road and the Extension road, details of any toll zones declared under section 61 or 93H of the **Melbourne City Link Act 1995**;
- (ha) in relation to the Mitcham-Frankston Freeway, details of any toll zones specified under section 195 of the **Mitcham-Frankston Project Act 2004**;
- (i) any matter required to be included by the relevant road Minister under section 22;
- (j) any other matter required to be included by this Act;
- (k) any other matter which is prescribed for the purpose of this clause.

**Sch.1 cl.1(ha)
inserted by
No. 39/2004
s. 278.**

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2. Matters which may be included in a register of public roads

The register may include information or cross references to information—

- (a) if a road became a road before 1 July 2004, the date on which the road became a road;
 - (b) about infrastructure in, on, over or under a road;
 - (c) relating to the mechanism by which a road was created or became a road;
 - (d) relating to construction standards for a public road;
 - (e) the reference of any plan or instrument made before 1 July 2004 that fixes or varies the boundaries of a road;
 - (f) which a road authority considers appropriate.
-

SCHEDULE 2

MANAGEMENT OF ROAD ACCESS

1. Access to freeways

No road, private road or access point is to be connected to a freeway without the written consent of VicRoads.

2. Decisions relating to access to controlled access roads

- (1) A road authority may make a decision in respect of one or more controlled access roads and particular adjacent land.
- (2) A decision under this clause—
 - (a) may be made on the initiative of the road authority or on the application of the owner of particular adjacent land; and
 - (b) must be written.
- (3) A decision under this clause may specify—
 - (a) the location or locations at which access between the particular adjacent land and the controlled access road is permitted;
 - (b) restrictions on the use of a location specified under paragraph (a);
 - (c) conditions on the use of a location specified under paragraph (a);
 - (d) where a particular access facility or a specified type of access facility is to be situated;
 - (e) restrictions on the use of an access facility;
 - (f) conditions on the use of an access facility;
 - (g) that access at a specified location or locations is no longer permitted;
 - (h) that an access facility for construction at a specified place must be of a specified type, standard or extent or be constructed in a specified manner;
 - (i) that either the type, standard or extent of the existing access facility must be changed in a manner specified by the road authority or the use of the access facility must be discontinued;

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- (j) that all access between the controlled access road and the land is prohibited;
 - (k) that all access between the controlled access road and the land is no longer prohibited;
 - (l) that a specified existing access facility must be removed by the owner within a specified period;
 - (m) without limiting paragraphs (g) to (l), that anything referred to in paragraphs (a) to (f) is, or is to be, changed as specified in the decision.
- (4) Without limiting sub-clause (3), a condition or restriction under sub-clause (3) may be—
- (a) a prohibition on the use of the permitted road access location or an access facility by pedestrians;
 - (b) a prohibition on turns by motor vehicles going into or out of the land;
 - (c) a restriction on the type and number of motor vehicles that the owner or occupier or the person who applied for the decision may allow to use the permitted road access location;
 - (d) a requirement that the owner or occupier or person who applied for the decision is to take specified or other reasonable steps to ensure the permitted road access location is used by others in accordance with the conditions;
 - (e) a restriction on when the permitted road access location may be used.
- (5) A decision or part of a decision may be limited to a specified period by reference to time or circumstance.
- (6) A decision must be consistent with any applicable policy under clause 3.
- (7) In this clause, "**access facility**" means—
- (a) a physical means of entry or exit for vehicles between adjoining land and a road reserve; or

Example

A driveway on adjacent land.

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- (b) infrastructure on a road reserve which provides, or a part of roadway which facilitates, entry or exit for traffic between the access facility referred to in paragraph (a) and the roadway.

Example

A driveway on adjoining land which extends into the road reserve to connect the driveway to the roadway or an acceleration or deceleration lane of a roadway which connects to an entry or exit to adjoining land.

3. Policy relating to application of clause 2

- (1) A road authority must make a policy about the application of clause 2 to access between the controlled access road and adjacent land for each controlled access road proposed to be declared.
- (2) A road authority may amend, revoke or substitute a policy made under sub-clause (1).
- (3) A road authority must provide a copy of any policy made or substituted under this clause to the responsible authority within the meaning of the **Planning and Environment Act 1987** administering the planning scheme applying to the area in which the controlled access road is located.
- (4) A road authority must notify the responsible authority within the meaning of the **Planning and Environment Act 1987** administering the planning scheme applying to the area in which the controlled access road is located of any amendment or revocation of a policy.

4. VicRoads must consult with municipal council

- (1) This clause applies if the road authority proposing to act under section 42 or clause 3 is VicRoads.
- (2) Before complying with clause 5, VicRoads must give—
 - (a) details of the proposal to each municipal council which VicRoads considers may be affected by the proposal;
 - (b) each municipal council referred to in paragraph (a) a reasonable opportunity to make a submission on the proposal to VicRoads.

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5. Publication requirements

- (1) A road authority must publish a notice of the making, amending or revoking of a declaration under section 42 or of the making, amending, revoking or substitution of a policy under clause 3—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the neighbourhood in which the public road to which the declaration applies is located.
- (2) A notice under sub-clause (1) relating to the making, amending or revoking of a declaration under section 42 must state—
 - (a) the reasons for making, amending or revoking the declaration; and
 - (b) information about the location of the controlled access road including—
 - (i) the points at which the controlled access road starts and ends or is to be removed; and
 - (ii) its alignment; and
 - (iii) the boundaries to which limitation of access is to be applied or removed.
- (3) A notice under sub-clause (1) must state—
 - (a) that there is a policy in respect of the application of clause 2 to access between the public road and adjacent land;
 - (b) if the policy is in substitution for an existing policy, a summary of, or a reference to, the existing policy;
 - (c) the text of the policy or details of the places and times when the policy can be inspected free of charge;
 - (d) the text of section 60;
 - (e) that a person who is affected by the decision to which the notice relates may apply to the Tribunal for review of the road authority's decision.

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- (4) A notice under sub-clause (1) must—
- (a) provide information about the circumstances in which compensation may be payable under section 127; and
 - (b) specify the date by which a claim for compensation must be lodged with the road authority.
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SCHEDULE 3

SPECIFIC POWERS OF STATE ROAD AUTHORITIES

1. Power to inspect, construct, maintain and repair roads

A State road authority may—

- (a) establish, construct, vary and extend roads and road infrastructure;
- (b) fix and alter the level and alignment of roadways and pathways;
- (c) inspect, maintain and repair roads and road infrastructure;
- (d) for the purpose of paragraphs (a), (b) and (c), perform any other road management function under this Act.

