

# Major Transport Projects Facilitation Act 2009

No. 56 of 2009

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Victoria

# **Major Transport Projects Facilitation Act 2009<sup>†</sup>**

**No. 56 of 2009**

[Assented to 29 September 2009]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purpose**

The purpose of this Act is to facilitate the development of major transport projects.

### **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

- (2) If a provision of this Act does not come into operation before 1 July 2010, it comes into operation on that day.

### 3 Definitions

In this Act—

***applicable approval*** means an approval, authorisation, consent, determination, decision (however described), licence or permit under an applicable law that is specified in column 2 of the Table in Schedule 1;

***applicable law*** means an Act specified in column 1 of the Table in Schedule 1;

***applicable law decision*** means a decision (however described) under an applicable law granting an applicable approval;

***applicable law decision maker*** means a person or body who, under an applicable law, grants an applicable approval under that law;

***application fee*** has the meaning given by section 4;

***approval decision*** means a decision of the Planning Minister under section 77;

***approved project*** means a declared project in respect of which a project area has been designated under Part 4;

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

***assessment committee*** means an assessment committee established under Part 8;

***assessment committee recommendation*** means a recommendation under section 73;

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***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 Sustainability and Environment;

***comprehensive impact statement*** means a statement prepared under Division 5 of Part 3 and includes such a statement revised under that Division;

***comprehensive impact statement assessment process*** means the process and requirements set out in Division 5 of Part 3;

***comprehensive impact statement determination***, in relation to a declared project, means a determination under section 20(1) requiring the preparation of a comprehensive impact statement for that project;

***comprehensive impact statement issues report*** means a report under section 59;

***construct*** includes reconstruct or make structural changes;

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

***Crown land*** includes a stratum of Crown land;

***cultural heritage management plan*** has the same meaning as in the **Aboriginal Heritage Act 2006**;

***declared project*** means a transport project declared under section 10 to be a declared project;

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***Department*** means the Department of Planning and Community Development;

***development***, in relation to a declared project, includes—

- (a) the construction of a facility or infrastructure; and
- (b) the construction or exterior alteration or exterior decoration of a building; and
- (c) the demolition or removal of a building or works; and
- (d) the construction or carrying out of works; and
- (e) the subdivision or consolidation of land, including buildings or airspace; and
- (f) the placing or relocation of a building or works on land; and
- (g) the construction or putting up for display of signs or hoardings;

***Director of Public Transport*** means the Director within the meaning of the **Transport Act 1983**;

***discretionary applicable law criteria*** means matters, things, criteria, factors, circumstances, principles or objects specified in an applicable law that may be applied, taken into account, or had regard to, in the applicable law by an applicable law decision maker when making a decision whether to grant an applicable approval under that law;

***enactment*** means an Act or a regulation under an Act;

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***Environment Protection Authority*** or ***EPA*** means the Authority within the meaning of the **Environment Protection Act 1970**;

***formal public hearing*** means a hearing conducted by an assessment committee under Subdivision 7 of Division 5 of Part 3;

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

***further option*** means a further option in relation to a declared project referred to in section 69;

***grant***, in relation to an applicable approval, includes, as the case requires, give, make, issue or provide;

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

***impact*** means a reasonably foreseeable, direct or indirect impact arising from—

- (a) the development of an approved project; or
- (b) the use of transport or non-transport infrastructure established by the approved project; or
- (c) the decommissioning of the transport or non-transport infrastructure established by the approved project;

***impact assessment guidelines*** means guidelines prepared under section 17;

***impact management plan*** means a plan prepared under Division 4 of Part 3;

***impact management plan assessment process*** means the process and requirements set out in Division 4 of Part 3;

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***impact management plan determination***, in relation to a declared project, means a determination under section 20(1) requiring the preparation of an impact management plan for that project;

***infrastructure manager*** has the same meaning as in the **Road Management Act 2004**;

***land*** includes a stratum of land;

***lease***, in Division 7 of Part 6, means a lease granted under section 177;

***leased land*** means land that is the subject of a lease granted under section 177;

***lessee*** means a person who is, for the time being, the lessee under a lease granted under section 177;

***licence*** in Division 7 of Part 6, means a licence issued under section 173;

***licensed land*** means land that is subject to a licence issued under section 173;

***licensee*** means a person who is, for the time being, the holder of a licence issued under section 173;

***mandatory applicable law criteria*** means matters, things, criteria, factors, circumstances, principles or objects specified in an applicable law that must be applied or complied with by an applicable law decision maker when making a decision whether to grant an applicable approval under that law;

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

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

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*navigation aid* has the same meaning as in the **Marine Act 1988**;

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

*non-transport infrastructure* means a facility, building, fixture, fitting or permanent structure (whether residential, commercial or industrial) that, when constructed, is in, on, over, part of, related or connected to transport infrastructure;

*notice of acquisition* means a notice of acquisition within the meaning of the **Land Acquisition and Compensation Act 1986**;

*Planning Minister* means the Minister administering the **Planning and Environment Act 1987**;

*port*—

- (a) means a facility at which goods can be loaded and unloaded, or persons can board and disembark, from a vessel; and
- (b) includes channels, navigation aids and other infrastructure and equipment that is necessary to enable the safe movement of vessels to and from a facility referred to in paragraph (a);

*preliminary hearing* means a preliminary hearing conducted under section 57;

*project area*, for a declared project or an approved project, means the area of land designated by Order under section 95, as varied by Order under section 96 or consolidated by Order under section 97;

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***project authority***, for a declared project or an approved project, means—

- (a) the project proponent; or
- (b) if the Project Minister appoints an entity under section 6, that entity;

***project contractor*** means a person designated under section 7;

***project declaration*** means a declaration made under section 10;

***project declaration guidelines*** means guidelines prepared under section 13;

***project function***, for a project authority, means a function or power specified under section 101 or 102;

***project land***, for an approved project, means—

- (a) land that is acquired under Part 6, including land that is surrendered or divested under Division 4 or 6 of that Part; or
- (b) land acquired by a project authority for the project for the purposes of the approved project before that project became an approved project;

***Project Minister*** means a Minister appointed under section 14;

***project proponent***, for a declared project, means the entity appointed under section 15;

***project proposal***, for a declared project, has the meaning given by section 5;

***project proposal guidelines*** means guidelines prepared under section 16;

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***properly made submission*** means a submission or an amendment to a submission that complies with section 52(3);

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

***public exhibition period***, for a comprehensive impact statement, means the period determined by the Planning Minister under section 45 for that statement;

***public land*** means—

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

***public sector body*** has the same meaning as in the **Public Administration Act 2004**;

***publication fee guidelines*** means the guidelines prepared under section 18;

***rail infrastructure*** has the same meaning as in the **Rail Safety Act 2006**;

***registered Aboriginal party*** has the same meaning as in the **Aboriginal Heritage Act 2006**;

***reservation date***, in relation to land, means the date on which the land became project land;

***restricted access area*** means an area established under section 196;

***review determination*** means a determination under section 42;

***revised comprehensive impact statement*** means a comprehensive impact statement revised in accordance with section 61;

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

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

*road function* means a project function conferred on a project authority relating to Subdivision 1 of Division 8 of Part 6;

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

*rolling stock* has the same meaning as in the **Rail Safety Act 2006**;

*scoping directions* means directions prepared by the Planning Minister under section 22 or 30;

*Secretary* means Secretary to the Department;

*State environment protection policy* has the same meaning as in the **Environment Protection Act 1970**;

*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;

*supplementary assessment* has the meaning given by section 69(1)(b);

*surplus land* means land determined under section 180 to be surplus land;

*transport infrastructure* means any of the following—

- (a) road infrastructure;
- (b) rail infrastructure;

- 
- (c) infrastructure that can be used for the movement of persons or goods;
  - (d) a port;
  - (e) a facility at which—
    - (i) goods can be loaded or unloaded from rolling stock; and
    - (ii) goods can be loaded or unloaded from heavy vehicles; and
    - (iii) goods referred to in subparagraphs (i) and (ii) can be temporarily stored;

***transport project*** means a project for the development of—

- (a) transport infrastructure; or
- (b) transport infrastructure together with non-transport infrastructure;

***utility*** means an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity or other like services under the authority of an Act of Victoria;

***utility infrastructure*** means any part of the supply, distribution or reticulation network owned, operated or controlled by a utility, including poles, pipes, cables, wires, conduits and tunnels;

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

***vessel*** has the same meaning as in the **Marine Act 1988**;

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

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*waste management policy* has the same meaning as in the **Environment Protection Act 1970**;

*works* includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil;

*works approval* has the same meaning as in the **Environment Protection Act 1970**.

#### **4 Meaning of *application fee***

For the purpose of this Act, an *application fee* is—

- (a) if the regulations prescribe an application fee, that fee;
- (b) if the regulations do not prescribe an application fee, the sum of every fee that would otherwise be payable in or as part of an application for an applicable approval, or on the granting of an applicable approval (as the case requires) by or under an applicable law that is referred to in an impact management plan or comprehensive impact statement (other than the fee payable for an application for the issue of a works approval).

#### **5 Meaning of *project proposal***

For the purposes of this Act, a *project proposal* is a document that contains all of the following—

- (a) a description of the declared project;
- (b) designs prepared for the declared project;

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- (c) a description of the proposed project area, including—
    - (i) the location of the proposed project area;
    - (ii) the land that is likely to be required for the declared project;
    - (iii) if relevant, the route the declared project is proposed to take;
  - (d) a description of the existing environment that may be impacted by the development and operation of the declared project;
  - (e) any applicable approvals or assessments under an applicable law that are likely to be required before the development for the declared project can commence;
  - (f) if relevant, any alternative options for the declared project that have been considered in the development of the project before it was declared to be a declared project;
  - (g) an outline of studies conducted in relation to the declared project and the study findings;
  - (h) an outline of any consultation that has been undertaken and results of the consultation;
  - (i) if relevant, a draft program for further consultation or studies in relation to an aspect of the declared project;
  - (j) if more than one project option is being considered for the purposes of the declared project, all of the matters specified in paragraphs (a) to (i) for each option.
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**6 Project Minister may appoint entity to be the project authority for an approved project**

The Project Minister, by notice published in the Government Gazette, may, for an approved project, appoint as the project authority an entity who is not the project proponent of that project.

**7 Designation of project contractor**

The Project Minister, by notice published in the Government Gazette, may designate a person with whom a project authority has entered into an agreement for the development of a part of an approved project on behalf of the project authority as a project contractor.

**8 Application of Crown Land (Reserves) Act 1978**

For the purposes of this Act, the **Crown Land (Reserves) Act 1978** is to be taken to have effect as if, in that Act, the terms "land" and "Crown land" have the same meaning as in this Act.

**9 Act to bind the Crown**

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

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**PART 2—MAJOR TRANSPORT PROJECT DECLARATIONS**

**10 Declaration of a transport project**

- (1) The Governor in Council, on the recommendation of the Premier, may declare a transport project to be a declared project—
  - (a) to which this Act applies; or
  - (b) this Act (other than Part 3 and 8) applies.
- (2) A declaration under subsection (1) must be published in the Government Gazette.
- (3) A declaration under subsection (1) takes effect—
  - (a) on the day the declaration is published in the Government Gazette; or
  - (b) if the declaration specifies a later day, on that day.

**11 Premier must consult with the Planning Minister before making recommendation**

The Premier must consult with the Planning Minister before making a recommendation under section 10.

**12 Assessment of transport project before recommendation**

- (1) The Premier must not make a recommendation under section 10 unless the Premier has assessed the transport project as a project that is of economic, social or environmental significance to—
  - (a) the State; or
  - (b) a region of the State.
- (2) In making an assessment under subsection (1), the Premier must have regard to the project declaration guidelines.

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### **13 Project declaration guidelines**

- (1) The Premier must prepare guidelines for the assessment of transport projects as to whether such projects are of economic, social or environmental significance to—
  - (a) the State; or
  - (b) a region of the State.
- (2) Project declaration guidelines must be published in the Government Gazette.
- (3) Project declaration guidelines take effect—
  - (a) on the day they are published in the Government Gazette; or
  - (b) if the guidelines specify a later day, on that day.

### **14 Premier must appoint Minister to be the Project Minister for a declared project**

The Premier, by notice published in the Government Gazette, must appoint a Minister to be the Project Minister for a declared project.

### **15 Project Minister must appoint project proponent**

- (1) After a project declaration has been made, the Project Minister, by notice published in the Government Gazette, must appoint the public authority that will be the project proponent for that declared project.
  - (2) To avoid doubt, the Project Minister, by notice published in the Government Gazette, may replace a public authority appointed under subsection (1) as the project proponent with another public authority.
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**PART 3—ASSESSMENT AND APPROVAL OF MAJOR  
TRANSPORT PROJECTS**

**Division 1—Guidelines for this Part**

**16 Project proposal guidelines**

- (1) The Planning Minister must prepare guidelines in relation to the form and content of a project proposal.
- (2) The Planning Minister must publish project proposal guidelines on the Department's Internet site as soon as practicable after the Minister prepares the guidelines.
- (3) Notice of the preparation of project proposal guidelines must be published in the Government Gazette as soon as practicable after the Planning Minister prepares the guidelines.
- (4) Project proposal guidelines take effect—
  - (a) on the day notice of their preparation is published in the Government Gazette; or
  - (b) if the guidelines specify a later day, on that day.

**17 Impact assessment guidelines**

- (1) The Planning Minister may prepare guidelines relating to—
  - (a) the assessment of impacts of a declared project; and
  - (b) the form and content of a comprehensive impact statement or impact management plan for a declared project; and
  - (c) the form and content of public notices required under this Part.

- (2) The Planning Minister must publish impact assessment guidelines on the Department's Internet site as soon as practicable after the Minister prepares the guidelines.
- (3) Notice of the preparation of impact assessment guidelines must be published in the Government Gazette as soon as practicable after the Planning Minister prepares the guidelines.
- (4) Impact assessment guidelines take effect—
  - (a) on the day notice of their preparation is published in the Government Gazette; or
  - (b) if the guidelines specify a later day, on that day.

#### **18 Publication fee guidelines**

- (1) The Planning Minister may prepare guidelines relating to the fee to be paid by a person for a copy of a comprehensive impact statement under section 49.
  - (2) Guidelines prepared under subsection (1) may provide for a methodology for determining an appropriate fee.
  - (3) The Planning Minister must publish publication fee guidelines on the Department's Internet site as soon as practicable after the Minister prepares the guidelines.
  - (4) Notice of the preparation of publication fee guidelines must be published in the Government Gazette as soon as practicable after the Planning Minister prepares the guidelines.
  - (5) Publication fee guidelines take effect—
    - (a) on the day notice of their preparation is published in the Government Gazette; or
    - (b) if the guidelines specify a later day, on that day.
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**Division 2—Project proposals**

**19 Preparation of project proposal**

- (1) A project proponent for a declared project must prepare a project proposal for that project.
- (2) A project proposal must be prepared in accordance with the project proposal guidelines.
- (3) To avoid doubt, a project proponent for a declared project may include in a project proposal for a declared project any matter that the proponent considers relevant.
- (4) On completing a project proposal for a declared project, the project proponent must give it to the Planning Minister.

**Division 3—Determination of appropriate impact assessment process**

**20 Planning Minister must make determination as to appropriate impact assessment**

- (1) On receiving a project proposal from a project proponent, the Planning Minister must make a determination as to whether—
    - (a) the comprehensive impact statement assessment process must be complied with in relation to the declared project; or
    - (b) the impact management plan assessment process must be complied with in relation to the declared project.
  - (2) The Planning Minister must make a determination that the comprehensive impact statement assessment process must be complied with in relation to the declared project to which the project proposal relates if the Minister considers that the project proposal is inadequate for the Minister to determine whether the impact
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management plan assessment process must be complied with in relation to the project.

- (3) The Planning Minister may make a determination requiring the project proponent to comply with the impact management plan assessment process only if the Minister is satisfied that—
- (a) the land that is likely to be required for the declared project is—
    - (i) land owned by a public authority or is vested in the Crown; or
    - (ii) land owned by a person that is not a public authority but is reserved for a public purpose under a planning scheme or other law; and
  - (b) the development of the declared project will not require, or has been granted any of the following—
    - (i) an applicable approval that is a works approval;
    - (ii) an applicable approval that is a permit or consent under the **Heritage Act 1995**;
    - (iii) an applicable approval that is a planning permit under the **Planning and Environment Act 1987**;
    - (iv) an applicable approval that is an amendment to a provision of a planning scheme under the **Planning and Environment Act 1987**.
- (4) The Planning Minister must make a determination under this section within 10 business days after receiving the project proposal.
- (5) A determination under this section must be given to the project proponent.
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- (6) Notice of the making of a determination under this section must be published in the Government Gazette as soon as practicable after the determination is made.

## **21 Effect of determination**

- (1) If the Planning Minister makes an impact management plan determination, Division 4 applies to the project proposal that relates to the declared project to which the determination applies.
- (2) If the Planning Minister makes a comprehensive impact statement determination, Division 5 applies to the project proposal that relates to the declared project to which the determination applies.

