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Confidential Draft prepared by the Office of Chief Parliamentary Counsel Victoria

## West Gate Tunnel Project Bill 2017

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***Fifth Draft***  
**8/12/2017**

**West Gate Tunnel Project Bill 2017**

A Bill for an Act to provide for the operation of the West Gate Tunnel, to consequentially amend the **Accident Towing Services Act 2007**, the **Children, Youth and Families Act 2005**, the **Criminal Procedure Act 2009**, the **EastLink Project Act 2004**, the **Fines Reform Act 2014**, the **Heavy Vehicle National Law Application Act 2013**, the **Infringements Act 2006**, the **Major Transport Projects Facilitation Act 2009**, the **Magistrates' Court Act 1989**, the **Melbourne City Link Act 1995**, the **Road Management Act 2004**, the **Road Safety Act 1986**, and the **Transport Integration Act 2010** and to make related amendments to certain other Acts and for other purposes.

**The Parliament of Victoria enacts:**

## Part 1—Preliminary

### 1 Purposes

The main purposes of this Act are—

- (a) to provide for the amendment, modification and tabling of the West Gate Tunnel Agreement; and
- (b) to provide for the imposition, collection and enforcement of tolls in relation to the use of the West Gate Tunnel tollway; and
- (c) to establish the Better Freight Fund into which the proceeds of infringement penalties and fines are to be paid; and
- (d) to amend the **Road Management Act 2004** and the **Road Safety Act 1986** to modify the operation of those Acts in relation to the West Gate Tunnel tollway; and
- (e) to amend the **Melbourne City Link Act 1995** and the **EastLink Project Act 2004**—
  - (i) to further provide for the use and disclosure of registration and licensing information held by VicRoads for the purpose of recovering unpaid tolling fees; and
  - (ii) to further provide for the imposition, collection and enforcement of tolls in relation to the use of a vehicle attached to a trailer in certain circumstances; and
- (f) to make consequential and related amendments to the **Road Management Act 2004**, the **Road Safety Act 1986** and to make related amendments to certain other Acts.



## 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 January 2019, it comes into operation on that day.

## 3 Definitions

In this Act—

*amending agreement* means an amending agreement made under section 15;

*authorised person* means a person authorised under section 25;

*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**;

*Chief Commissioner of Police* has the same meaning as Chief Commissioner has in the **Victoria Police Act 2013**;

*Children's Court registrar* means a registrar within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005**;

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

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

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

*debt recovery arrangements* means the minimum requirements approved by the Minister under section 36;

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

*effective*, in relation to an illegal user statement, a known user statement or a sold vehicle statement, means a statement that is accepted by an authorised person under section 31 as an effective statement and that has not ceased to be an effective statement for the purposes of section 32;

*enforcement agency* means—

- (a) the Chief Commissioner of Police;
- (b) a prescribed person;

*enforcement officer* means—

- (a) in the case of an infringement notice for an offence against section 65(1) or (3), a person authorised by the Minister under section 77(2);
- (b) a person authorised by an enforcement agency under section 48(1);

*extension of time* means an extension of time granted under section 57(4);

*Head, Transport for Victoria* has the same meaning as it has in section 3 of the **Transport Integration Act 2010**;

*illegal user statement* in relation to the use of a vehicle or trailer, means a statement in writing made by a person with respect to the vehicle or trailer, to the effect that the person believes that at the relevant time the vehicle or trailer was a stolen vehicle or trailer or

that the number plates displayed on the vehicle or trailer were stolen;

*infringement notice* has the same meaning as it has in the **Infringements Act 2006**;

*infringement penalty* has the same meaning as it has in the **Infringements Act 2006**;

*invoice* means a request for the payment of a toll in respect of a trip and any associated toll administration fee;

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

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

*Magistrates' Court registrar* means a registrar within the meaning of the **Magistrates' Court Act 1989**;

*modification* means an amendment in accordance with the terms of the West Gate Tunnel Agreement other than by an amending agreement;

*nomination rejection statement* means a statement in writing made by a person nominated in a known user statement, a sold vehicle statement or a tolling nomination

statement as being the responsible person in respect of a vehicle or trailer to the effect that if nominated—