2. Power to determine the standard of construction

- (1) A State road authority may determine the standard to which a road or any part of a road is to be constructed.
- (2) For the purposes of this clause, a State road authority must have regard to—
 - (a) the principal object of road management;
 - (b) any relevant Code of Practice and any standard or technical reference or other document referred to or incorporated in a relevant Code of Practice;
 - (c) the economic, budgetary, social, environmental or policy factors, objectives or constraints which apply to the State road authority.

3. Power to deviate roads

A State road authority may deviate a road through available land (whether or not the land is subject to any rights of way).

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4. Power to remove unlawful objects from road reserve

A coordinating State road authority may remove, alter or obliterate anything which is unlawfully located on a road reserve other than—

- (a) road infrastructure for which another road authority is the infrastructure manager; or
- (b) non-road infrastructure.

5. Power to erect signs and number roads

A relevant coordinating State road authority may—

- (a) erect signs on a State road; and
- (b) approve, assign and change the number of a State road.

6. Power to establish survey marks

A State road authority may cause standard survey marks to be established in roads.

7. Power to provide for temporary roads

- (1) A State road authority may provide temporary roads.
- (2) For the purposes of enabling works to be carried out on or over a road, or land next to a road, a State road authority may—
 - (a) fence off and occupy part of the road;
 - (b) erect a structure or temporary crossing for vehicles on, or over, the road;
 - (c) permit a person to do anything the State road authority may do under paragraph (a) or (b).
- (3) Clause 11 of Schedule 5 applies to the exercise of the power conferred by this clause.
- (4) The power conferred by this clause is subject to the State road authority obtaining any applicable consent, permit or authorisation under this Act or any other Act.

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8. Powers concerning fences, gates and by-passes

A State road authority may—

- (a) permit the erection and maintenance of gates and fences on or near roads;
- (b) permit the construction of by-passes for unfenced roads and for this purpose to require—
 - (i) the removal of any gate;
 - (ii) the erection of notices giving warning of the by-pass;
 - (iii) the maintenance of the by-pass and notices;
- (c) revoke the permission given under paragraphs (a) and (b) and require the removal of the gates, fences, notices and by-passes.

9. Powers concerning crossings over footpaths and channels

A State road authority may—

- (a) make a bridge or crossing over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel;
- (b) maintain, repair or reconstruct the bridge or crossing;
- (c) permit a person to do anything the State road authority may do under paragraph (a) or (b);
- (d) require a person to do anything the State road authority may do under paragraph (a) or (b).

10. Power to remove certain trees or vegetation

- (1) A coordinating State road authority may lop or remove any tree or vegetation on a road, or lop any tree or vegetation overhanging a road, if the coordinating State road authority considers that it is necessary to do so—
 - (a) to remove a danger to road users; or
 - (b) to prevent damage or obstruction to the operation of road infrastructure or non-road infrastructure; or
 - (c) to carry out works on the road or infrastructure on the road.
- (2) A coordinating State road authority may authorise an infrastructure manager or works manager to exercise the power conferred by this clause.

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- (3) The powers conferred by this clause are subject to any relevant requirements or restrictions which apply by or under any other Act.

11. Available land

- (1) For the purposes of this Schedule, a power requiring the use of any land is subject to the land being available land.
- (2) Crown land is available land if the Minister administering the relevant Crown land has given consent to the use of the land.
- (3) Private land is available land—
- (a) if the consent of the owners and occupiers to the use of the land has been obtained; or
 - (b) if the land is acquired under the **Land Acquisition and Compensation Act 1986**; or
 - (c) if the land is temporarily occupied under section 75 of the **Land Acquisition and Compensation Act 1986**.
- (4) For the purposes of sub-clause (3), private land includes Crown land held under lease or licence.
- (5) Land is available land if it is within a road reserve or is land owned by the coordinating road authority.
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SCHEDULE 4

**SPECIFIC TRAFFIC MANAGEMENT POWERS OF STATE ROAD
AUTHORITIES**

1. General power to manage traffic

A State road authority has the power to manage traffic on any road—

- (a) in respect of which it is the coordinating road authority; or
- (b) on land managed by the State road authority.

2. Powers concerning parking

- (1) A State road authority may with respect to non-arterial State roads fix, rescind or vary—
 - (a) the days, hours and periods of time for which, and the conditions on which, vehicles may stand in a parking area in a non-arterial State road or other parking area; and
 - (b) fees for any vehicles standing in a parking area and the manner of payment of those fees; and
 - (c) the fee for residents of any area which the State road authority sets aside as an area in which a resident parking scheme is to operate that allows a vehicle to stand in a parking area in any road in the area regardless of the fixed parking periods for that area.
- (2) VicRoads may with respect to arterial roads—
 - (a) manage clearways; and
 - (b) make policy decisions in relation to traffic management after consultation with any affected municipal councils.
- (3) In this clause "**parking area**" has the meaning it has in the **Road Safety Act 1986** or any regulations made under that Act.
- (4) A municipal council must exercise the powers conferred on a municipal council under the **Local Government Act 1989** in a manner which is consistent with this clause.

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3. Power to issue special parking permits

A State road authority may issue a special parking permit to any disabled person to enable him or her to leave a vehicle standing on different conditions from those fixed under any part of clause 2.

4. Power to remove unregistered or abandoned vehicles

- (1) A State road authority may—
 - (a) move or impound any unregistered vehicle or vehicle considered by it to be abandoned (and anything in, on or attached to, the vehicle);
 - (b) keep the vehicle in the place to which it has been moved or any other place;
 - (c) return the vehicle to its owner on payment of a fee;
 - (d) subject to sub-clause (2), sell, destroy or give away the vehicle (and anything in, on or attached to, the vehicle) if the owner of the vehicle has not paid the fee within 14 days of a State road authority impounding the vehicle.
- (2) Before exercising the power conferred by sub-clause (1)(d), the State road authority must take reasonable steps to notify the owner of the vehicle that the vehicle has been impounded and may be sold, destroyed or given away unless the specified fee is paid within 14 days.
- (3) A State road authority and anyone who obtains the vehicle from a State road authority under sub-clause (1)(d) is not liable to the owner of the vehicle or any other person in respect of any action taken under that sub-clause.
- (4) The fee set for the purposes of sub-clause (1)(c) must not exceed an amount that reasonably represents the cost to a State road authority of impounding, moving, keeping and releasing the vehicle, including any relevant overhead and other indirect costs.
- (5) For the purposes of sub-clause (1), a State road authority may consider that a vehicle has been abandoned if the vehicle has not been moved for 2 months.