### **Division 4—Impact management plans**

#### **Subdivision 1—Scoping directions**

## **22 Specification of matters to be considered and addressed in impact management plan**

- (1) Subject to section 23, the Planning Minister must prepare directions that specify the kinds of impacts and other matters that must be considered and addressed in an impact management plan for the declared project to which an impact management plan determination relates (the *scoping directions*).
- (2) Subject to section 24, the Planning Minister must prepare, and give to the project proponent, the scoping directions within 25 business days after making an impact management plan determination.

- (3) The scoping directions must be published in the Government Gazette as soon as practicable after the directions are prepared.

**23 Planning Minister may request further information in exceptional circumstances**

- (1) The Planning Minister, by written notice, given to a project proponent, may request further information from the project proponent for the purpose of preparing scoping directions for the impact management plan for the proponent's declared project.
- (2) The Planning Minister may only make a request under subsection (1) before the end of the period within which the Minister must prepare the scoping directions under section 22(2).
- (3) The Planning Minister may give a written notice under subsection (1) only if the Minister considers that exceptional circumstances exist such that the Minister considers it necessary to request that further information.
- (4) A notice under subsection (1) must specify the further information that is to be provided by the project proponent.

**24 Determining 25 business day period for the preparation of scoping directions**

The period of time specified in section 22(2) is not to be taken to include any business day falling within a period—

- (a) commencing on the day a notice is given to a project proponent under section 23; and
- (b) ending on the day the Planning Minister receives the information requested in the notice.
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**Subdivision 2—Preparation of impact management plan**

**25 Project proponent must consult with specified persons as directed by Planning Minister**

- (1) The Planning Minister, for the purpose of the preparation of an impact management plan for a declared project, may direct the project proponent for that project to consult with a person specified in the direction.
- (2) A direction under subsection (1) must be—
  - (a) given to the project proponent within 25 business days after the making of the impact management plan determination that relates to the declared project; and
  - (b) published in the Government Gazette within 25 business days after the making of the impact management plan determination that relates to the declared project.
- (3) The project proponent must comply with a direction under subsection (1).

**26 Project proponent must comply with this Division**

A project proponent for a declared project in relation to which an impact management plan determination has been made must comply with this Division.

**27 Content of impact management plans**

A project proponent for a declared project must prepare an impact management plan for the project that—

- (a) complies with the scoping directions for that plan; and
- (b) contains an assessment of the impacts of the declared project; and

- (c) sets out the options for the development of the declared project that have been considered, and the impacts for those options; and
- (d) sets out the methods considered to avoid, minimise, manage or offset the impacts referred to in paragraph (b) or (c); and
- (e) includes a description of the preferred option for the development of the declared project and the reasons for that preference; and
- (f) sets out how any State environment protection policy or any waste management policy that applies in relation to the development and use of the declared project will be observed; and
- (g) identifies all of the applicable approvals that will be required under all applicable laws in order for the declared project to be developed, including any requirements under those laws applying to the declared project when assessing the impacts of the declared project; and
- (h) includes the information that would be required for the applicable law decisions to be made under all of the applicable laws that apply to the project including—
  - (i) a list of the mandatory applicable law criteria and discretionary applicable law criteria; and
  - (ii) information as to how the proponent considers the criteria referred to in subparagraph (i) apply.

**28 Impact assessment guidelines must be had regard to when preparing impact management plan**

Subject to this Division, a project proponent for a declared project must have regard to any impact assessment guidelines when preparing an impact management plan for the project.

**29 Completed impact management plan to be given to Planning Minister**

On completing an impact management plan for a declared project, the project proponent for that project must—

- (a) submit the impact management plan to the Planning Minister for an approval decision in relation to the project; and
- (b) pay to the Planning Minister the application fee.

**Division 5—Comprehensive impact statements**

**Subdivision 1—Scoping directions**

**30 Specification of matters to be considered and addressed in comprehensive impact statements**

- (1) Subject to this Subdivision, the Planning Minister must prepare directions that specify the kinds of impacts and other matters that must be considered and addressed in a comprehensive impact statement for the declared project to which a comprehensive impact statement determination relates (the *scoping directions*).
- (2) Subject to this Subdivision, the Planning Minister must prepare, and give to the project proponent, the scoping directions within 25 business days after making a comprehensive impact statement determination.

- (3) The scoping directions must be published in the Government Gazette as soon as practicable after the directions are prepared.

**31 Planning Minister may request further information or public comment and submissions in exceptional circumstances**

- (1) The Planning Minister, before the end of the period specified under section 30, may—
    - (a) by written notice given to the project proponent, request further information from the project proponent for the purpose of preparing the scoping directions for the comprehensive impact statement for the proponent's declared project; or
    - (b) within 15 business days after making a comprehensive impact statement determination, invite, by notice published in a newspaper circulating generally throughout Victoria and on the Department's Internet site, the public to make written comment on, or make written submissions in respect of, a draft of the scoping directions within 15 business days after the date of the notice.
  - (2) A notice under subsection (1)(a) must specify the further information that is to be provided by the project proponent.
  - (3) If a notice is published under subsection (1)(b), the Planning Minister must publish on the Department's Internet site a draft of the scoping directions.
  - (4) The Planning Minister may—
    - (a) request further information from the project proponent under subsection (1)(a) only if the Minister considers that there are exceptional circumstances such that the Minister
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- considers it necessary to request that further information;
- (b) invite comments and submissions from the public under subsection (1)(b) only if—
- (i) the Minister considers that there are exceptional circumstances such that the Minister considers it necessary to seek those comments and submissions; or
  - (ii) the comprehensive impact statement assessment process is a process to which section 29 of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth applies.
- (5) When preparing the scoping directions, the Planning Minister must consider every comment or submission the Minister receives in response to an invitation under subsection (1)(b) within the period of time stated in that subsection.

**32 Determining the 25 business day period for scoping directions after notice for further information**

The period of time specified in section 30(2) is not to be taken to include any business day falling within the period—

- (a) commencing on the day a notice is given to a project proponent under section 31(1)(a); and
- (b) ending on the day the Planning Minister receives the information requested in the notice.

**33 Extension of period of time for preparation of scoping directions because of public consultation**

- (1) This section applies if the Planning Minister invites comments and submissions from the public under a notice published in accordance with section 31(1)(b).

- (2) Despite section 30(2), the Planning Minister must prepare the scoping directions within 15 business days after the last day of the period stated in the notice published in accordance with section 31(1)(b).

### **34 Amendment of scoping directions**

- (1) The Planning Minister may amend the scoping directions for the comprehensive impact statement for a project proponent's declared project only if the Minister considers that there are exceptional circumstances that require an amendment to the directions.
- (2) An amendment to the scoping directions must be given to the project proponent.
- (3) Notice of an amendment to the scoping directions must be published in the Government Gazette as soon as practicable after the amendment is made.
- (4) The scoping directions, as amended, must be published on the Department's Internet site as soon as practicable after being amended.

### **Subdivision 2—Assessment committees**

### **35 Establishment of assessment committee**

After publishing the scoping directions for a comprehensive impact statement for a declared project, the Planning Minister must—

- (a) establish an assessment committee in accordance with Part 8 to assess the comprehensive impact statement; and

- (b) give the assessment committee the terms of reference under which it will assess the comprehensive impact statement in accordance with this Division.

**36 Content of terms of reference for assessment committee**

- (1) The terms of reference given to an assessment committee by the Planning Minister under section 35(1)(b) may include directions to the assessment committee on the following matters—
  - (a) a direction to conduct a preliminary hearing in a particular way;
  - (b) the matters which the assessment committee is to consider;
  - (c) the conduct of cross-examination, if permitted;
  - (d) who may make submissions at a preliminary hearing;
  - (e) any other matter the Planning Minister thinks fit for the purpose of this Act.
- (2) Subsection (1) does not limit what may be included in the terms of reference given to an assessment committee.

**37 Publication of assessment committee terms of reference**

The Planning Minister must publish the terms of reference the Minister gives an assessment committee under section 35(1)(b) in the Government Gazette and on the Department's Internet site on the same day, or before the day, the comprehensive impact statement for a declared project is exhibited under Subdivision 4.

### **Subdivision 3—Preparation of comprehensive impact statements**

#### **38 Project proponent must comply with this Division**

A project proponent for a declared project in relation to which a comprehensive impact statement determination has been made must comply with this Division.

#### **39 Content of comprehensive impact statements**

A project proponent for a declared project must prepare a comprehensive impact statement for the project that—

- (a) complies with the scoping directions for that statement; and
  - (b) contains an assessment of the impacts of the declared project; and
  - (c) sets out the options for the development of the declared project that have been considered, and the impacts for those options; and
  - (d) sets out the methods considered to avoid, minimise, manage or offset the impacts referred to in paragraph (b) or (c); and
  - (e) includes a description of the preferred option for the development of the declared project and the reasons for that preference; and
  - (f) sets out how any State environment protection policy or any waste management policy that applies in relation to the development and use of the declared project will be observed; and
  - (g) identifies all of the applicable approvals that will be required under all applicable laws in order for the declared project to be developed, including any requirements under
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- those laws applying to the declared project when assessing the impacts of the declared project; and
- (h) includes the information that would be required for the applicable law decisions to be made under all of the applicable laws that apply to the project including—
    - (i) a list of the mandatory applicable law criteria and discretionary applicable law criteria; and
    - (ii) information as to how the proponent considers the criteria referred to in subparagraph (i) apply; and
  - (i) in the case where the applicable approval that will be required is an amendment to a provision of a planning scheme—
    - (i) identifies every planning scheme that applies to the location or proposed location of the declared project; and
    - (ii) contains the proposed amendments to every provision of every planning scheme that will be required; and
    - (iii) contains an explanatory report for every proposed amendment to a provision of a planning scheme and any document to be applied, adopted or incorporated in any such amendment.

**40 Impact assessment guidelines must be had regard to when preparing comprehensive impact statement**

Subject to this Division, a project proponent for a declared project must have regard to any impact assessment guidelines when preparing a comprehensive impact statement for the project.

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**41 Submission of comprehensive impact statement to Planning Minister**

- (1) On completing a comprehensive impact statement for a declared project, the project proponent for that project must—
  - (a) submit the comprehensive impact statement to the Planning Minister for review under section 42; and
  - (b) pay to the Planning Minister the application fee.
- (2) The project proponent must give the Planning Minister at least 20 business days written notice of the proponent's intention to submit a comprehensive impact statement to the Planning Minister under subsection (1).

**42 Consideration of comprehensive impact statement by Planning Minister**

- (1) The Planning Minister, within 20 business days after receiving a comprehensive impact statement, must make a written determination (a *review determination*) as to whether the comprehensive impact statement can be released for public exhibition under Subdivision 4.
- (2) The Planning Minister, in a review determination, may determine that a comprehensive impact statement may be released for public exhibition under Subdivision 4 only if the Minister is satisfied that the statement is adequate to be released for that purpose.
- (3) In order to be satisfied that a comprehensive impact statement is adequate to be released for public exhibition, the Minister must be satisfied the statement meets the requirements set out in section 39.

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- (4) For the purpose of determining whether a comprehensive impact statement meets the requirements set out in section 39(f), (g) and (h), the Planning Minister may consult with—
- (a) any applicable law decision maker empowered to grant an applicable approval that is necessary for the declared project or a part of the declared project to be developed and to which the comprehensive impact statement relates; and
  - (b) any other person who the Minister considers has the necessary experience or training to advise the Minister in respect of the matters the Minister must consider in making a review determination.
- (5) In a review determination, the Planning Minister may direct the project proponent to revise an assessment, or the presentation of an assessment or finding, contained in the comprehensive impact statement if the Minister is of the view that the assessment or presentation is not adequate to be released for public exhibition.
- (6) A review determination must be—
- (a) given to the project proponent; and
  - (b) published on the Department's Internet site.
- (7) In addition, notice of the making of a review determination must be published in the Government Gazette.

#### **43 Revisions to draft comprehensive impact statements**

- (1) On receiving a review determination directing revisions to an assessment, or the presentation of an assessment or finding, contained in the comprehensive impact statement, the project proponent must—
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- (a) revise the statement in accordance with the determination; and
  - (b) submit the comprehensive impact statement (as revised) for review under section 42.
- (2) For the purpose of this Subdivision, a comprehensive impact statement that is revised in accordance with a review determination is to be taken to be a comprehensive impact statement prepared in accordance with section 38.
- (3) To avoid doubt, subsection (1) is not to be taken as precluding more than one revised comprehensive impact statement being submitted for review under section 42.

#### **Subdivision 4—Public exhibition of comprehensive impact statements**

##### **44 Application**

This Subdivision applies if the Planning Minister, in a review determination, determines that a comprehensive impact statement is adequate to be released for public exhibition.

##### **45 Time period for public exhibition**

- (1) The Planning Minister must determine the period that the comprehensive impact statement must be made publicly available in accordance with this Subdivision.
- (2) The period determined by the Planning Minister—
  - (a) must commence on the day notice is published under section 47; and
  - (b) must not be less than 20 business days and not more than 30 business days.

- (3) A determination under this section must be published on the Department's Internet site on the same day as the review determination that determines that the comprehensive impact statement can be released for public exhibition under this Subdivision is published on the Department's Internet site under section 42.
- (4) In addition, notice of a determination under this section must be published in the Government Gazette on the same day that notice of the making of the review determination that determines that the comprehensive impact statement can be released for public exhibition under this Subdivision is published in the Government Gazette under section 42.

#### **46 Public exhibition of comprehensive impact statement**

The project proponent for the declared project to which a comprehensive impact statement relates must—

- (a) make the comprehensive impact statement publicly available in accordance with this Subdivision for the period determined by the Planning Minister under section 45; and
- (b) give the comprehensive impact statement to the assessment committee established under section 35 to assess the comprehensive impact statement.

#### **47 Notification of public exhibition of comprehensive impact statement**

- (1) The project proponent must—
  - (a) publish notice of the comprehensive impact statement—
    - (i) in a newspaper circulating generally throughout Victoria; and

- (ii) in at least one newspaper circulating in the area where the declared project to which the statement relates will be developed; and
  - (iii) on the project proponent's Internet site; and
- (b) give a copy of the notice to—
  - (i) the Planning Minister; and
  - (ii) the owners and occupiers of land that are or will be materially affected by the declared project; and
  - (iii) all road authorities and infrastructure managers that are or will be materially affected by the declared project.
- (2) On receiving a copy of the notice, the Planning Minister must publish the notice on the Department's Internet site.

**48 Content of public notice of comprehensive impact statement**

A notice under section 47 must—

- (a) include the name of the project proponent; and
  - (b) include information about the scope of the declared project; and
  - (c) state the places where the comprehensive impact statement may be inspected by the public; and
  - (d) invite submissions on the comprehensive impact statement during the public exhibition period; and
  - (e) state that submissions must be made to the assessment committee established to assess the comprehensive impact statement; and
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- (f) state the last date by which submissions must be made to the assessment committee established to assess the comprehensive impact statement; and
- (g) give an explanation as to how a submission in relation to the comprehensive impact statement must be made; and
- (h) state an address to which submissions to the assessment committee established to assess the comprehensive impact statement are to be sent; and
- (i) be in accordance with any impact assessment guidelines.

**49 Public availability of comprehensive impact statement**

- (1) The project proponent must, during the public exhibition period—
  - (a) publish the comprehensive impact statement on the project proponent's Internet site; and
  - (b) give the comprehensive impact statement to the Secretary; and
  - (c) make copies of the comprehensive impact statement available to the public for inspection free of charge during business hours—
    - (i) at the place of business of the project proponent; and
    - (ii) if the project proponent has any place of business in the region of the State where the declared project is proposed to be developed, at those places; and

- (d) use reasonable endeavours to cause copies of the comprehensive impact statement to be made available to the public for inspection at public places free of charge during business hours.
- (2) The project proponent, during the public exhibition period, must give a copy of the comprehensive impact statement to an owner of land whose land is or will be materially affected by the development of the declared project to which the statement relates if the owner requests a copy.
- (3) A copy of a comprehensive impact statement must be given under subsection (2) free of charge.
- (4) On payment of the relevant fee, a person other than a person who is an owner of land whose land is or will be materially affected by the development of the declared project to which the comprehensive impact statement relates may be given a copy of the statement.
- (5) On receiving a comprehensive impact statement under subsection (1)(b), the Secretary must publish the statement on the Department's Internet site.
- (6) In this section—  
***public place*** includes—
- (a) the offices or libraries of the Councils whose municipal districts are within the region of the State where the declared project is proposed to be developed;
  - (b) a place that is determined, in writing, by the Secretary for the purposes of this section;
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*relevant fee* means the fee determined by the project proponent in accordance with the publication fee guidelines.

**50 Notification of applicable law decision makers of public exhibition of comprehensive impact statement**

As soon as practicable after receiving a notice under section 47(1)(b)(i), the Planning Minister must notify, in writing, every applicable law decision maker referred to in the comprehensive impact statement of the following—

- (a) the public exhibition of the statement;
- (b) that the applicable law decision makers may provide advice in accordance with section 65 or be required to provide advice to an assessment committee under section 245(2).

**51 Comprehensive impact statements to be given to agencies and applicable law decision makers**

The project proponent must give a copy of the comprehensive impact statement to every applicable law decision maker referred to in the statement as soon as practicable after the commencement of the public exhibition period.

