

Authorised Version No. 035
EastLink Project Act 2004

No. 39 of 2004

Authorised Version incorporating amendments as at
1 January 2014

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1 January 2014

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- | | |
|---|---|
| (a) to empower the State to enter into an Agreement for the design, construction, operation, maintenance and management of EastLink; and | S. 1(a)
amended by
No. 95/2005
s. 4(2). |
| (b) to provide for the collection and enforcement of tolls in relation to the use of EastLink; and | S. 1(b)
amended by
No. 95/2005
s. 4(2). |
| (c) to confer powers on VicRoads in relation to the land required for or affected by the Project; and | S. 1(c)
amended by
No. 93/2009
s. 39(1). |
| (d) to provide procedures to deal with the interface between Utilities and the Freeway Corporation in relation to Utility infrastructure and the Project; and | |
| (e) to confer other powers on the Minister, VicRoads and the Freeway Corporation and other persons for the purposes of the Project; and | S. 1(e)
amended by
No. 93/2009
s. 39(1). |

S. 1(f)(i)
amended by
No. 95/2005
s. 4(2).

- (f) to amend the **Road Management Act 2004**—
- (i) to modify its operation in relation to EastLink; and
 - (ii) to provide for issues relating to civil liability arising out of road management; and
 - (iii) in relation to rights of review of decisions under that Act; and
- (g) to amend section 85 of the **Constitution Act 1975** in relation to certain of the amendments made by this Act to the **Road Management Act 2004**.

2 Commencement

- (1) This section and sections 1, 266, 270, 272, 273, 276 and 277 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Section 259 comes into operation on 1 July 2004.
- (3) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in subsection (3) does not come into operation before 1 July 2005, it comes into operation on that day.

3 Definitions

- (1) In this Act—

Agreement means—

- (a) the agreement for the Project entered into under section 15 and the exhibits to that agreement; or

- (b) if all or any of the provisions of the agreement for the Project entered into under section 15 or the exhibits to that agreement are amended, the agreement and the exhibits as so amended;

Amending agreement means an Amending agreement under section 17(1);

approved Utility agreement means a Utility agreement that is approved by the Authority under section 157;

arterial road has the same meaning as it has in the **Road Management Act 2004**;

authorised person means a person authorised in writing by the Freeway Corporation under section 197AA;

S. 3(1) def. of *authorised person* inserted by No. 74/2007 s. 39(a).

Authority means VicRoads;

S. 3(1) def. of *Authority* substituted by No. 93/2009 s. 37.

business day means a day that is not—

- (a) a Saturday or a Sunday; or
(b) a day that is appointed as a public holiday or public half-holiday throughout the whole of Victoria under the **Public Holidays Act 1993**;

Central Plan Office means the Central Plan Office of the Department of Transport, Planning and Local Infrastructure;

S. 3(1) def. of *Central Plan Office* amended by No. 70/2013 s. 4(Sch. 2 item 14.1(a)).

corresponding body has the same meaning as in section 84BB of the **Road Safety Act 1986**;

S. 3(1) def. of *corresponding body* inserted by No. 74/2007 s. 39(a).

S. 3(1) def. of
corresponding law
inserted by
No. 74/2007
s. 39(a).

corresponding law has the same meaning as in section 84BB of the **Road Safety Act 1986**;

Council has the same meaning as it has in the **Local Government Act 1989**;

Crown land includes a stratum of Crown land;

decision-maker, in Part 8, means—

- (a) the Minister and the Utility Minister; or
- (b) a person appointed under section 189;

declared freeway use agreement means an agreement in a class of agreements declared under section 202 to be declared freeway use agreements;

S. 3(1) def. of
Department Head
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 135).

Department Head has the same meaning as it has in the **Public Administration Act 2004**;

S. 3(1) def. of
EastLink
inserted by
No. 95/2005
s. 4(3)(a).

EastLink means land declared under section 143 to be a road and includes any part of that land;

S. 3(1) def. of
effective
inserted by
No. 74/2007
s. 39(a).

effective, in relation to an illegal user statement, a known user statement or a sold vehicle statement, means a statement that is, or is accepted by an authorised person under section 199 as, and has not ceased to be, an effective statement for the purposes of Part 9;

enactment means an Act or a regulation under an Act;

enforcement agency means—

- (a) the Chief Commissioner of Police; or
- (b) if another person is prescribed by the regulations to be the enforcement agency with respect to all or any part of the enforcement agency's functions, that other person in respect of those functions;

enforcement officer means a person appointed under section 208;

Extended Project area has the meaning given by section 6;

freeway has the same meaning as it has in the **Road Management Act 2004**;

Freeway Corporation means the person who, for the time being, is the Freeway Corporation under section 10;

S. 3(1) def. of *Freeway Corporation* substituted by No. 14/2005 s. 3.

freeway use agreement means—

- (a) an agreement between the Freeway Corporation and another person for the use of a vehicle on EastLink; or
- (b) a declared freeway use agreement;

S. 3(1) def. of *freeway use agreement* amended by No. 95/2005 s. 4(3)(c).

illegal user statement, in relation to the use of a vehicle, means a statement in writing made by a responsible person to the effect that the person believes that at the relevant time the vehicle was a stolen vehicle or that the number plates displayed on the vehicle were stolen;

S. 3(1) def. of *illegal user statement* inserted by No. 74/2007 s. 39(a).

S. 3(1) def. of
*known user
statement*
inserted by
No. 74/2007
s. 39(a).

known user statement, in relation to the use of a vehicle, means a statement in writing made by a responsible person—

- (a) to the effect that the person was not driving at the relevant time, or had not at that time possession or control of, the vehicle; and
- (b) containing sufficient information to identify and locate the person who the responsible person last knew to have, before the relevant time, possession or control of the vehicle;

land includes a stratum of land;

lease in Division 3 of Part 5, means a lease granted under section 103;

lessee means a person who is for the time being the lessee under a lease granted under section 103;

leased land means land that is the subject of a lease granted under section 103;

licence in Division 2 of Part 5, means a licence issued under section 90(1) or 90(2);

licensee means—

- (a) a person who is for the time being the holder of a licence issued under section 90(1); or
- (b) in Division 2 of Part 5, a person who is for the time being the holder of a licence issued under section 90(1) or 90(2);

licensed land means land that is subject to a licence issued under section 90(1);

* * * * *

S. 3(1) def. of *Mitcham-Frankston Freeway* repealed by No. 95/2005 s. 4(3)(b).

municipal road has the same meaning as it has in the **Road Management Act 2004**;

Native Title Act means the Native Title Act 1993 of the Commonwealth;

nomination rejection statement means a statement in writing made by a person nominated in a known user statement or a sold vehicle statement as being the responsible person in relation to a vehicle to the effect that—

S. 3(1) def. of *nomination rejection statement* inserted by No. 74/2007 s. 39(a).

- (a) if nominated in a known user statement, the person had not had possession or control of the vehicle at the relevant time, as stated in the known user statement; and
- (b) if nominated in a sold vehicle statement, the vehicle had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vehicle statement;

non-arterial State road has the same meaning as it has in the **Road Management Act 2004**;

notified Utility infrastructure means Utility infrastructure—

- (a) that is identified under section 159; or
- (b) that has been notified under section 161;

S. 3(1) def. of
operator
inserted by
No. 74/2007
s. 39(a).

operator, in relation to a vehicle at the time the vehicle was driven in a toll zone, means each of the following—

- (a) the registered operator of the vehicle at that time or the person recorded at that time on a register of vehicles maintained under a corresponding law as the person responsible for the vehicle;
- (b) if VicRoads under the regulations under the **Road Safety Act 1986**, or a corresponding body under a corresponding law, has received notice of transfer of registration of the vehicle, the person whose name is disclosed in the records kept by VicRoads or the corresponding body (as the case requires) as being responsible for the vehicle at that time;
- (c) if the vehicle is not registered under the **Road Safety Act 1986** or a corresponding law, the person whose name is disclosed in the records kept by VicRoads or the corresponding body as being responsible for the vehicle at that time;
- (d) if the vehicle displays a number plate—
 - (i) the person who, at the time at which the registration number borne by that number plate was last assigned by VicRoads or a corresponding body, was the registered operator of, or (if assigned by a corresponding body) the person recorded on a register of vehicles maintained under the corresponding law as the person

responsible for, the vehicle to which that registration number was assigned, whether or not that vehicle is the same as the vehicle involved in the offence; or

- (ii) the person whose name is disclosed in the records kept by VicRoads or a corresponding body as being entitled, or last entitled, at that time to use or possess that number plate;
- (e) if the vehicle displays a general identification mark by means of a special identification plate issued by VicRoads under the regulations under the **Road Safety Act 1986** or by a corresponding body under a corresponding law, the person to whom the mark is assigned at that time;

* * * * *

S. 3(1) def. of *owner* repealed by No. 74/2007 s. 39(b).

prescribed tolling system means a tolling system prescribed for the purposes of Part 9;

S. 3(1) def. of *prescribed tolling system* inserted by No. 14/2007 s. 15(2).

Project means the project described in section 4 or any part of that project;

Project area has the meaning given by section 5;

Project construction work means work for the construction of the Project;

Project Document means a document of a class that is designated in the Agreement as a Project Document;

public authority means any body (including any trust) established by or under an Act for a public purpose, other than a Council;

public land means—

- (a) Crown land; or
- (b) land owned by or vested in a public authority;

rectification includes repair, replacement and reinstatement;

registered operator has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

S. 3(1) def. of *registered operator* inserted by No. 74/2007 s. 39(a).

reserved Crown land means land reserved or deemed to be reserved for any public purpose under the **Crown Land (Reserves) Act 1978**;

reserved project land means land that is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project;

S. 3(1) def. of *responsible person* inserted by No. 74/2007 s. 39(a).

responsible person means—

- (a) the operator; or
- (b) the person nominated in an effective known user statement or an effective sold vehicle statement;

road has the same meaning as it has in the **Road Management Act 2004**;

road authority has the same meaning as it has in the **Road Management Act 2004**;

Secretary to the Department of Environment and Primary Industries means the Department Head of the Department of Environment and Primary Industries

S. 3(1) def. of *Secretary to the Department of Environment and Primary Industries* inserted by No. 70/2013 s. 4(Sch. 2 item 14.1(c)).

Secretary to the Department of Infrastructure means the body corporate established under section 35 of the **Project Development and Construction Management Act 1994**;

* * * * *

S. 3(1) def. of *Secretary to the Department of Sustainability and Environment* repealed by No. 70/2013 s. 4(Sch. 2 item 14.1(b)).

sold vehicle statement, in relation to the use of a vehicle, means a statement in writing made by a responsible person—

S. 3(1) def. of *sold vehicle statement* inserted by No. 74/2007 s. 39(a).

(a) to the effect that—

- (i) the person had sold or otherwise disposed of the vehicle before the relevant time or that any interest in the vehicle had otherwise ceased to be vested in the person before that time; and
- (ii) the person was not at that time driving, or had not at that time possession or control of, the vehicle; and

- (b) containing sufficient information to identify and locate the person to whom the vehicle was sold or disposed of, or in whom an interest in the vehicle was otherwise vested, and the date and, if relevant, the time of sale, disposal or vesting;

stratum of Crown land means a stratum of land that is Crown land;

stratum of land means a part of land consisting of a space of any shape, below on or above the surface of the land, or partly below and partly above the surface of the land, all the dimensions of which are limited;

surplus land means land determined under section 121 to be surplus land;

toll means a toll fixed under section 195;

toll administration fee means a toll administration fee fixed under section 195;

toll zone means a toll zone specified under section 195;

tolling nomination statement means a tolling nomination statement made by an authorised person under Part 6AA of the **Road Safety Act 1986**;

tollway billing arrangement means an agreement or arrangement between a person and a tollway operator (or an agent of a tollway operator) relating to the payment of tolls for the use of a vehicle in a tollway;

S. 3(1) def. of *tolling nomination statement* inserted by No. 74/2007 s. 39(a).

S. 3(1) def. of *tollway billing arrangement* inserted by No. 74/2007 s. 39(a).

tollway operator means a person, other than the Freeway Corporation, who—

S. 3(1) def. of *tollway operator* inserted by No. 74/2007 s. 39(a).

- (a) operates a tollway under a law of this State, or another State or of a Territory, or under an agreement between that person and the State or another State or Territory; and
- (b) is empowered or entitled, under that law or agreement, to levy or impose a toll or charge for the use of the tollway;

traffic control centre means an area of land declared under section 8 to be the traffic control centre;

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

trip means the driving of a vehicle on EastLink—

S. 3(1) def. of *trip* substituted by Nos 95/2005 s. 4(3)(d), 14/2007 s. 15(1), 74/2007 s. 39(c).

- (a) in a single direction; and
- (b) through one or more toll zones (without repeating a toll zone); and
- (c) within the space of a single hour; and
- (d) whether or not that driving is interrupted by exit from EastLink; and
- (e) that, if the driving is interrupted by exit from EastLink, involves re-entering at a point that is forwards of the point of exit;

unnotified Utility infrastructure means Utility infrastructure—

- (a) that has not been identified under section 159; or

- (b) that has not been notified under section 161;

S. 3(1) def. of *Utility* amended by No. 17/2009 s. 30, substituted by No. 6/2010 s. 203(1) (Sch. 6 item 14(a)) (as amended by No. 45/2010 ss 22, 23(4)(a)), amended by No. 61/2011 s. 25(Sch. 1 item 4).

Utility means—

- (a) a utility within the meaning of the **Road Management Act 2004**; or
- (b) a provider of public transport within the meaning of the **Road Management Act 2004**; or
- (c) the Public Transport Development Authority within the meaning of section 3 of the **Transport Integration Act 2010**; or
- (d) any person who manages rail infrastructure within the meaning of Part 5 of the **Rail Safety Act 2006**; or
- (e) any person who operates rolling stock within the meaning of Part 5 of the **Rail Safety Act 2006**;

Utility agreement means an agreement entered into under section 154 and, if that agreement is amended under section 158, that agreement as so amended;

S. 3(1) def. of *Utility infrastructure* amended by No. 6/2010 s. 203(1) (Sch. 6 item 14(b)) (as amended by No. 45/2010 ss 22, 23(4)(a)).

Utility infrastructure means any part of the supply, distribution or reticulation network operated or managed by a Utility, including—

- (a) poles, pipes, cables, wires, conduits and tunnels; and
- (b) rail infrastructure and tram infrastructure (both within the meaning of the **Rail Management Act 1996**);

Utility Minister in relation to a Utility, means the Minister for the time being administering any Act—

- (a) under which a Utility is authorised to provide an infrastructure service; or
- (b) that regulates the provision by the Utility of an infrastructure service;

variation means an amendment of the Agreement made under section 17(2);

variation statement means a statement setting out the terms of a variation;

vehicle has the same meaning as **motor vehicle** has in the **Road Safety Act 1986**;

VicRoads means the Roads Corporation continued under section 80 of the **Transport Integration Act 2010**;

S. 3(1) def. of **VicRoads** amended by No. 6/2010 s. 203(1) (Sch. 6 item 14(c)) (as amended by No. 45/2010 ss 22, 23(4)(a)(b)).

works has the same meaning as it has in the **Road Management Act 2004**.

- (2) In this Act, the expressions **just terms**, **native title**, **native title holder**, **native title rights and interests**, **registered native title body corporate** and **registered native title claimant** have the same respective meanings as they have in the Native Title Act 1993 of the Commonwealth.
- (3) The Premier may determine a Minister as the Utility Minister for a Utility and if a determination is made that Minister is deemed to be the Utility Minister for that Utility for the purposes of this Act.

s. 3A

S. 3(4)
inserted by
No. 14/2007
s. 15(3).

- (4) For the purposes of this Act, the period of a trip commences—
- (a) in the case of the first driving of a vehicle on EastLink in a particular direction, when that vehicle is first detected by the prescribed tolling system as travelling in that direction; and
 - (b) in the case of any other driving on EastLink, when that vehicle is first detected by the prescribed tolling system as travelling in a particular direction after the last trip in that direction.

S. 3A
inserted by
No. 6/2010
s. 24(5)(Sch. 1
item 5) (as
amended by
No. 45/2010
ss 5, 23(3)).

3A Transport Integration Act 2010

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

S. 4
substituted by
No. 14/2005
s. 4.

4 The Project

In this Act, a reference to the Project is a reference to the project for—

- (a) an integrated transport corridor connecting the Eastern Freeway to the Frankston Freeway including tunnels under the Mullum Mullum Creek; and
- (b) a link with the Ringwood By-Pass; and
- (c) the construction of the Dandenong Southern By-Pass.

S. 4A
inserted by
No. 93/2009
s. 38.

4A Functions and powers of VicRoads

- (1) For the purposes of this Act, VicRoads has the following functions—
- (a) on behalf of the State, to administer and manage agreements and arrangements between the State and any other person for,

-
- or relating to, the development or delivery of the Project;
- (b) to make recommendations regarding those agreements and arrangements to the Minister;
 - (c) to facilitate and coordinate consultations with statutory authorities and agencies of the State and other bodies or persons involved in, or affected by, the development or operation of the Project;
 - (d) to negotiate and enter into arrangements with statutory authorities and agencies of the State and other bodies or persons involved in, or affected by, the development or operation of the Project;
 - (e) to make recommendations to the Minister in relation to facilitating the Project and coordinating with statutory authorities, agencies of the State and other bodies or persons involved in, or affected by, the development or operation of the Project;
 - (f) to ensure that agreements and arrangements between the State and any other person for, or relating to, the development or delivery of the Project are performed in accordance with their terms;
 - (g) to manage the responsibilities of the State in relation to the operation of the Project;
 - (h) to make recommendations to the Minister on public safety issues relating to the Project;
 - (i) to manage, on behalf of the State, regulatory issues arising from the operation of the Project.

- (2) VicRoads must comply with any directions given by the Minister, including any direction relating to the provision of information or reports concerning the exercise of its powers and the performance of its functions.

5 Project area

S. 5(1)
amended by
No. 14/2005
s. 5(1).

- (1) Subject to subsections (2) and (3), for the purposes of this Act, the Project area means the areas of land shown as the Project area on the plans numbered LEGL./04–047 to LEGL./04–106 and lodged in the Central Plan Office or, if any of those areas of land is varied in accordance with this Part, those areas as so varied.

- (2) For the purposes of this Act the plans referred to in subsection (1) must be read as one plan in the manner shown in plan numbered LEGL./04–046 and lodged in the Central Plan Office.

S. 5(3)
inserted by
No. 14/2005
s. 5(2).

- (3) If consolidated plans of the Project area have been approved under section 7A, then for the purposes of this Act, the Project area means the areas of land shown as the Project area on the current approved consolidated plans or, if any of those areas of land is varied in accordance with this Part, those areas as so varied.

6 Extended Project area

S. 6(1)
amended by
No. 14/2005
s. 6(1).

- (1) Subject to subsections (2) and (3), for the purposes of this Act, the Extended Project area means the areas of land shown as the Extended Project Area on the plans numbered LEGL./04–047 to LEGL./04–106 and lodged in the Central Plan Office or, if any of those areas of land is varied in accordance with this Part, those areas as so varied.

Note

The Extended Project area includes the Project area.

- (2) For the purposes of this Act the plans referred to in subsection (1) must be read as one plan in the manner shown in plan numbered LEGL./04–046 and lodged in the Central Plan Office.
- (3) If consolidated plans of the Extended Project area have been approved under section 7A, then for the purposes of this Act, the Extended Project area means the areas of land shown as the Extended Project area on the current approved consolidated plans or, if any of those areas of land is varied in accordance with this Part, those areas as so varied.

S. 6(3)
inserted by
No. 14/2005
s. 6(2).

7 Changes to Project area and Extended Project area

- (1) The Governor in Council may, by Order published in the Government Gazette, vary the Project area by doing either or both of the following—
 - (a) increasing the Project area by adding land in the vicinity of the Project area; or
 - (b) decreasing the Project area.
- (2) The Governor in Council may, by Order published in the Government Gazette, vary the Extended Project area by doing either or both of the following—
 - (a) increasing the Extended Project area by adding land in the vicinity of the Extended Project area; or
 - (b) decreasing the Extended Project area.
- (3) An Order under this section takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the Order, on that later day.
- (4) An Order under this section must be made on the recommendation of the Minister and the Minister administering the **Planning and Environment Act 1987**.

s. 7A

S. 7(5A)
inserted by
No. 14/2005
s. 7.

(5) The Ministers must not make a recommendation under subsection (4) unless they have received the appropriate plans, which have been—

- (a) signed by the Surveyor-General; and
- (b) lodged at the Central Plan Office.

(5A) For the purposes of subsection (5), the appropriate plans may show the Project area or Extended Project area as varied.

(6) The Minister must cause a copy of each Order under this section to be laid before each House of the Parliament within 6 sitting days of that House after the Order is made.

(7) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order under this section as if that Order were a statutory rule within the meaning of that Act.

S. 7A
inserted by
No. 14/2005
s. 8.

7A Consolidated Plans

(1) The Governor in Council may, by Order published in the Government Gazette, approve consolidated plans of the Project area incorporating all variations to the Project area made under section 7 up to the date of the Order.

(2) The Governor in Council may, by Order published in the Government Gazette, approve consolidated plans of the Extended Project area incorporating all variations to the Extended Project area made under section 7 up to the date of the Order.

(3) An Order under this section takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the Order, on that day.

(4) An Order under this section must be made on the recommendation of the Minister.

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- (5) The Minister must not make a recommendation under subsection (4) unless the Minister has received the appropriate consolidated plans, which have been—
 - (a) signed by the Surveyor-General; and
 - (b) lodged at the Central Plan Office.
 - (6) An Order under this section approving consolidated plans for the Project area revokes and replaces any existing approved consolidated plans for the Project area.
 - (7) An Order under this section approving consolidated plans for the Extended Project area revokes and replaces any existing approved consolidated plans for the Extended Project area.

8 Traffic control centre

- (1) The Governor in Council may, by Order published in the Government Gazette, declare any area of land in the Project area to be the traffic control centre.
- (2) An Order under this section must be made on the recommendation of the Minister and the Minister administering the **Planning and Environment Act 1987**.
- (3) The Ministers must not make a recommendation under subsection (2) unless they have received the appropriate plans, which have been—
 - (a) signed by the Surveyor-General; and
 - (b) lodged at the Central Plan Office.