5. Power to remove vehicles causing obstruction or danger

- (1) A State road authority may move or impound any vehicle that—
- (a) is causing an unlawful obstruction; or
 - (b) is unlawfully parked or left standing in an area designated by the Minister; or
 - (c) has been left standing illegally for a period of at least 2 days; or
 - (d) has been left standing in an area in which in the opinion of the State road authority the vehicle is obstructing the free movement of traffic on a road or from a driveway; or
 - (e) has been left standing in an area in which in the opinion of the State road authority the vehicle constitutes a hazard to road safety.
- (2) A State road authority may charge the owner of a vehicle a fee of up to the amount of the fee set for the purposes of clause 4(1)(c).
- (3) The powers conferred by this clause and clause 4 are in addition to any powers under the **Road Safety Act 1986**.

6. Power to move other obstructions

A State road authority may—

- (a) move any thing that encroaches or obstructs the free use of a roadway or pathway or that reduces the breadth, or confines the limits, of a roadway or pathway, including any thing placed on the roadway or pathway under clause 11 or 12;
- (b) require any person responsible for, or in control of, the thing to move it.

7. Power to restrict traffic near a construction site

For the purposes of enabling works to be carried out on or over a road, or land next to a road, a State road authority may—

- (a) fence off and occupy part of the road;
- (b) erect a structure or temporary crossing for vehicles on, or over, the road;
- (c) permit a person to do anything the State road authority may do under paragraph (a) or (b).

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8. Power to close roadway or pathway on seasonal basis

A State road authority may close a roadway or pathway, or part of a roadway or pathway, for a particular period during the year.

9. Power to erect and remove works and structures

A State road authority may erect and remove any works or structures—

- (a) to protect passengers, pedestrians, drivers and cyclists on a roadway or pathway; or
- (b) to regulate traffic on a roadway or pathway.

10. Power to place obstructions or barriers on a roadway permanently

A State road authority may block or restrict the passage or access of vehicles on a roadway by placing and maintaining any permanent barrier or other obstruction on the roadway.

11. Power to place obstructions or barriers on a roadway temporarily

A State road authority may block or restrict the passage or access of vehicles on a roadway by placing and maintaining any temporary barrier or other obstruction on the roadway—

- (a) for as long as is necessary to prevent any injury to any person or damage to any property (including damage to the roadway itself); or
- (b) for as long as is necessary for a procession, public ceremony or function; or
- (c) for a genuine traffic diversion experiment.

12. Power to restrict use of roadway by vehicles of a certain size

A State road authority may prohibit or restrict the use of a roadway by any motor vehicle of, or over, a certain size or weight.

13. Power to determine speed limits

A State road authority may determine speed limits for vehicles on a roadway.

14. Power to prohibit traffic on unsafe roads

A State road authority may prohibit or restrict traffic on a road that it considers is unsafe for that traffic.

SCHEDULE 5

ROAD PROPERTY PROVISIONS, POWERS AND DUTIES

1. Vesting of roads and public highways

- (1) Subject to this clause, the Crown has absolute property in—
 - (a) the land over which there is a freeway or arterial road (whether the freeway or arterial road is constructed at the level of the surface of the land or not); and
 - (b) all land reserved or proclaimed as a road under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Forests Act 1958** or the **National Parks Act 1975**—
whether before or after the commencement of this Schedule.
- (2) The declaration of a freeway or arterial road under section 14 as a freeway or arterial road may provide that the declaration has effect in respect of a specified part of the land over which there is a freeway or arterial road of vesting in the Crown absolute property only in a specified stratum.
- (3) Sub-clause (1) is subject to any lease or licence granted under—
 - (a) this Act; or
 - (b) the **Local Government Act 1989**; or
 - (c) the **Land Act 1958**; or
 - (d) clause 13(3) of Schedule 5 of the **Transport Act 1983** as in force before the commencement of this Schedule.
- (4) Subject to sub-clause (6), a road vests in fee simple in the municipal council of the municipal district in which it is located upon becoming a road.
- (5) The public highway vests in the municipal council free of all mortgages, charges, leases and sub-leases.

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- (6) Sub-clause (4) does not apply to—
- (a) a freeway or an arterial road;
 - (b) a road that becomes a road if it is agreed between the municipal council and VicRoads that the road should vest in VicRoads;
 - (c) roads on Crown land;
 - (d) roads vested in a Minister or in any public authority (other than a municipal council).

2. Nature of ownership of road

- (1) Clause 1 does not have effect to—
- (a) impose any duty on the Crown, a municipal council or a public statutory authority as owner of the land in a road that it would not have if it were not the owner of the land but were only the road authority;
 - (b) allow adverse possession or easements by long user to be acquired over the road;
 - (c) authorise the disposition of the fee simple or any estate or interest in the land except as authorised by clause 9;
 - (d) make a road subject to the compulsory acquisition powers under the **Land Acquisition and Compensation Act 1986**.
- (2) Subject to clause 1 and sub-clause (1), for the purposes of the management of a road, a road authority has the powers that a freehold owner in possession of the land would have.

3. Boundary of road if no boundary fixed

- (1) If the boundary of a road has not been fixed, the boundary is deemed to be—
- (a) if the road adjoins unalienated Crown land, one metre from the edge of the roadway or any road related infrastructure; or
 - (b) if the road adjoins freehold land, the boundary of the freehold land; or
 - (c) subject to sub-clause (3), if the road adjoins Crown land held under a lease or a licence, the boundary of the Crown land.
- (2) For the purposes of sub-clause (1)(a) the edge of the roadway is the edge of the shoulder.
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- (3) Sub-clause (1)(c) does not apply if the Crown land is held—
- (a) under a licence of a kind to which section 138A(5) of the **Land Act 1958** applies; or
 - (b) under a lease or licence granted under clause 9; or
 - (c) under a lease or licence deemed to have been granted under clause 9.

4. Obligations in relation to fencing

Despite any Act or rule of law to the contrary, neither the Crown nor a road authority is required to fence or contribute to the fencing of any portion of a public highway.

5. Power of State road authority to use road for other functions

Subject to clause 16 of Schedule 7, a State road authority may use a road in the performance of its other functions if the use does not unreasonably interfere with the primary purpose of the road.

6. Right to support

A road authority has in respect of a road for which it is responsible a right of physical support from land adjacent to the road.

7. Powers may be exercised in relation to a stratum

A State road authority may exercise any power conferred on a State road authority under this Act in respect of a specified stratum only.

8. Power to use public land with consent

- (1) Subject to this clause, a State road authority may for the purpose of the construction or maintenance of a road exercise any power conferred on a State road authority under this Act in respect of unreserved Crown land or land vested in a public authority.
- (2) Before exercising any power under sub-clause (1), the State road authority must obtain consent in writing—
 - (a) in the case of unreserved Crown land, from the Minister administering the **Land Act 1958**;
 - (b) in the case of land vested in a public authority, the public authority or the Minister administering the Act under which the public authority is constituted.