- (a) in a known user statement, the person had not had possession or control of the vehicle or trailer at the relevant time, as stated in the known user statement; or
- (b) in a sold vehicle statement, the vehicle or trailer had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vehicle statement; or
- (c) in a tolling nomination statement, that the person was not the responsible person in relation to the vehicle or trailer at the time of the tolling offence as stated in the tolling nomination statement;

***ongoing registration agreement*** means an agreement made in accordance with section 39;

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

- (a) the registered operator of the vehicle or trailer at that time or the person recorded at that time on a register of vehicles maintained under a corresponding law as the person responsible for the vehicle or trailer;
- (b) if VicRoads under the regulations under the **Road Safety Act 1986**, or a corresponding body under a corresponding law, has received notice of transfer of registration of the vehicle or trailer, the person whose name is

Part 1—Preliminary

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disclosed in the records kept by VicRoads or the corresponding body (as the case requires) as being responsible for the vehicle or trailer at that time;

- (c) if the vehicle or trailer is not registered under the **Road Safety Act 1986** or a corresponding law, the person whose name is disclosed in the records kept by VicRoads or the corresponding body as being responsible for the vehicle or trailer at that time;
- (d) if the vehicle or trailer displays a number plate—
  - (i) the person who, at the time at which the registration number borne by that number plate was last assigned by VicRoads or a corresponding body, was the registered operator of, or (if assigned by a corresponding body) the person recorded on a register of vehicles or trailers maintained under the corresponding law as the person responsible for, the vehicle or trailer to which that registration number was assigned, whether or not that vehicle or trailer is the same as the vehicle or trailer involved in the offence; or
  - (ii) the person whose name is disclosed in the records kept by VicRoads or a corresponding body as being entitled, or last entitled, at that time to use or possess that number plate;

- (e) if the vehicle or trailer displays a general identification mark by means of a special identification plate issued by VicRoads under the regulations under the **Road Safety Act 1986** or by a corresponding body under a corresponding law, the person to whom the mark is assigned at that time;

*penalty reminder notice fee* has the same meaning as it has in the **Infringements Act 2006**;

*police officer* has the same meaning as it has in the **Victoria Police Act 2013**;

*project authority* has the same meaning as it has in the **Major Transport Projects Facilitation Act 2009**;

*project contractor* has the same meaning as it has in the **Major Transport Projects Facilitation Act 2009**;

*project document* means any document of a class that is designated in the West Gate Tunnel Agreement as a project document;

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

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

*registration* means—

- (a) a temporary registration;
- (b) an ongoing registration;

*relevant agency* means—

- (a) the relevant West Gate Tunnel Corporation; or

(b) the West Gate Tunnel operator; or

(c) an enforcement agency;

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

***relevant West Gate Tunnel Corporation*** means—

(a) for the purposes of Part 3, except sections 26 and 27, if—

(i) a person has been declared under Part 3 to be the relevant West Gate Tunnel Corporation, that person; or

(ii) a declaration is not in force under Part 3, the West Gate Tunnel Corporation; and

(b) for the purposes of a provision of this Act other than those referred to in paragraph (a), including sections 26 and 27, the West Gate Tunnel Corporation;

***responsible person*** in relation to a vehicle or trailer means—

(a) the operator of the vehicle or trailer; or

(b) the person nominated as the responsible person in relation to the vehicle or trailer in an effective known user statement or an effective sold vehicle statement;

***Secretary*** means the Secretary to the Department of Economic Development, Jobs, Transport and Resources;

***sold vehicle statement***, in relation to the use of a vehicle or trailer, means a statement in writing made by a person for the vehicle or trailer—

- (a) to the effect that—
- (i) the person had sold or otherwise disposed of the vehicle or trailer before the relevant time or that any interest in the vehicle or trailer had otherwise ceased to be vested in the person before that time; and
  - (ii) the person was not at that time driving, or had not at that time possession or control of, the vehicle or trailer; and
- (b) containing sufficient information to identify and locate the person to whom the vehicle or trailer was sold or disposed of, or in whom an interest in the vehicle or trailer was otherwise vested, and the date and, if relevant, the time of sale, disposal or vesting;

*special circumstances* has the same meaning as it has in the **Infringements Act 2006**;

*temporary registration* means the registration of a vehicle in accordance with section 40;

*toll* means a toll fixed under Division 2 of Part 3;