9 Application of Crown Land (Reserves) Act 1978

For the purposes of this Act, the **Crown Land (Reserves) Act 1978** is deemed to have effect as if, in that Act, the terms *land* and *Crown land* had the same meanings as in this Act.

s. 10

S. 10
substituted by
No. 14/2005
s. 9.

10 Freeway Corporation

- (1) Subject to this section, ConnectEast Pty Limited A.C.N. 101 213 263 is the Freeway Corporation.
- (2) If the person who is, for the time being, the Freeway Corporation agrees to the declaration of another person as the Freeway Corporation in its place, the Governor in Council may, by Order published in the Government Gazette, declare that other person to be the Freeway Corporation.
- (3) If the Agreement is terminated, the Governor in Council may, by Order published in the Government Gazette—
 - (a) declare that the person who, immediately before the termination, was the Freeway Corporation has ceased to be the Freeway Corporation; and
 - (b) declare a person specified in the Order to be the Freeway Corporation.
- (4) An Order under this section takes effect on the day that it is published in the Government Gazette, or if a later day is specified in the Order, on that later day.

11 Freeway Corporation not to be public authority

The person who is for the time being the Freeway Corporation is not a public authority within the meaning of any enactment by reason only that it is the Freeway Corporation.

S. 12
substituted by
No. 14/2005
s. 10.

12 Delegation by Freeway Corporation

- (1) Subject to this section, the Freeway Corporation may, by instrument, delegate to an approved corporation any of the powers and functions of the Freeway Corporation under—
 - (a) this Act or the regulations (except this power of delegation); or

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- (b) the **Road Management Act 2004** or the regulations under that Act; or
- (c) the **Road Safety Act 1986** or the regulations under that Act.
- (2) If the Freeway Corporation delegates any power or function under this section the Freeway Corporation must publish a notice of that delegation in the Government Gazette.
- (3) The Minister may recommend to the Governor in Council that a particular corporation be approved for the purpose of this section, if the Minister is satisfied that it is necessary and appropriate to do so to give effect to the Agreement.
- (4) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette, approve a corporation for the purposes of this section.
- (5) In this section *approved corporation* means—
- (a) a Concessionaire within the meaning of the Agreement; or
 - (b) the Construction Contractor within the meaning of the Agreement; or
 - (c) the Operator within the meaning of the Agreement; or
 - (d) a corporation approved under subsection (4).

13 Delegation by Minister

- (1) The Minister may, by instrument, delegate any of the powers of the Minister under this Act or the Agreement to—
- (a) the Authority; or
 - (b) an employee of the Authority; or

S. 13(1)
substituted by
No. 14/2005
s. 11.

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- (c) a person employed under Part 3 of the **Public Administration Act 2004**; or
- (d) a public authority.
- (2) A delegate of a power under subsection (1) may, subject to any conditions to which the delegation is subject, sub-delegate that power to any other person or persons or body if the instrument of delegation authorises its sub-delegation.
- (3) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

14 Act to bind Crown

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

PART 2—THE AGREEMENT

Division 1—The Agreement for the Project

15 Power to enter into Agreement

- (1) The Minister, after consultation with the Treasurer, may enter into, for and on behalf of the State, an agreement for the Project.
- (2) The agreement must be in writing.
- (3) Without limiting subsection (1), the agreement may provide for the design, construction, finance, lease, operation, maintenance, repair, transfer, modification, up-grade and management of the Project.

16 Power to enter into Project Documents

The Minister, after consultation with the Treasurer, may enter into, for and on behalf of the State, any Project Document.

17 Amendment of Agreement

- (1) All or any of the provisions of the Agreement may be amended from time to time by an Amending agreement.
- (2) All or any of the provisions of the Agreement may be amended from time to time in accordance with the terms of the Agreement.
- (3) A variation statement must be prepared for each amendment made under subsection (2).
- (4) In this section, *amended* includes varied, added to, substituted, cancelled or revoked.

18 Notice of Agreement, Amending agreement, or variation

- (1) The Minister must cause to be published in the Government Gazette, a notice of the making of—
 - (a) the Agreement; or
 - (b) an Amending agreement; or
 - (c) a variation.
- (2) The notice must specify the place or places at which a person may inspect (as the case requires)—
 - (a) the Agreement; or
 - (b) the Amending agreement; or
 - (c) the variation statement.

19 Commencement of Agreement

The Agreement commences—

- (a) when the notice of making of the Agreement is published in the Government Gazette under section 18; or
- (b) if a later day is specified in the Agreement, on that later day.

20 Commencement of Amending agreement or variation

- (1) An Amending agreement commences—
 - (a) when the notice of making of the Amending agreement is published in the Government Gazette under section 18; or
 - (b) if a later day is specified in the Amending agreement, on that later day.

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- (2) A variation commences—
- (a) when the notice of making of the variation is published in the Government Gazette under section 18; or
 - (b) if a later day is specified in the variation statement, on that later day.

21 Tabling in Parliament

- (1) The Minister must cause a copy of the Agreement to be laid before each House of the Parliament within 6 sitting days of that House following the making of the Agreement.
- (2) The Minister must cause a copy of each Amending agreement to be laid before each House of the Parliament within 6 sitting days of that House following the making of the Amending agreement.
- (3) The Minister must cause a copy of each variation statement to be laid before each House of the Parliament within 6 sitting days of that House following the making of the variation.

22 Revocation

- (1) The Agreement may be revoked wholly or in part by resolution of each House of the Parliament passed within 6 sitting days of that House after a copy of the Agreement is laid before that House.
- (2) An Amending agreement may be revoked wholly or in part by resolution of each House of the Parliament passed within 6 sitting days of that House after a copy of the Amending agreement is laid before that House.
- (3) A variation may be revoked wholly or in part by resolution of each House of the Parliament passed within 6 sitting days of that House after a copy of the variation statement is laid before that House.

- (4) If the Agreement is not laid before a House of the Parliament within the period required by section 21(1), the Agreement is deemed to be revoked on the day immediately following the end of that period.
- (5) If an Amending agreement is not laid before a House of the Parliament within the period required by section 21(2), the Amending agreement is deemed to be revoked on the day immediately following the end of that period.
- (6) If a variation statement is not laid before a House of the Parliament within the period required by section 21(3), the variation is deemed to be revoked on the day immediately following the end of that period.
- (7) The Minister must cause to be published in the Government Gazette a notice of the revocation of the Agreement, Amending agreement or variation or part of the Agreement, Amending agreement or variation.

23 Effect of revocation of Amending agreement or variation

If an Amending agreement or variation or part of an Amending agreement or variation is revoked under section 22—

- (a) a provision of the Agreement that had been cancelled or revoked by the Amending agreement or variation, or by the part of the Amending agreement or variation that is revoked, is revived as from the beginning of the day on which the Amending agreement or variation or part, was revoked; and

- (b) a provision of the Agreement that had been amended (otherwise than by cancellation or revocation) by the Amending agreement or variation, or by the part of the Amending agreement or variation that is revoked, takes effect without that amendment as from the beginning of the day on which the Amending agreement or variation, or part, was revoked as if the amendment had not been made.

Division 2—Giving effect to the Agreement

24 Act to prevail over Agreement

If a provision of the Agreement is inconsistent with a provision of this Act, the provision of this Act prevails.

25 Duty of Government to give effect to Agreement

Subject to the laws of Victoria, the Government, its Ministers and its public authorities will do all things necessary and practicable—

- (a) to ensure that the State and all its public authorities facilitate, on behalf of the State, the implementation of the Agreement; and
- (b) to enable the State to discharge its obligations under the Agreement.

26 Appropriation

Any amount that the State is required to pay under or arising out of the Agreement or a Project Document is payable from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.

27 Specific performance

For the avoidance of doubt, it is declared that section 23(1) of the **Crown Proceedings Act 1958** authorises the granting and enforcement of a decree of specific performance against the Crown in respect of the obligations of the State under the Agreement or a Project Document.

28 Enforcement of Agreement

- (1) The Agreement may be enforced only by or on behalf of the State or another party to the Agreement or a successor or assign of another party to the Agreement.
- (2) Neither the State nor a public authority is liable for the acts or omissions of—
 - (a) any other party to the Agreement; or
 - (b) a licensee in relation to the Project; or
 - (c) a lessee in relation to the Project.

29 No warranty given

- (1) Except as expressly provided in this Act or the Agreement, the State or a public authority must not be taken to have given—
 - (a) any express or implied warranty to any person as to the accuracy of any information provided to the Freeway Corporation in connection with the Agreement; or
 - (b) any express or implied representation to any person in relation to any matter disclosed in any tender document or negotiation relating to the Agreement.
- (2) Subsection (1) does not apply to a warranty or representation given under an Act if the Act expressly provides for a warranty or representation of that kind to be relied on by any person.

30 Agreement to be *State contract*

- (1) The Agreement is deemed to be a State contract for the purposes of the **Information Privacy Act 2000**.
- (2) Services performed under the Agreement are services in connection with the performance of the State's functions.
- (3) Despite subsection (1), the **Information Privacy Act 2000** does not apply in relation to acts done or practices engaged in by the Freeway Corporation under the Agreement to the extent that the Freeway Corporation is bound by an approved privacy code within the meaning of the Privacy Act 1988 of the Commonwealth in relation to those acts and practices.

S. 30(3)
inserted by
No. 14/2005
s. 12.

31 Agreement may require performance bond or other security

- (1) The Agreement may require the Freeway Corporation to provide or enter into a bond or other arrangement for payment to secure performance of the Agreement.
- (2) The State may recover any money payable under a bond or arrangement referred to in subsection (1) even if the requirement in the Agreement for the provision of the bond or arrangement or the payment of any amount under the bond or arrangement is a penalty.

31A Payments for performance

The Freeway Corporation must comply with a requirement under the Agreement that the Freeway Corporation pay an amount to the State or another person, or credit the State or another person with an amount, in relation to the performance of the Freeway Corporation under the Agreement even if the requirement is a penalty.

S. 31A
inserted by
No. 14/2005
s. 13.

32 Agreement may empower State to call for transfer of property

- (1) The Agreement may provide that the State may call for the sale, transfer or assignment to itself, or to another person, of any real or personal property in which the Freeway Corporation has an interest (*a property transfer provision*).
- (2) A property transfer provision is not invalid and the State is not prevented from exercising a power conferred by the provision by reason only of a law or a rule of law under which the provision, or the exercise of the power, would, but for this subsection, have been invalid because of any mortgage, charge or other security held by the State over or in respect of the property of the Freeway Corporation.
- (3) The State may exercise any power under a property transfer provision even if the provision is a penalty.

33 Security for payments to State under Agreement

- (1) This section applies to a mortgage, charge or other security given by a person that includes a provision that secures, or purports to secure, payment to the State of an amount that is, or may become due or payable to the State by the person under, or in connection with, the Agreement (*a security provision*).
- (2) A security provision is not invalid by reason only of a law or rule of law under which the provision would, but for this subsection, have been invalid or unenforceable because the property secured under the mortgage, charge or other security includes an amount that is, or may become, due and payable by the State.

PART 3—ACQUISITION OF PROJECT LAND

Division 1—Acquisition of land in the Project area

34 Powers of acquisition

- (1) The Authority may acquire an interest in land in the Project area by agreement or by a compulsory process for the purposes of the Project or any purpose connected with the Project.
- (2) This section does not apply to the compulsory acquisition of native title rights and interests.

35 Application of Land Acquisition and Compensation Act 1986

Subject to this Division, the **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

- (a) the **EastLink Project Act 2004** is the special Act; and
- (b) VicRoads is the Authority.

S. 35(a)
amended by
No. 95/2005
s. 4(4)(a).

S. 35(b)
amended by
No. 93/2009
s. 39(1).

36 Acquired land to be Crown land

Subject to section 39, any interest in land acquired by the Authority under section 34 vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that Act.

37 Acquired land deemed to be reserved

- (1) If the Authority acquires the fee simple in land under section 34, the land—
 - (a) is deemed to be unalienated land of the Crown; and
 - (b) is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project.
- (2) The reservation of land under subsection (1) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

38 Acquisition of easement—easement in gross

If the Authority acquires any right in the nature of an easement or purporting to be an easement under section 34, that right must be taken to be an easement even though there is no land vested in the Authority or the Crown that is benefited by or capable of being benefited by that right.

39 Acquisition by Authority—effect on Utilities

- (1) This section applies if—
 - (a) the Authority acquires an interest in land under section 34; and
 - (b) an easement of a Utility or a right in the nature of an easement of a Utility is extinguished on that acquisition.
- (2) Nothing in section 24 of the **Land Acquisition and Compensation Act 1986** has the effect of removing—
 - (a) a Utility's ownership of any Utility infrastructure; or

- (b) any right (other than an interest in real property) arising under any existing agreement between Utilities in relation to Utility infrastructure; or
 - (c) any right conferred by an enactment on a Utility in relation to Utility infrastructure.
- (3) The acquisition of the interest in land is not to be regarded as placing a Utility in breach of, or as constituting a default or potential default under any obligation, undertaking, warranty or covenant in any agreement, arrangement or understanding between the Utility and a third party, including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment, transfer or disposal of any land or interest in land.

40 Acquisition of lease or licence

- (1) If any interest in land to be acquired under section 34 is held by a licensee or lessee of the Crown, the Authority must notify the Secretary to the Department of Environment and Primary Industries of the intention to acquire the interest.
- (2) The notice must include a description of the interest to be acquired.

S. 40(1)
amended by
No. 70/2013
s. 4(Sch. 2
item 14.2).

41 Modification of Land Acquisition and Compensation Act 1986—general

- (1) Section 3(3) of the **Land Acquisition and Compensation Act 1986** does not apply to the extent that this Division is inconsistent with that Act.
- (2) The Project area is deemed to have been reserved under a planning instrument for a public purpose for the purposes of section 5 of the **Land Acquisition and Compensation Act 1986**.

S. 41(3)
amended by
No. 95/2005
s. 4(4)(a).

- (3) Section 8(1) of the **Land Acquisition and Compensation Act 1986** applies to an acquisition under section 34 as if for paragraph (e) there were substituted—

"(e) state that the land is within the Project area under the **EastLink Project Act 2004**;"

S. 41(4)
amended by
No. 95/2005
s. 4(4)(a).

- (4) Section 43 of the **Land Acquisition and Compensation Act 1986** applies to an acquisition under section 34 as if after section 43(1)(b) there were inserted—

"(ba) Any special suitability or adaptability of the land in which the acquired interest subsists for a purpose for which it could be used under the **EastLink Project Act 2004** for the purposes of the Project within the meaning of that Act."

- (5) Section 109 of the **Land Acquisition and Compensation Act 1986** does not apply to an interest in land acquired under section 34.

42 Modification of Land Acquisition and Compensation Act 1986—temporary occupation

Section 75 of the **Land Acquisition and Compensation Act 1986** has effect as if it empowered the Authority and any person authorised by the Authority under that section to enter any land and section 75(6) did not apply.

43 Modification of Land Acquisition and Compensation Act 1986—regulations

The regulations in force from time to time under the **Land Acquisition and Compensation Act 1986** and the forms prescribed under those regulations apply in relation to the operation of this Division with such modifications as are necessary to give effect to this Division.

44 Transfer of building or structure as compensation

- (1) With the agreement of the person entitled to compensation under this Division for the acquisition of an interest in land, the Authority may transfer a building or structure from reserved project land or surplus land or from land owned by the Authority or by that person to other land owned by that person in full or in part settlement of any compensation that the Authority is liable to pay.
- (2) With the agreement of the person entitled to compensation under this Division for the acquisition of an interest in land, the Authority may ask—

* * * * *

S. 44(2)(a)
repealed by
No. 93/2009
s. 39(2)(a).

- (b) the Secretary to the Department of Infrastructure to transfer a building or structure from land owned by it to land owned by that person—

in full or in part settlement of any compensation that the Authority is liable to pay.

- (3) The Secretary to the Department of Infrastructure may comply with a request under this section despite anything to the contrary in any other Act.

S. 44(3)
amended by
No. 93/2009
s. 39(2)(b).

45 Adjoining land may be provided as compensation

- (1) If the Authority acquires compulsorily under this Division part of a parcel of land owned by a person, the Authority may require that person to take land—
 - (a) that adjoins the part of that parcel that was not acquired; and
 - (b) that is owned by the Authority or is surplus land.
- (2) The value of that adjoining land must be deducted from any amount to be paid by way of compensation to the owner of the land acquired compulsorily by the Authority.
- (3) If the Authority and the owner cannot agree as to the value of the adjoining land, the value must be settled in the same manner and at the same time as the compensation to be paid to that owner.

46 Cultural and Recreational Lands Act 1963

Section 3 of the **Cultural and Recreational Lands Act 1963** does not apply to the compulsory acquisition of land under this Division.

Division 2—Acquisition of native title rights and interests

47 Compulsory acquisition of native title rights and interests

- (1) The Authority may acquire a native title right or interest in land in the Extended Project area by a compulsory process for the purposes of the Project or any purpose connected with the Project.
- (2) Subject to this Division, the **Land Acquisition and Compensation Act 1986** applies to a compulsory acquisition referred to in subsection (1) and for that purpose—

(a) the **EastLink Project Act 2004** is the special Act; and

S. 47(2)(a)
amended by
No. 95/2005
s. 4(4)(a).

(b) VicRoads is the Authority.

S. 47(2)(b)
amended by
No. 93/2009
s. 39(1).

(3) Section 3(3) of the **Land Acquisition and Compensation Act 1986** does not apply to the extent that this Division is inconsistent with that Act.

48 Acquired right or interest to vest in Crown

Any right or interest in land acquired by the Authority under section 47 vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that Act.

49 Procedure for acquisition

- (1) For the purposes of the compulsory acquisition of native title rights and interests in land, the Authority is authorised to comply with any relevant procedure under the Native Title Act for a valid acquisition of those rights and interests.
- (2) If the procedure under section 24MD(6B) of the Native Title Act applies and an objection is not made under paragraph (d) of that subsection within 2 months after notice is given under that subsection, the Authority may compulsorily acquire the native title rights and interests.
- (3) For the purposes of the application of the procedure under section 24MD(6B) of the Native Title Act in relation to the compulsory acquisition, the Tribunal is the independent body for hearing an objection under section 24MD(6B)(f) and sections 50 and 51 apply.

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- (4) If an objection is made under section 24MD(6B)(d) of the Native Title Act to a proposed compulsory acquisition of native title rights and interests, the Authority may compulsorily acquire the native title rights and interests in the land if—
- (a) all those objections have been withdrawn; or
 - (b) within 5 months after notification under section 24MD(6B) of the Native Title Act of a proposed compulsory acquisition a request has not been made for the objection to be referred to the Tribunal.
- (5) If an objection made under section 24MD(6B)(d) of the Native Title Act to a proposed compulsory acquisition is referred to the Tribunal and a determination is made that the proposed compulsory acquisition proceed, the Authority, in accordance with the determination and subject to this Act, may compulsorily acquire the native title rights and interests.
- (6) If the Tribunal makes a determination that the proposed compulsory acquisition not proceed, or proceed subject to conditions, the Authority must comply with that determination except as permitted by subparagraphs (i), (ii) and (iii) of section 24MD(6B)(g) of the Native Title Act.

50 Referral of objections to Tribunal

- (1) A person or body that makes an objection under section 24MD(6B)(d) of the Native Title Act to a proposed compulsory acquisition of native title rights and interests may request the Authority to refer the objection to the Tribunal.
- (2) A request must be made within 5 months after notification under section 24MD(6B) of the Native Title Act of the proposed compulsory acquisition.

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- (3) If a request is made, the Authority must refer the objection to the Tribunal unless the Authority decides not to proceed with the compulsory acquisition.
 - (4) The Authority is a party to a proceeding in the Tribunal in respect of an objection.

51 Determination of Tribunal on objection

- (1) The Tribunal may make any of the following determinations in respect of an objection referred to it under section 50—
 - (a) a determination that the proposed compulsory acquisition that is the subject of the objection proceed; or
 - (b) a determination that the proposed compulsory acquisition proceed subject to conditions; or
 - (c) a determination that the proposed compulsory acquisition not proceed.
- (2) In making a determination, the Tribunal must take into account—
 - (a) the likely impact of the proposed compulsory acquisition on the objector's registered native title rights and interests; and
 - (b) the measures proposed to be taken to minimise that impact.
- (3) For the avoidance of doubt, a determination is not an order of the Tribunal for the purposes of the **Victorian Civil and Administrative Tribunal Act 1998**.

Note

Compare section 79 of the Native Title Act.

52 Disputed claims for compensation: native title land

If the compensation payable to a person in respect of the compulsory acquisition of native title rights and interests in land to which this Division applies does not amount to compensation on just terms, the person is entitled to such additional compensation as is necessary to ensure that compensation is paid on just terms.

53 Cultural and Recreational Lands Act 1963

Section 3 of the **Cultural and Recreational Lands Act 1963** does not apply to the compulsory acquisition of a right or interest under this Division.

Division 3—Acquisition of land outside the Project area

54 Power of Authority to purchase land

- (1) The Authority may purchase land for the purposes of the Project in any area outside the Project area.
- (2) The Authority may purchase land in any area outside the Project area for the purpose of preservation, restoration or provision of native habitat.
- (3) The Authority may purchase the whole of a parcel of land even if only part of the land is required for the purposes of the Project or for the purposes of subsection (2).
- (4) If the Authority acquires part of a parcel of land under section 34, it may purchase the rest of the parcel of land under this Division even if the rest of the parcel is not required for the purposes of the Project or for the purposes of subsection (2).

EastLink Project Act 2004
No. 39 of 2004
Part 3—Acquisition of Project Land

s. 54

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- (5) If an Order has been published under section 55 requiring a public authority to surrender land to the Crown or divesting land from a public authority and at the time the public authority acquired the land it did not acquire the whole of the parcel of which the land formed part, the Authority may purchase the rest of the parcel of land under this Division even if the rest of the parcel is not required for the purposes of the Project or for the purposes of subsection (2).
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S. 54(5)
inserted by
No. 14/2005
s. 14.