9. Power to grant lease or licence

- (1) Subject to sub-clause (2), VicRoads may grant a lease or licence for a period not exceeding 40 years of any part of a road reserve of a road administered by VicRoads if VicRoads is satisfied that the lease or licence will not significantly affect the primary use of the road.
- (2) Sub-clause (1) does not apply to a road on land administered under the **Forests Act 1958**, the **National Parks Act 1975** or the **Crown Land (Reserves) Act 1978**.
- (3) VicRoads may enter into a commercial agreement with any person in relation to a lease or licence granted under this clause.
- (4) VicRoads must give notice to the Minister administering the **Land Act 1958** of any lease or licence granted under this clause.
- (5) The Minister may, with the agreement of the relevant Ministers, determine policies for the granting of leases and licences under this clause.
- (6) The Minister must cause a copy of any policy determined under sub-clause (5) to be published in the Government Gazette.
- (7) VicRoads must comply with any policy determined under sub-clause (5).
- (8) Any policies made under clause 13(6) of Schedule 5 of the **Transport Act 1983** which are in force immediately before the commencement of this clause have effect as if made under this clause.
- (9) Nothing in sub-clause (1) prevents the grant of a lease or licence under the **Land Act 1958** of land in a road which is not subject to a lease or licence granted under sub-clause (1).
- (10) In this clause "**relevant Ministers**" means the Minister or Ministers administering the **Land Act 1958**, the **Forests Act 1958**, the **National Parks Act 1975** and the **Crown Land (Reserves) Act 1978**.

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10. Infrastructure not part of land

- (1) Infrastructure on, in, under or over any road reserve—
- (a) is not part of the land or road reserve on, in, under or over which it is located; and
 - (b) is personal property of the relevant road authority or infrastructure manager.

Note: Examples of infrastructure are included in the definitions of "non-road infrastructure", "road infrastructure" and "road-related infrastructure" in section 3(1).

- (2) This clause has effect despite any provision in this Act or any other Act or law relating to the vesting of roads.

11. Acquisition of land

- (1) A State road authority may, with the approval of the Minister, purchase or compulsorily acquire any land which is or may be required by the State road authority for or in connection with the performance of its functions under this Act.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Road Management Act 2004** is the special Act; and
 - (b) a State road authority is the Authority; and
 - (c) "**land**" includes strata above or below the surface of land and easements and rights to use land or strata above or below the surface of the land; and
 - (d) section 74(1)(c) of the **Land Acquisition and Compensation Act 1986** has effect as if it also empowered a State road authority to take samples of plants; and
 - (e) section 75 of the **Land Acquisition and Compensation Act 1986** has effect as if it empowered a State road authority to enter any land and section 75(6) did not apply.

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- (3) In addition to its powers under section 75 of the **Land Acquisition and Compensation Act 1986**, a State road authority may for the purposes of this Act and subject to compliance with sub-sections (3), (4) and (5) of section 75 of the **Land Acquisition and Compensation Act 1986**—
- (a) carry out investigations on and search for and obtain materials from any land; and
 - (b) use any temporarily occupied land for the purposes of—
 - (i) constructing a roadway on adjoining land; or
 - (ii) placing a temporary roadway or pathway on the land to be used while a road is impassable or for traffic management or safety purposes; and
 - (c) exercise on the land any of its powers under Schedule 6.
- (4) In full or in part settlement of any compensation which a State road authority is liable to pay, the State road authority—
- (a) may transfer a building from land owned by a person entitled to the compensation to other land owned either by that person or by the State road authority; or
 - (b) may transfer a building from land owned by the State road authority to other land owned either by the State road authority or by a person entitled to the compensation.
- (5) Where by the exercise by a State road authority of any of the powers contained in this clause it is necessary to acquire any land compulsorily from the owner thereof—
- (a) the State road authority may require that owner to take any land adjoining that land which is owned by the State road authority and is no longer required by the State road authority; and
 - (b) the value of that land is to be deducted from any sum to be paid by way of compensation to the owner of the land acquired compulsorily by the State road authority; and
 - (c) if that value cannot be agreed upon between the State road authority and the owner, it is to be settled in the same manner and at the same time as the compensation to be paid to that owner.
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- (6) Where any right to use land or any right in the nature of an easement or purporting to be an easement is acquired by a State road authority, that right is deemed for all purposes to be an easement notwithstanding that there is no land vested in the State road authority or its successors which is in fact benefited or capable of being benefited by that right.
- (7) Clause 12 does not apply to an easement acquired compulsorily by a State road authority.

12. Powers of Registrar of Titles

- (1) The Registrar of Titles may make any recordings that are necessary or expedient in the Register relating to any land affected by the exercise of a power of a State road authority under this Act.
- (2) Without limiting sub-clause (1), the Registrar of Titles may require a person to produce any instrument or document other than a certificate of title.

13. VicRoads may be appointed as committee of management

- (1) Despite anything in any Act, VicRoads may be appointed to be a committee of management under the **Crown Land (Reserves) Act 1978** of any areas of Crown land which are adjacent to any arterial road and are reserved under section 4 of that Act.
- (2) Despite anything in any Act, VicRoads may out of its general fund expend money upon the improvement of an area of Crown land to which sub-clause (1) applies.
- (3) Without limiting the generality of sub-clause (2), the improvement of an area of Crown land may include the provision of public toilets.

14. No private right of way or easement on road

A private right of way or easement cannot—

- (a) develop or co-exist with a public right of way over the same land; or
- (b) revive on the revocation of the declaration of a road or the discontinuance of a public road or the permanent closure of a road over that land.

SCHEDULE 6

**SPECIFIC PROTECTION OF ROADS AND ADJOINING LAND
POWERS OF STATE ROAD AUTHORITIES**

1. Exercise of powers in relation to private roads

- (1) A State road authority may at its discretion exercise any of its powers with respect to roads in relation to a private road—
 - (a) with the agreement of the owner of, or person responsible for, the private land; or
 - (b) if the State road authority has reasonable grounds for considering that it is necessary or desirable to do so in the interests of public safety or for environmental reasons.
- (2) A State road authority may charge a reasonable amount for any works conducted under this clause.

2. Power concerning holes and other dangers

A State road authority may—

- (a) fill any hole or excavation in or near a road;
- (b) remove any cause of possible damage to a road, or of danger to anyone or anything using the road;
- (c) erect or restore any fence near any hole or excavation that is near a road;
- (d) require a person to do any of the things listed in paragraphs (a), (b) and (c).