*toll administration fee* means a fee fixed under Division 2 of Part 3;

*toll zone* means a zone specified under Division 2 of Part 3;

*tolling device* means any system, equipment or thing prescribed as a device for the purposes of Part 3;

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



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

***tollway operator*** means a person, other than the West Gate Tunnel Corporation, who—

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

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

***trip*** means the driving of a vehicle on the West Gate Tunnel tollway in one toll zone or more than one toll zone and uninterrupted by exit from the road on which the zone is or zones are and subsequent re-entry to that road;

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

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

***West Gate Tunnel Agreement*** means the agreement for the West Gate Tunnel Project entered into by the Minister on [*insert date*] and the Schedules and exhibits to that agreement, or if all or any of the provisions of that agreement or the Schedules or the exhibits to that agreement are amended, that agreement and Schedules and exhibits as so amended;

***West Gate Tunnel Corporation*** means the person for the time being declared to be the West Gate Tunnel Corporation under section 8;

***West Gate Tunnel operator*** means the person for the time being declared to be the West Gate Tunnel operator under section 9;

***West Gate Tunnel Project*** means the project declared as the Western Distributor Project under section 10 of the **Major Transport Projects Facilitation Act 2009** on 5 September 2016 and published in the Government Gazette on 15 September 2016;

***West Gate Tunnel Project area*** means the area of land within or approximate to the West Gate Tunnel Project land designated as the project area by Order under section 95 of the **Major Transport Projects Facilitation Act 2009** and as varied from time to time under section 96 of the **Major Transport Projects Facilitation Act 2009**;

***West Gate Tunnel Project land*** means the land more or less delineated within the plans in Schedule 1 dated 14 May 2017 and published in the Government Gazette Number S 153 on 17 May 2017 to amend the Order of the Minister for Planning under section 3(1) of the **Environment Effects Act 1978**, comprising of—

- (a) the drawing numbered WDA-WGTP-LFWD-001 Rev B; and
- (b) the drawing numbered WDA-WGTP-LFWD-002 Rev B; and
- (c) the drawing numbered WDA-WGTP-LFWD-003 Rev B; and
- (d) the drawing numbered WDA-WGTP-LFWD-004 Rev B; and

- (e) the drawing numbered WDA-WGTP-LFWD-005 Rev B; and
- (f) the drawing numbered WDA-WGTP-LFWD-006 Rev B; and
- (g) the drawing numbered WDA-WGTP-LFWD-007 Rev B; and
- (h) the drawing numbered WDA-WGTP-LFWD-008 Rev B; and
- (i) the drawing numbered WDA-WGTP-LFWD-009 Rev B; and
- (j) the drawing numbered WDA-WGTP-LFWD-0010 Rev B; and
- (k) the drawing numbered WDA-WGTP-LFWD-0011 Rev B; and
- (l) the drawing numbered WDA-WGTP-LFWD-0012 Rev B;

***West Gate Tunnel tollway*** means the land in the West Gate Tunnel Project area that is declared to be a freeway under section 193 of the **Major Transport Projects Facilitation Act 2009**.

#### **4 Objects of Act**

The objects of this Act are to authorise and facilitate—

- (a) the operation and management of the West Gate Tunnel tollway; and
- (b) the tolling of the use of vehicles on the West Gate Tunnel tollway by the West Gate Tunnel Corporation.

**5 Relationship with the power of the Crown to make an agreement or enter into a contract**

Nothing in this Act limits or otherwise affects any power of the Crown to make an agreement or enter into a contract apart from this Act.

**6 Declaration this Act is transport legislation**

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

**7 Functions and powers of the Secretary**

- (1) Subject to subsection (4), the Secretary has the following functions—
  - (a) on behalf of the Crown, to administer and manage contractual arrangements between the Crown and the West Gate Tunnel Corporation;
  - (b) to make recommendations regarding those contractual arrangements to the Minister;
  - (c) to manage the responsibilities of the Crown in relation to the operation of the West Gate Tunnel tollway;
  - (d) to make recommendations to the Minister on public safety issues relating to the West Gate Tunnel tollway;
  - (e) to manage, on behalf of the Crown, regulatory issues arising from the operation of the West Gate Tunnel tollway;
  - (f) to undertake any other functions conferred on the Secretary in relation to the West Gate Tunnel tollway under this or any other Act.
- (2) The Secretary must comply with any directions of the Minister, including any direction relating to the provision of information or reports concerning the exercise of the Secretary's powers and the performance of the Secretary's functions.