**52 Public submissions on comprehensive impact statements**

- (1) Subject to this section, during the public exhibition period, any person may—
  - (a) make a submission to the assessment committee established to assess the comprehensive impact statement; or
  - (b) amend such a submission.

- (2) Two or more persons, together, may make a submission or an amendment to a submission. An assessment committee may treat such a submission as a single submission.
- (3) A submission or an amendment to a submission is not properly made unless it—
  - (a) is in writing; and
  - (b) states the name and address of the person making the submission or amendment; and
  - (c) states the grounds of the submission or amendment; and
  - (d) is relevant to the declared project; and
  - (e) is within the scope of the terms of reference of the assessment committee; and
  - (f) in the case of a submission made by 2 or more persons, states the name and address of the person who will—
    - (i) represent those persons in a preliminary hearing or a formal public hearing; and
    - (ii) be the contact person for those persons.
- (4) A person who has made a properly made submission may withdraw that submission by notice in writing given to the assessment committee.

**53 Assessment committee must disclose properly made submissions unless they are confidential**

- (1) An assessment committee must cause a properly made submission to be published on the Department's Internet site unless—
    - (a) the person who made the submission claims, when giving it to the committee, that the submission contains confidential information; and
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- (b) the committee decides that the submission contains confidential information.
  - (2) A properly made submission given to an assessment committee that has been claimed under this section to contain confidential information, and that the committee has decided contains confidential information, may be published if that information is omitted.
  - (3) If information is omitted from a properly made submission that is made publicly available by an assessment committee under subsection (2), a note to that effect must be included in the submission at the place in the submission from which the information is omitted.
  - (4) Despite anything to the contrary in this section, if requested in writing by the Planning Minister, an assessment committee must give a properly made submission (with any confidential information contained in the submission) to the Minister.

**54 Review of submissions by assessment committee**

- (1) An assessment committee must review every properly made submission it receives under this Subdivision that is made within the public exhibition period.
- (2) An assessment committee may review a submission or an amendment to a submission it receives under this Subdivision—
  - (a) that is made after the end of the public exhibition period and is a properly made submission; or
  - (b) even if the submission or amendment to a submission is not a properly made submission.

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**55 Public submissions on comprehensive impact statements to be given to project proponent**

An assessment committee must give a copy of every submission, and every amendment to a submission, that it receives to the project proponent.

**56 Consultation with persons who have made submissions to clarify matters in submissions**

- (1) As part of a review under section 54, the assessment committee may meet with, or correspond with, a person who has made a submission in order to clarify a matter arising from the submission.
  - (2) An assessment committee must make a record of every meeting it has with a person under subsection (1).
  - (3) An assessment committee must cause all correspondence between itself and a person who has made a submission and all records referred to in subsection (2) to be published on the Department's Internet site unless—
    - (a) the person claims, when meeting with the committee or in correspondence with the committee, that the information they provide is or contains confidential information; and
    - (b) the committee decides that that information is or contains confidential information.
  - (4) Information given to an assessment committee that has been claimed under this section to contain confidential information, and that the committee has decided contains confidential information, may be published if that confidential information is omitted.
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- (5) If information is omitted from a record or correspondence that is made publicly available by an assessment committee under subsection (4), a note to that effect must be included in the record or correspondence at the place in the record or correspondence from which the information is omitted.
  - (6) Despite anything to the contrary in this section, if requested in writing by the Planning Minister, an assessment committee must give a record or correspondence (with any confidential information contained in the record or correspondence) to the Minister.

#### **57 Preliminary hearings**

- (1) The assessment committee must conduct a preliminary hearing so as to enable persons—
    - (a) who have made properly made submissions in relation the comprehensive impact statement to clarify any issues that they have raised in their submissions about the declared project; or
    - (b) to raise any procedural or preliminary matters in relation to the formal public hearing that will be conducted in relation to the comprehensive impact statement.
  - (2) The assessment committee may determine which persons who have made properly made submissions may attend the preliminary hearing.
  - (3) The preliminary hearing must be conducted—
    - (a) in accordance with Division 2 of Part 8; and
    - (b) in accordance with any direction given to the assessment committee by the Planning Minister under the terms of reference given to the committee under section 35(1)(b); and
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- (c) within 20 business days after the end of the public exhibition period.
  - (4) Without limiting the matters about which an assessment committee may give directions in the conduct of a preliminary hearing, an assessment committee may give directions to a project proponent—
    - (a) seeking clarification of any matters arising from the project proponent's comprehensive impact statement;
    - (b) requiring the project proponent to provide further information in relation to any or all of its impact assessments in relation to the declared project;
    - (c) requiring the project proponent to provide further information regarding any other aspect of the project proponent's comprehensive impact statement.
  - (5) An assessment committee must—
    - (a) make a record of a preliminary hearing conducted under this section; and
    - (b) prepare a written summary of the preliminary hearing that includes—
      - (i) a list of the names of the persons who participated in the hearing; and
      - (ii) a list of the issues raised at the hearing.
  - (6) An assessment committee must cause a written summary referred to in subsection (5) to be published on the Department's Internet site.

**58 Notification of preliminary hearings**

- (1) As soon as practicable after the commencement of the public exhibition period for a comprehensive impact statement, the assessment committee must—
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- (a) publish notice of the time and place at which the preliminary hearing is to be conducted—
    - (i) in a newspaper circulating generally throughout Victoria; and
    - (ii) in at least one newspaper circulating in the area where the declared project to which the statement relates will be developed; and
  - (b) give notice of the time and place at which the preliminary hearing is to be conducted to the owners and occupiers of land that were given a notice under section 47; and
  - (c) cause notice of the time and place at which the preliminary hearing is to be conducted to be published on the Department's Internet site.
- (2) The assessment committee may also direct the project proponent for the declared project to publish notice of the time and place at which the preliminary hearing is to be conducted on the project proponent's Internet site.
  - (3) The project proponent must comply with a direction under subsection (2) as soon as practicable after receiving the direction.

#### **59 Comprehensive impact statement issues report**

- (1) An assessment committee must give the project proponent for the declared project in relation to which the committee was established a written report that summarises the issues in relation to the declared project that the committee considers the project proponent must address under Subdivision 5.
  - (2) A report under subsection (1) must be given to the project proponent within 20 business days after the end of the public exhibition period.
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**60 Project proponent must prepare a schedule of possible revisions that address issues in report**

Within 10 business days after receiving a comprehensive impact statement issues report, a project proponent must prepare a schedule for the preparation of revisions to the comprehensive impact statement that address the issues raised in the report and give that schedule to—

- (a) the assessment committee; and
- (b) the Secretary.

**Subdivision 5—Refinement of comprehensive impact statements and options for declared project**

**61 Project proponent must revise comprehensive impact statement**

- (1) A project proponent must revise the comprehensive impact statement so that the statement addresses the issues set out in a comprehensive impact statement issues report.
- (2) A project proponent may also revise the comprehensive impact statement so that the statement addresses any issue raised in a submission, or amendment to a submission, given to the proponent under section 55.

**62 Publication and submission of revised comprehensive impact statement**

- (1) This section applies subject to section 63.
- (2) A project proponent must publish on its Internet site—
  - (a) the revised comprehensive impact statement; and
  - (b) notice of that publication.

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- (3) In addition, notice of the publication of the revised comprehensive impact statement must be—
- (a) published—
    - (i) in a newspaper circulating generally throughout Victoria; and
    - (ii) in at least one newspaper circulating in the area where the declared project to which the statement relates will be developed; and
  - (b) given to—
    - (i) the Secretary; and
    - (ii) every person who made a properly made submission during the public exhibition period; and
    - (iii) all owners and occupiers of land that were given a notice under section 47; and
    - (iv) all owners and occupiers of land who are or will be materially affected by the declared project because of the revised comprehensive impact statement and who have not been given a notice under section 47.
- (4) A notice of the publication of a revised comprehensive impact statement must—
- (a) include the name of the project proponent; and
  - (b) include information about the scope of the declared project; and

- (c) invite submissions on the revised comprehensive impact statement from persons who may be adversely affected by the revised statement because of the revisions; and
  - (d) state that submissions must be made to the assessment committee established to assess the comprehensive impact statement to which the revised statement relates; and
  - (e) state the last date by which submissions must be received, which must be no less than 10 business days after the date of publication of the notice in the newspaper circulating generally throughout Victoria; and
  - (f) give an explanation as to how a submission in relation to the revised statement must be made; and
  - (g) state an address to which submissions to the assessment committee established to assess the comprehensive impact statement to which the revised statement relates are to be sent.
- (5) On receiving a notice under subsection (3)(b)(i), the Secretary must publish the notice on the Department's Internet site.

**63 Assessment committee to be notified of publication**

At least 10 business days before a project proponent publishes a revised comprehensive impact statement in accordance with section 62(2)(a), the proponent must notify the assessment committee established to assess the comprehensive impact statement of the proponent's intention to publish the revised comprehensive impact statement.

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**Subdivision 6—Other requirements before formal public hearings**

**64 Revised comprehensive impact statement and works approvals**

- (1) This section applies if a works approval is required in order for the declared project or a part of the declared project to be developed.
- (2) The project proponent must—
  - (a) give the revised comprehensive impact statement to the EPA for review by the EPA on the same day the proponent gives the revised statement to the assessment committee; and
  - (b) pay to the EPA an amount that is equivalent to the fee prescribed for the purpose of section 19B(1)(b) of the **Environment Protection Act 1970**.

**65 Advice of applicable law decision makers in relation to application of applicable law criteria**

- (1) An applicable law decision maker may give an assessment committee advice as to—
    - (a) whether the parts of a comprehensive impact statement that relate to the kinds of applicable approvals it grants under the relevant applicable law adequately address the applicable law criteria for the granting of those kinds of approvals; and
    - (b) if so, the kinds of conditions or restrictions it may impose on those kinds of approvals.
  - (2) Advice under subsection (1) must be given to an assessment committee before the first day after the end of the formal public hearing conducted in relation to the comprehensive impact statement.
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**Subdivision 7—Formal public hearings**

**66 Notification of formal public hearing to be conducted**

- (1) The assessment committee must, as soon as practicable after receiving a notification under section 63—
  - (a) publish notice of the time and place at which the formal public hearing for the comprehensive impact statement is to be conducted—
    - (i) in a newspaper circulating generally throughout Victoria; and
    - (ii) in at least one newspaper circulating in the area where the declared project to which the statement relates will be developed; and
  - (b) give notice of the time and place at which the formal public hearing is to be conducted to—
    - (i) the Secretary; and
    - (ii) the owners and occupiers of land that were given a notice under section 47.
- (2) On receiving a notice under subsection (1)(b)(i), the Secretary must publish the notice on the Department's Internet site.

**67 Direction to project proponent to publish formal public hearing time and place on Internet**

- (1) The assessment committee may also direct the project proponent for the declared project to which the comprehensive impact statement relates to publish notice of the time and place at which the formal public hearing is to be conducted on the project proponent's Internet site.

- (2) The project proponent must comply with a direction under subsection (1) as soon as practicable after receiving the direction.

**68 Conduct of formal public hearing by assessment committee**

- (1) An assessment committee must conduct a formal public hearing in relation to the comprehensive impact statement in accordance with Division 2 of Part 8.
- (2) The assessment committee must commence to conduct the formal public hearing within 20 business days after notice of the publication of the revised statement is published under section 62(2).
- (3) The assessment committee must complete the formal public hearing within 30 business days after commencing the hearing under subsection (2).

**Subdivision 8—Supplementary comprehensive impact statement assessments**

**69 Consideration of further assessments arising out of a formal public hearing or submissions**

- (1) This section applies if—
  - (a) in a formal public hearing or a properly made submission, a further option in relation to the declared project is put forward that the assessment committee considers—
    - (i) provides a prudent and feasible alternative to the preferred option contained in the comprehensive impact statement; and
    - (ii) has not been given sufficient consideration; and

- (b) the assessment committee considers that that further option may have the effect of requiring the comprehensive impact statement to be revised and reassessed (*a supplementary assessment*).
- (2) In exceptional circumstances, the assessment committee may recommend, in writing, to the Planning Minister that the Minister directs the project proponent to undertake a supplementary assessment.
- (3) In determining what constitutes exceptional circumstances for the purpose of subsection (2), an assessment committee may have regard to—
  - (a) the nature of the declared project and the contents of the comprehensive impact statement; and
  - (b) the extent to which the further option provides a prudent and feasible alternative to the preferred option presented in the comprehensive impact statement; and
  - (c) the impacts of the further option; and
  - (d) any further information that is provided to the committee by the project proponent under section 70(1) in relation to the extent to which the further option provides a prudent and feasible alternative.

**70 Assessment committee may request further information from project proponent**

- (1) For the purpose of making a recommendation to the Planning Minister under section 69(2), an assessment committee may request, in writing, the project proponent to give to the committee further information in relation to the extent to which a further option provides a prudent and feasible alternative.
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- (2) On receiving a request under subsection (1), the project proponent must comply with the request.
- (3) An assessment committee must give any additional information given by the project proponent in compliance with a request under subsection (1) to the Secretary.
- (4) On receiving additional information under subsection (3), the Secretary must publish the additional information on the Department's Internet site.

**71 Planning Minister may direct project proponent to undertake a supplementary assessment**

- (1) On receiving a recommendation under section 69(2), the Planning Minister may, in writing, direct the project proponent to whom the recommendation relates to undertake a supplementary assessment in relation to a further option in accordance with section 72.
- (2) The Planning Minister must give his or her reasons for a direction under subsection (1) to the project proponent.

**72 Supplementary assessments of further options**

- (1) This section applies if the Planning Minister directs the project proponent for a declared project to undertake a supplementary assessment in relation to a further option in accordance with this section.
- (2) The project proponent for the declared project to which the further option relates must review and revise the comprehensive impact statement for the project in light of the further option.
- (3) After revising the comprehensive impact statement in accordance with subsection (2), the project proponent must comply with sections 60, 62, 63 and 64.

- (4) For the purpose of subsection (3), a reference in those sections to a revised comprehensive impact statement is to be read as a reference to a comprehensive impact statement reviewed and revised under this section.
- (5) In addition, section 68 applies as if a reference in that section to a comprehensive impact statement were reference to a comprehensive impact statement reviewed and revised under this section.

**Subdivision 9—Assessment committee recommendations in relation to comprehensive impact statements**

**73 Assessment committee recommendations**

- (1) An assessment committee established for a declared project, by written report to the Planning Minister, must recommend to the Planning Minister (an *assessment committee recommendation*) as to whether the Minister should make an approval decision that—
  - (a) grants all or some of the applicable approvals that are necessary for the declared project or a part of the declared project to be developed (with or without conditions); or
  - (b) refuses to grant all of the applicable approvals that are necessary for the declared project or a part of the declared project to be developed.
- (2) An assessment committee must not make an assessment committee recommendation that is inconsistent with the committee's terms of reference.

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- (3) If an assessment committee recommendation recommends that the Planning Minister grant all or some of the applicable approvals that are required for the declared project or a part of the declared project to be developed but with conditions, the recommendation must specify—
- (a) the conditions; and
  - (b) the relevant applicable law under which the conditions are being imposed; and
  - (c) the person or body authorised under the relevant applicable law to administer compliance with the conditions.
- (4) In making an assessment committee recommendation, an assessment committee must have regard to—
- (a) the project proposal; and
  - (b) the comprehensive impact statement; and
  - (c) all properly made submissions; and
  - (d) any issues raised in, as the case requires—
    - (i) meetings and correspondence referred to in section 56; and
    - (ii) a preliminary hearing; and
    - (iii) a formal public hearing; and
  - (e) the comments of the persons the committee was directed by the Planning Minister to consult with under this Division; and
  - (f) any consultation with or advice received from an applicable law decision maker under this Division; and
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- (g) subject to this section, every applicable law relevant to the declared project, including the mandatory applicable law criteria and discretionary applicable law criteria under that law (as the case requires).
- (5) In addition, in making an assessment committee recommendation, an assessment committee may have regard to any other matter the committee considers relevant.
- (6) Subsection (4)(g) applies despite anything to the contrary in the applicable law that requires the relevant applicable law decision maker under that law to do anything other than have regard to the mandatory applicable law criteria.
- (7) An assessment committee recommendation must set out the reasons of the assessment committee.
- (8) An assessment committee recommendation must be made and given to the Planning Minister within 30 business days after the last day of the formal public hearing conducted in relation to the comprehensive impact statement unless the Planning Minister directs the project proponent, under section 71, to undertake a supplementary assessment in relation to a further option.

**74 Specific applicable approval—Environment protection works approvals**

- (1) This section applies if a works approval is required under the **Environment Protection Act 1970** in order for the declared project or a part of the declared project to be developed.
- (2) An assessment committee must give a copy of its assessment committee recommendation to the EPA on the same day on which the committee gives the Planning Minister its assessment committee recommendation.

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- (3) On receiving an assessment committee recommendation under this section, the EPA may give advice to the Planning Minister as to—
- (a) whether the Minister should, as part of the Minister's approval decision, issue a works approval for the declared project or a part of the declared project; and
  - (b) if a works approval should be issued, whether it should be subject to conditions and the nature of such conditions (if any).
- (4) The EPA must give its advice to the Planning Minister within 30 business days after receiving the copy of the assessment committee recommendation.