3. Power in respect of neighbouring land

- (1) A coordinating State road authority may exercise the power conferred by this clause in any case where the coordinating State road authority considers that—
 - (a) the condition of land near a road may adversely affect—
 - (i) the safety of users of the road; or
 - (ii) the structural integrity of any part of the road;or
 - (b) a thing on land near a road constitutes a danger to persons or vehicles lawfully entitled to use the road.

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- (2) Without limiting the generality of sub-clause (1), the condition of land near a road is to be taken to adversely affect the safety of users of the road if—
- (a) the condition of the land may obscure the field of view of users of the road; or
 - (b) the condition may distract the attention of a driver of a vehicle on the road.
- (3) If this clause applies, the coordinating State road authority may serve a notice on the owner or occupier of the land to remove, mitigate or rectify the condition or thing specified in the notice.
- (4) Without limiting the generality of the power, the power includes directing—
- (a) the removal of overhanging trees or other encroachments on air space over a road;
 - (b) that the landform of the land be altered;
 - (c) that measures be taken to reduce the flow of water onto a road, including the removal of levee banks or other constructed features that have altered the natural flow of water;
 - (d) that the risk of materials coming onto the road from the land be reduced;
 - (e) that excavations on the land are to be filled;
 - (f) that fences are erected, lights are installed or other measures taken with respect to hazards on the land;
 - (g) the removal of a hoarding or sign;
 - (h) the removal or modification of specified traffic hazards;
 - (i) that rectification works specified in the notice be conducted within the time specified.

Note: Section 61 provides that it is an offence to fail to comply with a direction without reasonable excuse.

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4. Power of State road authority to take remedial action

- (1) Subject to this Act, a State road authority may enter any land to which clause 3 applies for the purpose of exercising powers under that clause if—
- (a) the owner or occupier has not complied with a direction under that clause; or
 - (b) the State road authority considers that there is an emergency or that the works are required urgently to ensure public safety, the structural integrity of the road or the movement of traffic on the road.
- (2) VicRoads may—
- (a) cause to be removed, destroyed or blocked any means of access to or from a freeway constructed, formed or laid out without the consent of VicRoads; and
 - (b) cause to be erected and maintained fences, posts or other obstructions along any part of a freeway or along or across any entrance, approach or means of access thereto for the purpose of preventing access to the freeway.
- (3) The relevant coordinating State road authority may cause to be removed, destroyed or blocked any access points on a controlled access road constructed without the consent of the relevant coordinating State road authority.

5. Power to take actions to secure structural integrity of road

Without limiting the powers conferred by clauses 3 and 4, a State road authority may construct, install and maintain structures or works on any land near a road for the purpose of ensuring the structural integrity of the road.

SCHEDULE 7

INFRASTRUCTURE AND WORKS ON ROADS

PART 1—SPECIFIC DUTIES OF INFRASTRUCTURE MANAGERS OR WORKS MANAGERS

1. Duty to apply principles

An infrastructure manager or works manager must have regard to the principles in clause 14 in the performance of its functions or the exercise of powers in the provision of non-road infrastructure on roads.

2. Duty to act in accordance with good engineering practice or relevant industry standard

An infrastructure manager or works manager must in installing non-road infrastructure and conducting related works apply good engineering practice and relevant industry standards.

3. Duty to have traffic management plan

An infrastructure manager or works manager must comply with—

- (a) any requirements in relation to the safety of road users; and
- (b) section 99A of the **Road Safety Act 1986**.

4. Duty to cooperate

An infrastructure manager or works manager must cooperate in good faith with any other infrastructure manager or works manager in coordinating the management and maintenance of infrastructure and related works on a road.

5. Duty to avoid unnecessary delay or obstruction or interference with infrastructure

An infrastructure manager or works manager must—

- (a) if practicable, use methods which do not involve excavating or breaking up the surface of a roadway or pathway or interfering with infrastructure in preference to methods that do;

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- (b) if it is necessary to excavate or break up the surface of a roadway or pathway, the works should be conducted—
 - (i) at a time and in a manner to minimise as far as is reasonably practicable inconvenience to road users and other persons; and
 - (ii) so as to minimise long term damage or disruption;
 - (c) as far as is practicable, reinstate at its own cost the roadway or pathway or infrastructure to the standard before the works were commenced.

6. Duty to maintain non-road infrastructure or related works to a satisfactory standard

An infrastructure manager must take reasonable measures to—

- (a) maintain the non-road infrastructure or related works to a satisfactory state of repair;
- (b) avoid causing damage to the roadway, road infrastructure or non-road infrastructure;
- (c) repair any damage caused to the roadway, road infrastructure or non-road infrastructure by a failure of infrastructure for which the infrastructure manager is responsible;
- (d) take reasonable precautions to ensure that anything placed on a roadway or pathway does not cause an obstruction or inconvenience;
- (e) take reasonable precautions to ensure that anything placed on a roadway or pathway does not cause an obstruction or danger to any person with a disability;
- (f) in the case of any part of a road used for rail infrastructure, ensure that the condition of the surface is maintained to a standard which is equivalent to the standard of the adjacent road surface.

Example

A road authority or a utility which has infrastructure in a road must take care that its pit lids, access hole covers, gratings and similar things are kept flush with the surrounding surface of the roadway or pathway so that they do not cause a hazard or adversely affect the smooth passage of traffic.

7. Duty to give notice to relevant coordinating road authority

- (1) Unless sub-clause (2) applies, an infrastructure manager or works manager must give notice to the relevant coordinating road authority of any proposed installation of non-road infrastructure or related works on the road reserve.
- (2) Sub-clause (1) does not apply if the proposed installation of non-road infrastructure or related works are necessary because of an emergency, but the infrastructure manager or works manager must advise the relevant coordinating road authority about the installation of non-road infrastructure or related works as soon as is reasonably practicable.

8. Duty to give notice to other infrastructure manager or works manager

- (1) Unless sub-clause (3) or (4) applies, an infrastructure manager or works manager must give notice to any other infrastructure manager or works manager responsible for any non-road infrastructure in the area which could be affected by any proposed installation of infrastructure or related works on a road or the road reserve of any road.
- (2) The infrastructure manager or works manager must negotiate in good faith so as to minimise any adverse effects on any other non-road infrastructure.
- (3) Sub-clause (1) does not apply if the proposed installation of infrastructure or related works are necessary because of an emergency, but the infrastructure manager or works manager must advise any other infrastructure manager or works manager responsible for non-road infrastructure in the area which could be affected about the installation of non-road infrastructure or related works as soon as is reasonably practicable.
- (4) Sub-clause (1) does not apply if an exemption under the regulations applies.