**PART 4—PROVISION OF PUBLIC LAND AND COUNCIL
LAND**

**Division 1—Surrender or divesting of public land and
Council land**

**55 Surrender or divesting of land of public authorities
and Councils**

- (1) The Governor in Council may, by Order published in the Government Gazette—
 - (a) require a public authority or Council in which land in the Project area is vested to surrender that land to the Crown; or
 - (b) divest land in the Project area from a public authority or Council.
- (2) Subsection (1) applies whether or not that land was vested in the public authority or Council by or under an Act or by any other means.
- (3) Subsection (1) does not apply to land that is reserved under the **Crown Land (Reserves) Act 1978**.
- (4) A public authority or Council must comply with a requirement under subsection (1)(a).
- (5) A power may only be exercised under subsection (1) on the joint recommendation of the Minister and—
 - (a) in the case of a public authority, the Minister administering the Act under which the public authority is established; or
 - (b) in the case of a Council, the Minister administering the **Local Government Act 1989**.

56 Surrender of interests in unreserved Crown land

- (1) The Minister may recommend to the Governor in Council that the interests (if any) of a public authority or a Council in any Crown land that is a part of the Project area be surrendered to the Crown on—
 - (a) receiving a plan of land signed by the Surveyor-General; and
 - (b) being satisfied that the land shown on the plan represents land, the interests in which are to be surrendered to the Crown.
- (2) Subsection (1) does not apply to land that is reserved under the **Crown Land (Reserves) Act 1978**.
- (3) On receiving the Minister's recommendation, the Governor in Council may, by Order published in the Government Gazette, declare that the interests (if any) in the land shown on the plan are surrendered to the Crown.

57 Effect of surrender or divesting

- (1) This section applies to land on—
 - (a) the conveyance to the Crown or the registration of an instrument of transfer and surrender to the Crown of the land that a public authority or Council is required to surrender under section 55(1)(a); or
 - (b) the publication in the Government Gazette of an Order under section 55(1)(b) in respect of the land; or
 - (c) the publication in the Government Gazette of an Order under section 56 in respect of the land.

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- (2) The land is deemed to be unalienated land of the Crown and is freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.
 - (3) Unless the relevant Order under section 55 or 56 expressly excludes the operation of this subsection, if any part of the land is or is being used as a road—
 - (a) that part of the land ceases to be a road; and
 - (b) all rights, easements and privileges existing or claimed in that part of the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease.
 - (4) Unless the relevant Order under section 55 or 56 expressly excludes the operation of this subsection, if any part of the land is the bed, soil and banks of a river, all rights, easements and privileges existing or claimed in that part of the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease.
 - (5) The land is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project.
 - (6) This section has effect despite anything to the contrary in section 175A of the **Water Industry Act 1994**, section 10 or clause 1 of Schedule 5 to the **Road Management Act 2004** or any other Act.

58 Temporary reservation may be amended or revoked

The reservation of land under section 57(5) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

Division 2—Removal of reservations on land

59 Land Acts not to apply

This Division has effect despite anything to the contrary in the **Crown Land (Reserves) Act 1978** or the **Land Act 1958**.

60 Revocation of reservation of Schedule 1 land

- (1) The Order in Council specified in item 1 in Schedule 1 is revoked in so far as it relates to the land shown hatched on the plan numbered LEGL./04–044 and lodged in the Central Plan Office.
- (2) The reservation of land specified in item 2 in Schedule 1 is revoked in so far as it relates to the land shown hatched on the plan numbered LEGL./04–045 and lodged in the Central Plan Office.

61 Revocation of reservations—entire reservation

- (1) If any Crown land permanently or temporarily reserved under the **Crown Land (Reserves) Act 1978** is entirely within the Project area, the Minister may recommend to the Governor in Council that the reservation of that land be revoked in its entirety.
- (2) On receiving the Minister's recommendation, the Governor in Council may, by Order published in the Government Gazette, revoke the following—

- (a) any Order in Council reserving the land;
- (b) any Crown grant, certificate of title or folio of the Register issued or created with respect to the land.

62 Revocation of reservations—part of reservation

- (1) If any Crown land permanently or temporarily reserved under the **Crown Land (Reserves) Act 1978** is within the Project area, and if only part of the reservation of that land is to be revoked, the Minister on—

- (a) receiving a plan of land signed by the Surveyor-General; and
- (b) being satisfied that the land shown on the plan represents that part of the reservation to be revoked—

may recommend to the Governor in Council that that part of the reservation be revoked.

- (2) On receiving the Minister's recommendation, the Governor in Council may, by Order published in the Government Gazette, revoke the following—

- (a) any Order in Council reserving the land;
- (b) any Crown grant, certificate of title or folio of the Register issued or created with respect to the land—

to the extent that the Order in Council, Crown grant, certificate of title or folio relates to the land shown on the plan.

63 Effect of revocation of reservation

- (1) This section applies to—
- (a) land referred to in section 60(1) or 60(2), on the commencement of that subsection;

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- (b) land referred to in an Order under section 61, on the publication of that Order in the Government Gazette;
 - (c) land shown on a plan to which an Order under section 62 applies, on the publication of that Order in the Government Gazette.
- (2) The land is deemed to be unalienated land of the Crown and is freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.
 - (3) Unless the relevant Order under section 61 or 62 expressly excludes the operation of this subsection, if any part of the land is or is being used as a road—
 - (a) that part of the land ceases to be a road; and
 - (b) all rights, easements and privileges existing or claimed in that part of the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease.
 - (4) Unless the relevant Order under section 61 or 62 expressly excludes the operation of this subsection, if any part of the land is the bed, soil and banks of a river, all rights, easements and privileges existing or claimed in that part of the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease.
 - (5) The appointment of any committee of management is revoked in so far as it applies to the land.
 - (6) Any regulations made under section 13 of the **Crown Land (Reserves) Act 1978** are revoked in so far as they apply to the land.

(7) The land is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project.

(8) This section has effect despite anything to the contrary in section 175A of the **Water Industry Act 1994**, section 10 of the **Road Management Act 2004** or any other Act.

64 Temporary reservation may be amended or revoked

The reservation of land under section 63(7) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

65 Minister to be notified of reservation

The Authority must notify the Minister administering the **Crown Land (Reserves) Act 1978** of the reservation of any land under this Division.

Division 3—Declaration of roads

66 Orders may continue or declare roads

(1) An Order made under Division 1 or Division 2 may specify that any part of the land (that is the subject of the Order) that was a freeway, an arterial road, a non-arterial State road or a municipal road before the publication of the Order continues to be a freeway, an arterial road, a non-arterial State road or a municipal road.

(2) Any land that is specified in an Order in accordance with subsection (1) continues to be a freeway, an arterial road, a non-arterial State road or a municipal road as specified in the Order.

- (3) The Governor in Council may, by Order published in the Government Gazette, specify that any reserved project land that was a freeway, an arterial road, a non-arterial State road or a municipal road immediately before it became reserved project land is to be deemed to be a freeway, an arterial road, a non-arterial State road or a municipal road.
- (4) Any land that is specified in an Order in accordance with subsection (3) is, from the date of publication of the Order, deemed to be declared under section 14 of the **Road Management Act 2004** as a freeway, an arterial road, a non-arterial State road or a municipal road as specified in the Order.
- (5) For the avoidance of doubt it is declared that this section has effect in addition to and not in derogation of the deemed reservation of the land under this Division.
- (6) This section has effect despite anything to the contrary in any other Act.

Division 4—Entry into possession of certain Project land

67 Definitions

In this Division—

project land means land that is deemed under Division 1 or Division 2 to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project;

reservation date in relation to land means the date on which the land became project land.

68 Power to enter into possession

Subject to this Division, the Authority may enter into possession of project land.

69 Authority must try to obtain agreement

The Authority must diligently endeavour to obtain agreement with the person in occupation of project land (the *occupier*) as to the terms on which the Authority will enter into possession of the land.

70 Time for entry into possession—general

If, at the reservation date, project land is not used by any person as the principal place of residence or business of that person, the Authority may enter into possession of the land at any time after the reservation date after giving 7 days' notice in writing of its intention to enter into possession to the occupier of the land.

71 Time for entry into possession—residence or business

- (1) Subject to this Division, if project land or part of project land is used, at the reservation date, by a person as the principal place of residence or business of that person, the Authority must not enter into possession of—
- (a) the part of the land so used; or
 - (b) if the whole of the land is so used, that land—

before the end of 3 months after the reservation and unless the Authority has given 7 days' notice in writing of its intention to enter into possession to the occupier of the land.

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- (2) The occupier is not liable for the payment of rent in respect of the occupation of that part of the project land that is used as the principal place of residence or business of the occupier during the 3 month period referred to in subsection (1).
- (3) If the occupier ceases of the occupier's own accord to occupy the project land before the end of the 3 month period referred to in subsection (1), the entitlement of that person under this Division to occupy the land without payment of rent to the Authority also ceases.
- (4) If the occupier was in occupation of the land immediately before the reservation date—
- (a) in accordance with section 26(2) of the **Land Acquisition and Compensation Act 1986** or an agreement under section 26(6) of that Act; or
 - (b) in accordance with section 20E(2) of the **Project Development and Construction Management Act 1994** or an agreement under section 20E(6) of that Act—
- this Division applies as if the 3 month period referred to in subsection (1) were the remainder of the period of occupation permitted under the relevant provision or agreement specified in paragraph (a) or (b) of this subsection.
- (5) If the occupier was in occupation of the land before the reservation date—
- (a) in accordance with section 26(2) of the **Land Acquisition and Compensation Act 1986** or an agreement under section 26(6) of that Act; or

- (b) in accordance with section 20E(2) of the **Project Development and Construction Management Act 1994** or an agreement under section 20E(6) of that Act—

and the period of occupation permitted under the relevant provision or agreement specified in paragraph (a) or (b) had ended before the reservation date, the Authority may enter into possession of the land at any time after the reservation date after giving 7 days' notice in writing of its intention to enter into possession to the occupier of the land.

72 Early entry of place of residence or business

- (1) Section 71 does not apply if—
- (a) the Governor in Council certifies that having regard to—
 - (i) the urgency of the case or any other exceptional circumstances; and
 - (ii) the public interest—it is not practicable for the Authority to delay entry into possession of the project land until after the end of the 3 month period referred to in section 71(1); or
 - (b) the Authority and the occupier have, with the consent of the Minister, entered into an agreement in relation to the time of entry into possession of the project land by the Authority.
- (2) A certificate under subsection (1)(a) must specify the date on which the Authority is to take possession.
- (3) The Authority must serve a copy of the certificate under subsection (1)(a) on the occupier.

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- (4) The occupier whose period of occupation of the project land was abridged under subsection (1)(a) is entitled to claim compensation under Division 5 for any loss or damage that is incurred as a direct, natural and reasonable consequence of that abridgment and for which the person could not otherwise make a claim under that Division.
 - (5) The compensation payable pursuant to subsection (4) may be paid to—
 - (a) the person who is entitled to claim the compensation; or
 - (b) the constituted attorney of that person.

73 Occupation may be extended by agreement

- (1) The period of occupation of the project land after the reservation date (including the 3 month period referred to in section 71(1)) may be extended by agreement in writing between the Authority and the occupier of the project land.
- (2) An agreement under subsection (1) must provide for the payment of rent by the occupier of the relevant land to the Authority.

74 Continued occupation without agreement

If a person continues to occupy project land after the period permitted under section 71 or the reservation date (as the case may be) and an agreement has not been entered into under section 73 in respect of that occupation, that person—

- (a) is to be taken to be in possession of the land in pursuance of a tenancy determinable at will by the Authority; and
- (b) is liable to pay to the Authority a fair market rent in respect of that continued occupation.

75 Recovery of rent

Any rent payable to the Authority under this Division may be recovered as a debt due to the Authority in any court of competent jurisdiction.

76 Proceedings where refusal to give up possession

- (1) If the Authority is entitled under this Division to enter into possession of project land and the occupier of the land or any other person—
 - (a) refuses to give up the possession of the land;
or
 - (b) hinders the Authority from entering on and taking possession of the land—the Authority may issue its warrant under this section to the sheriff.
- (2) A warrant issued under this section authorises the sheriff to—
 - (a) enter onto the land specified in the warrant;
and
 - (b) deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land;
and
 - (c) use such force as is reasonably necessary to execute the warrant.
- (3) On receipt of a warrant issued under this section, the sheriff must deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land.
- (4) The costs incurred in the issuing and execution of a warrant must be paid by the person refusing to give up possession.

- (5) The amount of the costs and the amount of any rent owed by that person must be deducted and retained by the Authority from the compensation (if any) payable under this Part to that person.
- (6) If no compensation is payable to that person or if the compensation payable is less than the amount of the costs and rent (if any) then payment of the amount in excess of the compensation must if not paid on demand be enforced by a warrant to seize property.
- (7) On application by the Authority, a magistrate must issue a warrant for the purposes of subsection (6).

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S. 76(8)
repealed by
No. 87/2009
s. 27.

77 Residential Tenancies Act 1997 not to apply

Nothing in the **Residential Tenancies Act 1997** applies to or in relation to any matter provided for or any proceedings under this Division.

78 Giving of notices and documents

- (1) Any notice or other document that the Authority is required to give to any person under this Division may be served on that person in accordance with section 250.
- (2) If the Authority does not know the location of a person on whom the Authority is required to serve the notice or document, the notice or document may be served—
 - (a) by publication of a copy of it in a newspaper circulating generally throughout the State;
and
 - (b) by affixing it in a prominent place on the land to which it relates.

- (3) The validity of any notice under this Division is not affected by any misdescription in it of the land or of any interest in the land if sufficient information appears on the face of the notice to identify the land or interest affected.

Division 5—Compensation for surrendered or divested or reserved land

79 Compensation—surrender, divesting or revocation of reservation

- (1) Subject to this Act and the **Land Acquisition and Compensation Act 1986**, every person who—
- (a) immediately before the publication of an Order under Division 1 or 2 had a legal or equitable estate or interest in land to which the Order applies; or
 - (b) immediately before the commencement of section 60(1) or 60(2) had a legal or equitable estate or interest in any Crown land to which that subsection applies—
- has a claim for compensation.
- (2) The **Land Acquisition and Compensation Act 1986** (except sections 31 to 36) applies to the determination of compensation payable under this section—
- (a) in the case of an estate or interest in land to which subsection (1)(a) applies, as if the publication of the Order were a notice of acquisition of that estate or interest and the Authority had acquired that estate or interest; or

- (b) in the case of an estate or interest in land to which subsection (1)(b) applies, as if the proclamation of the commencement of section 60(1) or 60(2) were a notice of acquisition of that estate or interest and the Authority had acquired that estate or interest.
- (3) Section 43 of the **Land Acquisition and Compensation Act 1986** applies to the determination of compensation under this section as if after section 43(1)(b) there were inserted—
- "(ba) Any special suitability or adaptability of the land in which the acquired interest subsists for a purpose for which it could be used under the **EastLink Project Act 2004** for the purposes of the Project within the meaning of that Act."
- (4) This section does not apply to—
- (a) an estate or interest held by a public authority; or
- (b) an estate or interest (other than an interest in fee simple) held by a Council.

S. 79(3)
amended by
No. 95/2005
s. 4(4)(a).

80 Compensation for Councils in certain circumstances

- (1) This section applies to land—
- (a) that was under the control of a Council immediately before the publication of an Order under Division 1 or 2 in relation to that land; or
- (b) to which section 60(1) or 60(2) applies that was under the control of a Council immediately before the commencement of that subsection.

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- (2) If the Council has—
- (a) sustained any pecuniary loss; or
 - (b) incurred any expense—
- as a direct, natural and reasonable consequence of the Order or the commencement of section 60(1) or 60(2), the Council may claim the amount of that loss or expense from the Authority.
- (3) For the purposes of subsection (2), the value of the land must not be taken into account when calculating the loss sustained or expense incurred by the Council.
- (4) A claim under subsection (2) must be made within 2 years after the Order was made or section 60(1) or 60(2) commenced (as the case requires).
- (5) Section 48 and Parts 10 and 11 of the **Land Acquisition and Compensation Act 1986** apply to a claim under subsection (2) as if it were a claim under section 47(1) of that Act.

81 Transfer of building or structure as compensation

- (1) With the agreement of a Council entitled to compensation under this Division, the Authority may transfer a building or structure from reserved project land or surplus land or from land owned by the Authority or by the Council to other land owned by the Council in full or in part settlement of any compensation that the Authority is liable to pay.
- (2) With the agreement of a Council entitled to compensation under this Division, the Authority may ask—

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S. 81(2)(a)
repealed by
No. 93/2009
s. 39(3)(a).

(b) the Secretary to the Department of Infrastructure to transfer a building or structure from land owned by it to land owned by the Council—

in full or in part settlement of any compensation that the Authority is liable to pay.

(3) The Secretary to the Department of Infrastructure may comply with a request under this section despite anything to the contrary in any other Act.

S. 81(3)
amended by
No. 93/2009
s. 39(3)(b).

82 Adjoining land may be provided as compensation

(1) If the Authority is liable to pay compensation to a Council under section 80, the Authority may require the Council to take land—

- (a) that adjoins land owned by the Council; and
- (b) that is owned by the Authority or is surplus land.

(2) The value of that land must be deducted from any amount to be paid by way of compensation to the Council by the Authority under section 80.

(3) If the Authority and the Council cannot agree on the value of the adjoining land, the value must be settled in the same manner and at the same time as the compensation to be paid to the Council under section 80.

83 No other compensation payable

Except as provided in this Division, no compensation is payable by the Crown or the Authority in respect of anything done or arising out of this Part.

Division 6—General

84 Effect of reservation of a stratum of Crown land

If a stratum of Crown land becomes reserved project land, any reservation or other right, title, trust, limitation, reservation, restriction, encumbrance, estate or interest—

- (a) that applied both to that stratum of land and to any other stratum of land, immediately before the reservation of that stratum; and
- (b) that was revoked or surrendered with respect to the reserved stratum on the reservation of the stratum—

continues to apply to the other strata of land to which it applied immediately before the reservation, despite the reservation of that stratum.

PART 5—MANAGEMENT OF LAND FOR PROJECT

Division 1—General powers of Authority

85 Authority appointed committee of management

- (1) The Authority is deemed to be the committee of management under the **Crown Land (Reserves) Act 1978** of reserved project land.
- (2) The provisions of sections 15(2), 15(3), 15(4), 15(7), 15(8) and 15(9) of the **Crown Land (Reserves) Act 1978** do not apply to the Authority as committee of management.
- (3) In addition to the powers conferred on committees of management under the **Crown Land (Reserves) Act 1978**, the Authority as committee of management has all the powers necessary to give effect to this Act.
- (4) For the purposes of this section, the **Crown Land (Reserves) Act 1978** applies as if a reference to the Minister under that Act were a reference to the Minister administering this Act.

86 Authority may carry out or authorise works on public land

- (1) The Authority may carry out or authorise any person or body to carry out works on public land in the Extended Project area for the purposes of the Project.
- (2) The Authority must consult with any Minister, public authority or Council that owns or is responsible for the management of public land before carrying out or authorising the carrying out of works on that land.

S. 86(2)
amended by
No. 14/2005
s. 15(1).

S. 86(4)
inserted by
No. 14/2005
s. 15(2).

S. 86(5)
inserted by
No. 14/2005
s. 15(2).

S. 86(6)
inserted by
No. 14/2005
s. 15(2).

- (3) The Authority must not carry out or authorise the carrying out of works on reserved Crown land unless—
 - (a) the works are not inconsistent with the reservation of the land; or
 - (b) the reservation is revoked.
- (4) An authorisation under this section may be given subject to any conditions that are not inconsistent with the Agreement.
- (5) An authorisation that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.
- (6) In this section, *public land* includes land owned by or vested in a Council.

87 Authority liable to pay compensation

- (1) The Authority is liable to compensate any person who has—
 - (a) sustained any pecuniary loss; or
 - (b) incurred any expense—as a direct, natural and reasonable consequence of the entry onto or occupation of or the carrying out of works on public land under section 86 by or on behalf of the Authority.
- (2) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.
- (3) A Utility is not entitled to compensation under this section.

88 Temporary access to Crown land

- (1) The Authority may use or authorise the use of any Crown land for the purposes of the Project.
- (2) The Authority must obtain the approval of the Land Minister before exercising any power under subsection (1).
- (3) Once the use has ended, the Authority must ensure that any land used under this section is restored to a condition that is satisfactory to the Land Minister.
- (4) The Authority must not use or authorise the use of reserved Crown land under this section unless—
 - (a) the use is not inconsistent with the reservation of the land; or
 - (b) the reservation is revoked.

(4A) An authorisation under this section may be given subject to any conditions that are not inconsistent with the Agreement.

S. 88(4A)
inserted by
No. 14/2005
s. 16.

(4B) An authorisation that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.

S. 88(4B)
inserted by
No. 14/2005
s. 16.

(5) In this section *Land Minister* means the Minister administering section 12 of the **Land Act 1958**.

88A Powers in relation to easements

- (1) Without limiting any other power of the Authority under this Act, if an easement is acquired under Part 3, the Authority may carry out or authorise any other person to carry out any works on the land in that easement.
- (2) An authorisation under this section may be given subject to any conditions that are not inconsistent with the Agreement.

S. 88A
inserted by
No. 14/2005
s. 17.

- (3) An authorisation that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.

Division 2—Licences

89 Application

This Division applies despite anything to the contrary in section 175A of the **Water Industry Act 1994**, the **Land Act 1958**, the **Crown Land (Reserves) Act 1978** or any other Act.

90 Authority may issue licence for purposes of Project

- (1) The Authority may issue a licence to any person to enter on and use the whole or part of—
- (a) any reserved Project land in the Project area;
or
 - (b) any public land in the Extended Project area that is not in the Project area—
- for the purposes of the construction of the Project.
- (2) The Authority may issue a licence to any person to enter on and use the whole or part of—
- (a) any former Project land; or
 - (b) any public land in the Extended Project area that is not in the Project area—
- for any of the other purposes of the Project.
- (3) The Authority must consult with any Minister, public authority or Council that owns or is responsible for the management of public land or former Project land before carrying out or authorising the carrying out of works on that land.

S. 90(3)
amended by
No. 14/2005
s. 18(1).

- (4) The Authority must not issue a licence for the use of public land or former Project land that is reserved Crown land unless—
- (a) the use is not inconsistent with the reservation of the land; or
 - (b) the reservation is revoked.
- (5) In this section—

former Project land means land in the Project area that was reserved Project land but in respect of which the reservation for the purposes of the Project has been revoked;

public land includes land owned by or vested in a Council.

S. 90(5)
substituted by
No. 14/2005
s. 18(2).

91 Term of licence

The period for which a licence is issued must not exceed the period of operation of the Agreement.