- (3) The Governor in Council may, by Order published in the Government Gazette, declare that the Secretary is authorised to carry out a function under subsection (1).
- (4) The Secretary must not carry out a function under subsection (1) unless the Secretary has been authorised to do so in accordance with subsection (3).
- (5) The Secretary has all the powers that are necessary or convenient to perform the Secretary's functions under this section.

## **8 West Gate Tunnel Corporation**

- (1) The Governor in Council may, by Order published in the Government Gazette, declare any person to be the West Gate Tunnel Corporation.
- (2) If the person who is, for the time being, the West Gate Tunnel Corporation agrees to the declaration of another person as the West Gate Tunnel Corporation in its place, the Governor in Council may, by Order published in the Government Gazette declare that other person to be the West Gate Tunnel Corporation.
- (3) If the West Gate Tunnel Agreement is terminated or expires, the Governor in Council may, by Order published in the Government Gazette—
  - (a) declare that the person who, immediately before the termination or expiry, was the West Gate Tunnel Corporation has ceased to be the West Gate Tunnel Corporation; and
  - (b) declare a person specified in the Order to be the West Gate Tunnel Corporation.
- (4) An Order under this section takes effect on the day that it is published in the Government Gazette, or if a later day is specified in the Order, on that later day.

- (5) The person who is, for the time being, the West Gate Tunnel Corporation is not a public authority within the meaning of any Act or enactment by reason only that it is the West Gate Tunnel Corporation.

**9 West Gate Tunnel operator**

- (1) The Governor in Council may, by Order published in the Government Gazette, declare any person to be the West Gate Tunnel operator.
- (2) If the person who is, for the time being, the West Gate Tunnel operator agrees to the declaration of another person as the West Gate Tunnel operator, the Governor in Council may, by Order published in the Government Gazette, declare that other person to be the West Gate Tunnel operator for the purposes of this Act.
- (3) If the West Gate Tunnel Agreement is terminated or expires, the Governor in Council may, by Order published in the Government Gazette—
- (a) declare that the person who, immediately before the termination or expiry, was the West Gate Tunnel operator has ceased to be the West Gate Tunnel operator; and
  - (b) declare a person specified in the Order to be the West Gate Tunnel operator for the purposes of this Act.
- (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.
- (5) The person who is, for the time being, the West Gate Tunnel operator is not a public authority within the meaning of any Act or enactment by reason only that it is the West Gate Tunnel operator.

## 10 Power of delegation

- (1) The West Gate Tunnel Corporation may by instrument delegate to the West Gate Tunnel operator—
  - (a) any of its functions or powers under Part 3 (except the power to fix or impose a toll or toll administration fee under section 26 or 27) or the regulations made under this Act in respect of tolling; or
  - (b) any of its functions or powers under the **Road Management Act 2004** or regulations under that Act; or
  - (c) any of its functions or powers under the **Road Safety Act 1986** or regulations under that Act; or
  - (d) any of its functions or powers under the **Accident Towing Services Act 2009** or regulations under that Act; or
  - (e) any of its functions or powers under the regulations made under section 56 of the **Transport (Compliance and Miscellaneous) Act 1983**.
- (2) If the West Gate Tunnel Corporation delegates any function or power under this section, the West Gate Tunnel Corporation must publish a notice of that delegation in the Government Gazette.

## 11 Act binds 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.

## **Part 2—The West Gate Tunnel Agreement**

### **Division 1—West Gate Tunnel Agreement**

#### **12 Tabling in Parliament**

- (1) The Minister must cause a copy of the West Gate Tunnel Agreement to be laid before each House of the Parliament.
- (2) The Minister must cause a copy of each amending agreement to be laid before each House of the Parliament within 6 sitting days of that House following the publication of the notice of making of the amending agreement.