9. Duty to provide information

- (1) An infrastructure manager responsible for non-road infrastructure must comply with a request for information from a coordinating road authority, an infrastructure manager or a works manager responsible for existing or proposed road infrastructure or non-road infrastructure which is reasonably required in relation to—

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- (a) the location of any non-road infrastructure; and
 - (b) technical advice or assistance relating to the conduct of any works on that non-road infrastructure in a safe manner.
- (2) If an infrastructure manager or works manager becomes aware that any infrastructure or works for which another infrastructure manager or works manager is responsible—
- (a) is not in the location shown in the relevant records; or
 - (b) appears to be in an unsafe condition; or
 - (c) appears to be in need of repair or maintenance—
- the infrastructure manager or works manager must give that information to the other infrastructure manager or works manager.

10. Duty to consult members of the public

- (1) This clause applies if an infrastructure manager or works manager is proposing to install non-road infrastructure or conduct related works which are likely to significantly affect—
 - (a) occupiers or owners of property near the road; or
 - (b) a class of road users or another section of the public.
- (2) If practicable, the infrastructure manager or works manager should conduct appropriate consultation with the persons likely to be significantly affected.

11. Duty to take other reasonable measures to minimise disruption and ensure safety

While works are being conducted on a road, the works manager must take all reasonable measures to—

- (a) minimise disruption to traffic;
- (b) ensure the safety of the works for road users and adjoining properties;
- (c) make adequate provision for persons with a disability.

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12. Duty to reinstate

- (1) In completing the works, the works manager must after the works are completed reinstate the roadway, pathway or area of roadside to the standard before the works were commenced—
 - (a) as promptly as is reasonably practicable; and
 - (b) as nearly as is reasonably practicable to an equivalent standard of quality and design; and
 - (c) so as to ensure that any feature to assist persons with a disability is restored.
- (2) If a works manager (other than a coordinating road authority) has not completed the works as required by this clause, the relevant coordinating road authority may direct the infrastructure manager or works manager to conduct reinstatement works as specified in the direction within the period specified in the direction.
- (3) If an infrastructure manager or works manager fails to comply with a direction under sub-clause (2), the relevant coordinating road authority may take measures to ensure the reinstatement works are completed.
- (4) For the purposes of sub-clause (3), if but for this clause the conduct of the works would be regulated by another law, the relevant coordinating road authority must ensure that as far as is reasonably practicable the works are conducted by an appropriately qualified person in compliance with that law.
- (5) The relevant coordinating road authority may recover any costs reasonably incurred under sub-clause (3) from the infrastructure manager or works manager.

13. Notice of completion of works

- (1) The works manager must within 7 days of completing any works, including any reinstatement works, notify the relevant coordinating road authority as to the works that have been completed.
- (2) The period of 7 days specified in sub-clause (1) may be varied by—
 - (a) the relevant coordinating road authority;
 - (b) the regulations.

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- (3) The infrastructure manager must ensure that the works manager has complied with this clause.

Note 1: Section 64 provides that it is an offence to fail to give notice

Note 2: The Regulations may provide for an exemption from the requirement to give notice: see section 132(3)(b).

**PART 2—SPECIFIC POWERS OF COORDINATING ROAD
AUTHORITIES WITH RESPECT TO INFRASTRUCTURE
AND WORKS ON ROADS**

14. Principles applying to infrastructure managers and works managers

- (1) An infrastructure manager or a works manager must have regard to the principles specified in this clause in the provision of non-road infrastructure on roads.
- (2) The primary purpose of a road is use by members of the public and authorised uses must be managed as far as is reasonably practicable in such a way as to minimise any adverse impacts on the primary purpose.
- (3) Without limiting the generality of sub-clause (2), authorised uses must be managed so as to—
 - (a) minimise any damage to roads and road infrastructure;
 - (b) ensure that any works necessary for the provision of non-road infrastructure are conducted as quickly as practicable;
 - (c) minimise any disruption to road users;
 - (d) minimise any risk to the safety and property of road users and the public generally;
 - (e) facilitate the design and installation of infrastructure which minimises any risk to the safety of road users;
 - (f) ensure that the road and any other infrastructure is reinstated as nearly as practicable to the condition existing before the works necessary for the provision of the non-road infrastructure were conducted;
 - (g) protect and preserve existing significant roadside vegetation and sites of biological significance within the road reserve.

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15. Duties of infrastructure managers and works managers

- (1) This clause applies to any infrastructure manager or works manager which—
 - (a) is responsible for the provision of any non-road infrastructure on a road reserve; or
 - (b) carries out any works on a road; or
 - (c) exercises any power or function conferred by any other Act or law which affects a road.
- (2) If an infrastructure manager or works manager is required to comply with a duty or a condition of a consent under this Act, the infrastructure manager or works manager must meet the cost of complying with that duty or condition.
- (3) The duties set out in this Schedule also apply to any other person who installs infrastructure on a road or conducts works on a road without being authorised to do so.

16. Consent of coordinating road authority

- (1) A person may apply to the coordinating road authority for written consent to the conduct of proposed works on a road as specified in the application.

Note 1: It is an offence to conduct works on a road unless consent has been obtained or an exemption or other circumstances apply: see section 63.

Note 2: The Regulations may provide for an exemption from a requirement to obtain consent to the conduct of proposed works: see section 132(3)(a).

- (2) Without limiting the generality of sub-clause (1), "**proposed works**" includes—
 - (a) installing any infrastructure, erecting any structure or carrying out related activities in, on or over a road;
 - (b) digging or disturbing the surface of a road;
 - (c) removing any infrastructure, structure or other object on a road;
 - (d) pumping water onto a road;
 - (e) erecting any obstruction on a road.

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- (3) If the proposed works affect any non-road infrastructure which is the responsibility of an infrastructure manager or works manager other than the applicant, the application must include the prescribed particulars in relation to the compliance or proposed compliance of the applicant with the relevant requirements of Part 1.
 - (4) If an application for consent is made by an infrastructure manager, the coordinating road authority must consult with the infrastructure manager and the responsible road authority before determining the application.
 - (5) A coordinating road authority may having regard to the works and infrastructure management principles—
 - (a) upon an application, give its consent to proposed works; or
 - (b) upon an application, refuse to give its consent to proposed works but consent is not to be unreasonably withheld; or
 - (c) at its initiative without an application, give its consent to proposed works; or
 - (d) give its consent so as to apply to a particular case or class of cases or generally to apply to all cases or to different classes of cases.