92 Conditions of licence—general

- (1) A licence may be issued subject to any conditions that are not inconsistent with the Agreement.
- (2) A licence that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.

93 Conditions on licence over stratum of land

- (1) In imposing conditions on a licence over a stratum of land, the Authority must have regard to the following matters—
 - (a) that reasonable access to and use of the stratum and other land be provided for; and
 - (b) that the rights of the registered proprietor, lessee or licensee of other land not be interfered with; and

- (c) that the rights of support of the stratum or of other land or of any building or structure erected or to be erected on those lands be provided for; and
 - (d) that the making and removal of improvements by the licensee be provided for; and
 - (e) that any necessary rights for the passage or provision of services (including drainage, sewerage or the supply of water, gas, electricity or telecommunications) to or through the stratum, where those rights are necessary for the reasonable enjoyment of the stratum or of other land, be provided for.
- (2) The issuing of a licence under this Division of a stratum of land is conclusive proof of compliance with subsections (1)(a), (1)(b), (1)(c), (1)(d) and (1)(e) with respect to the licence.

94 Conditions relating to sub-licences

The conditions on a licence may include conditions relating to sub-licences.

95 Ability to mortgage licence

The licensee may only mortgage, charge, assign or otherwise encumber the licensee's interest in the licence in accordance with the terms of the Agreement.

96 Amendment of licence

A licence may be amended at any time with the agreement of the licensee.

97 Termination of licence

A licence may be terminated in whole or in part before the end of the term of the licence in accordance with the Agreement.

98 Renewal of licence

- (1) A licence may be renewed in accordance with the terms of the Agreement.
- (2) A licence must not be renewed for a period that ends after the end of the period of operation of the Agreement.

99 Revocation of reservation on termination of licence

- (1) The Minister, after consultation with the Minister administering the **Crown Land (Reserves) Act 1978**, may recommend to the Governor in Council that the temporary reservation of licensed land be revoked on the termination of the licence as to that land.
- (2) After receiving the Minister's recommendation, the Governor in Council may, by Order published in the Government Gazette, revoke the reservation of the land.
- (3) An Order under subsection (2) has effect on the day that it is published in the Government Gazette.
- (4) On an Order under subsection (2) taking effect—
 - (a) the land is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests; and
 - (b) the appointment of the Authority as committee of management is revoked to the extent that it applies to the land.

100 Orders may close roads

- (1) An Order made under section 99 may specify that any part of the land that is the subject of the Order ceases to be a road.
- (2) If an Order made under section 99 specifies that any land ceases to be a road—
 - (a) that land ceases to be a road; and
 - (b) all rights, easements and privileges existing or claimed in that land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease.
- (3) This section applies despite anything to the contrary in section 10 of the **Road Management Act 2004**.

101 Orders may continue roads

- (1) An Order made under section 99 may specify that any part of the land that is the subject of the Order that was a freeway, an arterial road, a non-arterial State road or a municipal road immediately before the publication of the Order continues to be a freeway, an arterial road, a non-arterial State road or a municipal road.
- (2) Any land that is specified in an Order in accordance with subsection (1) continues to be a freeway, an arterial road, a non-arterial State road or a municipal road as specified in the Order.
- (3) This section has effect despite anything to the contrary in any other Act.

Division 3—Leases

102 Application

This Division applies despite anything to the contrary in section 175A of the **Water Industry Act 1994**, the **Land Act 1958**, the **Crown Land (Reserves) Act 1978** or any other Act.

103 Leasing powers

The Governor in Council, on behalf of the Crown, subject to and in accordance with the terms of the Agreement may grant a lease of any part of the Project area for the purposes of the Project.

104 Term of lease

The term of a lease must be in accordance with the Agreement.

105 Conditions of lease—general

- (1) A lease may be granted subject to any conditions that are not inconsistent with the Agreement.
- (2) A lease that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.

106 Conditions on lease over stratum of land

- (1) In imposing conditions on a lease of a stratum of land, the Governor in Council must have regard to the following matters—
 - (a) that reasonable access to and use of the stratum and other land be provided for; and
 - (b) that the rights of the registered proprietor, lessee or licensee of other land not be interfered with; and
 - (c) that the rights of support of the stratum or of other land or of any building or structure erected or to be erected on those lands be provided for; and

- (d) that the making, maintenance and removal of improvements by the lessee be provided for; and
 - (e) that any necessary rights for the passage or provision of services (including drainage, sewerage or the supply of water, gas, electricity or telecommunications) to or through the stratum, where those rights are necessary for the reasonable enjoyment of the stratum or of other land, be provided for.
- (2) The granting of a lease under this Division of a stratum of land is conclusive proof of compliance with subsections (1)(a), (1)(b), (1)(c), (1)(d) and (1)(e) with respect to the lease.

107 Conditions relating to sub-leases

The conditions imposed on a lease may include conditions relating to sub-leases.

108 Ability to mortgage lease

The lessee may only mortgage, charge, assign or otherwise encumber the lessee's interest in the lease in accordance with the terms of the Agreement.

109 Amendment of lease

A lease may be amended at any time with the agreement of the lessee.

110 Termination of lease

A lease may be terminated in whole or in part before the end of the term of the lease in accordance with the Agreement.

111 Renewal of lease

A lease may be renewed in accordance with the terms of the Agreement.

Division 4—Interim operation

112 Interim operation

- (1) The Minister may, by notice in the Government Gazette, determine an area of land as land to which this section applies.
- (2) A determination may only be made under subsection (1) in relation to land in respect of which the temporary reservation has been revoked under Division 2.
- (3) If notice of an area of land has been given under subsection (1) this Act applies to that land as if any reference in this Act to leased land or land leased under Division 3 included a reference to that land.
- (4) The Governor in Council may by Order published in the Government Gazette declare that this section no longer applies to certain land.
- (5) This section ceases to apply to land—
 - (a) on the grant of a lease of that land under Division 3; or
 - (b) on the publication of an Order under subsection (4) in respect of the land—whichever is the earlier.

Division 5—Interim leases and licences for reserved Project land

113 Application

- (1) This Division applies despite anything to the contrary in section 175A of the **Water Industry Act 1994**, the **Land Act 1958**, the **Crown Land (Reserves) Act 1978** or any other Act.
- (2) This Division does not apply to leased land or licensed land.

114 Power to issue interim licences for reserved project land

The Authority may issue a licence to any person to enter on and use the whole or part of reserved project land for any purpose that is not inconsistent with the proposed use of the land for the purposes of the Project.

115 Power to grant interim leases for reserved project land

The Authority may grant a lease to any person of the whole or part of reserved project land for any purpose that is not inconsistent with the proposed use of the land for the purposes of the Project.

116 Termination of lease or licence

- (1) The Authority may terminate a lease or licence by giving the required notice of termination to the lessee or licensee.
- (2) The required notice of termination is not less than—
 - (a) 60 business days in respect of land used as the lessee's or licensee's principal place of residence; or
 - (b) 20 business days in any other case.
- (3) A lease or licence may be terminated earlier with the agreement of the lessee or licensee.
- (4) The Authority is entitled to enter into possession of the land on the termination of the lease or licence.
- (5) This section applies despite anything to the contrary in the lease or licence.

117 Proceedings where refusal to give up possession

- (1) If the Authority is entitled under this Division to enter into possession of land and the person in occupation of the land or any other person—
 - (a) refuses to give up the possession of the land;
or
 - (b) hinders the Authority from entering on and taking possession of the land—the Authority may issue its warrant under this section to the sheriff.
- (2) A warrant issued under this section authorises the sheriff to—
 - (a) enter on the land specified in the warrant;
and
 - (b) deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land;
and
 - (c) use such force as is reasonably necessary to execute the warrant.
- (3) On receipt of a warrant issued under this section, the sheriff must deliver possession of the land to the Authority or the person appointed in the warrant to receive possession of the land.
- (4) The costs incurred in the issuing and execution of a warrant must be paid by the person refusing to give up possession.
- (5) The amount of the costs may if not paid on demand be enforced by a warrant to seize property.
- (6) On application by the Authority, a magistrate must issue a warrant for the purposes of subsection (5).

S. 117(7)
repealed by
No. 87/2009
s. 28.

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118 Residential Tenancies Act 1997 not to apply

Nothing in the **Residential Tenancies Act 1997** applies to or in relation to a lease under this Division.

Division 6—Powers over other land

119 Land purchased by Authority

The Authority may sell, lease, licence or otherwise deal with any land purchased by the Authority under section 54.

120 Authority may enter into agreements for land

- (1) The Authority alone or jointly with any other person may enter into an agreement with another person (the *purchaser*) concerning the use or development of land purchased by the Authority under section 54—
 - (a) on disposing of the whole of its interest in the land to the purchaser; or
 - (b) in anticipation of disposing of the whole of its interest in the land to the purchaser.
- (2) Division 2 of Part 9 of the **Planning and Environment Act 1987** applies to an agreement under subsection (1) as if—
 - (a) that agreement were an agreement under that Division; and
 - (b) that Division referred to the Authority instead of the responsible authority for the planning scheme; and
 - (c) section 174(2)(c) were omitted; and

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- (d) sections 177(2), 178 and 179(1) referred to the Minister administering this Act instead of the Minister.

121 Surplus land

- (1) The Authority, with the approval of the Minister and the Minister administering section 12 of the **Land Act 1958**, may determine that certain Crown land in the Project area is not required for the Project and is surplus land.
- (2) The Authority must publish a copy of a determination under this section in the Government Gazette.
- (3) This section does not apply to—
 - (a) land reserved or deemed to be reserved under the **Crown Land (Reserves) Act 1978**; or
 - (b) leased land; or
 - (c) licensed land; or
 - (d) land for which the Agreement requires a licence to be issued under Division 2 or a lease to be granted under Division 3.

122 Disposition of surplus land

- (1) The Authority, after consultation with the Minister administering section 12 of the **Land Act 1958**, may, on behalf of the Crown, sell, lease or licence surplus land.
 - (2) The proceeds of the sale of land under this section, less any costs incurred by the Authority in selling the land, must be paid into the Consolidated Fund.
 - (3) This section applies despite anything to the contrary in the **Land Act 1958**.
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PART 6—STATUTORY POWERS AND EXEMPTIONS

Division 1—Planning controls

S. 123
amended by
No. 81/2004
s. 50.

123 Authority may be planning authority

The Authority may be authorised as a planning authority under section 9 of the **Planning and Environment Act 1987** in respect of the preparation of an amendment to a planning scheme for any part of the Extended Project area.

124 Authority to be responsible authority

- (1) The Minister administering the **Planning and Environment Act 1987** on the recommendation of the Minister may appoint the Authority as the responsible authority for the administration and enforcement of any planning scheme or any part of a planning scheme.
- (2) If the Authority is appointed under subsection (1), it is deemed for the purposes of the **Planning and Environment Act 1987** to be the responsible authority for the administration and enforcement of the planning scheme or the relevant part of a planning scheme.

S. 125
substituted by
No. 14/2007
s. 16.

125 Authority to be referral authority

- (1) The Authority is deemed to be specified as a referral authority in any planning scheme under the **Planning and Environment Act 1987** in relation to—
 - (a) land in the Extended Project area; and
 - (b) land in any additional referral area declared under subsection (2).
- (2) The Minister may, by Order published in the Government Gazette, declare any area within 200 metres of the boundary of the Extended Project area to be an additional referral area for the purposes of this section.

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- (3) The Minister must not make an Order under subsection (2) unless the Minister has received the appropriate plans which have been—
- (a) signed by the Surveyor-General; and
 - (b) lodged in the Central Plan Office.

126 Application of planning laws

- (1) This section applies to a use or development of land in the Extended Project area that is authorised by or under this Act or the Agreement for the purposes of the Project.
- (2) Nothing in a planning scheme under the **Planning and Environment Act 1987**—
 - (a) requires a permit under that Act for the use or development; or
 - (b) prevents the use or development.
- (3) This section does not apply to the traffic control centre.

127 Planning compensation

- (1) Despite anything to the contrary in Part 5 of the **Planning and Environment Act 1987** or in a planning scheme or amendment under that Act, that Part applies as if—
 - (a) the Project area had been reserved for a public purpose under a planning scheme; and
 - (b) the Authority was liable to pay any compensation under that Part that arises from that deemed reservation and no other planning authority, responsible authority, Minister or public authority was liable to pay compensation in respect of the Project area under that Part.

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- (2) On the revocation of the reservation under this Act of any reserved project land, subsection (1) ceases to apply to that land.

Division 2—Exemption from other statutory approvals

128 Approvals of public bodies not required

- (1) Subject to Part 8, but despite anything to the contrary in any other enactment or law, a permit, licence, consent, approval or other authority is not required from any person or body, other than the Authority (in accordance with the Agreement) or the Environment Protection Authority, for the carrying out of works for the purposes of the Project.
- (2) Nothing in this section derogates from any requirement relating to standards of construction and safety that may apply under any other Act.

Division 3—Application of other Acts

129 Building Act 1993

- (1) The **Building Act 1993** does not apply to or in relation to licensed land or leased land or to anything done on that land.
- (2) Despite subsection (1), the **Building Act 1993** applies to and in relation to the traffic control centre.

130 Building and Construction Industry Security of Payment Act 2002

The **Building and Construction Industry Security of Payment Act 2002** does not apply to the Crown in respect of the Agreement or anything done under the Agreement.

131 Mineral resources and extractive industry

- (1) The **Mineral Resources (Sustainable Development) Act 1990** does not apply to or in relation to licensed land or leased land or to anything done on that land.

S. 131(1)
amended by
No. 63/2006
s. 61(Sch.
item 9).

* * * * *

S. 131(2)
repealed by
No. 6/2009
s. 50.

- (3) Section 204 of the **Land Act 1958** does not apply to a licence issued under section 90(1) or to a lease granted under section 103.
- (4) Section 205 of the **Land Act 1958** does not apply to licensed land or leased land.
- (5) Nothing in this section affects the ownership by the Crown of minerals.
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PART 7—ROAD MANAGEMENT

Division 1—Application

132 Powers under Road Management Act 2004

The powers conferred on the Freeway Corporation under this Part are in addition to any powers conferred on the Freeway Corporation under the **Road Management Act 2004**.

Division 2—Construction powers in relation to roads

133 Powers relating to roads

- (1) The Authority, for the purposes of facilitating the construction of the Project, may—
 - (a) open, discontinue, construct, relocate or realign any road; and
 - (b) close any road to traffic.
- (2) Without limiting subsection (1), the Authority may—
 - (a) carry out improvements to roads in the Extended Project area; and
 - (b) carry roads over or under any road constructed or to be constructed in the Extended Project area; and
 - (c) carry any road constructed or to be constructed in the Extended Project area over or under other roads; and
 - (d) cause fences, posts or other structures to be erected along any road constructed or to be constructed in the Extended Project area or along or across any entrance, approach or means of access to any road constructed or to be constructed in the Extended Project area.

- (3) The Governor in Council, by Order published in the Government Gazette, may provide for any vesting or divesting of lands necessary because of the exercise of any powers under subsection (1) or (2).

134 Authority to comply with Agreement

The Authority must not exercise its powers under section 133 in a manner that is inconsistent with the Agreement.

135 Authority to advise road authority before exercising power

The Authority must advise the relevant road authority before exercising any power under section 133, unless the exercise of that power is provided for in the Agreement.

136 Exercise of powers by road authority

A road authority must not exercise its powers in a manner that is inconsistent with the Agreement or with the exercise by the Authority of its powers under section 133.

137 Effect of decision about road

- (1) A decision under section 133 to open, discontinue, construct, relocate or realign a road has no effect until the Authority causes notice of it to be published in—
- (a) the Government Gazette; and
 - (b) in a newspaper circulating generally throughout the area affected by the decision.
- (2) On the publication under subsection (1) of a decision discontinuing, realigning or relocating a road—
- (a) the land over which the discontinued, realigned or relocated road ran ceases to be a road; and

- (b) all rights, easements and privileges existing or claimed in the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or supposed dedication or by user or operation of law or otherwise, cease; and
 - (c) the land is deemed to be unalienated land of the Crown freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests; and
 - (d) if the decision provides for the land to be reserved for the purposes of the Project, the land is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of the Project.
- (3) The reservation under subsection (2)(d) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.
- (4) This section applies despite anything to the contrary in section 10 of the **Road Management Act 2004** or any other Act.

138 Temporary closure of roads to traffic

For the purposes of facilitating the construction of the Project, the Authority may temporarily close a road to traffic if the Authority considers it necessary to do so so that works on the road or neighbouring land can be carried out.

139 Powers of Freeway Corporation in relation to existing roads

- (1) The Freeway Corporation has all the powers of the Authority under sections 133 and 138 for the purposes of the Project in respect of roads specified in the Agreement.

- (2) The Freeway Corporation, with the agreement of the Authority, may exercise any of the powers of the Authority under sections 133 and 138 for the purposes of the Project in respect of any road not specified in the Agreement.
- (3) If the Freeway Corporation exercises a power under this section, it must do so in a manner that—
 - (a) is not inconsistent with the Agreement; and
 - (b) is consistent with any requirements of the Authority.
- (4) The Freeway Corporation must advise the Authority and the relevant road authority before exercising any power under this section, unless the exercise of that power is provided for in the Agreement.
- (5) A road authority must not exercise its powers in a manner that is inconsistent with the exercise by the Freeway Corporation of its powers under this section.

140 Restriction on powers to close or discontinue roads

Nothing in this Act permits the Authority or the Freeway Corporation to close to traffic or discontinue a road for the purpose of increasing traffic on EastLink.

S. 140
amended by
No. 95/2005
s. 4(4)(b).

141 Compensation for denial of access

- (1) Subject to subsection (2), the Authority is liable to pay compensation in accordance with this section if the effect of a decision made under this Division to discontinue, realign or relocate a road is that existing access to any land is denied.

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- (2) Compensation is not payable under this section for the denial of access if—
- (a) there is adequate existing alternative access to the land; or
 - (b) the Authority provides, or agrees to provide, adequate alternative access to the land; or
 - (c) the Authority has begun compulsory acquisition procedures under the **Land Acquisition and Compensation Act 1986** for the land to which access is denied; or
 - (d) a claim for compensation is not served on the Authority within one year of the making of the decision under this Division.
- (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.
- (6) Section 127 of the **Road Management Act 2004** does not apply in respect of any matter for which compensation is payable under this Division.

142 Freeway Corporation to be responsible for road management for certain roads on licensed land

- (1) The Minister may from time to time declare that the Freeway Corporation is to be the responsible road authority for a road or part of a road on licensed land.
- (2) The Minister must cause a notice of a declaration under subsection (1) to be published in the Government Gazette.
- (3) On the publication of a notice of a declaration under subsection (1), the Freeway Corporation is deemed to be the responsible road authority under the **Road Management Act 2004** for the road or part of a road specified in the declaration.
- (4) The **Road Management Act 2004** (except Division 4 of Part 4 and Schedule 7) applies to a road or part of a road specified in a declaration under subsection (1) as if any reference in that Act to EastLink were a reference to the road or part of a road specified in the declaration.
- (5) The Minister may at any time revoke a declaration under subsection (1).
- (6) The Minister must cause a notice of a revocation of a declaration under subsection (1) to be published in the Government Gazette.
- (7) On the publication of the notice of revocation of a declaration under this section, the Freeway Corporation ceases to be the responsible road authority for the road or part of a road specified in the declaration.

S. 142(4)
amended by
No. 95/2005
s. 4(4)(b).

Division 3—Road declaration powers

143 Declaration of EastLink

S. 143
(Heading)
amended by
No. 95/2005
s. 4(4)(c).

- (1) The Minister may from time to time declare any part of the following land to be a road—
 - (a) any land leased under section 103; or
 - (b) any land that was licensed land but in respect of which the licence has terminated.
- (2) A declaration under subsection (1) must state whether the road or any part of the road is to be treated as—
 - (a) a freeway; or
 - (b) an arterial road.
- (3) The Minister must cause a notice of a declaration under subsection (1) to be published in the Government Gazette.
- (4) On the publication of a notice of a declaration under subsection (1), the road specified in the declaration is deemed to be—
 - (a) declared under section 14 of the **Road Management Act 2004** to be a freeway or an arterial road as specified in the notice; and
 - (b) a road open to and for use by the public for passage with vehicles; and
 - (c) a highway within the meaning of the **Road Safety Act 1986**.
- (5) Nothing in this section makes VicRoads the responsible road authority for EastLink.

S. 143(5)
amended by
No. 95/2005
s. 4(4)(b).

144 Declaration of other roads

- (1) The Minister may from time to time declare to be a road any part of any land that was licensed land but in respect of which the licence has terminated.
- (2) A declaration under subsection (1) must state whether the road or any part of the road is to be treated as—
 - (a) an arterial road; or
 - (b) a non-arterial State road; or
 - (c) a municipal road.
- (3) The Minister must cause a notice of a declaration under subsection (1) to be published in the Government Gazette.
- (4) On the publication of a notice of a declaration under subsection (1), the road specified in the declaration is deemed to be—
 - (a) declared under section 14 of the **Road Management Act 2004** to be an arterial road, a non-arterial State road or a municipal road as specified in the notice; and
 - (b) a road open to and for use by the public for passage with vehicles; and
 - (c) a highway within the meaning of the **Road Safety Act 1986**.

145 Power to revoke declaration

- (1) The Minister, by Order published in the Government Gazette may revoke—
 - (a) a declaration (in whole or in part) under section 143 or 144; or

(b) a declaration (in whole or in part) under the **Road Management Act 2004** of any freeway, arterial road, non-arterial State road or municipal road on licensed land or leased land.

(2) On the publication of an Order under subsection (1), the road (or the relevant part of the road) ceases to be a freeway, arterial road, non-arterial State road or municipal road.

146 VicRoads may not declare roads on licensed land or leased land

(1) Despite anything to the contrary in the **Road Management Act 2004**, VicRoads must not make a declaration or revoke a declaration under section 14 of that Act in respect of any road on licensed land or leased land.

(2) Nothing in this section affects the status of any freeway, arterial road or non-arterial State road existing on land before it became licensed land or leased land.

Pt 7 Div. 4
(Heading)
amended by
No. 95/2005
s. 4(4)(d).

