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

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The Parliament of Victoria enacts as follows:

1. Purposes

The main purposes of this Act are—

(a) to amend the Mitcham-Frankston Project Act 2004—

(i) to include the construction of the Dandenong Southern By-Pass in the Project; and
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(ii) to improve the operation of the tolling provisions; and

(iii) to improve generally the operation of that Act; and

(b) to amend the Road Management Act 2004 in relation to the functions of the Mitcham-Frankston Freeway Corporation; and

(c) to amend the Southern and Eastern Integrated Transport Authority Act 2003 to include the construction of the Dandenong Southern By-Pass in the Project.

2. Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

3. Definition

In section 3 of the Mitcham-Frankston Project Act 2004, for the definition of "Freeway Corporation" substitute—

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

4. New section 4 substituted

For section 4 of the Mitcham-Frankston Project Act 2004 substitute—

"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
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(b) a link with the Ringwood By-Pass; and
(c) the construction of the Dandenong Southern By-Pass."

5. Project area

(1) In section 5(1) of the Mitcham-Frankston Project Act 2004 for "sub-section (2)" substitute "sub-sections (2) and (3)".

(2) After section 5(2) of the Mitcham-Frankston Project Act 2004 insert—

"(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

(1) In section 6(1) of the Mitcham-Frankston Project Act 2004 for "sub-section (2)" substitute "sub-sections (2) and (3)".

(2) After section 6(2) of the Mitcham-Frankston Project Act 2004 insert—

"(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."
7. Changes to Project area and Extended Project area

After section 7(5) of the Mitcham-Frankston Project Act 2004 insert—

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

8. New section 7A inserted

After section 7 of the Mitcham-Frankston Project Act 2004 insert—

"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."
(5) The Minister must not make a recommendation under sub-section (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.

9. New section 10 substituted

For section 10 of the *Mitcham-Frankston Project Act 2004* substitute—

"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.”.

10. New section 12 substituted

For section 12 of the Mitcham-Frankston Project Act 2004 substitute—

’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

(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).'

11. Delegation by Minister

For section 13(1) of the Mitcham-Frankston Project Act 2004 substitute—

"(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
   (c) a person employed under Part 3 of the Public Administration Act 2004; or
   (d) a public authority.".
12. Information privacy

After section 30(2) of the Mitcham-Frankston Project Act 2004 insert—

"(3) Despite sub-section (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.".

13. New section 31A inserted

After section 31 of the Mitcham-Frankston Project Act 2004 insert—

"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.".

14. Power of Authority to purchase land

After section 54(4) of the Mitcham-Frankston Project Act 2004 insert—

"(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 sub-section (2).

15. **Authority may carry out or authorise works on public land**

   (1) In section 86(2) of the *Mitcham-Frankston Project Act 2004* for "or public authority" substitute ", public authority or Council".

   (2) After section 86(3) of the *Mitcham-Frankston Project Act 2004* insert—

   '(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.'.

16. **Temporary access to Crown land**

   After section 88(4) of the *Mitcham-Frankston Project Act 2004* insert—

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

   (4B) An authorisation that is inconsistent with the Agreement is invalid only to the extent of the inconsistency.".
17. New section 88A inserted

After section 88 of the *Mitcham-Frankston Project Act 2004* insert—

"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.

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

18. Authority may issue licence for purposes of Project

(1) In section 90(3) of the *Mitcham-Frankston Project Act 2004* for "or public authority" substitute ", public authority or Council".

(2) For section 90(5) of the *Mitcham-Frankston Project Act 2004* substitute—

'(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.'.
19. Fixing of tolls and toll administration fees

   After section 195(2) of the Mitcham-Frankston Project Act 2004 insert—

   "(2A) In addition to any other fees fixed under sub-section (1)(c), a notice under sub-section (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.".

20. Liability to pay toll and fees

   In sections 197(1)(b) and 197(2) of the Mitcham-Frankston Project Act 2004 for "fee" substitute "fees".

21. Exemptions from toll and fees

   (1) In the heading to section 198 of the Mitcham-Frankston Project Act 2004 for "fee" substitute "fees".

   (2) In sections 198(1) and 198(2) of the Mitcham-Frankston Project Act 2004 for "fee is" substitute "fees are".

   (3) After section 198(3) of the Mitcham-Frankston Project Act 2004 insert—

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

   (5) In this section "allowable agreement period" means 72 hours, or if a longer period is prescribed, that longer period.'
22. Owner not liable if statement supplied

In section 199(1) of the Mitcham-Frankston Project Act 2004 for "a demand" (wherever occurring) substitute "the first demand".

23. Charge of toll

(1) In section 200(1) of the Mitcham-Frankston Project Act 2004 for "fee" (wherever occurring) substitute "fees".