#### **Division 6—Interaction with the Aboriginal Heritage Act 2006**

##### **75 Giving and notification of cultural heritage management plans**

The project proponent for a declared project must—

- (a) give the Planning Minister a copy of every cultural heritage management plan that is approved under the **Aboriginal Heritage Act 2006** for the area in which works are to be carried out for the development of the project or a part of the project; or
- (b) notify, in writing, the Planning Minister if the project proponent has applied to VCAT under section 116 of the **Aboriginal Heritage Act 2006** for a review of, or commenced proceedings in a court in relation to—

- (i) a decision of a registered Aboriginal party to refuse to approve a cultural heritage management plan under section 63 of that Act; or
- (ii) a decision of the Secretary (within the meaning of that Act) to refuse to approve a cultural heritage management plan under section 65 of that Act.

### **Division 7—Approval decisions**

#### **Subdivision 1—Application**

#### **76 Application of Division**

This Division applies if the Planning Minister receives—

- (a) an impact management plan from a project proponent under section 29; or
- (b) an assessment committee recommendation.

#### **Subdivision 2—General provisions relating to approval decisions**

#### **77 Approval decisions**

- (1) Subject to this Division, on receiving an impact management plan or assessment committee recommendation, the Planning Minister must make a decision (an *approval decision*) whether to—
  - (a) grant all or some of the applicable approvals that are necessary for the declared project or a part of the declared project to be developed; or

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- (b) refuse to grant all of the applicable approvals that are necessary for the declared project or a part of the declared project to be developed.
- (2) In making an approval decision, the Planning Minister must—
- (a) in the case where the Minister receives an assessment committee recommendation, have regard to—
- (i) the assessment committee recommendation; and
- (ii) the advice of the EPA under section 74; and
- (b) in every case, have regard to the discretionary applicable law criteria under an applicable law; and
- (c) subject to subsection (3), in every case, have regard to the mandatory applicable law criteria under an applicable law.
- (3) Subsection (2)(c) applies despite anything to the contrary in the applicable law that requires the relevant applicable law decision maker under that law to do anything other than have regard to the mandatory applicable law criteria.

**78 Approval decisions for planning scheme amendments**

The Planning Minister may make an approval decision that is solely for an amendment to a provision of a planning scheme if the Planning Minister has received a notification under section 75(b).

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**79 Consultation required in impact management plan cases**

Before making an approval decision following receipt of an impact management plan, the Planning Minister must consult with every applicable law decision maker empowered to grant an applicable approval that is necessary for the declared project or a part of the declared project to be developed.

**80 Contents of approval decisions**

- (1) An approval decision must—
    - (a) specify—
      - (i) the applicable approvals granted or not granted; and
      - (ii) if any of the applicable approvals have been granted subject to conditions, those conditions; and
      - (iii) any other conditions the Planning Minister may wish to impose; and
    - (b) set out the reasons of the Planning Minister.
  - (2) Without limiting subsection (1)(a)(iii), the Planning Minister may, by condition, require the project proponent to—
    - (a) in the case of an approval decision relating to a declared project for which a comprehensive impact statement was prepared—prepare an impact management plan under Division 4 in relation to an aspect of the declared project;
    - (b) in all cases—enter into an agreement with the Minister in relation to any matter relating to the development of the declared project that is not a matter to which an applicable
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approval (to which the approval decision relates) applies.

**81 Time within which approval decision must be made**

- (1) The Planning Minister must make an approval decision within 40 business days after receiving, as the case requires—
  - (a) the impact management plan; or
  - (b) the assessment committee recommendation.
- (2) However, the Planning Minister must not make his or her decision under this Division before—
  - (a) receiving advice from the EPA under section 74; or
  - (b) the time afforded to the EPA under that section lapses—

whichever occurs first.

**82 Giving and publication of approval decision**

- (1) An approval decision must be given to—
  - (a) the project proponent; and
  - (b) every applicable law decision maker empowered to grant an applicable approval that is necessary for the declared project or a part of the declared project to be developed; and
  - (c) in the case of an approval decision following the comprehensive impact statement assessment process, the persons referred to in section 62(3)(b)(ii) to (iv); and
  - (d) in the case of an approval decision following the impact management plan assessment process, the persons with whom the project proponent consulted in accordance with a direction under section 25.

- (2) An approval decision must be published on the Department's Internet site and notice of its making must be published in the Government Gazette.
- (3) An approval decision takes effect on the day notice of its making is published in the Government Gazette.

**83 Publication of assessment committee recommendation**

- (1) The Planning Minister must publish the assessment committee recommendation to which the Minister's approval decision relates at the same time as the approval decision.
- (2) An approval recommendation must be published on the Department's Internet site.

**84 Effect of approval decision granting the applicable approvals for a declared project**

- (1) An approval decision granting any of the applicable approvals necessary for a declared project to be developed, where that decision relates to a particular applicable approval, is to be taken to be a decision of the applicable law decision maker granting the applicable approval under the relevant applicable law—
  - (a) despite anything to the contrary in that applicable law; and
  - (b) even if—
    - (i) no application was made under the applicable law for the particular applicable approval; or
    - (ii) the process specified under the relevant applicable law for the making of the applicable law decision for the particular applicable approval was not complied with; or

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- (iii) a fee required in respect of an application under the relevant applicable law for the making of the applicable law decision for the particular applicable approval was not paid.
- (2) Subject to subsection (3), an applicable approval to which this section applies may be varied, amended or revoked by the relevant applicable law decision maker in accordance with the relevant applicable law under which that approval operates—
- (a) only on the application of the project authority for the declared project to which the applicable approval applies; and
- (b) with the written consent of the Planning Minister.
- (3) In the case of an applicable approval that is a works approval, a condition to which the approval is subject may be amended, or a new condition may be inserted into the works approval, by the EPA by notice—
- (a) given to the project authority for the declared project to which the approval relates; and
- (b) published in the Government Gazette.
- (4) A amendment, or insertion, of a condition under subsection (3) is to be taken to be an amendment of the works approval under section 19C of the **Environment Protection Act 1970**.
- (5) Subsections (2) and (3) apply despite anything to the contrary in an applicable law.
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### **Subdivision 3—Planning scheme amendments**

#### **85 Modification of application of the Planning and Environment Act 1987**

- (1) This section applies if the Planning Minister must make an approval decision that relates to the preparation, adoption and approval of an amendment to a provision of a planning scheme under the **Planning and Environment Act 1987**.
- (2) Subject to this Division, for the purpose of the Planning Minister making the approval decision, the **Planning and Environment Act 1987** (except sections 38(2) to (4) and 39) applies as an applicable law.

#### **86 Amendments to provisions of planning schemes must not require planning permit for works**

An approval decision that makes an amendment to a provision of a planning scheme must not have the effect of requiring a person to hold a planning permit in order for that person or another person to carry out works in the project area for the declared project to which the decision relates.

### **Subdivision 4—Other applicable law exclusions and modifications**

#### **87 Modification of the application of the Flora and Fauna Guarantee Act 1988**

- (1) This section applies if the Planning Minister must make an approval decision that relates to the granting of a permit under section 40 of the **Flora and Fauna Guarantee Act 1988**.
  - (2) The project proponent is taken to be a landholder to which section 40 of that Act applies for the purpose of the Planning Minister making the approval decision.
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**88 Modification of the application of the Heritage Act 1995**

- (1) This section applies if the Planning Minister must make an approval decision that relates to—
  - (a) the issue of a permit under section 74 of the **Heritage Act 1995**; or
  - (b) the issue of a consent under section 129 of the **Heritage Act 1995**.
- (2) Subject to this Division—
  - (a) in the case of the issue of a permit under section 74 of that Act, that Act (except sections 72 and 74(2)) applies as an applicable law for the purpose of the Planning Minister making the approval decision;
  - (b) in the case of the issue of a consent under section 129 of that Act, that Act (except sections 129(2)(c)) applies as an applicable law for the purpose of the Planning Minister making the approval decision.

**Division 8—Approval decision variations**

**89 Applications for variations**

- (1) The project authority for a declared project may apply to the Planning Minister for a variation to the approval decision that applies to the declared project.
- (2) An application must—
  - (a) be in writing; and
  - (b) specify the variation being sought; and
  - (c) include information that explains, and the reasons for, the variation sought.

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**90 Planning Minister to make determination on application**

- (1) On receiving an application under section 89, the Planning Minister must determine which provisions of the impact management plan assessment process or comprehensive impact statement process should apply to the variation sought.
- (2) In making a determination under subsection (1), the Planning Minister must have regard to the nature of the variation sought.
- (3) A determination under subsection (1) must—
  - (a) specify which of the provisions of the impact management plan assessment process or comprehensive impact statement process will apply to the variation sought; and
  - (b) be given to the project authority that made the application.
- (4) Notice of the making of a determination under subsection (1) must be published—
  - (a) in the Government Gazette; and
  - (b) on the Department's Internet site.

**Note**

See also section 84(2).

**91 Application of Part to variation sought by project authority**

On the making of a determination under section 90—

- (a) the provisions of the impact management plan assessment process or comprehensive impact statement process specified in the determination apply to the variation sought—

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- (i) as if a reference in those provisions to the project proponent were a reference to the project authority seeking the variation to the approval decision that applies to the declared project; and
  - (ii) as if a reference in those provisions to the declared project (other than a reference to the declared project to be developed) were a reference to the variation being sought to the approval decision that applies to the approved project; and
  - (iii) as if a reference in those provisions to a declared project to be developed were a reference to the declared project to be developed if the variation to the approval decision that applies to the project is made; and
  - (iv) with any other modifications that are necessary; and
- (b) Divisions 6 and 7 apply—
- (i) as if a reference in those Divisions to an approval decision were an approval decision varying the approval decision that applies to the declared project; and
  - (ii) as if a reference in those Divisions to the project proponent were a reference to the project authority seeking the variation to the approval decision that applies to the declared project; and
  - (iii) with any other modifications that are necessary.
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**92 Development of approved project may continue in some cases while a variation sought**

To avoid doubt, a project authority may continue to develop those parts of an approved project that do not relate to the variation of the approval decision sought under this Division.

**Division 9—Other matters**

**93 Correction of mistakes**

- (1) The Planning Minister may correct an approval decision, or applicable approval to which the approval decision applies, if the decision or applicable approval contains—
  - (a) a clerical mistake or an error arising from any accidental slip or omission; or
  - (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the approval decision or applicable approval.
- (2) Subsection (1) applies despite anything to the contrary in an applicable law.

**94 Reports to the Premier in relation to compliance with time limits under this Part**

The Planning Minister, within 10 business days after receiving a written request from the Premier, must report to the Premier in relation to—

- (a) whether there has been any non-compliance by any person or body with a time limit required under this Part; and
  - (b) the reasons for those cases of non-compliance.
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**PART 4—THE PROJECT AREA**

**95 Designation of project area**

- (1) This section applies if the Planning Minister—
    - (a) makes an approval decision in relation to a declared project; or
    - (b) if the Governor in Council declares a transport project to be a declared project to which this Act (other than Part 3 and 8) applies.
  - (2) The Planning Minister, by Order published in the Government Gazette, must designate the area of land for—
    - (a) in the case where the Minister has made a determination under section 20 that does not require a project proponent for a declared project to conduct an impact assessment under Part 3—the declared project to which the determination relates;
    - (b) in the case where the Minister has made an approval decision—the declared project to which that decision relates.
  - (3) The Planning Minister must not make a designation under this section unless—
    - (a) the Minister has received appropriate plans that describe the area of land that have been—
      - (i) signed by the Surveyor-General; and
      - (ii) lodged at the Central Plan Office; and
    - (b) the designation is consistent with any applicable planning scheme.
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- (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.

**96 Variations to project area**

- (1) A project authority for an approved project may request the Planning Minister to vary the project area for the approved project by doing either or both of the following—
- (a) increasing the project area by designating an area of land in the vicinity of the project area to be part of the project area;
  - (b) designating an area of land as not being part of the project area.
- (2) A request under subsection (1) must—
- (a) set out the variation being requested; and
  - (b) be in writing.
- (3) On receiving a request under subsection (1), the Planning Minister, by Order published in the Government Gazette, may vary the project area by doing either or both of the following—
- (a) increasing the project area by designating an area of land in the vicinity of the project area to be part of the project area;
  - (b) designating an area of land as not being part of the project area.
- (4) The Planning Minister must not make a designation under this section unless the Planning Minister has received appropriate plans that describe the area of the land that have been—
- (a) signed by the Surveyor-General; and
  - (b) lodged at the Central Plan Office.
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- (5) 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.

**97 Consolidated plans for project area**

- (1) The Planning Minister, by Order published in the Government Gazette, may approve consolidated plans of a project area incorporating all variations to the project area made under section 96 up to the date of the Order.
- (2) The Planning Minister must not make an Order under this section unless the Planning Minister has received the appropriate consolidated plans, that have been—
- (a) signed by the Surveyor-General; and
  - (b) lodged at the Central Plan Office.
- (3) An Order under this section approving consolidated plans for a project area revokes and replaces any existing approved consolidated plans for the project area.
- (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 day.

**98 Planning scheme amendment powers of Planning Minister in relation to variations to project area**

- (1) This section applies if—
- (a) an Order is made under section 96; and
  - (b) land to which that Order relates is deemed to be reserved for public purposes under a planning scheme.
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- (2) The Planning Minister, in accordance with the **Planning and Environment Act 1987**, may amend the provisions of the planning scheme so that—
- (a) in the case of an Order made under section 96(3)(a)—the land is deemed to be reserved for public purposes under the planning scheme;
  - (b) in the case of an Order made under section 96(3)(b)—the land ceases to be deemed to be reserved for public purposes under the planning scheme.
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**PART 5—A PROJECT AUTHORITY'S FUNCTIONS AND  
POWERS**

**Division 1—Interpretation**

**99 Definitions**

In this Part—

*additional project power* means any one or more  
of the following—

- (a) to acquire, hold or dispose of, on behalf  
of the Crown, real or personal property;
- (b) with the written approval of the  
Treasurer, to participate in the  
formation of a corporation, trust,  
partnership or other body or enter into a  
joint venture;
- (c) to subscribe for or otherwise acquire,  
and hold and dispose of, shares in or  
debentures or other securities of, a  
corporation;
- (d) to become a member of a company  
limited by guarantee;
- (e) to subscribe for or otherwise acquire,  
and hold and dispose of, units in a trust;
- (f) to acquire, and hold and dispose of, an  
interest in a partnership or other body;
- (g) to give indemnities, guarantees,  
releases and charges, and anything else  
of a similar nature;

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- (h) to, on behalf of the Crown—
- (i) assign, grant, lease, licence, sell, mortgage, use as a security, or otherwise encumber or dispose of, any intellectual property right of the Crown;
  - (ii) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit, any intellectual property right of the Crown;
  - (iii) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain or exploit any Crown copyright;
- (i) to employ or engage staff or consultants;
  - (j) to enter into arrangements for the services of persons employed under the **Public Administration Act 2004**;
  - (k) to appoint agents and attorneys, and act as agent;

*specified project power* means an additional project power specified by Order under section 100.

### **100 Specification of project powers**

The Governor in Council, on the recommendation of the Project Minister for the approved project to be developed by a project authority, by Order published in the Government Gazette, may specify an additional project power to be a specified project power.

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**Division 2—Functions and powers of a project authority**

**101 A project authority's functions**

A project authority has, for an approved project, the following functions—

- (a) to facilitate, on behalf of the State, the development of the approved project;
- (b) to seek and evaluate submissions from persons interested in undertaking the approved project;
- (c) to negotiate with persons interested in undertaking the development of the approved project;
- (d) to make recommendations in relation to contractual arrangements between the State and any other person for the development or delivery of the approved project;
- (e) to enter into contractual arrangements with any persons for the development or delivery of the approved project and to administer and manage such arrangements;
- (f) to administer and manage agreements and arrangements between the State and any other person for, or relating to, the development or delivery of the approved project;
- (g) 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 approved project;
- (h) 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 approved project;

- (i) to make recommendations to the Project Minister in relation to facilitating the approved 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 approved project;
- (j) to ensure that agreements and arrangements between the State and any other person for, or relating to, the development or delivery of the approved project are performed in accordance with their terms;
- (k) to commission transport infrastructure that is developed as part of an approved project;
- (l) to undertake any other functions that are conferred on the project authority by or under this Act or any other Act.

### **102 A project authority's powers**

- (1) For the purpose of performing its project functions, the project authority, in addition to all other powers conferred on it by or under any other Act or law, may—
  - (a) exercise a specified project power; and
  - (b) exercise a power conferred on it by or under this Act.
- (2) In addition, a project authority may do all other things necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its project functions under this Act.

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**103 Delegation—to staff and members**

- (1) A project authority, by instrument, may delegate to—
  - (a) an employee of the authority; or
  - (b) a person employed under the **Public Administration Act 2004**; or
  - (c) if the authority is a body corporate, a member or chief executive of the authority—  
any project function the project authority has, other than this power of delegation.
- (2) If the project authority is a body corporate, an instrument under subsection (1) must be under the authority's common seal.

**104 Delegation—when the Director of Public Transport is the project authority**

- (1) This section applies if the project authority is the Director of Public Transport.
- (2) The Director of Public Transport, by instrument, may delegate to—
  - (a) a person employed in the Department of Transport under Part 3 of the **Public Administration Act 2004**; or
  - (b) a person employed by VicRoads; or
  - (c) a person engaged by the Secretary to the Department of Transport—  
any project function the Director has, other than this power of delegation.