Division 4—Power of Minister to close EastLink to traffic

S. 147
(Heading)
amended by
No. 95/2005
s. 4(4)(c).

147 Power of Minister to close EastLink

Despite anything to the contrary in this Act or the Agreement or the **Road Management Act 2004**, the Minister may close EastLink to traffic if—

(a) conditions exist outside the leased land that cause the Minister to believe that a serious threat to public safety exists; or

S. 147
amended by
No. 95/2005
s. 4(4)(b).

(b) there is an emergency on leased land and the Freeway Corporation has failed to close EastLink to traffic.

S. 147(b)
amended by
No. 95/2005
s. 4(4)(b).

PART 8—INTERFACE WITH UTILITIES

Division 1—Introduction

148 Certain powers of Utilities not affected

Nothing in this Part affects any power of a Utility—

- (a) to respond to and deal with an emergency; or
- (b) to use a vehicle on any road in the Extended Project area.

Division 2—Consent of Authority

149 Division does not apply to leased land or licensed land

This Division does not apply to leased land or licensed land.

150 Utility to obtain consent of Authority

- (1) A Utility must obtain the written consent of the Authority before carrying out works on Utility infrastructure, or for the construction of new Utility infrastructure, in the Extended Project area.
- (2) The Authority must not unreasonably delay or refuse its consent under this section.
- (3) The Authority may grant a consent under this section subject to any reasonable conditions that the Authority may determine.
- (4) This section applies in addition to the requirements of and despite anything to the contrary in any other Act or law.

151 Utility may refer matter to Ministers for determination

A Utility may refer the matter to the Minister and the Utility Minister for determination under Division 8 if—

- (a) the Authority refuses or unreasonably delays giving its consent under section 150; or
- (b) the Utility objects to any condition imposed by the Authority on that consent.

Division 3—Consent of Freeway Corporation

152 Utility to obtain consent of Freeway Corporation

- (1) A Utility must obtain the written consent of the Freeway Corporation before carrying out or causing the carrying out of works on Utility infrastructure, or for the construction of new Utility infrastructure, in, on, over or under licensed land.
- (2) The Freeway Corporation must not unreasonably delay or refuse its consent under this section.
- (3) A consent under this section may be granted on such reasonable conditions as the Freeway Corporation thinks fit.
- (4) This section does not apply to Utility infrastructure if—
 - (a) an approved Utility agreement provides for access by the Utility to licensed land to carry out works in relation to that Utility infrastructure; or
 - (b) the work is being carried out under a determination made under Division 8.
- (5) This section applies in addition to the requirements of and despite anything to the contrary in any other Act or law.

153 Utility may refer matter to Ministers for determination

A Utility may refer the matter to the Minister and the Utility Minister for determination under Division 8 if—

- (a) the Freeway Corporation refuses or unreasonably delays giving its consent under section 152; or
- (b) the Utility objects to any condition imposed by the Freeway Corporation on that consent.

Division 4—Agreements between Freeway Corporation and Utility

154 Agreements in relation to licensed land

The Freeway Corporation may enter into an agreement with a Utility under this Division in relation to Utility infrastructure or any works affecting Utility infrastructure constructed or to be constructed in, on, over or under licensed land.

155 What can a Utility agreement provide for?

- (1) A Utility agreement may only provide for the following matters—
 - (a) the means of minimising disruption to the Utility infrastructure and the services provided by the Utility infrastructure;
 - (b) the respective rights of the Freeway Corporation and the Utility to have access to the Utility infrastructure;
 - (c) the respective rights of the Freeway Corporation and the Utility to carry out works affecting the Utility infrastructure;
 - (d) the relocation and rectification of Utility infrastructure;

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- (e) the standards (including safety, operational and accreditation standards) that are to apply to the relocation or rectification of Utility infrastructure;
 - (f) the costs of any relocation or rectification of the Utility infrastructure and how those costs are to be apportioned between the Freeway Corporation and the Utility;
 - (g) the certification by the Utility of works affecting Utility infrastructure.
- (2) An agreement that provides for any other matter is not a Utility agreement for the purposes of this Division.

156 Requirements for Utility agreements

- (1) A Utility agreement must be in writing.
- (2) A Utility agreement must not be inconsistent with this Act or the Agreement.
- (3) A Utility agreement that does not comply with subsection (2) is of no effect to the extent of the inconsistency.
- (4) If a Utility agreement provides for standards in relation to a matter in accordance with section 155(1)(e), those standards are to apply in relation to that matter despite anything to the contrary in any other Act or law, once the Utility agreement takes effect.

157 Utility agreements must be approved by the Authority

A Utility agreement is of no effect unless it is approved by the Authority.

158 Utility agreement may be amended

- (1) An approved Utility agreement may be amended by agreement between the Freeway Corporation and the Utility.
- (2) An amendment of an approved Utility agreement is of no effect unless it is approved by the Authority.
- (3) In this section, *amended* includes varied, added to, substituted, cancelled or revoked.

Division 5—Notified Utility infrastructure

159 Duty to identify Utility infrastructure

Before commencing Project construction work on licensed land, the Freeway Corporation must take all reasonable steps to identify all Utility infrastructure in, on, over or under that land that may be affected by the Project construction work.

160 Freeway Corporation to give notice

- (1) Before commencing Project construction work on licensed land, the Freeway Corporation must give notice of the proposed Project construction work in accordance with this section.
- (2) The notice must—
 - (a) be published in the Government Gazette; and
 - (b) be given in writing to each Utility that the Freeway Corporation is aware owns or operates Utility infrastructure in the Extended Project area.

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- (3) The notice must require Utilities with Utility infrastructure in the Extended Project area to notify the Freeway Corporation in writing within 30 business days after the publication or giving of the notice (whichever is the later)—
 - (a) setting out the nature and location of the Utility infrastructure; and
 - (b) stating whether or not the Utility believes that the Utility infrastructure will be affected by the Project construction work.
 - (4) The Freeway Corporation is not required to give a notice to a Utility under subsection (2)(b) in relation to particular Utility infrastructure if an approved Utility agreement exists with that Utility in relation to that Utility infrastructure.

161 Duty of Utility to give notice

A Utility must, within the time required in the notice given under section 160, give notice in writing to the Freeway Corporation—

- (a) setting out the nature and location of the Utility infrastructure of the Utility in the Extended Project area; and
- (b) stating whether or not the Utility believes that the Utility infrastructure will be affected by the Project construction work.

162 Copies of notices to be given to Authority

- (1) The Freeway Corporation must give the Authority a copy of each notice given under section 160 as soon as practicable and not more than 7 days after the notice is given.
- (2) The Freeway Corporation must give the Authority a copy of each notice received by the Freeway Corporation under section 161 as soon as practicable and not more than 7 days after receiving that notice.

163 Freeway Corporation to consult and seek agreement

- (1) After complying with section 160 and before commencing any Project construction work on licensed land, the Freeway Corporation must consult with any Utility that the Freeway Corporation is aware owns or operates Utility infrastructure in the Extended Project area that may be affected by the Project construction work.
- (2) In consulting under subsection (1), the Freeway Corporation and the Utility must make all reasonable efforts to reach agreement in accordance with Division 4.
- (3) This section does not apply to Utility infrastructure if the Freeway Corporation has already reached an agreement with the Utility under Division 4 in respect of that Utility infrastructure.

164 Referral to Ministers for determination if no agreement

If an agreement has not been reached with a Utility under Division 4 within 50 business days after the Utility gives notice to the Freeway Corporation under section 161, the Freeway Corporation may refer the matters under negotiation to the Minister and the Utility Minister for determination under Division 8.

165 Power of Minister to direct Utility

- (1) The Minister, after consultation with the Utility Minister, may direct a Utility to carry out works in the Extended Project area.
- (2) The Minister may only give a direction under subsection (1) if it is necessary to implement the matters provided for in an approved Utility agreement or a determination under Division 8.

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- (3) Without limiting subsection (1), a direction under this section may specify a period within which works required under the approved Utility agreement or determination must be performed even if this is a different period from any period provided for in the approved Utility agreement or determination.

166 Direction to Freeway Corporation

- (1) The Freeway Corporation may apply to the Minister for a direction under this section if—
- (a) a Utility has not completed the works required by a direction under section 165 within the period specified in the direction; or
 - (b) the Freeway Corporation believes on reasonable grounds that the works required by a direction under section 165 will not be completed within the period specified in the direction.
- (2) On an application under this section, the Minister, after consultation with the Utility Minister, may direct the Freeway Corporation to carry out or complete the works required by the relevant direction under section 165.
- (3) Without limiting subsection (2), a direction under this section may specify a period within which the works must be performed even if this is a different period from any period provided for in the approved Utility agreement or determination or the relevant direction under section 165.
- (4) If the Freeway Corporation complies under a direction under this section with a requirement imposed on a Utility or any other person, the Utility or other person is not required to comply with that requirement.

167 Requirements for directions

- (1) A direction under section 165 or 166 must be in writing.
- (2) A direction must not cause unreasonable delay or add unreasonable cost to the Project.
- (3) Subject to this section, a direction must not be inconsistent with this Act or the Agreement.

168 Direction to prevail over requirement to consent

- (1) A direction under section 165 or 166 prevails over any provision of any other Act or law that requires the Utility to consent to the carrying out of the work that is subject to the direction.
- (2) If a direction provides for compliance with a standard in relation to a matter, that standard applies in relation to that matter despite anything to the contrary in any other Act or law.

Division 6—Unnotified Utility infrastructure

169 Duties of Freeway Corporation

If the Freeway Corporation discovers unnotified Utility infrastructure in the course of carrying out Project construction work, the Freeway Corporation must—

- (a) take all reasonable steps to identify the Utility that owns or operates that Utility infrastructure; and
- (b) give notice of the Utility infrastructure to—
 - (i) the Authority; and
 - (ii) the relevant Utility Minister.

170 Freeway Corporation to give notice

- (1) If the Freeway Corporation has identified the Utility that owns or operates unnotified Utility infrastructure, the Freeway Corporation must give the Utility notice of the Project construction work in accordance with this section.
- (2) The notice must—
 - (a) be in writing; and
 - (b) request the Utility to advise the Freeway Corporation within 24 hours as to whether the Utility infrastructure is still operational or, if it is not operational, whether it is redundant; and
 - (c) request the Utility within 24 hours—
 - (i) to agree to authorise the Freeway Corporation to remove the Utility infrastructure, if it is redundant; or
 - (ii) to agree to the relocation of the Utility infrastructure; or
 - (iii) to request the Freeway Corporation to preserve the Utility infrastructure and agree to pay any costs incurred by the Freeway Corporation as a result of any delay caused by preserving that infrastructure.

171 Utility agreement may be entered into

The Freeway Corporation and the Utility may enter into an agreement under Division 4 with respect to any matter referred to in section 170(2)(c).

172 Notice to Minister if Utility cannot be found or fails to respond

The Freeway Corporation may notify the Minister and the Authority if—

- (a) a Utility fails to comply with a request under section 170 within 24 hours after being given a notice under that section; or
- (b) the Freeway Corporation is unable to identify the Utility that owns or operates unnotified Utility infrastructure within 24 hours after the discovery of the infrastructure.

173 Minister may direct Utility to carry out works

- (1) The Minister, after consultation with the Utility Minister, may direct a Utility that is given notice under section 170 to carry out works in the Extended Project area.
- (2) The Minister must give a direction under subsection (1) if it is necessary to give effect to the Agreement.
- (3) This section does not apply to the carrying out of works if an approved Utility agreement exists in respect of those works.
- (4) A direction under this section may specify—
 - (a) the manner in which and the standard to which the direction must be complied with; and
 - (b) the period (being not less than 28 days) within which the direction must be complied with.

- (5) If a direction under this section provides for compliance with a standard in relation to a matter that standard is to apply in relation to that matter despite anything to the contrary in any other Act or law.

174 Direction to Freeway Corporation after notice to Minister

- (1) The Minister, after consultation with the Utility Minister, may give a direction under this section if—
- (a) the Freeway Corporation has given the Minister notice under section 172; and
 - (b) the Minister considers that a delay in relocating or reinstating the Utility infrastructure—
 - (i) would be contrary to the public interest; or
 - (ii) would, in all the circumstances, be unreasonable.
- (2) A direction under subsection (1)—
- (a) may direct the Freeway Corporation to relocate, rectify or otherwise deal with the Utility infrastructure; and
 - (b) may direct the Freeway Corporation to comply with specified standards (including safety, operational and accreditation standards) that are to apply to the relocation or rectification of the Utility infrastructure; and

- (c) may direct the Freeway Corporation to comply with any safety or technical requirements imposed by law in respect of the carrying out of the required works (including any requirements imposed on the Utility or any other person specified in the direction in respect of those works) that are not inconsistent with the Agreement; and
 - (d) must direct the Freeway Corporation to take reasonable care and take all reasonable steps to minimise damage to the Utility infrastructure and disruption to the infrastructure services.
- (3) If a direction directs the Freeway Corporation, under subsection (2)(b), to comply with specified standards in relation to a matter, those standards are to apply in relation to that matter despite anything to the contrary in any other Act or law.

175 Direction to Freeway Corporation after application to Minister

- (1) The Freeway Corporation may apply to the Minister for a direction under this section if—
- (a) a Utility has not completed the works required by a direction under section 173 within the period specified in the direction; or
 - (b) the Freeway Corporation believes on reasonable grounds that the works required by a direction under section 173 will not be completed within the period specified in the direction.
- (2) On an application under this section, the Minister, after consultation with the Utility Minister, may direct the Freeway Corporation to carry out or complete the works required by the relevant direction under section 173.

- (3) Without limiting subsection (2), a direction under this section may specify a period within which the works must be performed even if this is a different period from any period provided for in the relevant direction under section 173.
- (4) If the Freeway Corporation complies under a direction under this section with a requirement imposed on a Utility or any other person, the Utility or other person is not required to comply with that requirement.

176 Requirements for directions

- (1) A direction under section 173, 174 or 175 must be in writing.
- (2) The Minister must ensure that a direction under section 173, 174 or 175 does not cause unreasonable delay or add unreasonable cost to the Project.
- (3) Subject to this section, a direction under section 173, 174 or 175 must not be inconsistent with this Act or the Agreement.

177 Direction to prevail over requirement to consent

A direction under section 174 or 175 prevails over any provision of any other Act that requires the Utility to consent to the carrying out of the work that is subject to the direction.

Division 7—Liability for costs

178 Freeway Corporation to be liable for certain relocation and rectification costs

Subject to this Division, the Freeway Corporation is liable to pay the fair and reasonable costs of relocating or rectifying any Utility infrastructure that is affected by the Project construction work.

179 Standard to apply to relocation or rectification

- (1) For the purposes of section 178, the standard applied to the relocation or rectification must result in the Utility infrastructure having the same or a similar technical capability and having at least the same remaining life as it had before it was affected.
- (2) If new Utility infrastructure is required to meet the standard referred to in subsection (1), the Freeway Corporation is liable for the cost of that new infrastructure.

180 Liability for costs of disruption of infrastructure services

- (1) The Freeway Corporation is liable for the costs incurred by a Utility as a direct result of any disruption of the infrastructure services provided by the Utility caused by the carrying out of Project construction work.
- (2) For the purposes of subsection (1), the costs may include any of the following—
 - (a) an amount imposed on the Utility under a contract for failing to provide the infrastructure service;
 - (b) liquidated damages for breach of a contract with a third party;
 - (c) loss of revenue.
- (3) Except as provided in subsection (2)(b), the Freeway Corporation is not liable under subsection (1) for loss or damage arising from breach of contract with a third party.
- (4) The Freeway Corporation is liable for costs under this section on the basis that the Utility makes all reasonable efforts to mitigate its loss.

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- (5) If the Utility does not make all reasonable efforts to mitigate its loss, the Freeway Corporation is only liable for the costs that would have been incurred if the Utility had made all reasonable efforts to mitigate its loss.

181 Utility liable for differential if it requests upgrade

If a Utility requests that a higher standard than the standard required by section 179 should apply to the relocation or rectification of Utility infrastructure, the Utility is liable to pay the difference in cost between the lower and higher standard.

182 Utility liable for delay costs

- (1) If the failure of a Utility to notify the Freeway Corporation of Utility infrastructure caused the Freeway Corporation to incur costs as a result of a delay in carrying out Project construction work, the Utility is liable to pay those costs to the Freeway Corporation.
- (2) A Utility is liable for costs under this section on the basis that the Freeway Corporation makes all reasonable efforts to mitigate its loss.
- (3) If the Freeway Corporation does not make all reasonable efforts to mitigate its loss, the Utility is only liable for the costs that would have been incurred if the Freeway Corporation had made all reasonable efforts to mitigate its loss.

183 Limitation of liability

Except as provided in this Part, the Freeway Corporation is not liable to pay damages or other compensation to the Utility or any other person as a result of any effect of the Project on—

- (a) the Utility infrastructure of the Utility; or
- (b) the provision of infrastructure services by the Utility using Utility infrastructure.

184 Dispute as to cost of relocation or rectification

- (1) If a dispute arises between the Freeway Corporation and a Utility as to the cost of relocation or rectification of Utility infrastructure, the Freeway Corporation or the Utility may refer the matter to the Minister and the Utility Minister for determination under Division 8.
- (2) The person referring the matter for determination must notify the Authority of that referral.

185 Certification of work

- (1) On completion by the Freeway Corporation of any work of relocation or rectification of Utility infrastructure under Division 6, the Utility must assess the work and—
 - (a) if it is satisfied that the work is satisfactory and complete, certify that fact to the Freeway Corporation; or
 - (b) if it is not satisfied that the work is satisfactory or complete, notify the Freeway Corporation that more work is required.
- (2) The notice under subsection (1)(b) must specify as clearly as possible the work that is required.
- (3) If the Utility does not give a certificate or notice under subsection (1) within 14 days after the Freeway Corporation notifies it of the completion of the work, the Utility is deemed to be satisfied with the work.
- (4) If the Utility gives a notice under subsection (1)(b), the Freeway Corporation must complete the further work required in the notice within the period of 30 days after receipt of the notice or any longer period specified in the notice.
- (5) This section does not apply if the Freeway Corporation is unable to identify the Utility that owns or operates the Utility infrastructure.

186 Referral of matters by Utilities to Ministers for determination

The Utility may refer the matter to the Minister and the Utility Minister for determination under Division 8 if the Freeway Corporation does not complete the further work to the Utility's satisfaction within the specified time under section 185.

187 Referral of matters by Freeway Corporation to Ministers for determination

The Freeway Corporation may refer the matter to the Minister and the Utility Minister for determination under Division 8 if the Utility refuses to certify the work on the completion of the further work under section 185 or unreasonably delays giving that certification.

188 Freeway Corporation no longer liable if work satisfactory

The Freeway Corporation ceases to be liable to carry out any further work in respect of a specific work of relocation or rectification if—

- (a) a certificate is given under section 185 in respect of the work; or
- (b) the work is deemed under that section to be satisfactory; or
- (c) the work is determined under Division 8 to be satisfactory.

Division 8—Dispute resolution

189 Who can determine matters referred to the Ministers?

On the referral of a matter to them under this Part, the Minister and the Utility Minister must—

- (a) determine the matter; or
- (b) appoint a person to determine the matter.

190 What must be considered in determining a matter?

In determining a matter, the decision-maker—

- (a) must have regard to—
 - (i) any submission (whether written or oral) of the Freeway Corporation or the Utility; and
 - (ii) in the case of a matter referred under section 164, the public interest in minimising the disruption of the services provided by the Utility; and
- (b) may have regard to any other information or material that the decision-maker thinks fit.

191 Requirements for determinations

- (1) A determination under this Division must be in writing.
- (2) The decision-maker must ensure that the determination does not cause unreasonable delay or add unreasonable cost to the Project.
- (3) Subject to this section, a determination must not be inconsistent with this Act or the Agreement.

192 Determination to prevail over inconsistent laws

If there is any inconsistency between a determination under this Division and any other Act or law, the determination prevails to the extent of the inconsistency.

Division 9—No review of determination or direction

193 No appeal or review

- (1) In this section *decision* means—
- (a) an approval under section 157; or
 - (b) a direction made or purporting to be made under section 165, 166, 173, 174 or 175; or
 - (c) a determination made or purporting to be made under Division 8.
- (2) Subject to subsection (5), a decision is final and binding on the Freeway Corporation and the Utility.
- (3) Subject to subsection (5), no appeal may be made to a court in respect of the decision.
- (4) Subject to subsection (5), no proceedings—
- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or injunction; or
 - (b) seeking any order under the **Administrative Law Act 1978**—
- (whether on the ground of absence of jurisdiction or any other ground) may be brought against any decision-maker in respect of a decision or any proceedings relating to that decision or any other act, matter or thing incidental to the making of that decision.
- (5) Nothing in this section prevents the Freeway Corporation from challenging the validity of a decision if the Freeway Corporation believes that compliance with the decision would place it in breach of the Agreement.
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PART 9—TOLLS

Division 1—Right to toll

194 Freeway Corporation may fix, charge and collect tolls and toll administration fees

The Freeway Corporation may fix, charge and collect tolls for the use of a vehicle in a toll zone and toll administration fees but may do so only in accordance with this Act and the Agreement.

195 Fixing of tolls and toll administration fees

(1) The Freeway Corporation in accordance with this Act and the Agreement by notice published in the Government Gazette—

(a) may specify toll zones on EastLink; and

(b) may fix tolls that are payable in respect of the use of vehicles in toll zones; and

(c) may fix toll administration fees that are payable to the Freeway Corporation and specify the circumstances in which they are payable.

(2) A notice under subsection (1) may specify different tolls in respect of different cases or classes of case including different zones or groups of zones, different classes of vehicle and the use of different vehicles at different times, or any combination of these.

S. 195(1)(a)
amended by
No. 95/2005
s. 4(4)(b).

- (2A) In addition to any other fees fixed under subsection (1)(c), a notice under subsection (1) may, without specifying an amount, permit the Freeway Corporation to recover, as toll administration fees in respect of a vehicle, any fees from time to time charged by VicRoads to the Freeway Corporation under the **Road Safety Act 1986** for the provision of information about the ownership of the vehicle.
- (3) A notice under subsection (1) takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the notice, on that day.
- (4) A day fixed under subsection (3) in relation to EastLink or part of EastLink must be on or after the day fixed under section 196 for the commencement of tolling on EastLink or that part of EastLink.
- (5) In any proceedings under this Part, the production of a Government Gazette purporting to contain a notice under subsection (1) is evidence of the valid publication of the notice and of the fixing of the toll or toll administration fee in accordance with this Act and the Agreement.