#### **15 Amendment of West Gate Tunnel Agreement**

- (1) The parties to the West Gate Tunnel Agreement may, from time to time, by agreement in writing and with the consent of the Minister, amend all or any of the provisions of the West Gate Tunnel Agreement that affect those persons.
- (2) The Minister must cause to be published in the Government Gazette a notice of the making of an agreement under subsection (1).
- (3) The notice must—
  - (a) state that an agreement has been made; and
  - (b) specify an address of a Government Internet site at which the agreement is published.
- (4) The Minister or a public entity designated by the Minister must cause an agreement that is the subject of a notice under subsection (2) to be published on the Government Internet site specified in the notice.
- (5) An amendment under subsection (1) comes into operation—



- (a) when the notice under subsection (2) is published in the Government Gazette; or
  - (b) if a later day is specified in the agreement, on that later day.
- (6) In this section—
- amend* includes—
- (a) a variation; or
  - (b) an addition; or
  - (c) a substitution; or
  - (d) a cancellation; or
  - (e) a revocation—
- but does not include a modification.

## **16 Modification of West Gate Tunnel Agreement**

- (1) The State may direct that changes be made to all or any of the provisions of the West Gate Tunnel Agreement that are necessary to make a modification.
- (2) The Minister must cause to be published in the Government Gazette a notice on a modification being made in accordance with subsection (1).
- (3) The notice must—
  - (a) state that a modification has been made; and
  - (b) specify an address of a Government Internet site on which the modification is published.
- (4) The Minister or a public entity designated by the Minister must cause a modification that is the subject of a notice under subsection (2) to be published on the Government Internet site specified in the notice.
- (5) A modification under subsection (1) comes into operation—

- (a) when the notice under subsection (2) is published in the Government Gazette; or
  - (b) if a later day is specified in the direction of a modification, on that later day.
- (6) In this section—

*modify* means to change the scope of, or technical standards applicable to, design and construction or operation or maintenance activities.

## **18 Commencement of amending agreement**

An amending agreement commences—

- (a) on the day the notice of making of the amending agreement is published in the Government Gazette under section 15(2); or
- (b) if a later day is specified in the amending agreement, on that later day.

## **20 Revocation**

- (1) An amending agreement may be revoked wholly or in part by a resolution of both Houses of the Parliament being passed within 6 sitting days of a copy of the amending agreement being laid before each House of the Parliament.
- (2) If an amending agreement is not laid before a House of the Parliament within the period required by section 19(2), the amending agreement is taken to be revoked on the day immediately following the end of that period.
- (6) The Minister must cause to be published in the Government Gazette a notice of the revocation of the amending agreement.

## **21 Effect of revocation of amending agreement**

If an amending agreement is revoked under section 20—

- (a) a provision of the West Gate Tunnel Agreement that had been cancelled or revoked by the amending agreement, or by the part of the amending agreement that is revoked, is revived as from the beginning of the day on which the amending agreement or part was revoked; and
- (b) a provision of the West Gate Tunnel Agreement that had been amended (otherwise than by cancellation or revocation) by the amending agreement, or by the part of the amending agreement that is revoked, takes effect without that amendment as from the beginning of the day on which the amending agreement, or part, was revoked as if the amendment had not been made.

## **Division 2—Giving effect to the West Gate Tunnel Agreement**

### **22 Act to prevail over West Gate Tunnel Agreement**

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

### **23 Enforcement of West Gate Tunnel Agreement**

- (1) The West Gate Tunnel Agreement may be enforced only by or on behalf of the State or another party to the West Gate Tunnel Agreement or a successor or assign of another party to the West Gate Tunnel Agreement.
- (2) Neither the State nor a public authority is liable for the acts or omissions of—
  - (a) any other party to the West Gate Tunnel Agreement; or

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- (b) a licensee for the West Gate Tunnel Project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or
- (c) a lessee in relation to the West Gate Tunnel Project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or
- (d) any employee or contractor of that other party, licensee or lessee.

## **Part 3—Tolls**

### **Division 1—Preliminary**

#### **24 Declaration of relevant West Gate Tunnel Corporation**

- (1) The West Gate Tunnel Corporation and the Minister, by notice published in the Government Gazette, may jointly declare that another person is the relevant West Gate Tunnel Corporation for the purposes of this Part other than Division 2.
- (2) A notice under subsection (1) takes effect one month after the day on which it is published in the Government Gazette or, if a later day is specified in the notice, on that later day.