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**105 Delegation—to the project contractor**

- (1) A project authority, by instrument, may delegate to a project contractor a road function.
- (2) If a project authority delegates a road function under this section, the authority must publish a notice of that delegation in the Government Gazette.
- (3) If the project authority is a body corporate, an instrument under subsection (1) must be under the authority's common seal.

**106 Sub-delegations by project contractor**

- (1) This section applies if an instrument of delegation under section 105 delegating a road function to the project contractor named in the instrument authorises the sub-delegation of that road function by that project contractor to another person or body.
- (2) Subject to the consent of the Project Minister and any conditions to which the instrument of delegation is subject, the project contractor, by instrument, may sub-delegate any road function delegated to the contractor under that instrument of delegation to any other person.
- (3) If a project contractor sub-delegates any road function under this section, the project contractor must publish a notice of that sub-delegation in the Government Gazette.

**107 Application of Interpretation of Legislation Act 1984 to sub-delegations by project contractor**

Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by section 106 in the same way as they apply to a delegation.

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**108 Project contractor to notify project authority before performing a road function**

- (1) A project contractor must notify, in writing, the project authority that delegated a road function to the contractor of its intention to perform a road function.
- (2) A project contractor does not need to comply with subsection (1) if there is an agreement in force between the project contractor and the project authority that provides for a notification of the kind referred to in that subsection.

**109 Project authority subject to Project Minister direction or control**

A project authority, when performing or exercising a project function, is subject to the direction and control of the Project Minister.

**Division 3—End of declared project**

**110 Notification of completion of approved project**

- (1) On the completion of an approved project, the project authority for the project must notify, in writing, the Project Minister of the project's completion.
- (2) On receiving a notification under subsection (1), the Project Minister must publish a notice in the Government Gazette, advising of the completion of the approved project.

**111 Effect of notification of completion of an approved project**

On publication of a notice under section 110(2), the project authority ceases to have any project functions in respect of the approved project to which the notice relates.

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## PART 6—PROJECT DELIVERY

### Division 1—Acquisition of land in the project area

#### 112 Powers of acquisition

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

#### 113 Application of Land Acquisition and Compensation Act 1986

Subject to this Division and Division 6, the **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

- (a) the **Major Transport Projects Facilitation Act 2009** is the special Act; and
- (b) a project authority is the Authority.

#### 114 Acquired land to be Crown land

Subject to sections 115 and 117, any interest in land acquired by a project authority under section 112 vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that Act unless—

- (a) the land was Crown land before its acquisition; and
  - (b) the project authority declares in the notice of acquisition that the project authority is acquiring the interest in fee simple in the land.
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**115 Certain acquired land taken to be reserved**

- (1) If a project authority acquires an interest in land that vests in the Crown under section 113, the land—
  - (a) is taken to be unalienated land of the Crown; and
  - (b) is taken 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 approved 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**.

**116 Acquisition of easement—easement in gross**

If a project authority acquires any right in the nature of an easement or purporting to be an easement under section 112, that right must be taken to be an easement even though there is no land vested in the project authority or the Crown that is benefited by or capable of being benefited by that right.

**117 Acquisition by project authority—effect on utilities**

- (1) This section applies if—
  - (a) a project authority acquires an interest in land under section 112 or Division 6; 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—

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- (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 (other than an interest in real property) 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.

**118 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) Land in a project area is taken 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**.
- (3) Section 7(2) of the **Land Acquisition and Compensation Act 1986** applies to an acquisition under section 112 as if in that section for "twelve months" there were substituted "3 months".

(4) Section 8(1) of the **Land Acquisition and Compensation Act 1986** applies to an acquisition under section 112 as if for paragraph (e) there were substituted—

"(e) state that the land is within a project area within the meaning of the **Major Transport Projects Facilitation Act 2009**;"

(5) Section 74 of the **Land Acquisition and Compensation Act 1986** applies to a project authority's powers of entry in relation to land as if after section 74(1)(b) there were inserted—

"(ba) undertake flora and fauna surveys and archaeological investigations; and".

(6) Section 43 of the **Land Acquisition and Compensation Act 1986** applies to an acquisition under section 112 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 **Major Transport Projects Facilitation Act 2009** for the purposes of an approved project within the meaning of that Act;"

(7) Section 109 of the **Land Acquisition and Compensation Act 1986** does not apply to an interest in land acquired under section 112.

#### **119 Modification of Land Acquisition and Compensation Act 1986—temporary occupation**

Section 75 of the **Land Acquisition and Compensation Act 1986** has effect as if—

(a) it empowers the project authority and any person authorised by the project authority under that section to enter any land; and

- (b) after section 75(2)(f) there were inserted—
- "(fa) demolish structures (other than places of residence or business); or
  - (fb) carry out works on drainage channels, streams or other waterways, or works relating to the diversion of drainage channels, streams or other waterways; or"; and
- (c) section 75(6) did not apply.

### **120 Compensation for entry or temporary occupation**

- (1) This section applies if a project authority occupies land under section 75 of the **Land Acquisition and Compensation Act 1986**.
- (2) Section 47(3) of the **Land Acquisition and Compensation Act 1986** does not apply.
- (3) The owner of the land has a right to receive rent from the project authority for the occupation of the land by the authority as determined under this section.
- (4) Within 30 days after serving a notice under section 75(3) of the **Land Acquisition and Compensation Act 1986**, the project authority must make an offer for the payment of rent to the owner of the land for the authority's occupation of that land.
- (5) If a project authority and the owner of the land do not agree on an amount of rent to be paid by the project authority within one month after the project authority's first offer for the payment of rent under subsection (3), the project authority must notify the Valuer General in writing of the disagreement.
- (6) Within 10 business days after receiving notice from a project authority under subsection (4), the Valuer General must appoint a valuer to determine

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the amount of rent payable for the occupied land by the project authority.

- (7) If a project authority or an owner of the land disagrees with a determination made by a valuer under subsection (6), the disagreement is taken to be a disputed claim for the purposes of the **Land Acquisition and Compensation Act 1986** and Part 10 of that Act applies as if—
- (a) a reference in that Part to the Authority were a reference to the project authority; and
  - (b) a reference in that Part to the claimant were a reference to the owner.

**121 Project authority to prepare condition report for occupied land**

- (1) Within 14 days after the project authority occupies land under section 75 of the **Land Acquisition and Compensation Act 1986**, the project authority must give the owner of the land a report as to the condition of the land at occupation (*a condition report*).
- (2) If the owner of the land disagrees with any aspect of the condition report, the owner must give written notice of that disagreement to the project authority within one month after being given the condition report.
- (3) If the owner of the land does not give notice of the owner's disagreement within the time specified under subsection (2), the owner is taken to agree with the contents of the condition report.
- (4) If the owner gives a notice within the time specified under subsection (2) and the owner and project authority cannot agree as to the contents of the condition report within 2 months after the date the condition report was given under subsection

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- (1), the project authority must notify the Valuer General that a dispute exists under this section.
- (5) Within 10 business days after receiving notice from a project authority under subsection (4), the Valuer General must appoint a valuer to prepare a condition report.
- (6) For the purposes of section 47(1) of the **Land Acquisition and Compensation Act 1986**, a condition report prepared by a valuer under this section is conclusive evidence of the condition of the land immediately prior to its occupation by the project authority.

**122 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.

**123 Transfer of building or structure as compensation**

With the agreement of the person entitled to compensation under this Division for the acquisition of an interest in land, a project authority may transfer a building or structure from project land or from land owned by the project authority or by that person to other land owned by that person in full or in part settlement of any compensation that the project authority is liable to pay.

**124 Adjoining land may be provided as compensation**

- (1) If a project authority acquires compulsorily under this Division part of a parcel of land owned by a person, the project authority may require that person to take land—

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- (a) that adjoins the part of that parcel that was not acquired; and
  - (b) that is owned by the project 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 project authority.
- (3) If the project 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.

## **Division 2—Acquisition of native title rights and interests**

### **125 Application of Division**

This Division applies in relation to an approved project if—

- (a) section 24KA of the Native Title Act does not apply to the approved project; and
- (b) the Project Minister makes an Order in respect of the approved project under section 126 requiring acquisition of any native title rights and interests.

### **126 Project Minister may order compulsory acquisition**

- (1) The Project Minister, by Order published in the Government Gazette, may determine that compulsory acquisition of native title rights and interests is necessary for the purposes of an approved project.
- (2) An Order under this section takes effect on the day that it is published in the Government Gazette.

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**127 Compulsory acquisition of native title rights and interests**

- (1) A project authority may acquire a native title right or interest in land in the project area by a compulsory process for the purposes of an approved project or any purpose connected with an approved 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 **Major Transport Projects Facilitation Act 2009** is the special Act; and
  - (b) the project authority is the Authority.
- (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.

**128 Acquired right or interest to vest in Crown**

Any right or interest in land acquired by the project authority under section 127 vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that Act.

**129 Procedure for acquisition**

- (1) For the purposes of the compulsory acquisition of native title rights and interests in land, a project 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 project authority may
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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, VCAT is the independent body for hearing an objection under section 24MD(6B)(f) and sections 130 and 131 apply.
  - (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 project 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 VCAT.
  - (5) If an objection made under section 24MD(6B)(d) of the Native Title Act to a proposed compulsory acquisition is referred to VCAT and a determination is made that the proposed compulsory acquisition proceed, the project authority, in accordance with the determination and subject to this Act, may compulsorily acquire the native title rights and interests.
  - (6) If VCAT makes a determination that the proposed compulsory acquisition not proceed, or proceed subject to conditions, the project 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.
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**130 Referral of objections to VCAT**

- (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 project authority to refer the objection to VCAT.
- (2) A request under subsection (1) must be made within 5 months after notification under section 24MD(6B) of the Native Title Act of the proposed compulsory acquisition.
- (3) If a request is made, the project authority must refer the objection to VCAT unless the project authority decides not to proceed with the compulsory acquisition.
- (4) The project authority is a party to a proceeding in VCAT in respect of an objection.

**131 Determination of VCAT on objection**

- (1) VCAT may make any of the following determinations in respect of an objection referred to it under section 130—
    - (a) a determination that the proposed compulsory acquisition that is the subject of the objection proceed;
    - (b) a determination that the proposed compulsory acquisition proceed subject to conditions;
    - (c) a determination that the proposed compulsory acquisition not proceed.
  - (2) In making a determination, VCAT must take into account—
    - (a) the likely impact of the proposed compulsory acquisition on the objector's registered native title rights and interests; and
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- (b) the measures proposed to be taken to minimise that impact.
- (3) To avoid doubt, a determination is not an order of VCAT for the purposes of the **Victorian Civil and Administrative Tribunal Act 1998**.

**Note**

Compare section 79 of the Native Title Act.

**132 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.

**Division 3—Acquisition of land outside the project area**

**133 Power of project authority to purchase land**

- (1) A project authority may purchase land outside the project area for the purposes of an approved project.
- (2) A project authority may purchase land outside the project area for the purpose of preservation, restoration or provision of native habitat.
- (3) A project authority may purchase the whole of a parcel of land even if only part of the land is required for the purposes of an approved project or a purpose specified in subsection (2).
- (4) If a project authority acquires part of a parcel of land under section 112, 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 an approved project or a purpose specified in subsection (2).

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- (5) If an Order has been published under section 134 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 project 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 an approved project or a purpose specified in subsection (2).

#### **Division 4—Provision of public land and Council land**

##### **Subdivision 1—Surrender or divesting of public land and Council land**

#### **134 Surrender or divesting of land of public authorities and Councils**

- (1) The Governor in Council on the recommendation of the Project Minister, by Order published in the Government Gazette, may—
- (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).

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- (5) A public authority or Council that receives notice of a requirement under subsection (1)(a) must notify the Project Minister of any lease, licence or other interest in the land that is being divested.
  - (6) The Project Minister must give notice to any public authority, Council or person affected by an Order under subsection (1) within 10 business days after the Order is published.

### **135 Surrender of interests in unreserved Crown land**

- (1) The Project Minister may recommend to the Governor in Council that the interests (if any) of a public authority or a Council in any land in 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 Project Minister's recommendation, the Governor in Council, by Order published in the Government Gazette, may declare that the interests (if any) in the land shown on the plan are surrendered to the Crown.

### **136 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 134(1)(a); or

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- (b) the publication in the Government Gazette of an Order under section 134(1)(b) in respect of the land; or
  - (c) the publication in the Government Gazette of an Order under section 135 in respect of the land; or
  - (d) the publication in the Government Gazette of an Order under section 162 in respect of the land.
- (2) The land is taken 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 134 or 135 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 134 or 135 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.
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- (5) The land is taken 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 approved project.
- (6) This section has effect despite anything to the contrary in section 175A of the **Water Industry Act 1994**, section 10 of, or clause 1 of Schedule 5 to, the **Road Management Act 2004** or any other Act.

**137 Temporary reservation may be amended or revoked**

The reservation of land under section 136(5) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

**Subdivision 2—Removal of reservations on land**

**138 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**.

**139 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 Project Minister may recommend to the Governor in Council that the reservation of that land be revoked in its entirety.
- (2) On receiving the Project Minister's recommendation, the Governor in Council, by Order published in the Government Gazette, may 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.

**140 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 Project 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 Project Minister's recommendation, the Governor in Council, by Order published in the Government Gazette, may 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.

**141 Effect of revocation of reservation**

- (1) This section applies to the following—
  - (a) land referred to in an Order under section 139, on the publication of that Order in the Government Gazette;

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- (b) land shown on a plan to which an Order under section 140 applies, on the publication of that Order in the Government Gazette.
- (2) The land is taken 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 139 or 140 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 139 or 140 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.
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- (7) The land is taken 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 approved project.
  - (8) This section has effect despite anything to the contrary in section 175A of the **Water Industry Act 1994**, section 10 of, or clause 1 of Schedule 5 to, the **Road Management Act 2004** or any other Act.

#### **142 Temporary reservation may be amended or revoked**

The reservation of land under section 141(7) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

#### **Subdivision 3—Notification of reservations**

#### **143 Minister to be notified of reservation**

The project authority must notify the Minister administering the **Crown Land (Reserves) Act 1978** of the reservation of any land under Subdivision 1 or 2 or Division 6.

#### **Subdivision 4—Declaration of roads**

#### **144 Orders may continue or declare roads**

- (1) An Order made under Subdivision 1 or Subdivision 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.
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- (3) The Governor in Council, by Order published in the Government Gazette, may specify that any 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 taken 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, taken 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) To avoid doubt, it is declared that this section has effect in addition to and not in derogation of the reservation of the land that is taken to be in effect under this Division.
  - (6) This section has effect despite anything to the contrary in any other Act.

#### **Subdivision 5—Compensation for surrendered or divested or reserved land**

##### **145 Compensation—surrender, divesting or revocation of reservation**

- (1) Subject to this Act and the **Land Acquisition and Compensation Act 1986**, a person has a claim for compensation if the person immediately before the publication of an Order under Subdivision 1 or 2 had a legal or equitable estate or interest in land to which the Order applies.
- (2) The **Land Acquisition and Compensation Act 1986** (except sections 31 to 36) applies to the determination of compensation payable under this section as if the publication of an Order under Subdivision 1 or 2 were a notice of acquisition of

that estate or interest and the project 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 **Major Transport Projects Facilitation Act 2009** for the purposes of an approved 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.

**146 Compensation for Councils in certain circumstances**

- (1) This section applies to land that was under the control of a Council immediately before the publication of an Order under Subdivision 1 or 2 in relation to that land.
- (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, the Council may claim the amount of that loss or expense from the project 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.

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- (4) A claim under subsection (2) must be made within 2 years after the Order is made.
  - (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.

**147 Transfer of building or structure as compensation**

With the agreement of a Council entitled to compensation under this Subdivision, a project authority may transfer a building or structure from project land or from land owned by the project authority or by the Council to other land owned by the Council in full or in part settlement of any compensation that the project authority is liable to pay.

**148 Adjoining land may be provided as compensation**

- (1) If a project authority is liable to pay compensation to a Council under section 146, the project authority may require the Council to take land—
  - (a) that adjoins land owned by the Council; and
  - (b) that is owned by the project 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 a project authority under section 146.
- (3) If a project 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 146.

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**Subdivision 6—Other matters**

**149 No other compensation payable**

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

**150 Effect of reservation of a stratum of Crown land**

If a stratum of Crown land becomes 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.

**Division 5—Entry into possession of certain project land**

**151 Power to enter into possession**

Subject to this Part, a project authority may enter into possession of project land.

**152 Project authority must try to obtain agreement**

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

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**153 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 project 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.

**154 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 project 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 date and unless the project authority has given 7 days' notice in writing of its intention to enter into possession to the occupier of the land.

(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 project authority also ceases.

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- (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 project 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.