S. 195(2A)
inserted by
No. 14/2005
s. 19.

S. 195(4)
amended by
No. 95/2005
s. 4(4)(b).

196 Commencement of tolling

- (1) The Governor in Council, by Order published in the Government Gazette, may fix a day for the commencement of tolling on EastLink or part of EastLink.
- (2) A day fixed under subsection (1) must be determined in accordance with this Act and the Agreement.

S. 196(1)
amended by
No. 95/2005
s. 4(4)(b).

Division 2—Charge and collection of tolls

197AA Authorisation of authorised persons

S. 197AA
inserted by
No. 74/2007
s. 40.

The Freeway Corporation may, in writing, authorise a person to carry out functions under this Part.

197 Liability to pay toll charged

S. 197(1)(b)
amended by
No. 14/2005
s. 20.

- (1) Subject to this Part, a person who is the driver of a vehicle used in a toll zone is liable to pay to the Freeway Corporation—
 - (a) the toll charged by the Freeway Corporation for that use; and
 - (b) the relevant toll administration fees charged by the Freeway Corporation.

S. 197(2)
amended by
Nos 14/2005
s. 20, 74/2007
s. 41.

- (2) Subject to section 199, the person who was the operator of a vehicle at the time it was driven in a toll zone is liable for the payment of the toll and toll administration fees as if that person were the driver of the vehicle at the time the vehicle was driven in the toll zone.

S. 197(3)
amended by
No. 74/2007
s. 41.

- (3) Subsection (2) does not affect the liability of the driver of a vehicle to pay a toll or toll administration fee, but if the toll or toll administration fee is paid to the Freeway Corporation, no further action may be taken by the Freeway Corporation to recover that toll or toll administration fee from the driver, operator or any other person.

198 Exemptions from toll and toll administration fees

S. 198
(Heading)
amended by
No. 14/2005
s. 21(1).

(1) A toll and toll administration fees are not payable under section 197 in respect of a vehicle that is the subject of a tollway billing arrangement.

S. 198(1)
amended by
Nos 14/2005
s. 21(2),
74/2007
s. 42(1).

(2) A toll and toll administration fees are not payable under section 197 in respect of a vehicle that under the regulations is exempt from the payment of tolls.

S. 198(2)
amended by
No. 14/2005
s. 21(2).

(3) Nothing in this section prevents any charge being made under a freeway use agreement.

(4) Nothing in this section prevents a tollway billing arrangement from being entered into within the allowable agreement period after the use of the vehicle in a toll zone.

S. 198(4)
inserted by
No. 14/2005
s. 21(3),
amended by
Nos 95/2005
s. 4(5),
74/2007
s. 42(1).

(5) In this section *allowable agreement period* means 3 days, beginning on the day after the day on which the vehicle was used in a toll zone, or if a longer period is prescribed, that longer period.

S. 198(5)
inserted by
No. 14/2005
s. 21(3),
amended by
No. 74/2007
s. 42(2).

199 Operator not liable if effective tolling statement made

S. 199
amended by
No. 14/2005
s. 22,
substituted by
No. 74/2007
s. 43.

(1) The operator of a vehicle is not liable under section 197 to pay a toll or toll administration fee for the use of the vehicle in a toll zone if, within the period of 14 days after the request for payment of the toll or toll administration fee, the operator gives to an authorised person—

- (a) an illegal user statement; or
- (b) a known user statement; or
- (c) a sold vehicle statement—

and the authorised person accepts the statement as an effective statement for the purposes of this Part.

- (2) Information contained in a known user statement or a sold vehicle statement identifying a person is sufficient for the purposes of this Part if it contains—
 - (a) in the case of an individual, the individual's full name and current home address and either the individual's date of birth or the number of the licence or permit authorising the individual to drive and, if that licence or permit is issued by a corresponding body, the name of that body; and
 - (b) in the case of a person other than an individual, its full name and current address and (where applicable) its Australian Business Number or Australian Company Number; and
 - (c) reasons for nominating the individual under paragraph (a) or the person under paragraph (b);
 - (d) in any case, any other prescribed information.
- (3) A statement containing all the information required by subsection (2) may be accepted by an authorised person as an effective statement for the purposes of this Part.

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- (4) In addition, an authorised person may decide to accept a known user statement or a sold vehicle statement as an effective statement for the purposes of this Part even if it does not contain all the information required by subsection (2) if the authorised person is satisfied that it contains sufficient information to identify and locate the nominated person.
- (5) An authorised person may decide to accept an illegal user statement as an effective statement for the purposes of this Part if satisfied as to the matters, and any reasons set out in support of those matters, stated in the statement.
- (6) In any proceedings for the recovery of a toll or toll administration fee, an effective statement that is a known user statement or a sold vehicle statement is evidence that the person named in the statement was driving the vehicle at all the relevant times relating to the matter specified in the statement, if the proceedings are—
- (a) against the person named in the statement; and
 - (b) in respect of the matter named in the statement.

199A Cancellation of acceptance of statement

- (1) An authorised person may cancel the acceptance of a known user statement or sold vehicle statement as an effective statement for the purposes of this Part if—
- (a) the person nominated in the statement as being the responsible person gives to an authorised person within the prescribed period a nomination rejection statement; and

S. 199A
inserted by
No. 74/2007
s. 43.

s. 199B

- (b) the authorised person is satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect.
- (2) If the acceptance of a statement as an effective statement is cancelled under subsection (1), on that cancellation—
 - (a) the statement ceases to be effective for the purposes of this Part and cannot be used by an authorised person to make a tolling nomination statement; and
 - (b) the operator who would, but for the statement, have continued to be the responsible person in relation to the vehicle becomes again the responsible person.

S. 199B
inserted by
No. 74/2007
s. 43.

199B Offence to provide false or misleading information

A person must not in a statement given to the authorised person under section 199(1) or 199A(1) provide information that the person knows to be false or misleading.

Penalty: 60 penalty units.

200 Charge of toll

- (1) The Freeway Corporation may make a request for payment of a toll for the use of a vehicle in a toll zone and any relevant toll administration fee from—
 - (a) the operator of the vehicle; and
 - (b) the person nominated in a known user statement or a sold vehicle statement that has been accepted by an authorised person as an effective statement.

S. 200(1)
amended by
No. 14/2005
s. 23(1),
substituted by
No. 74/2007
s. 44(1).

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- (2) A request for payment under subsection (1) must—
- (a) be in writing; and
- (b) must identify separately each trip for which a toll and toll administration fees are payable.
- * * * * *
- * * * * *
- (5) A request for payment must not be made of a person under this section in relation to the use of a vehicle in a toll zone before the end of the allowable agreement period after that use.
- (6) In this section *allowable agreement period* means 3 days, beginning on the day after the day on which the vehicle was used in a toll zone, or if a longer period is prescribed for the purposes of section 198, that longer period.
- S. 200(2) amended by Nos 14/2005 s. 23(2)(a), 74/2007 s. 44(2)(a).
- S. 200(2)(b) amended by Nos 14/2005 s. 23(2)(b), 74/2007 s. 44(2)(b).
- S. 200(2)(c) amended by No. 14/2005 s. 23(2)(c), repealed by No. 74/2007 s. 44(2)(c).
- S. 200(3)(4) inserted by No. 14/2005 s. 23(3), repealed by No. 74/2007 s. 44(3).
- S. 200(5) inserted by No. 14/2005 s. 23(3), amended by No. 74/2007 s. 44(4).
- S. 200(6) inserted by No. 14/2005 s. 23(3), amended by No. 74/2007 s. 44(5).

S. 201
amended by
No. 74/2007
s. 45(a).

201 Payment of toll

If an amount is paid to the Freeway Corporation on a request for payment made of a person under section 200—

S. 201(a)
amended by
No. 74/2007
s. 45(a).

(a) the Freeway Corporation must apply that amount to the trips identified in the request for payment that are specified by the person making the payment; or

S. 201(b)
amended by
No. 74/2007
s. 45.

(b) if the person does not specify the trips to which the amount is to be applied, the Freeway Corporation must apply that amount first to pay the earliest unpaid request for payment made of that person under that section and then to pay any later unpaid requests for payment made of that person in the order in which the requests for payment were made.

202 Declared freeway use agreements

The Governor in Council may, by Order published in the Government Gazette, declare a class of agreements to be declared freeway use agreements for the purposes of this Part.

203 Prescribed tolling system not surveillance device

(1) A tolling system that is prescribed as a prescribed tolling system for the purposes of this Part is not a surveillance device within the meaning of the **Surveillance Devices Act 1999** when installed, used or maintained for the purpose of collecting information for the purpose of tolling or road management or traffic management.

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- (2) If information is collected by means of a prescribed tolling system for a purpose set out in subsection (1)—
- (a) that information may be provided to the State, a public authority or a Council in compliance with a requirement under any enactment or the Agreement; and
 - (b) that information or access to that information may be provided to any person who is authorised by law or under the Agreement to have access to or to request the provision of that information; and
 - (c) that information may be used for any other purpose if it does not identify and could not lead to the identification of any person.

Division 3—Tolling offences and registration of vehicles

Pt 9 Div. 3
(Heading)
amended by
No. 74/2007
s. 46.

204 Offence to drive unregistered vehicle in toll zone

S. 204
amended by
Nos 14/2005
s. 24, 95/2005
s. 4(4)(b)(c),
substituted by
No. 74/2007
s. 47.

- (1) A person must not drive a vehicle in a toll zone unless the vehicle is registered under this Part in respect of that toll zone by the Freeway Corporation.
- Penalty: 10 penalty units.
- (2) If during the course of a trip a person commits an offence against subsection (1), the person is guilty of only one offence against that subsection, regardless of how many toll zones the person drives in during the course of that trip.
- (3) If a person drives a vehicle in a toll zone and the trip commences before midnight on a particular day and ends on the succeeding day—

- (a) a person is guilty of only one offence under subsection (1) in relation to that trip; and
 - (b) the offence is to be taken to have occurred on the day on which the trip commenced.
- (4) In a proceeding for an offence against subsection (1), it is a defence to the charge for the driver to prove that he or she believed on reasonable grounds, at the time the offence is alleged to have been committed, that the vehicle—
- (a) was registered under this Part in respect of the relevant toll zone by the Freeway Corporation; or
 - (b) was covered by a tollway billing arrangement that was not suspended at the time the offence is alleged to have been committed.
- (4A) A certificate purporting to be given by the tollway operator certifying that, at the time the offence is alleged to have been committed, the tollway billing arrangement was suspended, is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, at that time, the tollway billing arrangement was suspended.
- (5) In a proceeding for an offence against subsection (1), it is a defence to the charge for the driver to prove—
- (a) that he or she received, or was issued, an invoice in respect of the trip that is the subject of the charge; and
 - (b) that the invoice was paid in full (even though it may also have related to trips other than the trip that is the subject of the charge) in any manner, and within the time, permitted by the invoice.

S. 204(4)(b)
amended by
No. 75/2010
s. 3(1).

S. 204(4A)
inserted by
No. 75/2010
s. 3(2).

- (6) In subsection (5), *invoice* means a request for the payment of a toll in respect of a trip and any relevant toll administration fees.
- (7) Despite anything to the contrary in this or any other Act (other than the Charter of Human Rights and Responsibilities)—
- (a) only one criminal proceeding may be commenced in respect of an offence constituted by the driving of any one vehicle in a toll zone on any one day; and
 - (b) only one infringement notice may be issued in respect of an offence constituted by the driving of any one vehicle in a toll zone on any one day—

regardless of how many toll zones the vehicle is driven in during the course of that day and how many trips the vehicle makes during the course of that day and how many different people drive the vehicle during the course of that day.

- (8) For the purposes of subsection (7), a criminal proceeding commenced against, or an infringement notice served on, a person in respect of an offence against subsection (1) is to be disregarded if the charge or infringement notice is withdrawn.
- (9) Subsection (1) does not apply in respect of a vehicle if it is exempted, in accordance with the regulations, from the requirement to be registered under this Part.
- (10) Subsection (1) does not apply in respect of a vehicle that under the regulations is exempt from the payment of tolls.
- (11) Subsection (1) does not apply in respect of a vehicle covered by a tollway billing arrangement that was not suspended at the time the offence is alleged to have been committed.

S. 204(11)
amended by
No. 75/2010
s. 3(3).

- (12) On a person being found guilty of an offence under subsection (1), any debt that arose under section 197 as a result of the person driving in the toll zone on the day of the offence in the vehicle that was the subject of the offence is extinguished.

S. 205
amended by
Nos 95/2005
s. 4(4)(b)(e),
14/2007
s. 15(4),
substituted by
No. 74/2007
s. 47.

205 Registration of vehicles

- (1) The Freeway Corporation must establish and maintain a register of vehicles.
- (2) The Freeway Corporation may register a vehicle—
 - (a) for a specified period; or
 - (b) until the happening of a specified event; or
 - (c) for an unlimited period; or
 - (d) in respect of all toll zones or a specified toll zone or toll zones.
- (3) A person may seek the registration, under this Part, of a vehicle or more than one vehicle by application made to the Freeway Corporation in writing or orally or partly in writing and partly orally.
- (4) The Freeway Corporation may, in accordance with this Part, cancel or suspend the registration of a vehicle.

S. 205A
inserted by
No. 74/2007
s. 47.

205A On-going registration

- (1) Without limiting its discretion otherwise to do so, the Freeway Corporation may refuse to register a vehicle unless the vehicle is the subject of an agreement that is wholly or partly in writing between the Freeway Corporation and the person seeking registration.
- (2) Without limiting the matters about which an agreement referred to in subsection (1) may provide, it may—

- (a) be expressed as having force for a specified period or until the happening of a specified event or for an unlimited period; and
 - (b) contain specified terms including conditions of use and procedures to be followed to settle disputes that arise under the agreement; and
 - (c) specify the circumstances in which, and procedure by which, the agreement, or the registration under this Part of a vehicle that is subject of the agreement, may be cancelled or suspended.
- (3) The agreement by the Freeway Corporation to register a vehicle under this Part is sufficient consideration on the part of the Freeway Corporation for an agreement referred to in subsection (1).

205B Temporary registration

S. 205B
inserted by
No. 74/2007
s. 47.

- (1) The Freeway Corporation may register a vehicle for a specified period of up to 14 days without an agreement of a kind referred to in section 205A(1) being in force in respect of the vehicle.
- (2) Registration in accordance with this section may be granted subject to conditions of use notified to the person seeking the registration either orally or in writing or partly orally and in writing.
- (3) If registration is sought on a particular day for a period of 24 hours, the commencement of the registration may be back-dated to a time not earlier than the beginning of the day that is 3 days before the day on which registration is sought.
- (4) If registration is sought for a specified period (other than a period of 24 hours) and is sought—
 - (a) before the end of that specified period or within the period of 2 days immediately following the end of that specified period; or

(b) not later than 6 days after the beginning of that specified period—

(whichever is the earlier), the commencement of registration may be back-dated to a time not earlier than the beginning of that specified period.

(5) The agreement by the Freeway Corporation to register a vehicle under this Part is sufficient consideration on the part of the Freeway Corporation for an arrangement entered into in accordance with this section.

S. 205C
inserted by
No. 74/2007
s. 47.

205C Information to be given in relation to registration

- (1) If the Freeway Corporation agrees to register a vehicle under this Part, it must give the following information to the person who sought the registration—
- (a) confirmation that the vehicle has been, or will be at a specified time, registered or of the circumstances in which the vehicle becomes registered;
 - (b) the whole or that part of the licence plate number of the vehicle that is stated to the Freeway Corporation by that person;
 - (c) an identifying number, or combination of letters and numbers, for the registration;
 - (d) except in the case of a registration in accordance with section 205B, the conditions of use, if any;
 - (e) except in the case of a registration in accordance with section 205B, information about how the registration may be cancelled or suspended;

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- (f) in the case of registration in accordance with section 205B—
- (i) the period to which registration applies; or
 - (ii) if the period to which the registration applies cannot be determined at the time the information is given, information which enables the person to determine the period to which the registration applies;
- (g) the toll zone or zones in respect of which the vehicle has been or will be registered.
- (2) The information referred to in subsection (1) is required to be given—
- (a) orally or in writing, in the case of information referred to in paragraph (a), (b), (c), (f) or (g) of that subsection; and
 - (b) in writing, in the case of any other information.
- (3) The Freeway Corporation must give any information referred to in subsection (1) that it has not given to the person seeking registration before registering a vehicle to that person—
- (a) as soon as is practicable after registering the vehicle; and
 - (b) in the case of information required to be given in writing, by sending notice containing that information to that person by post to an address nominated by that person within 5 business days after the date the registration is effected.

Penalty: 100 penalty units.

S. 205D
inserted by
No. 74/2007
s. 47.

205D Cancellation or suspension of registration

- (1) If the Freeway Corporation cancels or suspends the registration under this Part of a vehicle, it must do so—
 - (a) by any method stated for that purpose in an agreement relating to the vehicle; or
 - (b) by giving notice of the cancellation or suspension in one of the following ways—
 - (i) by personal service of written notice on the person who sought the registration;
 - (ii) by personal service of written notice at the last address given to the Freeway Corporation by the person who sought the registration on a person who appears to be at least 16 years of age;
 - (iii) by written notice posted to the last address given to the Freeway Corporation by the person who sought the registration;
 - (iv) by written notice posted to the address of the owner of the vehicle to which the registration applies;
 - (v) if the person who sought the registration is a corporation—
 - (A) by personal service of written notice at the registered office of the corporation on a person who appears to be at least 16 years of age; or
 - (B) by written notice posted to the registered office of the corporation.

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- (2) A person is deemed to have been given a notice of cancellation or suspension—
- (a) under subsection (1)(b)(ii) on the next business day after the notice was served; or
 - (b) under subsection (1)(b)(iii), (iv) or (v)(B) on the third business day after the envelope containing the notice was posted; or
 - (c) under subsection (1)(b)(v)(A) on the day the notice was served.

206 Offence to tamper with prescribed tolling devices

A person must not, without just cause, tamper or interfere with a prescribed tolling device or any part of a prescribed tolling device in a manner—

- (a) that causes incorrect information to be recorded or transmitted; or
- (b) that prevents or interferes with the recording or transmission of information—

in respect of the use of a toll zone by a vehicle in which that device is or may be situated.

Penalty: 10 penalty units.

206A Offence to fraudulently induce registration

- (1) A person must not by fraudulent or collusive means, or by false representation, induce the Freeway Corporation to register a vehicle under this Part.

Penalty: 10 penalty units.

- (2) A person who seeks the right to drive a vehicle on a tollway must not make a false representation to the Freeway Corporation in seeking to do so.

Penalty: 10 penalty units.

S. 206A
inserted by
No. 74/2007
s. 48.

Division 4—Tolling enforcement

206B Court to require payment of toll and costs

S. 206B
inserted by
No. 74/2007
s. 49.

- (1) If a charge against a person for an offence against section 204 is found proven, whether or not a conviction is recorded or a penalty imposed for that offence, the court must make an order requiring the person to pay to the Freeway Corporation the prescribed administrative costs, if any.
- (2) An amount required to be paid under an order made under subsection (1) must be taken to be a judgment debt due by the person to the Freeway Corporation and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

207 Freeway Corporation may notify enforcement agency of non-payment of toll

S. 207(2)(a)
amended by
No. 74/2007
s. 50(1)(a).

S. 207(2)(b)
amended by
No. 95/2005
s. 4(4)(b),
substituted by
No. 74/2007
s. 50(1)(b).

- (1) This section applies if the Freeway Corporation or an authorised person believes on reasonable grounds that a person has committed an offence under section 204.
- (2) The Freeway Corporation or authorised person may notify the enforcement agency of that belief and request the enforcement agency—
 - (a) to serve an infringement notice in accordance with this Division on the operator of the vehicle involved in the offence; or
 - (b) to serve an infringement notice in accordance with this Division on the person nominated by an authorised person in a tolling nomination statement; or
 - (c) to commence proceedings in respect of that offence in accordance with this Act.

(3) If a request is made under this section in relation to a person, any right of the Freeway Corporation to bring proceedings to recover the toll and toll administration fees from that person as a debt ceases.

S. 207(3)
amended by
No. 14/2005
s. 25.

(4) Nothing in subsection (3) affects the existence of a debt.

(4A) If the Freeway Corporation or an authorised person believes, on reasonable grounds, that a vehicle that is not registered under this Part has, in respect of a particular toll zone, been driven in that toll zone in contravention of this Part, the Freeway Corporation may notify the enforcement agency to send a notice of the requirement to be registered under this Part in respect of that toll zone to the operator of the vehicle concerned.

S. 207(4A)
inserted by
No. 74/2007
s. 50(2).

(5) Nothing in subsection (2) requires the Freeway Corporation or an authorised person to notify the enforcement agency of an offence under section 204.

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S. 207(6)
repealed by
No. 74/2007
s. 50(3).

207A Disputes in relation to payment of tolls

S. 207A
inserted by
No. 74/2007
s. 51.

(1) If the Freeway Corporation or an authorised person has made a request under section 207(4A), the enforcement agency may send, by post, a notice of the requirement to be registered under this Part in respect of the toll zone to the operator of the vehicle concerned.

(2) If a dispute resolution process set out in an agreement referred to in section 205A(1) or established by Freeway Corporation relating to the registration, or non-registration, at a particular time of a vehicle under this Part is in progress,

proceedings (other than civil proceedings) cannot be commenced under this Part relating to the non-registration of the vehicle at that time.

208 Enforcement officers

- (1) An enforcement agency may appoint any person to be an enforcement officer for the purposes of this Part.
- (2) The appointment must be in writing and must specify the terms and conditions on which the person is appointed.
- (3) A person must not be appointed as an enforcement officer under this section unless the person has completed appropriate training or qualifications as determined by the enforcement agency.

209 Identification of enforcement officers

- (1) An enforcement agency must issue an identity card to each person it appoints as an enforcement officer.
- (2) The identity card issued to a person must—
 - (a) contain a photograph of the person; and
 - (b) state the full name of the person; and
 - (c) state that the person is an enforcement officer for the purposes of this Part.
- (3) An enforcement officer must produce his or her identity card for inspection at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

- (4) In any proceedings under this Act, an identity card purporting to be issued to a person by an enforcement agency under this section is evidence of the appointment of that person as an enforcement officer.

210 Power to serve a notice

(1) An enforcement officer may serve or cause to be served an infringement notice on any person whom he or she has reason to believe has committed an offence under section 204.