(2) In section 200(2) of the Mitcham-Frankston Project Act 2004—

(a) after "demand" insert "under sub-section (1)";

(b) in paragraph (b) for "fee is" substitute "fees are";

(c) in paragraph (c) for "fee" substitute "fees".

(3) After section 200(2) of the Mitcham-Frankston Project Act 2004 insert—

'(3) If all or any of the amount of a toll or toll administration fees is not paid within 14 days after the service on a person of a first demand for payment of that toll and those fees, the Freeway Corporation may serve a second demand for the payment of any unpaid amount of the toll and the relevant toll administration fees (which may include an increased fee for the second demand).

(4) A demand under sub-section (3)—

(a) must be in writing; and

(b) must identify separately each trip for which a toll and toll administration fees are payable; and
(c) be served on the person on whom the first demand was served.

(5) A demand 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 72 hours, or if a longer period is prescribed for the purposes of section 198, that longer period.'.

24. Offence to drive on Freeway without payment of toll

(1) For section 204(1)(b) of the Mitcham-Frankston Project Act 2004 substitute—

"(b) a demand is served on the person under section 200(3) for the payment of any relevant toll and toll administration fees for that use of the vehicle on the Mitcham-Frankston Freeway; and".

(2) In section 204(1)(c) of the Mitcham-Frankston Project Act 2004 for "fee" substitute "fees".

25. Notice of non-payment of toll

In section 207(3) of the Mitcham-Frankston Project Act 2004 for "fee" substitute "fees".

26. Withdrawal of notice

(1) For section 214(1) of the Mitcham-Frankston Project Act 2004, substitute—

"(1) An enforcement officer may withdraw an infringement notice by serving a withdrawal notice on the person served with the infringement notice—

(a) at any time within 28 days after the date on which the infringement notice was served; or
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(b) at the request of the person served with the infringement notice, at any later time.".

(2) After section 214(2) of the Mitcham-Frankston Project Act 2004 insert—

"(2A) Despite sub-section (1), an infringement notice cannot be withdrawn under that sub-section where the infringement penalty is registered under Schedule 7 to the Magistrates' Court Act 1989.".

27. Owner onus

(1) For section 219(3)(a) of the Mitcham-Frankston Project Act 2004 substitute—

"(a) before or within 28 days after the service on the owner of a summons in respect of the offence, the owner supplies to an enforcement official in a sworn statement in writing or in a statutory declaration the name and address of the person who was driving the vehicle at the relevant time; or".

(2) After section 219(3)(a) of the Mitcham-Frankston Project Act 2004 insert—

"(ab) where an infringement notice was served on the owner in respect of the offence, before the infringement penalty is registered under Schedule 7 to the Magistrates' Court Act 1989 the owner supplies to an enforcement official in a sworn statement in writing or in a statutory declaration the name and address of the person who was driving the vehicle at the relevant time; or".

(3) In sections 219(4) and 219(5) of the Mitcham-Frankston Project Act 2004 after "(3)(a)" insert ", (3)(ab)".
(4) In section 219(6)(b) of the *Mitcham-Frankston Project Act 2004* after "person" insert "or any other enforcement officer".

28. **Evidence of certificate issued by Freeway Corporation**

In section 222 of the *Mitcham-Frankston Project Act 2004*—

(a) for paragraph (c) substitute—

"(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";

(b) in paragraph (f) for "fee" substitute "fees".

29. **Limitation on powers to make laws**

In section 230(3) of the *Mitcham-Frankston Project Act 2004* after "this Act" (where first occurring) insert "or any other Act".

30. **Taxes and duties**

For section 253(2) of the *Mitcham-Frankston Project Act 2004* substitute—

"(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.".

31. **Regulations**

In section 258(1)(e) of the *Mitcham-Frankston Project Act 2004* after "tolls" insert "and toll administration fees".
32. Repeal of Part 12

Part 12 of the Mitcham-Frankston Project Act 2004 is repealed.

33. Amendments to the Road Management Act 2004

(1) In section 3(1) of the Road Management Act 2004, for the definition of "Mitcham-Frankston Freeway Corporation" substitute—

' "Mitcham-Frankston Freeway Corporation" means the Freeway Corporation within the meaning of the Mitcham-Frankston Project Act 2004;'.

(2) In section 134A(2) of the Road Management Act 2004 for "clauses 7 and 13" substitute "clauses 7, 12 and 13".

34. Amendment to Southern and Eastern Integrated Transport Authority Act 2003—New section 4

For section 4 of the Southern and Eastern Integrated Transport Authority Act 2003—New section 4 substitute—

"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.".
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 24 February 2005
Legislative Council: 20 April 2005

The long title for the Bill for this Act was "to amend the Mitcham-Frankston Project Act 2004, the Road Management Act 2004 and the Southern and Eastern Integrated Transport Authority Act 2003 and for other purposes."