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**155 Early entry of place of residence or business**

- (1) Section 154 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 project authority to delay entry into possession of the project land until after the end of the 3 month period referred to in section 154(1); or
  - (b) the project authority and the occupier have, with the consent of the Project Minister, entered into an agreement in relation to the time of entry into possession of the project land by the project authority; or
  - (c) the land is underground land that has been acquired under Division 6 and acquisition of the land will not disturb the use of the surface of the land.
- (2) A certificate under subsection (1)(a) must specify the date on which the project authority is to take possession.
- (3) The project authority must serve a copy of the certificate under subsection (1)(a) on the occupier.
- (4) The occupier whose period of occupation of the project land was abridged under subsection (1)(a) is entitled to claim compensation under Division 1 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.

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- (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.

**156 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 154(1)) may be extended by agreement in writing between the project 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 project authority.

**157 Continued occupation without agreement**

If a person continues to occupy project land after the period permitted under section 154 or the reservation date (as the case may be) and an agreement has not been entered into under section 156 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 project authority; and
- (b) is liable to pay to the project authority a fair market rent in respect of that continued occupation.

**158 Recovery of rent**

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

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**159 Proceedings where refusal to give up possession**

- (1) If a project 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 possession of the land; or
    - (b) hinders the project authority from entering on and taking possession of the land—the project 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 project 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 project 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 project authority from the compensation (if any) payable under this Part to that person.
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- (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 project authority, a magistrate must issue a warrant for the purposes of subsection (6).

**160 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.

**161 Giving of notices and documents**

- (1) Any notice or other document that a project authority is required to give to any person under this Division may be served on that person by any of the following—
- (a) delivering it personally to the person;
  - (b) leaving it at the usual or last known place of business of the person with a person 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;
  - (c) sending it by post, addressed to the person at the usual or last known place of residence or business of that person;
  - (d) if the person has given an alternative address to the project authority—sending it by post to that address.
- (2) However, if a project authority does not know the location of a person on whom the project authority is required to serve the notice or document, the notice or document may be served—
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- (a) by publishing a copy of it in a newspaper circulating generally throughout Victoria; 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 6—Acquisition of stratum of land below ground level**

**162 Acquisition of stratum of land below ground level**

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that a stratum of land below ground level in a project area is project land (the *underground land*).
- (2) An Order under this section must be made on the recommendation of the Project Minister.
- (3) The Governor in Council must not make an Order under this section unless the Governor in Council has received appropriate plans that specify the depth and length of the underground land and have been—
  - (a) signed by the Surveyor-General; and
  - (b) lodged at the Central Plan Office.
- (4) On the publication of an Order made under subsection (1), the underground land designated in the Order is surrendered to, or vests in, the Crown and—

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- (a) is taken to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests; and
  - (b) is taken to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being, in particular, the purposes of an approved project.
- (5) The reservation of land under subsection (4)(a) may be amended, revoked and otherwise dealt with in accordance with the **Crown Land (Reserves) Act 1978**.

**163 Compensation—underground land held in fee simple by private persons**

- (1) This section applies if by operation of section 162 underground land held in fee simple by a person (other than a public authority or a Council) vests in the Crown.
- (2) Subject to this Act and the **Land Acquisition and Compensation Act 1986**, every person who immediately before the publication of an Order under section 162(1) had a legal or equitable interest in the land has a claim for compensation.
- (3) The **Land Acquisition and Compensation Act 1986**, except sections 31 to 36 and 53, applies to the determination of compensation.

**164 Compensation—underground land surrendered by or divested from public authority or Council**

- (1) This section applies if by operation of section 162, underground land that is public land or Council land is surrendered to or vested in the Crown.
- (2) Subdivisions 5 and 6 of Division 4 apply to that surrender or divestment.

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**165 Compensation for denial of access**

- (1) Subject to subsection (2), a project authority is liable to pay compensation in accordance with this section if the effect of an Order made under this Division to declare underground land is that existing access to any land is denied.
- (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 project authority provides, or agrees to provide, adequate alternative access to the land; or
  - (c) the project 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 project authority within one year of the making of the Order under this Division.

**Division 7—Management of land for project**

**Subdivision 1—General powers of project authority**

**166 Project authority appointed committee of management**

- (1) A project authority is taken to be the committee of management under the **Crown Land (Reserves) Act 1978** of project land.
- (2) The provisions of sections 15(2), 15(3), 15(4), 15(7) and 15(9) of the **Crown Land (Reserves) Act 1978** do not apply to a project authority as committee of management.

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- (3) In addition to the powers conferred on committees of management under the **Crown Land (Reserves) Act 1978**, a project authority as committee of management has all the powers necessary to give effect to this Act.

**167 Project authority may carry out or authorise works on public land**

- (1) A project authority may carry out or authorise any person to carry out works on public land outside the project area for the purposes of an approved project.
- (2) A project authority must notify 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.
- (3) A project 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 land is the subject of a licence or tenancy agreement under section 17B of the **Crown Land (Reserves) Act** (as modified by this Act to apply to approved projects).
- (4) An authorisation under this section may be given subject to any conditions that are not inconsistent with the purposes of the approved project.
- (5) An authorisation that is inconsistent with the purposes of the approved project is invalid only to the extent of the inconsistency.

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**168 Application of Crown Land (Reserves) Act 1978**

If a project authority carries out or authorises a person to carry out works on public land under section 167, the Project Minister may exercise the powers under section 17B of the **Crown Land (Reserves) Act 1978** as if the Project Minister were the Minister and the project authority were the Secretary.

**169 Project authority liable to pay compensation**

- (1) A project 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 167 by or on behalf of the project 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.

**170 Temporary access to Crown land**

- (1) A project authority may use or authorise the use of any Crown land for the purposes of an approved project.
- (2) A project 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.

- (3) An authorisation under this section may be given subject to any conditions that are not inconsistent with the purposes of the approved project.
- (4) An authorisation that is inconsistent with the purposes of an approved project is invalid only to the extent of the inconsistency.

#### **171 Powers in relation to easements**

Without limiting any other power of a project authority under this Act, if an easement is acquired under this Part, the project authority may carry out or authorise any other person to carry out any works on the land in that easement.

#### **Subdivision 2—Licences**

#### **172 Application**

This Subdivision 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.

#### **173 Project authority may issue licence for purposes of approved project**

The project authority, on behalf of the Crown, may issue a licence to any person to enter on and use the whole or part of any project land that is Crown land for the purposes of an approved project.

#### **174 Term of licence**

The period for which a licence is issued must not exceed the period of the approved project.

#### **175 Conditions of licence**

- (1) A licence may be issued subject to any conditions that are not inconsistent with the purposes of an approved project.

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- (2) A licence that is inconsistent with the purposes of an approved project is invalid only to the extent of the inconsistency.

### **Subdivision 3—Leases**

#### **176 Application**

This Subdivision 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.

#### **177 Leasing powers**

The Project Minister, on behalf of the Crown, may grant a lease of any part of the project land that is Crown land for the purposes of an approved project.

#### **178 Term of lease over project land that is Crown land**

The term of a lease over project land that is Crown land must be in accordance with the purposes of an approved project and must not be for a period of greater than 65 years.

#### **179 Conditions of lease**

- (1) A lease over project land that is Crown land may be granted subject to any conditions that are not inconsistent with the purposes of an approved project.
- (2) A lease over project land that is Crown land that is inconsistent with the purposes of an approved project is invalid only to the extent of the inconsistency.

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**Subdivision 4—Other land powers**

**180 Surplus land**

- (1) A Project Minister may determine that certain project land is not required for an approved project and is surplus land.
- (2) The Project Minister must publish a copy of a determination under this section in the Government Gazette.
- (3) This section does not apply to leased land or licensed land.

**181 Disposition of surplus land—Crown**

- (1) The Project Minister, after consulting with the Minister administering section 12 of the **Land Act 1958**, on behalf of the Crown, may sell, lease or licence surplus land that is Crown land.
- (2) The proceeds of the sale of Crown land under this section, less any costs incurred by the project authority in selling the land, must be paid into the Consolidated Fund.
- (3) This section applies despite anything in the **Land Act 1958**.

**182 Removal of reservation of Crown land that is surplus land for sale**

- (1) Before selling any Crown land under section 181, the Project 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—

must recommend to the Governor in Council that the part of the reservation relating to the Crown land that is intended to be sold be revoked.

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

**183 Reservation of surplus land—Crown**

- (1) The Project Minister may recommend to the Governor in Council that an Order be made under this section in respect of all or part of any surplus land that is Crown land.
- (2) On the recommendation of the Minister under subsection (1), the Governor in Council, by Order published in the Government Gazette, may reserve the relevant surplus land.
- (3) An Order published under this section must state the purpose for which the land that is the subject of the Order is reserved.
- (4) On the publication of an Order under this section in respect of surplus land that is Crown land—
  - (a) subject to paragraph (d), that land is taken 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 any committee of management of that land is revoked to the extent that it relates to that land; and

- (c) any regulations under section 13 of the **Crown Land (Reserves) Act 1978** are revoked to the extent that they apply to that land; and
- (d) that land is taken to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for the purpose stated in the Order.

**184 Project authority may enter into agreements for surplus land**

- (1) A project authority alone or jointly with any other person may enter into an agreement with another person (the *purchaser*) concerning the use or development of any surplus land—
  - (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 project authority instead of the responsible authority for the planning scheme; and
  - (c) section 174(2)(c) were omitted; and
  - (d) sections 177(2), 178 and 179(1) referred to a Project Minister under this Act instead of the Minister.

**185 Disposition of surplus land—fee simple land**

A project authority may sell, lease or licence any surplus land that it holds in fee simple.

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**Division 8—Road management**

**Subdivision 1—Powers in relation to roads**

**186 Powers relating to roads**

- (1) A project authority, for the purposes of an approved project, may—
  - (a) open, discontinue, construct, relocate or realign any road; and
  - (b) close any road to traffic.
- (2) Without limiting subsection (1), a project authority may—
  - (a) carry out improvements to roads in the project area; and
  - (b) construct roads over or under any road constructed or to be constructed in the project area; and
  - (c) construct any road in the 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 project area or along or across any entrance, approach or means of access to any road constructed or to be constructed in the 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).

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**187 Project authority to advise coordinating road authority before exercising power**

A project authority must advise the relevant coordinating road authority before exercising any power under section 186.

**188 Exercise of powers by coordinating road authority**

A coordinating road authority must not exercise its powers in a manner that is inconsistent with the purposes of an approved project or with the exercise by the project authority of its powers under section 186.

**189 Effect of decision about road**

- (1) A decision under section 186 to open, discontinue, construct, relocate or realign a road has no effect until the project 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

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- (c) the land is taken 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 an approved project, the land is taken 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 approved 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.

#### **190 Temporary closure of roads to traffic**

For the purposes of an approved project, a project authority may temporarily close a road to traffic if the project authority considers it necessary to do so in order that works on the road or neighbouring land can be carried out.

#### **191 Compensation for denial of access**

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

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- (b) the project authority provides, or agrees to provide, adequate alternative access to the land; or
  - (c) a claim for compensation is not served on the project authority within one year of the making of the decision under this Subdivision.
- (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 Subdivision.

### **192 Compensation for affected utilities**

A project authority is liable to pay compensation in accordance with this section to a utility that has been adversely affected by a decision made under this Subdivision to discontinue, realign or relocate a road.

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**Subdivision 2—Road declaration powers**

**193 Declaration of roads**

- (1) The Project Minister may from time to time declare to be a road any part of any land that is within the project area.
- (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; or
  - (c) a non-arterial State road; or
  - (d) a municipal road.
- (3) The Project 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 taken to be—
  - (a) declared under section 14 of the **Road Management Act 2004** to be a freeway, 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**.

**194 Power to revoke declaration**

- (1) The Project Minister, by Order published in the Government Gazette, may revoke—
  - (a) a declaration (in whole or in part) under section 193; 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 in the project area.

(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.

### **195 Road authority may not declare roads in project area if not the project authority**

(1) This section applies to an approved project for which a road authority within the meaning of the **Road Management Act 2004** is not the project authority.

(2) Despite anything to the contrary in the **Road Management Act 2004**, a road authority that is not the project authority must not make a declaration or revoke a declaration under section 14 of that Act in respect of any road in the project area.

(3) Nothing in this section affects the status of any freeway, arterial road or non-arterial State road existing on land before that land became part of the project area.

### **Division 9—Restricted access areas**

#### **196 Restricted access areas**

(1) A project authority may establish or cause to be established as a restricted access area a project area or land occupied for the purposes of an approved project under section 75 of the **Land Acquisition and Compensation Act 1986**, or any part of the project area or land, by any of the following—

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- (a) the use of fencing, barriers or other permanent or temporary means of physical demarcation;
  - (b) erecting signs or causing signs to be erected on or in close proximity to the area stating that the area is a restricted access area and the restrictions (if any) which apply in relation to that area.
- (2) As soon as practicable after establishing a restricted access area under subsection (1), a project authority must cause a notice of the establishment of the restricted access area to be published in the Government Gazette.

**197 Appointment of authorised officers**

- (1) The Project Minister, after consultation with the project authority, may appoint a person to be an authorised officer if—
- (a) the person is an employee of the Crown or a public sector body; and
  - (b) the project authority considers that the person has the necessary competence, training or expertise to perform or exercise a function or power under this Division.
- (2) An appointment under subsection (1)—
- (a) must be in writing; and
  - (b) must specify the terms and conditions on which the person is appointed; and
  - (c) must specify the restricted access area, or a part of the restricted access area, in which the person may exercise powers, functions or duties as an authorised officer.

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**198 Identification of authorised officers**

- (1) A project authority must issue to each person appointed as an authorised officer an identity card that—
  - (a) contains a photograph of the person; and
  - (b) states the full name of the person to whom it is issued; and
  - (c) states that the person is an authorised officer for the purposes of this Division.
- (2) An authorised officer must produce his or her identity card for inspection at any time during the exercise of a power under this Act, if asked to do so.
- (3) If a person appointed to be an authorised officer proposes to exercise the functions of an authorised officer and fails to produce on demand his or her identity card, the person is not authorised to exercise those functions in relation to the person making the demand.
- (4) In any proceedings under this Act, an identity card purporting to be issued to a person by a project authority under this Division is evidence of the appointment of that person as an authorised officer.

**199 Project authority may authorise persons to be in restricted access areas**

- (1) A project authority may authorise a class of person or classes of persons to enter and remain in any part of a restricted access area for any of the following purposes—
  - (a) the preparation or conduct of activities for the purposes of an approved project;

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- (b) the carrying out of any activity associated with or ancillary to the matters specified in paragraph (a).
- (2) An authorisation under subsection (1) must be made by declaration or by issuing a certificate in writing.
- (3) A certificate or declaration under this section—
- (a) must specify the class of person or classes of persons to whom the authorisation applies; and
  - (b) must specify the terms and conditions (if any) to which the authorisation is subject; and
  - (c) subject to paragraph (d), may specify—
    - (i) the period during which the authorisation applies; and
    - (ii) the area to which the authorisation applies; and
  - (d) may be of general or limited application; and
  - (e) may differ according to differences in time, place or circumstance.
- (4) A certificate or declaration under this section must be published in the Government Gazette.

**200 Project authority may warn people to leave restricted access area**

- (1) A project authority may warn any person (other than the owner of the land or a person authorised in writing by the owner) to leave any part of a restricted access area under this Division for the purposes of an approved project.

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- (2) For the purposes of section 9(1) of the **Summary Offences Act 1966**, the project authority is taken to be the occupier of the land concerned in exercising a power under subsection (1).

**201 Warning people to leave restricted access area**

- (1) A project authority, a member of the police force or an authorised officer may warn any person who is not authorised under section 199 to be in a restricted access area, or otherwise authorised under this Act to be in that area, to leave any part of the restricted access area.
- (2) For the purposes of section 9(1) of the **Summary Offences Act 1966**, the project authority is taken to be the occupier of the land concerned in exercising a power under subsection (1).

**202 Direction not to enter restricted access area**

A member of the police force or an authorised officer may direct any person who is not authorised under section 199 to be in a restricted access area, or otherwise authorised under this Act to be in that area, not to enter the restricted access area.

**203 Offence to enter any part of restricted access area**

- (1) A person must not enter into or remain in any part of a restricted access area unless—
- (a) the person has a certificate of authorisation issued under section 199; or
  - (b) there is a declaration under section 199 that applies to the person; or
  - (c) the person is otherwise authorised under this Act; or
  - (d) the person is—
    - (i) a member of the police force; or

- (ii) an employee in the public service within the meaning of the **Public Administration Act 2004**; or
- (iii) an officer or employee of a public sector body—

acting in the performance of his or her duties; or

- (e) the person is the owner of that land or a person authorised in writing by the owner.

Penalty: 10 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person has a reasonable excuse for entering into or remaining in the restricted access area.

#### **204 Offence not to produce certificate on demand**

- (1) A person who is in a restricted access area, when asked to do so by a member of the police force or an authorised officer, must—
  - (a) produce a certificate of authorisation issued under section 199 or other evidence of that person's authority to be in that area; or
  - (b) give his or her name and address.

Penalty: 5 penalty units.

- (2) A member of the police force or an authorised officer must—
  - (a) produce proof of his or her identity and official status before exercising a power under subsection (1) unless, in the case of a member of the police force, the member is in uniform; and

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- (b) inform the person that—
- (i) the authorised officer or member of the police force (as the case requires) is empowered under subsection (1) to ask the person to produce evidence of that person's authority to enter or remain in the restricted access area or to ask the person to give that person's name and address; and
  - (ii) it is an offence to fail to comply with the requirements of subsection (1); and
- (c) make all reasonable attempts to ensure that the person understands the requirement made under subsection (1).
- (3) It is not an offence for a person to fail to comply with subsection (1) if the authorised officer or member of the police force (as the case requires) did not comply with subsection (2).