(1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 210(1A)
inserted by
No. 32/2006
s. 79(1).

(1B) In addition to and without limiting section 12 of the **Infringements Act 2006**, an infringement notice referred to in subsection (1) may be served by sending the notice by post addressed to—

S. 210(1B)
inserted by
No. 74/2007
s. 52.

(a) the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; or

(b) the person nominated in a tolling nomination statement that has been made by an authorised officer and accepted by an enforcement official as an effective statement under Part 6AA of the **Road Safety Act 1986**.

(2) An enforcement officer may cause to be served together with an infringement notice a notice containing information about the requirements arising under this Act in relation to the use of a vehicle on EastLink.

S. 210(2)
amended by
No. 95/2005
s. 4(4)(b).

(3) An enforcement officer may rely on a certificate under section 222 in forming a belief under subsection (1).

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S. 211
repealed by
No. 32/2006
s. 79(2).

s. 212

212 Infringement penalty

S. 212(1)
amended by
No. 74/2007
s. 53(1).

(1) The infringement penalty for the offence for which an infringement notice is issued is the prescribed amount or, if no amount is prescribed, 1 penalty unit.

S. 212(2)
amended by
No. 74/2007
s. 53(2).

(2) The prescribed amount must not exceed 2 penalty units.

S. 213
amended by
No. 21/2005
s. 59(1)(a),
repealed by
No. 32/2006
s. 79(2).

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S. 214
amended by
No. 14/2005
s. 26,
repealed by
No. 32/2006
s. 79(2).

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S. 215
substituted by
No. 32/2006
s. 80,
amended by
No. 74/2007
s. 54.

215 Additional effect of expiry

In addition to and without limiting Division 5 of Part 2 of the **Infringements Act 2006**, if an infringement notice is not withdrawn and—

- (a) the infringement penalty is paid within the time for payment stated in the notice; or
- (b) payment is accepted in accordance with section 15 of that Act—

any debt that arose under section 204 as a result of the person driving in the toll zone on the day of the offence in the vehicle that was the subject of the offence is extinguished.

216 Application of penalty

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S. 216(1)(2)
repealed by
No. 32/2006
s. 81.

- (3) If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the infringement notice and a conviction is imposed by the 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 that may be taken in respect of the conviction itself, including proceedings by way of appeal.

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S. 216(4)
repealed by
No. 32/2006
s. 81.

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S. 217
repealed by
No. 32/2006
s. 81.

218 Enforcement of infringement penalty

- (1) Payment of the infringement penalty may be enforced in accordance with the **Infringements Act 2006** or Schedule 3 to the **Children, Youth and Families Act 2005**, as the case may be, if—
- (a) the infringement penalty has not been paid within the time stated in the notice or in accordance with section 15 of the **Infringements Act 2006**; and
 - (b) the notice has not been withdrawn; and
 - (c) a charge has not been filed.

S. 218(1)
amended by
No. 21/2005
s. 59(1)(b),
substituted by
No. 32/2006
s. 82(1),
amended by
No. 48/2006
s. 42(Sch.
item 12.1(a)).

s. 219

S. 218(2)
substituted by
No. 32/2006
s. 82(2).

(2) The **Infringements Act 2006** applies as if an infringement notice under this Part were an infringement notice served in respect of a lodgeable infringement offence within the meaning of that Act.

S. 218(3)
inserted by
No. 21/2005
s. 59(2),
amended by
No. 48/2006
s. 42(Sch.
item
12.1(b)(i)).

(3) The **Children, Youth and Families Act 2005** applies as if—

S. 218(3)(a)
amended by
No. 48/2006
s. 42(Sch.
item
12.1(b)(ii)).

(a) an infringement notice under this Division were an infringement notice within the meaning of Schedule 3 to that Act; and

(b) an offence referred to in section 204 were a prescribed offence within the meaning of that Schedule; and

(c) the infringement penalty for the offence were the infringement penalty for the purposes of that Schedule.

S. 219
amended by
Nos 14/2005
s. 27, 21/2005
s. 59(3),
95/2005
s. 4(4)(b)(e),
32/2006
s. 83(1)(2),
48/2006
s. 42(Sch.
item 12.2),
14/2007 s. 8,
substituted by
No. 74/2007
s. 55.

219 Operator onus offence

An offence against section 204(1) is an operator onus offence for the purposes of Part 6AA of the **Road Safety Act 1986**.

219A Extension of time if no actual notice for offence to drive unregistered vehicle in toll zone

S. 219A
inserted by
No. 74/2007
s. 56.

- (1) If an infringement notice for an offence against section 204(1) is not served by delivering it personally to the person to whom it was issued, and that person is not in fact aware that it had been issued, the person may apply to an infringements registrar (within the meaning of the **Infringements Act 2006**) or a registrar (within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005**) of the Children's Court, as the case may be, to have an extension of time of 28 days to deal with the notice in accordance with this Act.
- (2) An application under subsection (1) must—
 - (a) be made within 14 days of the applicant becoming aware of the notice; and
 - (b) be filed with the registrar; and
 - (c) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the extension is sought.
- (3) If an application is made under subsection (1) to an infringements registrar within the meaning of the **Infringements Act 2006**, the registrar must—
 - (a) refer the application to the Magistrates' Court constituted by a magistrate; and
 - (b) cause a notice of the time and place of the hearing of the application to be given or sent to—
 - (i) the person who served the infringement notice on the applicant or caused it to be served; and
 - (ii) the applicant.

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- (4) The Magistrates' Court or a registrar (within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005**) of the Children's Court, as the case may be, may only grant an extension of time if satisfied that the person was not in fact aware, more than 14 days before making an application under subsection (1), that the infringement notice had been issued.
- (5) On the granting of the extension of time—
- (a) the infringement notice continues to have effect, unless withdrawn under section 18 of the **Infringements Act 2006**, despite the doing of any thing or the taking of any step in relation to it under the **Infringements Act 2006** or Schedule 3 to the **Children, Youth and Families Act 2005** before the extension of time was granted, but if an enforcement order had been made in relation to it before the extension of time was granted and the person does not take a relevant action in relation to the notice within the extended period, the notice ceases to have effect at the end of that period; and
 - (b) the period specified in the infringement notice as the period for payment of the infringement penalty does not apply and the extended period becomes the period for which payment of the infringement penalty must be made; and
 - (c) any fine or part of a fine within the meaning of the **Infringements Act 2006** or infringement penalty or part of an infringement penalty and prescribed costs within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005** that has been paid in relation to the infringement notice must be refunded

- (and the Consolidated Fund is, to the necessary extent, appropriated accordingly), if the person takes a relevant action in relation to the notice within the extended period; and
- (d) any of the procedures set out in the **Infringements Act 2006** or Schedule 3 to the **Children, Youth and Families Act 2005** that are being used for the enforcement of the infringement penalty within the meaning of that Act or that Schedule, as the case requires, must be discontinued and any enforcement order made, or warrant issued, under that Act or that Schedule, as the case requires, ceases to have effect if the person takes a relevant action in relation to the notice within the extended period.
- (6) For the purposes of subsection (5) a person who is granted an extension of time as referred to in subsection (1) only takes a relevant action in relation to an infringement notice if the person—
- (a) pays the whole of the penalty shown on the infringement notice; or
- (b) gives a statement under section 84BE of the **Road Safety Act 1986** to an enforcement official within the meaning of Part 6AA of that Act; or
- (c) elects to have the matter heard and determined in the Magistrates' Court under Part 2 of the **Infringements Act 2006**, or if the person is a child, elects to have the matter heard and determined in the Children's Court; or

S. 219A(6)(c)
amended by
No. 87/2009
s. 59.

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- (d) is offered a payment plan in accordance with the **Infringements Act 2006** and the enforcement agency under that Act or the Secretary (as the case may be) received the first payment under that plan from the person; or
- (e) in the case of a person who applies under section 22 of the **Infringements Act 2006** for an internal review, is notified of a decision in accordance with section 25(1)(b), (c) or (d) of that Act or section 25(2) of that Act.
- (7) If the Magistrates' Court or a registrar (within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005**) of the Children's Court, as the case may be, grants an extension of time as referred to in subsection (1), an infringement notice may be withdrawn under section 18 of the **Infringements Act 2006** even though the infringement penalty has been lodged with an infringements registrar under Part 4 of the **Infringements Act 2006** or registered under Schedule 3 to the **Children, Youth and Families Act 2005**, as the case requires.
- (8) Despite anything to the contrary in this section or the **Infringements Act 2006**, the 28 day extension period under this section is suspended and no step may be taken in the enforcement of an infringement notice to which this section applies if a person has—
- (a) applied for an internal review under section 22 of that Act which has not been determined, until the application is determined and the applicant notified of the outcome; or

- (b) applied for a payment plan under section 46 of that Act, until—
- (i) the person is notified that his or her application for a payment plan has been refused; or
 - (ii) in the case of a payment plan that has been offered, the payment plan is cancelled under section 48(2) of that Act; or
 - (iii) in the case of a payment plan that has commenced—
 - (A) the payment plan is cancelled under section 49(2)(b) of that Act; or
 - (B) the infringement penalty in respect of that infringement notice is removed from the payment plan under section 49(2)(a) of that Act; or
 - (C) the person receives written notice under section 52(2) of that Act advising the person that he or she is in default.

Division 5—Evidentiary provisions

220 Proof that vehicle driven on EastLink in a toll zone

Without prejudice to any other method of proving the relevant fact, if the fact that a vehicle was driven on EastLink in a toll zone is relevant in proceedings for an offence under section 204 or for the recovery of a debt, evidence of that fact as indicated or determined by—

S. 220
(Heading)
amended by
Nos 95/2005
s. 4(4)(c),
74/2007
s. 57(1).
S. 220
amended by
Nos 95/2005
s. 4(4)(b),
74/2007
s. 57(2).

- (a) a prescribed tolling device that was used in the prescribed manner; or
- (b) an image or message produced by a prescribed process—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of that fact.

221 Evidence of certificate or document from VicRoads

S. 221(1)
amended by
No. 70/2013
s. 4(Sch. 2
item 14.3).

- (1) A certificate in the prescribed form purporting to be issued by VicRoads or the Department of Transport, Planning and Local Infrastructure or an authorised person certifying that on a particular date a vehicle was registered under the **Road Safety Act 1986** in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, on that date, the person was the owner of the vehicle.

S. 221(2)
amended by
No. 74/2007
s. 58(1).

- (2) A certificate or document that purports to have been issued under an Act of the Commonwealth or another State or a Territory corresponding to the **Road Safety Act 1986** certifying that on a particular date a vehicle was registered under that Act in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, on that date, the person was the operator of the vehicle.

S. 221(3)
amended by
No. 70/2013
s. 3(Sch. 2
item 14.3).

- (3) A certificate containing the prescribed particulars purporting to be issued by VicRoads or the Department of Transport, Planning and Local Infrastructure or an authorised person certifying that on a particular date—
 - (a) a particular registration number was assigned to a particular vehicle; or

(b) a particular person was entitled, or last entitled, to use or possess a number plate bearing a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that vehicle or that person was entitled, or last entitled, to use or possess that number plate, as the case requires.

(4) A certificate or document that purports to have been issued under any corresponding law certifying that on a particular date—

S. 221(4)
amended by
No. 74/2007
s. 58(2)(a).

(a) a particular registration number was assigned under the corresponding law to a particular vehicle; or

S. 221(4)(a)
amended by
No. 74/2007
s. 58(2)(b).

(b) a particular person was entitled, or last entitled, under the corresponding law to use or possess a number plate bearing a particular registration number—

S. 221(4)(b)
amended by
No. 74/2007
s. 58(2)(b).

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that vehicle or that person was entitled, or last entitled, to use or possess that number plate, as the case requires.

(5) In this section, *authorised person* means a person who is authorised or who is the holder of a position authorised for the purposes of this section by VicRoads.

221A General evidentiary provision

S. 221A
inserted by
No. 74/2007
s. 59.

A certificate in the prescribed form purporting to be issued by the enforcement agency certifying as to any matter related to a toll which appears in or can be calculated from the records kept by the enforcement agency is admissible in evidence in

any proceedings and, in the absence of evidence to the contrary, is proof of that matter.

222 Evidence of certificate issued by Freeway Corporation

A certificate in the prescribed form purporting to be issued by the Freeway Corporation, or a person authorised by the Freeway Corporation, certifying—

S. 222(aa)
inserted by
No. 74/2007
s. 60.

(aa) that a specified vehicle was, or was not, registered under this Part in respect of a specified toll zone at a specified time; or

S. 222(ab)
inserted by
No. 74/2007
s. 60.

(ab) that the Freeway Corporation was, or was not, a party to an agreement relating to the use of a specified vehicle in a toll zone at a specified time; or

(a) that a specified person was, or was not, a party to a freeway use agreement; or

(b) that a freeway use agreement—

(i) existed, or did not exist, at a specified time; or

(ii) contained, or did not contain, specified terms; or

(iii) applied or did not apply to a specified vehicle; or

S. 222(c)
substituted by
No. 14/2005
s. 28(a).

(c) that the Freeway Corporation has served a demand on a specified person under section 200(1) or 200(3) for payment of a toll or toll administration fees and payment has not been made within the period of 14 days after service of the demand; or

(d) that a prescribed tolling device was used in the prescribed manner; or

(e) that an image or message was produced by a prescribed process; or

- (f) as to any matter related to a toll or toll administration fees that appears in or can be calculated from the records kept by the Freeway Corporation; or
- (g) as to any other matter that appears in, or that can be determined or calculated from, the records kept by the Freeway Corporation—
- is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

S. 222(f)
amended by
No. 14/2005
s. 28(b).

Division 6—Disclosure and keeping of records

223 VicRoads may disclose certain information to Freeway Corporation

- (1) VicRoads or a relevant person within the meaning of section 90I of the **Road Safety Act 1986** may disclose information about the registration under that Act of any vehicle—
- (a) to the Freeway Corporation for the purposes of section 200; or
- (b) to the enforcement agency; or
- (c) to a person who is employed by, or who is engaged to provide services for, the Freeway Corporation, VicRoads or the enforcement agency.
- (2) Sections 90N and 90Q(2) and (3) of the **Road Safety Act 1986** apply to a disclosure under this section as if it were a disclosure under Part 7B of that Act.

S. 223(1)
amended by
No. 55/2013
s. 14(1).

S. 223(2)
substituted by
No. 55/2013
s. 14(2).

224 Freeway Corporation to keep proper records

The Freeway Corporation must maintain proper records for the purposes of this Act about—

- (a) the payment or non-payment of tolls and toll administration fees; and
- (b) freeway use agreements.

Penalty: 120 penalty units.

225 Destruction of records

- (1) The Freeway Corporation must cause any records it holds in relation to the non-payment of a toll or toll administration fee to be destroyed within 2 years after the creation of the records or within any shorter or longer period prescribed by the regulations.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply to records that do not identify any person or vehicle.
-

PART 10—ADMINISTRATION AND ENFORCEMENT

**Division 1—Use of statutory powers and functions for
Project**

226 Governor in Council may require bodies to act

- (1) The Governor in Council, by Order published in the Government Gazette, may require a Department Head, a public authority or a Council—
 - (a) to carry out their functions in relation to the Project area or anything done or to be done in the Project area; and
 - (b) to carry out those functions within a period specified in the Order.
- (2) If a function relates to the giving of statutory approval, a requirement under subsection (1) cannot fix a shorter time or time limit to that prescribed by or under an Act.
- (3) The Department Head, public authority or Council must comply with a requirement under subsection (1).
- (4) A requirement under subsection (1) applies despite anything to the contrary in any other Act or law.

227 Minister may direct certain bodies to act

- (1) The Minister, after consultation with the relevant Minister, may direct VicRoads or a Council to exercise their powers in relation to roads in a manner that enhances the integration of EastLink into the Victorian road network, as specified in the direction.

S. 227(1)
amended by
No. 95/2005
s. 4(4)(b).

- (2) A direction under this section must be in writing.
- (3) A body to which a direction is given under this section must comply with that direction.
- (4) A direction under this section applies despite anything to the contrary in any other Act or law.
- (5) In this section—

relevant Minister means the relevant road Minister within the meaning of the **Road Management Act 2004**.

228 Powers of certain bodies extended

A Minister, Department Head, public authority or Council is deemed to have such powers as are necessary to enable the Minister, Department Head, public authority or Council—

- (a) to comply with any direction under or requirement of this Act or the regulations; and
- (b) to do any other thing that is necessary or convenient to be done for the purposes of the Project.

Division 2—Limitations on powers of Councils

229 Limitation on Council powers—generally

- (1) A Council must not exercise its powers under the following provisions of the **Local Government Act 1989** in relation to leased land or licensed land—
 - (a) sections 204, 207A, 207B, 207C, 207D and 207E; and
 - (b) Schedule 10; and
 - (c) Schedule 11.

- (2) A Council must not exercise any of its powers under Division 2 of Part 9 of the **Local Government Act 1989** inconsistently with the functions and powers of the Freeway Corporation under the **Road Management Act 2004** or the regulations under that Act or under the Agreement or under a licence or lease issued or granted under section 90(1) or 103 of this Act.
- (3) Section 165 of the **Water Act 1989** applies in relation to the Project area as if—
- (a) any reference in those sections to a council were a reference to the Freeway Corporation; and
 - (b) any reference in those sections to a municipal district were a reference to the Project area.

S. 229(3)
amended by
No. 85/2006
s. 173(Sch. 1
item 6).

230 Limitation on powers to make local laws

- (1) A Council must not make a local law under the **Local Government Act 1989** for or with respect to—
- (a) the Project area or the Extended Project area; or
 - (b) the carrying out of works for the purposes of the Project (including the timing of works for and standards of construction of those works); or
 - (c) restricting the use of any road for access to or egress from licensed land or a temporary construction site for the carrying out of works for the purposes of the Project; or
 - (d) requiring the retention of trees or vegetation or earthworks in relation to the Project.

S. 230(3)
amended by
No. 14/2005
s. 29.

-
- (2) Without limiting sections 111(2), 111(3) and 111(4) of the **Local Government Act 1989**, a local law, whether made before or after the commencement of this section, is inoperative to the extent that it makes provision for or with respect to or affecting any matter or thing referred to in subsection (1).
- (3) Without limiting subsection (2), a local law is inoperative to the extent that it is inconsistent with the exercise by the Freeway Corporation of its powers or functions under this Act or any other Act or under the Agreement or a Project Document or under a licence or a lease issued or granted under this Act.
- (4) Without limiting subsection (2), a local law is inoperative to the extent that it has the effect of, or is exercised in a manner directed at, preventing, hindering or disrupting the Freeway Corporation or the holder of a licence or lease issued or granted under section 90(1) or 103 in the performance of an obligation or the pursuit of a right under the Agreement, if the Governor in Council, by Order published in the Government Gazette, declares it to be inoperative.
- (5) In this section *temporary construction site* means—
- (a) any Crown land approved under section 88;
or
 - (b) any land entered under the powers in section 74 or 75 of the **Land Acquisition and Compensation Act 1986** for the purposes of the Project.

Division 3—Emergency orders

231 Independent Reviewer

In this Division *Independent Reviewer* means a person who is for the time being appointed in accordance with the Agreement to exercise powers under this Division.

232 Emergency orders

- (1) The Independent Reviewer may make an emergency order if the Independent Reviewer is of the opinion that the order is necessary because of a danger to life or property arising out of the carrying out of works for the Project on licensed land.
- (2) An emergency order may require any person to do any one or more of the following things within a specified time or times—
 - (a) to evacuate the licensed land or any part of the licensed land;
 - (b) to stop the carrying out of works for the Project on the licensed land or any part of the licensed land;
 - (c) to carry out works to make any part of the Project safe or to secure the licensed land or any part of the licensed land from access.
- (3) An emergency order must be in writing and may include any conditions that the Independent Reviewer thinks fit.

233 Service of emergency order

The Independent Reviewer must cause an emergency order under section 232 to be served on—

- (a) the Freeway Corporation; and

- (b) the Authority; and
- (c) any person to whom it is directed—
without delay after it is made.

234 Period of operation of emergency order

An emergency order remains in force until—

- (a) it is complied with; or
- (b) it is cancelled in writing by the Independent Reviewer.

235 Offence to fail to comply with emergency order

- (1) A person to whom an emergency order is directed under this Division must comply with the emergency order.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a corporation.

- (2) It is a defence to a prosecution of a person for an offence under this section if—
 - (a) the person took all reasonable steps to comply with the emergency order; or
 - (b) the person had a reasonable excuse for failing to comply with the emergency order.

236 No appeal or review

- (1) In this section *decision* means—
 - (a) a decision or purported decision by the Independent Reviewer to make an emergency order; or
 - (b) a failure by the Independent Reviewer to cancel an emergency order.

- (2) No proceedings—
- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or injunction; or
 - (b) seeking any order under the **Administrative Law Act 1978** (whether on the ground of absence of jurisdiction or any other ground)—

may be brought against the Independent Reviewer in respect of a decision or any proceedings relating to that decision or any other matter incidental to the making of that decision.

237 Request for police assistance

The Independent Reviewer may request the assistance of a member of the police force to evacuate an area that is subject to an emergency order.

Division 4—Emergency management

238 Emergency management

- (1) The Freeway Corporation is deemed to be a government agency for the purposes of Part 5 of the **Emergency Management Act 1986**.
- (2) Subsection (1) does not prevent the Freeway Corporation from receiving compensation under section 24 of the **Emergency Management Act 1986** for the taking and use of the Freeway Corporation's property under that section.

239 Emergency access to Project area

- (1) A member of the police force or an officer or member of any emergency service may enter and carry out any emergency function in the Project area.

S. 239(2)
def. of
*emergency
service*
amended by
No. 51/2005
s. 58(6).

(2) In this section—

emergency service means—

- (a) the Country Fire Authority established under the **Country Fire Authority Act 1958** or any permanent brigade established under that Act;
- (b) the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;
- (c) the Victoria State Emergency Service Authority established under the **Victoria State Emergency Service Act 2005**;
- (d) an ambulance service within the meaning of the **Ambulance Services Act 1986**.

Pt 10 Div. 5
(Heading)
amended by
No. 95/2005
s. 4(4)(f).