Example

A municipal council which is a coordinating road authority could give ongoing consent to a utility for the placement of an infrastructure item on municipal roads subject to reasonable conditions about the timing of the works to reduce disruption to traffic or the design or placement of infrastructure items of that kind to reduce traffic hazards.

- (6) A coordinating road authority may, having regard to the works and infrastructure management principles, give its consent subject to any reasonable conditions relating to the conduct of the proposed works which the coordinating road authority considers appropriate.

Note: The Regulations may restrict the power of a coordinating road authority to impose conditions on a consent to the conduct of proposed works: see section 132(3)(c).

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- (7) Without limiting the generality of sub-clause (6), conditions may include conditions relating to—
- (a) the location of any proposed infrastructure;
 - (b) the timing of any works;
 - (c) the use of any infrastructure.

Examples

A condition may require that an item of infrastructure is to be located at a certain setback from a roadway.

A condition may require that particular infrastructure be of a particular design or standard so as to minimise danger to road users.

A condition may require that particular infrastructure only be used for certain purposes or at certain times.

- (8) A coordinating road authority may include consents and conditions which are to apply generally in respect to all cases or to different classes of cases in an agreement under clause 18.
- (9) Conditions subject to which a consent is given under this section must not—
- (a) be inconsistent with this Act or any regulations; or
 - (b) require the applicant to act in a manner inconsistent with relevant industry safety and technical requirements imposed by or under any other Act.

Note 1: Regulations may provide that a coordinating road authority may not impose a condition of a specified type.

Note 2: Under sections 25(2)(e) and 27(2)(g), Codes of Practice may be referred to in determining whether or not the refusal of consent or any condition is reasonable.

Example

A failure by a coordinating road authority to consult in good faith in accordance with the principles set out in a Code of Practice may be evidence that the refusal to consent or the imposing of a condition is unreasonable.

- (10) A coordinating road authority may provide that the consent applies in respect of a particular case or a class of cases as is specified in the consent.

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17. Process applying to applications for written consent

- (1) If the coordinating road authority has not responded to an application under clause 16 before the expiry of the relevant period after the coordinating road authority receives the application, the coordinating road authority is to be taken to have given written consent.
- (2) If a coordinating road authority refuses to give written consent, the coordinating road authority must give reasons in writing for the refusal to the applicant.
- (3) Section 125 applies to any dispute arising out of a decision of a coordinating road authority on an application under clause 16.
- (4) A Code of Practice may provide for any matter relating to the process for considering applications under clause 16, including specifying grounds or criteria for refusing written consent.
- (5) In this clause, "**relevant period**" means—
 - (a) unless paragraph (b) applies, a period of 20 business days; or
 - (b) a period of business days as may be prescribed.

18. Agreements in respect of proposed works

- (1) A coordinating road authority may enter into an agreement with a road authority, an infrastructure manager or works manager in respect of proposed works on roads.
- (2) A term in the agreement that the coordinating road authority will give consent to proposed works, or give an exemption or variation, to which the agreement applies is sufficient consideration to make the agreement an enforceable contract.
- (3) An agreement under this clause must not be inconsistent with this Act or any applicable Code of Practice.

19. Power to rectify works on a road

- (1) If a coordinating road authority considers that any works have not been conducted in accordance with this Act, the coordinating road authority may give a notice to the road authority, infrastructure manager or works manager that authorised or conducted the works requiring rectification works to be conducted within a reasonable period specified in the notice.

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- (2) If a road authority, infrastructure manager or works manager fails to comply with a notice given under sub-clause (1), the coordinating road authority may conduct the rectification works or engage a person to conduct the rectification works on behalf of the coordinating road authority.
 - (3) A coordinating road authority may recover costs reasonably incurred in conducting rectification works from the road authority, infrastructure manager or works manager that failed to comply with the notice given under sub-clause (1).

Note: Under section 27(2)(g) and 27(2)(h), Codes of Practice may be referred to in determining whether or not the requirement to rectify works is reasonable.

20. Power to require removal, relocation, replacement or upgrade of existing non-road infrastructure

- (1) A coordinating road authority may for the purpose of improving the safety or efficient operation of a road by notice require an infrastructure manager responsible for existing non-road infrastructure on a road to remove, relocate, replace or upgrade the non-road infrastructure.
 - (2) A notice under sub-clause (1) must specify—
 - (a) the reason for requiring the removal, relocation, replacement or upgrade;
 - (b) the applicable standard to be met;
 - (c) the period within which the removal, relocation, replacement or upgrade is to be completed.
 - (3) The coordinating road authority must meet the costs reasonably incurred by the infrastructure manager in completing the removal, relocation, replacement or upgrade to the applicable standard.
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SCHEDULE 8

ROAD MANAGEMENT INFRINGEMENTS

<i>Road Management Infringement</i>	<i>Specified Penalty</i>
Construction of unauthorised access point to a freeway (section 60(1))	3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate
Failure to comply with a condition to which a written consent for construction of an access point to a freeway is subject (section 60(2))	3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate
Constructing or changing the means of entry to or exit from a controlled access road without authorisation (section 60(3))	3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate
Failure to comply with a condition to which an authorisation for constructing or changing the means of entry to or exit from a controlled access road is subject (section 60(4))	3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate
Conducting works in, on, under or over a public road without written consent (section 63)	3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate
Failure to comply with clause 13 of Schedule 7 (section 64)	2 penalty units in the case of a natural person or 5 penalty units in the case of a body corporate
Failure to comply with section 66(1)	3 penalty units
Failure to comply with section 67(2)	3 penalty units
Failure to comply with section 68(1)	3 penalty units
Failure to comply with section 69(1)	3 penalty units

SCHEDULE 9

TRANSITIONAL AND SAVINGS PROVISIONS

1. Declaration of existing roads

- (1) A road which immediately before 1 July 2004 is declared as a freeway, is deemed to have been declared as a freeway under this Act.
- (2) A road which immediately before 1 July 2004 is declared as—
 - (a) a forest road; or
 - (b) a main road; or
 - (c) a State highway; or
 - (d) the King-Street Bridge; or
 - (e) a tourists' road—is deemed to have been declared as an arterial road under this Act.
- (3) A road which immediately before 1 July 2004 is declared as a stock route is deemed to be a road under this Act.
- (4) A part of a road which immediately before 1 July 2004 is declared as a metropolitan bridge, is deemed to have been declared under this Act the same as the declaration under this Act of the road connected by the metropolitan bridge.
- (5) A road which immediately before 1 July 2004 is not a road to which sub-clause (1) or (4) applies may be declared as a State road or municipal road under this Act if a road authority registers the public highway as a public road in its register of roads.
- (6) A metropolitan bridge is to be declared the same as the declaration of the public road connected by the metropolitan bridge.
- (7) In this clause—

"forest road" means a road declared to be a forest road under the **Transport Act 1983** or proclaimed to be a forest road under any corresponding previous enactment;

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"main road" means a road declared to be or deemed to be a main road under the **Transport Act 1983** or any corresponding previous enactment;

"metropolitan bridge" means a bridge declared or deemed to have been declared under the **Transport Act 1983** or any corresponding previous enactment to be a metropolitan bridge;

"King-Street Bridge" has the same meaning as it had in the **King-street Bridge Act 1957**;

"State highway" means a road declared to be or deemed to be a State highway under the **Transport Act 1983** or any corresponding previous enactment;

"stock route" means a route declared to be or deemed to be a stock route under the **Transport Act 1983** or any corresponding previous enactment;

"tourists' road" means a road declared to be a tourists' road under the **Transport Act 1983** or proclaimed to be a tourists' road under any corresponding previous enactment.