**205 Offence to hinder or obstruct authorised officer**

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

Penalty: 10 penalty units.

**206 Evidence as to area being marked off**

In any proceedings under this Act, a certificate, signed on behalf of the project authority, certifying that an area was a restricted access area is evidence of the facts stated in the certificate.

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**Division 10—Other matters**

**207 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 Part.

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## PART 7—INTERFACE WITH UTILITIES

### Division 1—Interpretation

#### 208 Definitions

In this Part—

***approved utility agreement*** means a utility agreement that is taken to arise by operation of section 226(4);

***dispute*** means a dispute arising from an attempt to negotiate a utility agreement;

***expert*** means a person appointed under an instrument of appointment under section 219 or 220;

***model utility agreement guidelines*** means guidelines prepared under section 231;

***negotiation period*** means the period of time specified in section 214;

***notification period*** means the period commencing on the day a notice under section 211 is given to a utility and ending 30 business days after that day;

***notified utility infrastructure*** means utility infrastructure in relation to which a project authority has been given the information required under a notice under section 211 by the utility that owns, operates or controls the utility infrastructure;

***parties*** means a project authority that has complied with section 211 and a utility that has complied with a notice under section 212;

***unnotified utility infrastructure*** has the meaning given by section 209;

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**utility agreement** has the meaning given by section 210;

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

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

**209 Meaning of *unnotified utility infrastructure***

For the purposes of this Part, ***unnotified utility infrastructure*** is utility infrastructure that a project authority—

- (a) does not know the location of because—
  - (i) the project authority has not, after taking all reasonable steps, identified and given the utility that owns, operates or controls that utility infrastructure a notice under section 211; or
  - (ii) the utility that owns, operates or controls that utility infrastructure has not complied with section 212; or
- (b) knows of but that was incorrectly described, or the location of which was incorrectly given, by the utility that owns, operates or controls that utility infrastructure in purported compliance with a notice under section 211.

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**210 Meaning of *utility agreement***

- (1) For the purposes of this Part, a ***utility agreement*** is an agreement governing the rights and obligations of a project authority and a utility in relation to—
- (a) the location of utility infrastructure owned, operated or controlled by the utility within a project area; or
  - (b) works for the development of the approved project that affects or may affect utility infrastructure owned, operated or controlled by the utility located within a project area—  
as amended from time to time.
- (2) Without limiting the matters that a utility agreement may provide for, a utility agreement—
- (a) must provide for the respective rights and obligations of the utility and the project authority in the case where utility infrastructure located within the project area may need to be relocated or protected in order for works for the development of the approved project to be carried out;
  - (b) may provide for the respective rights and obligations of the utility and the project authority in relation to unnotified utility infrastructure located within a project area in cases where—
    - (i) the project authority discovers the unnotified utility infrastructure while carrying out works for the development of the approved project; or
    - (ii) the project authority causes damage to the unnotified utility infrastructure while carrying out works for the development of the approved project.
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**Division 2—Utility infrastructure notification and identification**

**211 Notification of proposed works for the development of the approved project**

- (1) Before commencing works for the development of the approved project in the project area, a project authority must take all reasonable steps to identify and give a notice that complies with this section of the proposed works for the development of the approved project to every utility.
- (2) A notice under subsection (1) must state—
  - (a) that the utility has 30 business days after receipt of the notice to notify, in writing, the project authority—
    - (i) as to whether the utility owns, operates or controls utility infrastructure within the project area or in the vicinity of the project area; and
    - (ii) if the utility does so—
      - (A) the nature and location of the utility infrastructure; and
      - (B) whether or not the utility is of the view that the utility infrastructure will be affected by the proposed works for the development of the approved project and how the utility infrastructure will be affected; and
  - (b) if the utility does not comply with the notice within the notification period, any utility infrastructure owned, operated or controlled by the utility located within the project area will be taken to be unnotified utility infrastructure for the purposes of the Part.

- (3) A notice under subsection (1) must also be published in the Government Gazette.

**212 Utility must comply with notice**

- (1) A utility that receives a notice under section 211 must comply with the notice within 30 business days after receiving the notice.
- (2) For the purpose of complying with a notice under section 211, a utility may provide the following information on the location of utility infrastructure—
- (a) plans that show the location of the infrastructure within an area of 3 square metres or less; or
  - (b) plans that show 2 or more known locations of the utility infrastructure, such that the project authority is able to ascertain the precise location of the infrastructure.

**Division 3—Negotiation of utility agreements**

**213 Negotiation trigger notice**

A project authority, or a utility that has complied with a notice under section 211, may, at any time after the end of the notification period, give written notice to the other party of an intention to commence negotiations with the other party for the purpose of entering into a utility agreement with that party.

**214 Reasonable endeavours must be used to negotiate utility agreement during negotiation period**

The parties must use all reasonable endeavours to negotiate a utility agreement within 50 business days after the giving of a notice under section 211(1) (the *negotiation period*).

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**215 Ministers to be notified if no agreement is reached**

If the parties have not entered into a utility agreement within the negotiation period, the project authority must give written notice of the parties' failure to enter into a utility agreement to—

- (a) the Project Minister; and
- (b) the Utility Minister for that utility.

**Division 4—Dispute resolution if there is no agreement**

**216 Project authority or utility can commence dispute resolution procedure after end of negotiation period**

If the parties have not entered into a utility agreement within the negotiation period, either of the parties may give written notice to the other party that a dispute exists to which this Division applies.

**217 Parties must use reasonable endeavours to agree to expert for the purposes of dispute**

The parties must use all reasonable endeavours to agree on the person to be appointed by the Project Minister under section 219.

**218 Notification of Project Minister**

- (1) If, within 5 business days after the giving of a notice under section 216, the parties have agreed on a person to be appointed by the Project Minister under section 219, the parties must notify, in writing, the Project Minister of that outcome and the name of the person.
- (2) If, within 5 business days after the giving of a notice under section 216, the parties have not agreed on a person to be appointed by the Project Minister under section 219, the parties must

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notify, in writing, the Project Minister of that outcome.

**219 Project Minister must appoint expert agreed to by parties**

- (1) On receipt of a notice under section 218(1), the Project Minister, by instrument, must appoint the person named in that notice as the expert.
- (2) The Project Minister must—
  - (a) make the appointment within 5 business days after receipt of a notice under section 218(1); and
  - (b) notify, in writing, the parties of the appointment.

**220 Project Minister must choose expert where there is no agreement by the parties as to the expert**

- (1) On receipt of a notice under section 218(2), the Project Minister, by instrument, must appoint a person as the expert in accordance with this section.
  - (2) The person appointed under subsection (1) must—
    - (a) have either of the following—
      - (i) at least 8 years experience working in the construction industry;
      - (ii) at least 8 years experience in working for utilities; and
    - (b) have at least 5 years experience as an arbitrator or mediator; and
    - (c) be of reputable character; and
    - (d) be available to hear the dispute during the period of time within which the dispute must be resolved.
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- (3) The Project Minister must—
- (a) make an appointment within 5 business days after receipt of a notice under section 218(2); and
  - (b) notify, in writing, the parties of the appointment.

**221 Fees of, and costs incurred by, expert**

An expert appointed under an instrument of appointment under section 219(1) or 220(1) is entitled to be paid—

- (a) fees and allowances, as determined in the instrument of appointment; and
- (b) reasonable costs (including legal costs) incurred by the expert for the purpose of making a determination under section 226.

**222 Immunity for expert**

- (1) The expert is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to the expert attaches instead to the Crown.

**223 Expert to commence dispute resolution within 5 business days after appointment**

Within 5 business days after his or her appointment, the expert must commence the process under this Division for the resolution of

the dispute by giving written notice of that commencement to the parties.

**224 Determination of procedure by expert**

- (1) The expert, within 5 business days after giving written notice under section 223, must—
  - (a) subject to this Division, determine the procedure he or she will apply for the resolution of the dispute; and
  - (b) notify, in writing, the parties of that procedure.
- (2) Unless otherwise directed in writing by the expert—
  - (a) submissions by the parties to the expert must be in writing; and
  - (b) the parties must provide a draft utility agreement (whether as part of a written submission or otherwise) that identifies the matters in relation to which the parties do not agree.

**225 Parties may make submissions**

A party may make a submission in relation to the dispute to the expert, in accordance with the procedure determined by the expert, within 30 business days after being notified of the procedure under section 224(1)(b).

**226 Determination of expert resolving dispute**

- (1) The expert must make a determination to resolve the dispute with 15 business days after the receipt of all of the submissions of the parties.
- (2) A determination under subsection (1) must—
  - (a) set out the reasons of the expert; and

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- (b) determine the terms and conditions for a utility agreement; and
  - (c) be given to the parties.
- (3) In determining the terms and conditions for a utility agreement, the expert must have regard to the model utility agreement guidelines.
  - (4) An approved utility agreement is taken to arise between the parties in accordance with the expert's determination.

**227 Termination of approved utility agreement**

An approved utility agreement taken to have arisen under section 226(4) may not be terminated or revoked unless agreed by both parties or as expressly provided for in the agreement.

**228 Expert may engage legal and other assistance**

The expert may engage lawyers and other persons that the expert considers necessary to assist the expert for the purpose of making a determination under section 226.

**229 Parties are liable to Project Minister for expert's costs paid by the Minister**

- (1) The parties are liable to the Project Minister for the expert's costs as provided in a determination under this section and the Project Minister may recover those costs from the parties in a court of competent jurisdiction.
- (2) The expert may make a determination as to the apportionment of liability between the parties for the payment of the expert's costs under subsection (1).
- (3) A determination under subsection (2) must be fair and reasonable.

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- (4) In determining what is fair and reasonable for the purpose of subsection (3), the expert may have regard to—
- (a) whether a party used all reasonable endeavours to negotiate a utility agreement in the period referred to in section 214;
  - (b) the reasonableness of the submissions of a party, having regard to the nature of the dispute.
- (5) Subsection (4) does not limit what may be had regard to in determining what is fair and reasonable for the purpose of subsection (3).
- (6) A determination under subsection (2) must—
- (a) set out the reasons of the expert; and
  - (b) be given to the Project Minister and the parties.
- (7) In this section—
- expert's costs* means the fees, allowances and costs referred to in section 221.

**230 Appeal to Supreme Court from a determination of expert**

- (1) A party to the dispute may appeal to the Supreme Court, on a question of law, from a determination of the expert under section 226.
- (2) An appeal must be instituted—
- (a) within 10 business days after a determination of the expert under section 226; and
  - (b) in accordance with the rules of the Supreme Court.

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**231 Model utility agreement guidelines**

- (1) The Project Minister must prepare guidelines in relation to the form and content of an approved utility agreement.
- (2) Without limiting subsection (1), model utility agreement guidelines must include a draft agreement that provides a range of differing and alternative terms and conditions in relation to—
  - (a) the costs of any relocation, protection or rectification of utility infrastructure; and
  - (b) the timing of any necessary works; and
  - (c) risk allocation between the parties; and
  - (d) standards at which necessary works are to be carried out; and
  - (e) means by which disruption to services provided by means of the utility infrastructure will be minimised; and
  - (f) the final certification of the works.
- (3) Model utility agreement guidelines must be published by the Project Minister in the Government Gazette.
- (4) Model utility agreement guidelines take effect—
  - (a) on the day that they are published in the Government Gazette; or
  - (b) if the guidelines specify a later day, on that day.

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**Division 5—Unnotified utility infrastructure**

**232 Notification in relation to unnotified utility infrastructure**

- (1) This section applies if a project authority, during the carrying out of work for the development of the approved project, discovers within the project area—
  - (a) unnotified utility infrastructure of the kind described in section 209(a); or
  - (b) unnotified utility infrastructure of the kind described in section 209(b) and there is no utility agreement, or approved utility agreement, in force that governs the rights and liabilities of the project authority and the utility that owns, operates or controls that infrastructure in cases where such infrastructure is discovered during the carrying out of works for the development of the approved project.
- (2) In the case referred to in subsection (1)(a), the project authority must give written notice to all utilities in accordance with this section.
- (3) In the case referred to in subsection (1)(b), the project authority must give written notice to the utility that owns, operates or controls the utility infrastructure.
- (4) A notice under subsection (2) or (3) must—
  - (a) identify and describe the utility infrastructure; and
  - (b) specify the location of the utility infrastructure; and

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- (c) state that—
- (i) the project authority intends to remove, relocate or protect the infrastructure (as the case requires); and
  - (ii) the utility that owns, operates or controls the utility infrastructure has 5 business days within which to—
    - (A) agree to the project authority to carry out works to remove, relocate or protect the infrastructure; or
    - (B) carry out the works itself to remove, relocate or protect the infrastructure; and
- (d) state that if the utility does not agree as to the works to be carried out, or does not itself carry out the works, to remove, relocate or protect the infrastructure, the utility is liable to the project authority for the costs referred to in section 233(8).

**233 Removal, relocation or protection of unnotified utility infrastructure**

- (1) This section applies if—
- (a) a project authority does not receive any information from a utility as required under a notice under section 232(2) or (3); or
  - (b) the project authority and the utility that owns, operates or controls the utility infrastructure to which a notice under section 232(2) or (3) has been given, have not, within 5 business days after the giving of the relevant notice, agreed as to the works to be carried out to, as the case requires, remove, relocate or protect the infrastructure; or
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- (c) the utility that owns, operates or controls the utility infrastructure to which a notice under section 232(2) or (3) has been given, has not, within 5 business days after agreeing with the project authority as to the works to be carried out, carried out the agreed works.
- (2) In the case referred to in subsection (1)(a), the project authority may—
- (a) in the case of utility infrastructure that is redundant—remove the infrastructure;
  - (b) in all other cases—
    - (i) relocate the infrastructure; or
    - (ii) carry out works to protect the infrastructure.
- (3) In a case referred in subsection (1)(b) or (c), the project authority—
- (a) must give the utility a reasonable estimate of the costs that the project authority will incur each day the authority cannot develop the approved project because the utility has not agreed to the works to be carried out or has not carried out the agreed works (as the case may be); and
  - (b) may, with the consent of the utility—
    - (i) in the case of utility infrastructure that is redundant—remove the infrastructure;
    - (ii) in all other cases—either relocate the infrastructure or carry out works to protect the infrastructure.
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- (4) The project authority must carry out an activity referred to in subsection (2) or (3) to a standard that results in the utility infrastructure having—
- (a) the same or a similar technical capability after the carrying out of that activity; and
  - (b) at least the same remaining operating life as it had before the carrying out of an activity referred to in subsection (2) or (3).
- (5) The project authority is liable to the utility for all direct costs incurred by the utility as a result of the carrying out of an activity referred to in subsection (2) or (3)—
- (a) that are fair and reasonable; and
  - (b) on the basis that the utility makes all reasonable efforts to mitigate its loss.
- (6) However, the project authority is not liable for any loss or damage suffered by the utility as a result of the carrying out of an activity referred to in subsection (2) or (3) that—
- (a) causes an interruption to any service provided by the utility by means of the utility infrastructure; or
  - (b) prevents the utility from being able to provide a service by means of the utility infrastructure.
- (7) The project authority is not liable to any other person for any loss or damage that the person suffers as a result of the carrying out of an activity referred to in subsection (2) or (3) that—
- (a) causes an interruption to any service provided by a utility by means of the utility infrastructure; or
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- (b) prevents a utility from being able to provide a service by means of the utility infrastructure.
  - (8) The utility is liable to the project authority for all costs incurred by the project authority as a result of a delay in the carrying out of works for the development of the approved project in order to remove, relocate or protect the utility infrastructure—
    - (a) that are fair and reasonable; and
    - (b) on the basis that the project authority makes all reasonable efforts to mitigate its loss.

**234 Damage to unnotified utility infrastructure**

- (1) This section applies if a project authority causes damage to unnotified utility infrastructure during the course of carrying out works for the development of the approved project (the *damaged infrastructure*).
  - (2) If the project authority cannot identify the utility that owns, operates or controls the damaged infrastructure, the project authority must notify all utilities as soon as possible of the damage.
  - (3) If the project authority has identified the utility that owns, operates or controls the damaged infrastructure, the project authority must notify the utility as soon as possible of the damage.
  - (4) The project authority—
    - (a) must repair the damage caused to the utility infrastructure by the carrying out of the works; and
    - (b) may protect, relocate or remove the utility infrastructure.
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- (5) The project authority is liable to the utility for all direct losses suffered by the utility as a result of the damage caused to the utility infrastructure by the carrying out of the work.
- (6) The project authority is not liable to any other person for any loss or damage that the person suffers as a result of the carrying out of works for the development of the approved project that damages the utility infrastructure and—
- (a) causes an interruption to any service provided by the utility by means of the infrastructure; or
  - (b) prevents the utility from being able to provide a service by means of the infrastructure.
- (7) The utility is liable to the project authority for all costs incurred by the project authority as a result of a delay in the carrying out of works in order to repair, protect, relocate or remove the damaged infrastructure—
- (a) that are fair and reasonable; and
  - (b) on the basis that the project authority makes all reasonable efforts to mitigate its loss.
- (8) If the damage results in an emergency situation—
- (a) the project authority must take all steps that are reasonable in the circumstances to end the emergency; and
  - (b) the utility is be liable for the costs incurred by the project authority in taking those reasonable steps.
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## PART 8—ASSESSMENT COMMITTEES

### Division 1—Establishment of assessment committees

#### 235 Establishment of assessment committees

The Planning Minister, by written instrument, may establish one or more assessment committees for the purpose of—

- (a) assessing comprehensive impact statements in accordance with Part 3; and
- (b) making recommendations to the Minister in relation to comprehensive impact statements.