Division 5—Powers of State to control EastLink

240 Powers of State to control Project

- (1) If the State exercises a power under the Agreement to assume control of the Project, the State has and may exercise all the powers of the Freeway Corporation under—
 - (a) this Act and the regulations; and
 - (b) the **Road Management Act 2004** and the regulations under that Act; and
 - (c) the **Road Safety Act 1986** and the regulations under that Act relating to traffic control devices.
- (2) The State may authorise any person to exercise any power conferred on the State by this section.

- (3) Despite anything to the contrary in this Act, the **Road Management Act 2004** or the **Road Safety Act 1986**, the Freeway Corporation is not entitled to exercise any power while it is conferred on the State by this section.
- (4) A power conferred on the State by this section must be exercised in accordance with the Agreement.

Division 6—Powers of Authority to investigate

241 Who is a Project party?

In this Division *Project party* means—

- (a) the Freeway Corporation; or
- (b) a person who is a party to a Project Document; or
- (c) a body corporate that is a related body corporate (within the meaning of the Corporations Act) of the Freeway Corporation or of a person who is a party to a Project Document.

242 Authority can require information

The Authority, by notice in writing, may require a Project party to provide the Authority with information or to answer any questions put to it by the Authority for the purpose of determining compliance with—

- (a) this Act or the regulations; or
- (b) the **Road Management Act 2004** or the regulations under that Act; or
- (c) Part 7B and section 99A of the **Road Safety Act 1986**, any agreement under section 90N of that Act or any regulations under that Act relating to traffic control devices; or

S. 242(c)
amended by
No. 55/2013
s. 14(3).

- (d) the Agreement; or
- (e) a Project Document.

243 Offence to fail to comply

- (1) A Project party must comply with a requirement under section 242 within the time specified in the notice.

Penalty: 120 penalty units.

- (2) It is a defence to a prosecution of a Project party for an offence under this section if—
 - (a) the Project party took all reasonable steps to comply with the requirement; or
 - (b) the Project party had a reasonable excuse for failing to comply with the requirement.

244 Authorised officers

- (1) The Authority may appoint any person to be an authorised officer for the purposes of this Division.
- (2) The appointment must be in writing and must specify the terms and conditions on which the person is appointed.
- (3) 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 Authority.

245 Identification of authorised officers

- (1) The Authority must issue an identity card to each person appointed as an authorised officer for the purposes of this Division.
- (2) The identity card issued to a person must—
 - (a) contain a photograph of the person; and
 - (b) state the full name of the person; and

- (c) state that the person is an authorised officer for the purposes of this Division.
- (3) In any proceedings under this Act, an identity card purporting to be issued to a person by the Authority under this section is evidence of the appointment of that person as an authorised officer.

246 Powers of entry and access

- (1) An authorised officer appointed under section 244 may enter the offices of a Project party during ordinary business hours—
- (a) to inspect any records, systems or equipment in the possession of the Project party; and
 - (b) to take copies of or extracts from those records—
- for the purpose of determining compliance with—
- (c) this Act or the regulations; or
 - (d) the **Road Management Act 2004** or the regulations under that Act; or
 - (e) Part 7B and section 99A of the **Road Safety Act 1986**, any agreement under section 90N of that Act or any regulations under that Act relating to traffic control devices; or
 - (f) the Agreement; or
 - (g) a Project Document.
- (2) Before exercising any power under this section, an authorised officer must—
- (a) produce his or her identity card to the Project party or an agent or employee of the Project party; and

S. 246(1)(e)
amended by
No. 55/2013
s. 14(3).

- (b) inform the Project party or the agent or employee of the Project party that it is an offence under section 247 to prevent the authorised officer from carrying out an inspection or from taking any copy or extract under this section.

247 Offence to hinder authorised officer

A Project party or an agent or employee of a Project party must not prevent an authorised officer appointed under section 244 from carrying out an inspection or from taking any copy or extract in accordance with section 246.

Penalty: 120 penalty units.

Division 7—Evidentiary provisions

248 Evidentiary certificates of Authority

In any proceedings under this Act, a certificate purporting to be signed by the Chief Executive Officer of the Authority, certifying—

- (a) that a person was or was not appointed under section 244 at a particular time; or
(b) that a licence had or had not been issued to a particular person under this Act—

is evidence of the facts stated in the certificate.

249 Evidentiary certificates of Freeway Corporation

A certificate purporting to be signed by the Freeway Corporation certifying that any land, buildings or other property in the Extended Project area that is described in the certificate is vested in, occupied by or operated on behalf of the Freeway Corporation is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

Division 8—Service of documents

250 Service of documents

If under this Act or the regulations, a notice, demand or other document is required or permitted to be served on any person, the notice, demand or other document may, unless the contrary intention appears, be served in or out of Victoria—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of 16 years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or
- (c) by sending it by post, addressed to the person at the usual or last known place of residence or business of that person; or
- (d) if the person has given an address to the enforcement agency or the Freeway Corporation that is not his or her place of residence or business, by sending it by post addressed to the person at that address.

Division 9—Proceedings for offences

251 Proceedings for offences under Part 9

- (1) Proceedings for an offence under Part 9 may only be brought by—
 - (a) a member of the police force; or
 - (b) an enforcement agency; or
 - (c) a person authorised by the Minister under subsection (2).
- (2) The Minister may authorise a person to bring proceedings for an offence under Part 9.

252 Proceedings for other offences

Proceedings for any offence under this Act (other than an offence referred to in section 251), may only be brought by—

- (a) a member of the police force; or
 - (b) a prescribed person.
-

PART 11—GENERAL

253 Taxes and duties

- (1) No duty is payable under the **Duties Act 2000** in respect of the Agreement or any other agreement entered into by the State and contemplated under the Agreement.
- (2) No land tax is payable in respect of leased land.
- (3) No land tax is payable by a licensee in respect of licensed land.

S. 253(2)
substituted by
No. 14/2005
s. 30.

S. 253(3)
inserted by
No. 14/2005
s. 30.

254 Rates and charges

- (1) Leased land and licensed land are not rateable land within the meaning of section 154 of the **Local Government Act 1989**.
- (2) Section 221 of the **Local Government Act 1989** does not apply in respect of EastLink.

S. 254(2)
amended by
No. 95/2005
s. 4(4)(b).

255 Requirement on Minister to consult

A failure of the Minister to consult with any other Minister under this Act before making any decision or taking any action does not invalidate that decision or action.

256 Action by Registrar of Titles

- (1) On being requested to do so and on delivery of any relevant instrument or document (but without production of a duplicate Crown grant or certificate of title), the Registrar of Titles must, as soon as practicable—

- (a) make any recordings in the Register that are necessary because of the operation of this Act or the Agreement; and
 - (b) register any lease made in accordance with the Agreement.
- (2) Division 4 of Part IV of the **Transfer of Land Act 1958** applies to any acquisition of land by the Authority under Division 1 of Part 3 as if the Crown were the acquiring authority rather than the Authority.

257 Supreme Court—limitation of jurisdiction

It is the intention of sections 83, 193 and 236 to alter or vary section 85 of the **Constitution Act 1975**.

258 Regulations

- (1) The Governor in Council may make regulations for or with respect to—

S. 258(1)(a)
amended by
No. 32/2006
s. 83(3).

- (a) prescribing the level of infringement penalty for the purposes of Part 9;

S. 258(1)(b)
amended by
No. 95/2005
s. 4(4)(b).

- (b) prescribing as a tolling device any system, equipment or thing (including any equipment or thing to be placed in or on a vehicle) for recording the use of a vehicle on EastLink;
- (c) prescribing the manner in which the tolling devices are to be installed, set up, tested, operated, used, maintained or repaired;
- (d) prescribing the manner in which information from the tolling devices is to be handled for the purposes of tolling;

S. 258(1)(e)
amended by
No. 14/2005
s. 31.

- (e) prescribing methods of recording the payment of tolls and toll administration fees;

- (f) exempting from the payment of tolls vehicles or classes of vehicle that under the Agreement may be exempted from the payment of tolls;
 - (fa) the exemption by the Freeway Corporation of vehicles from the requirement to be registered under Part 9;
 - (g) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may confer a discretionary authority or impose a duty on a specified person or class of person.

S. 258(1)(fa)
inserted by
No. 74/2007
s. 61.

259 Saving provision concerning change of Act name

Any reference to the **Mitcham-Frankston Project Act 2004** in any Act, subordinate instrument, agreement or other document as far as it relates to any period after the commencement of Part 3 of the **Transport Legislation (Further Miscellaneous Amendments) Act 2005** is to be treated as a reference to the **EastLink Project Act 2004**, unless the contrary intention appears.

New s. 259
inserted by
No. 95/2005
s. 5.

Pt 12
(Heading and
ss 259–278)
repealed by
No. 14/2005
s. 32,
new Pt 12
(Heading and
ss 260–272)
inserted by
No. 93/2009
s. 40.

New s. 260
inserted by
No. 93/2009
s. 40.

**PART 12—TRANSFER OF PROJECT FROM THE
SOUTHERN AND EASTERN INTEGRATED TRANSPORT
AUTHORITY TO VICROADS**

260 Definitions

In this Part—

instrument includes a document and an oral agreement;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

Southern and Eastern Integrated Transport Authority means the Southern and Eastern Integrated Transport Authority established under the **Southern and Eastern Integrated Transport Authority Act 2003**;

transfer date means the date specified under section 261(2)(d) for the purposes of the transfer.

261 Transfer of the Project

- (1) The Southern and Eastern Integrated Transport Authority must give to the Minister within the period of 3 months after the date on which this Act receives the Royal Assent a statement or statements approved by the Minister relating to the property, rights and liabilities of the Southern and Eastern Integrated Transport Authority in relation to the Project at a date specified by the Minister for the purposes of the relevant statement.
- (2) A statement under this section in relation to the Project—
 - (a) must allocate to VicRoads all the property, rights and liabilities of the Southern and Eastern Integrated Transport Authority which relate to the Project; and
 - (b) must be agreed to by the Chief Executive of VicRoads; and
 - (c) must be signed by the Chairperson of the Southern and Eastern Integrated Transport Authority and the Chief Executive of VicRoads; and
 - (d) must specify the transfer date on which the transfer is to take effect.
- (3) If a statement under this section is approved by the Minister—
 - (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part; and
 - (c) the Minister must cause the allocation statement to be published in the Government Gazette.

New s. 261
inserted by
No. 93/2009
s. 40.

S. 261(2)(b)
amended by
No. 29/2011
s. 3(Sch. 1
item 32).

- (4) The Minister may at any time direct the Southern and Eastern Integrated Transport Authority to amend a statement given to the Minister under this section as specified in the direction.
- (5) An allocation statement under this section may be amended in writing signed by the Minister.
- (6) If an allocation statement is amended under subsection (5), the amendments must be published in the Government Gazette.
- (7) Nothing in this section affects or limits any approval, agreement or other authority that either the Southern and Eastern Integrated Transport Authority or VicRoads may require or need to obtain before it can be a party to the transfer.
- (8) In this section, *statement* and *allocation statement* include a statement or allocation statement amended in accordance with this section.

Note

For the definition of *Project* see section 4.

New s. 262
inserted by
No. 93/2009
s. 40.

262 Property transferred to VicRoads

On the transfer date—

- (a) all property and rights of the Southern and Eastern Integrated Transport Authority that are allocated to VicRoads under an allocation statement, vest in VicRoads; and
- (b) all liabilities of the Southern and Eastern Integrated Transport Authority that are allocated to VicRoads under an allocation statement, become liabilities of VicRoads.

New s. 263
inserted by
No. 93/2009
s. 40.

263 Transfer subject to encumbrances

Unless an allocation statement under this Part otherwise provides, where, under this Part property and rights vest in VicRoads or liabilities become liabilities of VicRoads—

- (a) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (b) the rights to which the Southern and Eastern Integrated Transport Authority was entitled in respect of those liabilities immediately before they ceased to be liabilities of the Southern and Eastern Integrated Transport Authority vest in VicRoads.

264 Substitution of party to agreement

New s. 264
inserted by
No. 93/2009
s. 40.

If, under an allocation statement, the rights and liabilities of the Southern and Eastern Integrated Transport Authority under an agreement are transferred to VicRoads—

- (a) VicRoads becomes, on the transfer date, a party to the agreement in the place of the Southern and Eastern Integrated Transport Authority; and
- (b) on and after the transfer date, the agreement has effect as if VicRoads had always been a party to the agreement.

265 Instruments

New s. 265
inserted by
No. 93/2009
s. 40.

Each Southern and Eastern Integrated Transport Authority instrument relating to property transferred to VicRoads under this Part continues to have effect according to its tenor on and after the transfer date as if a reference in the instrument to the Southern and Eastern Integrated Transport Authority were a reference to VicRoads.

266 Proceedings

New s. 266
inserted by
No. 93/2009
s. 40.

If, immediately before the transfer date, proceedings relating to property transferred to VicRoads (including arbitration proceedings) to which the Southern and Eastern Integrated

Transport Authority was a party were pending or existing in any court or tribunal, then, on and after the transfer date, VicRoads is substituted for the Southern and Eastern Integrated Transport Authority as a party to the proceedings and has the same rights in the proceedings as the Southern and Eastern Integrated Transport Authority had.

New s. 267
inserted by
No. 93/2009
s. 40.

267 Interests in land

Without affecting the generality of this Part and despite anything to the contrary in any other Act (other than the **Charter of Human Rights and Responsibilities**) or law, if, immediately before the transfer date, the Southern and Eastern Integrated Transport Authority is, in relation to property transferred to VicRoads, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after the transfer date—

- (a) VicRoads is deemed to be the registered proprietor of that interest in land; and
- (b) VicRoads has the same rights and remedies in respect of that interest as the Southern and Eastern Integrated Transport Authority had.

New s. 268
inserted by
No. 93/2009
s. 40.

268 Action by Registrar of Titles

On being requested to do so and on delivery of any relevant instrument or document, the Registrar of Titles must make any recordings in the Register that are necessary because of the operation of this Part.

New s. 269
inserted by
No. 93/2009
s. 40.

269 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of the Part, including a transaction entered into or an instrument made, executed, lodged or given,

for the purpose of, or connected with the transfer of property, rights or liabilities under an allocation statement.

270 Evidence

Documentary or other evidence that would have been admissible for or against the interests of the Southern and Eastern Integrated Transport Authority in relation to property transferred to VicRoads is admissible for or against the interests of VicRoads.

**New s. 270
inserted by
No. 93/2009
s. 40.**

271 Transfer of employees

- (1) This section applies to an employee who is not employed under Part 3 of the **Public Administration Act 2004**.
- (2) If as a result of an allocation statement it is necessary to transfer any employees from the Southern and Eastern Integrated Transport Authority to VicRoads, the Secretary to the Department of Transport must list in writing the persons who were employed by the Southern and Eastern Integrated Transport Authority before the transfer date and who are to be transferred to VicRoads.
- (3) An employee transferred under this section is to be regarded as—
 - (a) being employed by VicRoads with effect from the transfer date;
 - (b) having been so employed on the same terms and conditions as those that applied to the person immediately before the transfer date;
 - (c) having accrued an entitlement to benefits in connection with that employment that is equivalent to the entitlement that the person had accrued immediately before the transfer date.

**New s. 271
inserted by
No. 93/2009
s. 40.**

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- (4) The service of an employee transferred under this section is to be regarded for all purposes as having been continuous with the service of the employee immediately before the transfer date.
 - (5) An employee transferred under this section is not entitled to receive any payment or other benefit by reason only of having ceased to be employed by the Southern and Eastern Integrated Transport Authority because of the operation of this Part.
 - (6) A certificate purporting to be signed by the Secretary to the Department of Transport certifying that a person named in the certificate was, with effect from the transfer date, employed by virtue of this section by VicRoads, is admissible in evidence in any proceedings as evidence of the matters stated in it.
 - (7) The superannuation entitlements of any person who is transferred under this section are to be taken not to be affected by that person being transferred.
 - (8) Nothing in this section prevents—
 - (a) any of the terms and conditions of employment of a person transferred under this section from being altered by or under any law, award or agreement with effect from any time after the transfer date;
 - (b) a person transferred under this section from resigning or being dismissed at any time after the transfer date in accordance with the then existing terms and conditions of his or her employment with VicRoads.

272 Validity of things done under this Part

New s. 272
inserted by
No. 93/2009
s. 40.

Nothing effected by, or done or suffered under,
this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of or as constituting a default under any Act (other than the **Charter of Human Rights and Responsibilities**) or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligee wholly or in part from any obligation.

SCHEDULE

SCHEDULE 1

REVOCATION OF RESERVATIONS

Item 1

Situation of land	Dandenong Creek
Instrument and date of reservation	Order in Council dated 23 May 1881
Description of land by reference to the Government Gazette	Government Gazette dated 25 February 1881, page 586 (item 30) and 27 May 1881, page 1389
Purpose of reservation	Site for Public purposes
Extent of revocation	Land shown hatched on the plan numbered LEGL./04-044 and lodged in the Central Plan Office

Item 2

Situation and area of land	Parish of Dandenong, County of Bourke, 23.12 hectares
Instrument and date of reservation	Dandenong Lands Act 1961 , Act No. 6797, section 3(1)(b), 28 November 1961
Purpose of reservation	Site for Public Recreation and Showgrounds
Extent of revocation	Land shown hatched on the plan numbered LEGL./04-045 and lodged in the Central Plan Office

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 12 May 2004

Legislative Council: 27 May 2004

The long title for the Bill for this Act was "to make provision in relation to the construction and management of the Mitcham-Frankston Freeway, to amend section 85 of the **Constitution Act 1975** and the **Road Management Act 2004** and other Acts and for other purposes."

The **Mitcham-Frankston Project Act 2004** was assented to on 8 June 2004 and came into operation as follows:

Sections 1, 2, 266, 270, 272, 273, 276 and 277 on 9 June 2004: section 2(1); section 259 on 1 July 2004: s. 2(2); sections 3–7, 9, 13, 14, Part 3 (sections 34–54), Part 4 Divisions 1 (sections 55–58), 3 (section 66), 4 (sections 67–78), 5 (sections 79–83), 6 (section 84), Part 5 Division 1 (sections 85–88), Part 6 Division 1 (sections 123–127), Part 10 Divisions 1 (sections 226–228), 8 (section 250), sections 255–257 and 261 on 1 July 2004: Special Gazette (No. 148) 25 June 2004 page 1; sections 8, 10–12, Part 2 (sections 15–33), sections 59, 61–65, Part 5 Divisions 2 (sections 89–101), 3 (sections 102–111), 4 (section 112), 5 (sections 113–118), 6 (sections 119–122), Part 6 Divisions 2 (section 128), 3 (sections 129–131), Part 7 (sections 132–147), Part 8 Divisions 1 (section 148), 3 (sections 152, 153), 4 (sections 154–158), 5 (sections 159–168), 6 (sections 169–177), 7 (sections 178–188), 8 (sections 189–192), 9 (section 193), Part 9 (sections 194–225), sections 229(1)(2), 230, Part 10 Divisions 3 (sections 231–237), 4 (sections 238, 239), 5 (section 240), 6 (sections 241–247), 7 (sections 248, 249), 9 (sections 251, 252), sections 253, 254, 258, 260, 262–265, 267–269, 271, 274, 275, 278, Schedule 1 on 24 September 2004: Special Gazette (No. 206) 22 September 2004 page 1; sections 60, 229(3) and Part 8 Division 2 (sections 149–151) on 18 November 2004: Government Gazette 4 November 2004 page 3048.

The name of this Act was changed from the **Mitcham-Frankston Project Act 2004** to the **EastLink Project Act 2004** by section 4(1) of the **Transport Legislation (Further Miscellaneous Amendments) Act 2005**, No. 95/2005.

2. Table of Amendments

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

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date: 16.11.04
Commencement Date: S. 50 on 23.5.05: Government Gazette 19.5.05 p. 930
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 135) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Mitcham-Frankston Project (Amendment) Act 2005, No. 14/2005

Assent Date: 10.5.05
Commencement Date: Ss 3–32 on 11.5.05: s. 2
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Children and Young Persons (Miscellaneous Amendments) Act 2005, No. 21/2005

Assent Date: 31.5.05
Commencement Date: S. 59 on 1.7.05: s. 2(6)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Victoria State Emergency Service Act 2005, No. 51/2005

Assent Date: 24.8.05
Commencement Date: S. 58(6) on 1.11.05: Government Gazette 20.10.05 p. 2308
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Transport Legislation (Further Miscellaneous Amendments) Act 2005, No. 95/2005

Assent Date: 29.11.05
Commencement Date: Ss 4, 5 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: Ss 79–83 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 12) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 9) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 173(Sch. 1 item 6) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Road Legislation Amendment Act 2007, No. 14/2007

Assent Date: 8.5.07
Commencement Date: Ss 8, 15, 16 on 9.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Road Legislation Further Amendment Act 2007, No. 74/2007

Assent Date: 18.12.07
Commencement Date: Ss 39–61 on 24.4.08: Government Gazette 24.4.08 p. 777
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Resources Industry Legislation Amendment Act 2009, No. 6/2009

Assent Date: 3.3.09
Commencement Date: S. 50 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Transport Legislation Miscellaneous Amendments Act 2009, No. 17/2009

Assent Date: 12.5.09
Commencement Date: S. 30 on 13.5.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Justice Legislation Miscellaneous Amendments Act 2009, No. 87/2009

Assent Date: 15.12.09
Commencement Date: Ss 27, 28 on 16.12.09: s. 2(1); s. 59 on 17.12.09: Government Gazette 17.12.09 p. 3338
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

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Endnotes

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009

Assent Date: 15.12.09
Commencement Date: S. 40 on 17.12.09: Government Gazette 17.12.09 p. 3339; ss 37–39 on 30.4.10: Special Gazette (No. 110) 30.3.10 p. 1
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 5), 203(1)(Sch. 6 item 14) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Road Legislation Miscellaneous Amendments Act 2010, No. 75/2010

Assent Date: 19.10.10
Commencement Date: S. 3 on 1.11.10: Government Gazette 21.10.10 p. 2531
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 32) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Transport Legislation Amendment (Public Transport Development Authority) Act 2011, No. 61/2011

Assent Date: 15.11.11
Commencement Date: S. 25 on 15.12.11: Special Gazette (No. 407) 13.12.11 p. 1; Sch. 1 item 4 on 2.4.12: Special Gazette (No. 101) 27.3.12 p. 1
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013

Assent Date: 24.9.13
Commencement Date: S. 14 on 1.1.14: s. 2(3)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 14) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **EastLink Project Act 2004**

3. Explanatory Details

No entries at date of publication.