2. Savings provisions

- (1) Subject to this Act, the amendments made to the **Transport Act 1983** by section 137 do not affect the continuity, status, operation or effect of any act, matter or thing done, existing or continuing under the **Transport Act 1983** as in force immediately before 1 July 2004.
 - (2) The repeal of section 203 of the **Local Government Act 1989** does not affect the status of any public highways vested in a municipal council under that section.
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SCHEDULE 10

FURTHER TRANSITIONAL AND SAVINGS PROVISIONS

1. Application of section 63

Section 63 does not apply to or in respect of the conduct of any works lawfully commenced by a person before the commencement of that section.

2 Provisions relating to exempt projects

- (1) In this clause, "**exempt project**" means a project for the extension of reticulated gas in respect of which financial assistance has been or is authorised to be paid out of the Regional Infrastructure Development Fund in accordance with section 5(1)(a)(iva) of the **Regional Infrastructure Development Fund Act 1999** during the financial years ending 30 June 2004, 30 June 2005 or 30 June 2006.
- (2) Despite anything to the contrary in this Act, Divisions 1 and 2 of Part 5 do not apply to or in respect of an exempt project or any associated works until the exempt project is completed or until 1 July 2007, whichever first occurs.
- (3) Despite anything to the contrary in this Act, the following provisions apply to or in respect of an exempt project or any associated works—
 - (a) the **Gas Industry Act 2001** as in force immediately before the commencement of section 172 continues to apply;
 - (b) no works can be conducted on a freeway without the prior consent in writing of VicRoads.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 5 March 2004

Legislative Council: 22 April 2004

The long title for the Bill for this Act was "to reform the law relating to road management in Victoria, to amend the **Transport Act 1983**, the **Road Safety Act 1986** and the **Local Government Act 1989** and to make related amendments to certain other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 5 March 2004

Legislative Council: 22 April 2004

Majorities:

Legislative Assembly: 1 April 2004 (absolute)

Legislative Council: 4 May 2004 (simple¹)

¹ See Ministerial statement made in the Legislative Council on 5 May 2004 as reported in *Parliamentary Debates (Hansard)* at pages 586–587.

The **Road Management Act 2004** was assented to on 11 May 2004 and came into operation as follows:

Part 1 (sections 1–6), Part 4 Division 1 (sections 20–32) and Part 4 Division 5 (sections 49–55) on 12 May 2004: section 2(1); Part 2 (sections 7–10), Part 3 (sections 11–19), Part 4 Division 2 (sections 33–39), Part 4 Division 3 (sections 40–46), Part 4 Division 6 (sections 56–59), Part 5 Division 3 (sections 71–89), Part 5 Division 4 (sections 90–96), Part 6 (sections 97–116), Part 7 (sections 117–135), Part 8 Division 1 (sections 136, 137), Part 8 Division 2 (sections 138–140), Part 8 Division 4 (sections 143–147), Part 8 Division 5 (sections 148–169), Schedules 1–6, Schedule 8 and Schedule 9 on 1 July 2004: section 2(2); Part 4 Division 4 (sections 47, 48), Part 5 Division 1 (sections 60–65), Part 5 Division 2 (sections 66–70), Part 8 Division 3 (sections 141, 142), Part 8 Division 6 (sections 170–179), Schedule 7 and Schedule 10 not yet proclaimed.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Road Management Act 2004** by Acts and subordinate instruments.

Mitcham-Frankston Project Act 2004, No. 39/2004

Assent Date: 8.6.04

Commencement Date: Ss 266, 270, 272, 273, 276, 277 on 9.6.04: s. 2(1);
ss 262–265, 267–269, 271, 274, 275, 278 on 24.9.04:
Special Gazette (No. 206) 22.9.04 p. 1

Current State: This information relates only to provision/s amending
the **Road Management Act 2004**

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Endnotes

3. Explanatory Details

¹ Part 4 Division 4 (sections 47, 48), Part 5 Division 1 (sections 60–65), Part 5 Division 2 (sections 66–70), Part 8 Division 3 (sections 141, 142), Part 8 Division 6 (sections 170–179), Schedule 7 and Schedule 10 of this Act are not yet proclaimed.

² Pt 6 Div. 2: Section 270(2) of the **Mitcham-Frankston Project Act 2004**, No. 39/2004 reads as follows:

270. Road Management Act 2004—new Divisions 2 and 3 inserted in Part 6

(2) The amendment made to the **Road Management Act 2004** by sub-section (1) is in substitution for Divisions 2 and 3 of Part 6 of that Act.

³ S. 99: See note 2.

⁴ S. 100: See note 2.

⁵ S. 101: See note 2.

⁶ S. 102: See note 2.

⁷ S. 103: See note 2.

⁸ S. 104: See note 2.

⁹ S. 105: See note 2.

¹⁰ S. 106: See note 2.

¹¹ Pt 6 Div. 3: See note 2.

¹² S. 107: See note 2.

¹³ S. 108: See note 2.

¹⁴ S. 109: See note 2.

¹⁵ S. 110: See note 2.

¹⁶ S. 111: See note 2.

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¹⁷ S. 129: Section 272(2) of the **Mitcham-Frankston Project Act 2004**, No. 39/2004 reads as follows:

272. Road Management Act 2004—New section 129 inserted

- (2) The amendment made to the **Road Management Act 2004** by sub-section (1) is in substitution for section 129 of that Act.

¹⁸ S. 167(1): Section 276(2) of the **Mitcham-Frankston Project Act 2004**, No. 39/2004 reads as follows:

276. Road Management Act 2004—Amendments to Victorian Civil and Administrative Tribunal Act 1998

- (2) The amendment made to the **Road Management Act 2004** by sub-section (1) is in substitution for section 167(1) of that Act.