#### 236 Function of assessment committees

- (1) The functions of an assessment committee are—
  - (a) to consider any matters that are referred to it by the Planning Minister relating to a declared project, in accordance with the terms of reference; and
  - (b) if required by the Planning Minister under Part 3, to undertake consultation on those matters; and
  - (c) to conduct preliminary hearings or formal public hearings; and

**Note**

See Part 3 regarding hearings.

- (d) to report and make recommendations to the Planning Minister in relation to—
  - (i) whether or not to grant any applicable approval that is required for a declared project to be developed; and
  - (ii) the conditions (if any) of such approval.

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- (2) Subject to this Part, in carrying out its functions in relation to a matter referred to it by the Planning Minister, an assessment committee may inquire into and inform itself in relation to the matter in any manner it sees fit.

### **237 Membership of committees**

- (1) An assessment committee consists of 3 or more members appointed by the Planning Minister.
- (2) The Planning Minister must not appoint a person as a member of an assessment committee unless the Minister is satisfied that the person has expertise relevant to the assessment of the matters that are referred to the committee.
- (3) The Planning Minister must appoint one of the members of an assessment committee to be chairperson of the assessment committee.

### **238 Terms of appointment**

- (1) A member of an assessment committee is appointed on the terms and conditions set out in the instrument of appointment.
- (2) The Planning Minister may fix fees and allowances for all members of an assessment committee or for particular members or classes of members.
- (3) Each member of an assessment committee is entitled to receive any fees and allowances fixed by the Planning Minister in respect of that member unless the person is an employee in the public service within the meaning of the **Public Administration Act 2004**.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of an assessment committee in respect of the office of member.
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### **239 Resignation**

A member of an assessment committee may resign as a member of the assessment committee by letter signed by the member and delivered to the Planning Minister.

### **240 Procedure at committee meetings**

- (1) The chairperson of an assessment committee must preside at a meeting of the assessment committee at which the chairperson is present.
- (2) If the chairperson of an assessment committee is to be absent from a meeting of the assessment committee, the chairperson must nominate a person to preside at the meeting within a reasonable time before the meeting.
- (3) A quorum of an assessment committee consists of a majority of the members of the assessment committee for the time being.
- (4) At a meeting of an assessment committee, a decision of the assessment committee is a decision of the majority of the members present and voting at the meeting and, if voting is equal, the person presiding at the meeting has a second or casting vote.
- (5) Subject to this Act and any directions given by the Planning Minister, an assessment committee may regulate its own proceedings and any other hearings or consultations it is required to undertake under this Act.

### **241 Consultation**

- (1) If required under Part 3 or by the Planning Minister under that Part, an assessment committee must undertake consultation in accordance with that Part and this section and any direction given by the Minister in relation to a matter referred to it by the Minister.
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- (2) A requirement by the Planning Minister under Part 3 must specify—
    - (a) the persons or classes of persons that are to be consulted; and
    - (b) whether or not the assessment committee is required or authorised to hold a conference with the persons to be consulted.
  - (3) The assessment committee must ensure that all persons invited to attend a conference under this section are advised in writing of the time and place at which the conference is to be held within a reasonable time before the conference.
  - (4) If consultation is undertaken under this section, the assessment committee must ensure that the relevant project proponent is—
    - (a) advised of the consultation itself; and
    - (b) given notice of the time and place of any conferences held as part of the consultation; and
    - (c) invited to attend any conference or other further consultation that takes place.
  - (5) A conference held under this section must be presided over by the chairperson of the assessment committee or an assessment committee member nominated by the chairperson for that purpose.
  - (6) The assessment committee must consider the discussions and resolutions of any conference held under this section when making an assessment committee recommendation.

#### **242 Disclosure of interests**

- (1) Before an assessment committee considers any matters referred to it, each member of the assessment committee must produce to the committee a signed statutory declaration that
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states whether the member has a direct or indirect pecuniary interest in relation to any matters referred to the assessment committee.

- (2) If, during the consideration of matters before the assessment committee, a member becomes aware of having a direct or indirect pecuniary interest in a matter being considered, the member must, as soon as practicable after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the assessment committee.
- (3) A production of a declaration under subsection (1) or a disclosure under subsection (2) must be recorded in the minutes of the meeting at which it was produced or disclosed.
- (4) If a member of an assessment committee produces a statutory declaration stating that the member does have a direct or indirect pecuniary interest in relation to any matter referred to the assessment committee, or a member discloses a direct or indirect pecuniary interest to the assessment committee, the member must not—
  - (a) take any further part in any consideration or discussion of the matter; or
  - (b) take part in any vote on the matter; or
  - (c) be counted for the purposes of a quorum.

### **Division 2—Hearings**

#### **243 Directions about hearings**

- (1) An assessment committee may give directions about—
  - (a) the times and places of hearings under Part 3; and

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- (b) matters preliminary to hearings under Part 3;  
and
  - (c) the conduct of hearings under Part 3.
- (2) An assessment committee may refuse to hear any person who fails to comply with a direction of the assessment committee.

#### **244 Hearings to be in public**

An assessment committee must conduct a hearing under Part 3 in public unless any person making a submission objects to making the submission in public and the assessment committee is satisfied that the submission is relevant and of a confidential nature.

#### **245 General procedure for hearings**

- (1) In hearing submissions, an assessment committee—
- (a) must act according to equity and good conscience without regard to technicalities or legal forms; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct a hearing under Part 3 in a formal manner; and
  - (d) is not bound by the rules or practice as to evidence but may inform itself on any matter—
    - (i) in any way it thinks fit; and
    - (ii) without notice to any person who has made a submission.
- (2) An assessment committee may require—
- (a) a person to produce any documents relating to any matter being considered by the assessment committee under this Act which it reasonably requires;
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- (b) an applicable law decision maker to provide the assessment committee with advice on a matter or issue the committee considers relevant for the purpose of making an assessment committee recommendation.
  - (3) An assessment committee may prohibit or regulate cross-examination in any hearing under Part 3 in accordance with any direction given by the Planning Minister.
  - (4) An assessment committee may hear evidence and submissions from any person who has made a submission in relation to the relevant comprehensive impact statement under Part 3.
  - (5) Submissions and evidence may be given to the committee orally or in writing or partly orally and partly in writing.

**246 Who may appear before an assessment committee?**

A person who has a right to be heard by an assessment committee or who is called by an assessment committee may—

- (a) appear and be heard in person; or
- (b) be represented by any other person.

**247 Effect of failure to attend hearing**

An assessment committee may report and make recommendations on a submission without hearing the person who made the submission if the person is not present or represented at the time and place appointed for the hearing of the submission.

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**248 Committee may hear two or more submissions together**

An assessment committee may consider two or more submissions together if the submissions concern the same land or the same or a related matter.

**249 Adjournment of hearings**

An assessment committee may from time to time adjourn a hearing under Part 3 to any times and places and for any purposes it thinks necessary and on any terms as to costs or otherwise which it thinks just in the circumstances.

**250 Technical defects**

An assessment committee may continue to hear submissions and make an assessment committee recommendation despite—

- (a) any defect, failure or irregularity in the preparation of a comprehensive impact statement; or
- (b) any failure to comply with Division 2 or 5 of Part 3 in relation to the preparation of a project proposal or comprehensive impact statement.

**251 Committee may take into account any relevant matter**

An assessment committee may take into account any matter it thinks relevant in making an assessment committee recommendation, subject to any directions given to it by the Planning Minister.

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**252 Offences**

A person who—

- (a) insults, assaults or obstructs a member of an assessment committee while the member is performing functions or exercising powers as a member; or
- (b) insults, assaults or obstructs any person attending a hearing before an assessment committee; or
- (c) misbehaves at a hearing before an assessment committee; or
- (d) repeatedly interrupts a hearing before an assessment committee; or
- (e) without lawful excuse disobeys a direction of an assessment committee—

is guilty of an offence.

Penalty: 10 penalty units.

**253 Project proponent to pay assessment committee's costs**

A project proponent must pay for, or reimburse, any reasonable costs and expenses incurred by or for an assessment committee in carrying out its functions under this Part in relation to the relevant declared project, including reasonable costs incurred in relation to receiving, processing and assessing submissions, unless the Planning Minister otherwise directs.

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**PART 9—GENERAL**

**254 Secretary may delegate powers to employees**

The Secretary, by instrument, may delegate to any employee in the Department any of the powers, discretions or functions which this Act gives to the Secretary except—

- (a) this power of delegation; and
- (b) any power, discretion or function which the Secretary exercises or performs as a delegate.

**255 Enforcement of Building Act 1993**

- (1) Despite anything to the contrary in the **Building Act 1993**, the Minister administering that Act may, by Order published in the Government Gazette, declare that the administration and enforcement in relation to all or part of an approved project of any of the provisions of that Act and the regulations made under that Act is to be carried out by the project authority or any other person or body specified in the Order and in accordance with the terms and conditions of the Order.
- (2) The **Building Act 1993** and the regulations under that Act apply for the purpose of this section as if a reference to a council or a relevant building surveyor or a municipal building surveyor were a reference to the project authority or the relevant person or body specified in an Order under this section.

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**256 Taxes and duties**

- (1) No duty is payable under the **Duties Act 2000** in respect of an agreement made for the purpose of an approved project or any agreement entered into by the State for the purpose of an approved project.
- (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.
- (4) No fee is payable to the Registrar of Titles in respect of a dealing lodged with the Registrar relating to surplus land or project land disposed of under Subdivision 4 of Division 7 of Part 6.

**257 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 land in a project area.

**258 Limitation on powers of Councils 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) a project area; or
    - (b) the carrying out of works for the purposes of an approved 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 an approved project; or
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- (d) the retention of trees, vegetation or earthworks in relation to an approved project.
- (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 a project authority of its powers or functions under this Act or any other Act 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 a project authority or the holder of a licence issued under section 173 or lease granted under section 177 in the performance of an obligation or the pursuit of a right for the purposes of an approved project, 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 170;  
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 an approved project.
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**259 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; and
  - (b) register any lease made in accordance with the purposes of an approved project.
- (2) Division 4 of Part IV of the **Transfer of Land Act 1958** applies to any acquisition of land by a project authority under Part 6 as if the Crown were the acquiring authority rather than the authority.

**260 Exclusion of proportionate liability under Wrongs Act 1958**

- (1) Despite anything to the contrary in Part IVAA of the **Wrongs Act 1958**, that Part does not—
    - (a) prevent a project authority and another person, or a project contractor and another person, from making express provision for their rights, obligations and liabilities under a contract relating to an approved project with respect to any matter to which that Part applies; and
    - (b) limit or otherwise affect the operation of any such express provision in such a contract.
  - (2) Subsection (1) extends to any provision in Part IVAA of the **Wrongs Act 1958** even if the provision applies to liability in contract.
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**261 Time limit for proceedings for reviews of approval decisions**

- (1) This section applies if the Planning Minister makes an approval decision.
- (2) Despite anything to the contrary in the **Administrative Law Act 1978** or in any rules of court, a proceeding for a review of the approval decision must be commenced in the Supreme Court within 21 days after notice of the making of the decision is published in the Government Gazette in accordance with section 82.

**262 Reviews of approval decisions**

- (1) This section applies if a proceeding is commenced in the Supreme Court under the **Administrative Law Act 1978** or otherwise for a review of an approval decision.
  - (2) The Supreme Court may hear and determine the proceeding or any matter in the proceeding—
    - (a) as expeditiously as possible; and
    - (b) with as much informality as is possible in accordance with the rules of evidence.
  - (3) In addition, the Supreme Court, in hearing and determining the proceeding or any matter in the proceeding must have regard to—
    - (a) the need for the expeditious development of transport infrastructure in order for services to be provided by means of such infrastructure for the benefit of the Victorian community; and
    - (b) the need for increased cost certainty and increased risk certainty in the delivery of declared projects.
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**263 No appeal or review of decisions under Parts 1, 2, 3 or 4 (except approval decisions)**

- (1) It is the intention of Parliament, by the enactment of this section, to preclude any appeal or review of any kind by the Supreme Court or any other court, or a tribunal (including VCAT), of any decision to which this section applies.
  - (2) In this section *decision* means—
    - (a) a decision of a person or body under a provision of Part 1, 2, 3 or 4 (however described) other than a decision of the Planning Minister under section 77 (a *specified decision*); or
    - (b) a purported specified decision; or
    - (c) a failure by a person or body to make a specified decision; or
    - (d) a decision or purported decision made by a person or body for the purpose of making a specified decision; or
    - (e) a decision or purported decision of the Planning Minister under section 77 that is taken to be a decision under an applicable law by operation of section 84.
  - (3) A decision is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal (including VCAT) on any account or before any person acting judicially within the meaning of the **Evidence Act 1958**.
  - (4) In addition, without limiting subsection (3), 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 on any ground, including an absence of jurisdiction, an
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excess of jurisdiction or any other ground of review; or

- (b) seeking any order under the **Administrative Law Act 1978** (whether on the ground of absence of jurisdiction or excess of jurisdiction or any other ground)—

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

- (5) Subsections (3) and (4) apply despite anything to the contrary in an applicable law.

**264 Schedule 2—related and consequential amendments to other Acts**

Schedule 2 has effect.

**265 Supreme Court—limitation of jurisdiction**

It is the intention of section 263 to alter or vary section 85 of the **Constitution Act 1975**.

**266 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
- (a) fees;
  - (b) 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) A power conferred by subsection (1)(a) to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
  - (b) maximum fees;

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s. 266

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- (c) minimum fees;
  - (d) fees that vary according to value or time;
  - (e) the manner of payment of fees;
  - (f) the time or times at which fees are to be paid.
- (3) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstance;
  - (c) may confer a discretionary authority or impose a duty on a specified person or class of person.
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## SCHEDULES

### SCHEDULE 1

#### APPLICABLE LAWS AND APPLICABLE APPROVALS

##### TABLE

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<i>Column 1</i> <i>Applicable law</i>	<i>Column 2</i> <i>Applicable approval</i>
<b>Coastal Management Act 1995</b>	Consent under section 40(1)
<b>Conservation, Forests and Lands Act 1987</b>	Comment under section 66
<b>Environment Protection Act 1970</b>	Works approval under section 19B(7)
<b>Flora and Fauna Guarantee Act 1988</b>	Permit under section 40 Licence under section 53 to take and keep fish
<b>Forests Act 1958</b>	Licence or permit under section 52 Permit under section 59(1) Authority under section 77
<b>Heritage Act 1995</b>	Permit under section 74 Permit under section 113 Consent under section 129
<b>National Parks Act 1975</b>	Permit under section 21(1)(a) Approval under section 23 Consent under section 25
<b>Planning and Environment Act 1987</b>	Preparation, approval and adoption of a planning scheme or an amendment to a planning scheme under sections 8, 29 and 35 Granting and issue of a planning permit under section 61

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<i>Column 1</i>	<i>Column 2</i>
<i>Applicable law</i>	<i>Applicable approval</i>
<b>Road Management Act 2004</b>	Consent under clause 1 of Schedule 2  Decision under clause 2 of Schedule 2  Consent under clause 16 of Schedule 7
<b>Water Act 1989</b>	Licence under section 51  Licence under section 67
<b>Wildlife Act 1975</b>	Authority under section 21(1), (2) or (3)  Licence under section 22(1)  Authorisation under section 28A

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SCHEDULE 2

Section 262

RELATED AND CONSEQUENTIAL AMENDMENTS TO  
OTHER ACTS

**1 Aboriginal Heritage Act 2006**

1.1 In section 46(c), for "section 49." **substitute**  
"section 49; or".

1.2 After section 46(c) **insert**—

"(d) a plan is required for the activity under  
section 49A."

1.3 After section 49 **insert**—

**"49A Plan required if impact management plan  
or comprehensive impact statement is  
required**

- (1) This section applies if a project proponent is required to prepare an impact management plan or comprehensive impact statement in relation to a declared project.
  - (2) The project proponent must not commence works until a cultural heritage management plan for the area in which the works are to be carried out has been approved.
  - (3) In this section, *declared project*, *comprehensive impact statement*, *impact management plan*, *project proponent* and *works* have the same meaning as in the **Major Transport Projects Facilitation Act 2009**".
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See:  
Act No.  
16/2006.  
LawToday:  
[www.  
legislation.  
vic.gov.au](http://www.legislation.vic.gov.au)

## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 13 August 2009*

*Legislative Council: 3 September 2009*

The long title for the Bill for this Act was "A Bill for an Act to facilitate the development of major transport projects and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 13 August 2009*

*Legislative Council: 3 September 2009*

*Absolute majorities:*

*Legislative Assembly: 3 September 2009*

*Legislative Council: 17 September 2009*

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