#### **25 Authorised persons**

The relevant West Gate Tunnel Corporation may, in writing, authorise a person to carry out functions under this Part.

### **Division 2—Fixing, charging and administration of tolls**

#### **26 Relevant West Gate Tunnel Corporation may fix, charge and collect tolls**

The relevant West Gate Tunnel Corporation may fix, charge and collect tolls for the use of a vehicle in a toll zone and toll administration fees if it is done in accordance with this Act and the West Gate Tunnel Agreement.

#### **27 Fixing of tolls and toll administration fees**

- (1) The relevant West Gate Tunnel Corporation in accordance with this Act and the West Gate Tunnel Agreement by notice published in the Government Gazette may—

- (a) specify toll zones on the West Gate Tunnel tollway; and
  - (b) fix tolls that are payable in respect of the use of vehicles in toll zones; and
  - (c) in the case that the West Gate Tunnel Agreement expressly provides for the fixing of toll administration fees that are payable to the relevant West Gate Tunnel Corporation and specification of the circumstances in which the fees are payable, fix toll administration fees and specify circumstances in which the fees are payable.
- (2) A notice under subsection (1) may specify different tolls and toll administration fees in respect of different cases or classes of cases including different zones or groups of zones, different classes of vehicle and the use of different vehicles at different times or any combination of these.
- (3) A notice under subsection (1) takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the notice, on that later day.
- (4) A day fixed under subsection (3) in relation to the West Gate Tunnel tollway or a part of the West Gate Tunnel tollway must be on or after the day fixed under section 28 for the commencement of tolling on the West Gate Tunnel tollway or that part of the West Gate Tunnel tollway.
- (5) In any proceedings under this Part, the production of a Government Gazette purporting to contain a notice is evidence of the valid publication of the notice and of the fixing of the toll or toll administration fee in accordance with this Act and the West Gate Tunnel Agreement.

### **Division 3—Charge and collection of tolls**

#### **28 Commencement of tolling**

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

#### **29 Liability to pay toll and toll administration fees**

- (1) Subject to this Part, a person who is the driver of a vehicle used in a toll zone is liable to pay to the relevant West Gate Tunnel Corporation—
  - (a) the toll charged by the relevant West Gate Tunnel Corporation for that use; and
  - (b) the relevant toll administration fee charged by the relevant West Gate Tunnel Corporation.
- (2) The following persons are taken to be the driver of a vehicle used in a toll zone for the purposes of subsection (1)—
  - (a) the operator of the vehicle;
  - (b) in the case of a vehicle that is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer.
- (3) This section does not apply in respect of the use in a toll zone of a vehicle in accordance with a tollway billing arrangement.

**30 Toll administration fee not payable for certain vehicles**

A toll administration fee under section 29 is not payable in respect of a vehicle that—

- (a) is registered with the relevant West Gate Tunnel Corporation; or
- (b) under the regulations is exempt from the payment of tolls.

**31 Operator not liable if effective statement made**

(1) The operator of a vehicle or a trailer is not liable to pay a toll or toll administration fee under section 29(2) if the operator gives an authorised person—

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

and the authorised person accepts the statement as an effective statement in relation to the vehicle or the trailer for the purposes of this Part.

- (2) A statement under subsection (1) must be given to the authorised person within 28 days of a request for payment of a toll and toll administration fee being made of the operator of the vehicle or trailer.
- (3) An authorised person may accept an illegal user statement as an effective statement if the authorised person is satisfied of the matters, and any reasons set out in support of those matters, stated in the statement.
- (4) An authorised person may accept a known user statement or a sold vehicle statement as an effective statement if it contains the following information about the person nominated in the



statement as the responsible person in relation to the vehicle or trailer concerned—

- (a) in the case of an individual—
    - (i) the individual's full name and current home address; and
    - (ii) either of the following—
      - (A) the individual's date of birth; or
      - (B) the number of the licence or permit authorising the individual to drive and if the licence or permit was issued by a corresponding body, the name of that body;
  - (b) in the case of a person other than an individual—
    - (i) the person's full name and current address; and
    - (ii) if applicable, the person's Australian Business Number or Australian Company Number;
  - (c) the reasons for nominating an individual under paragraph (a) or a person under paragraph (b);
  - (d) any other prescribed information.
- (5) An authorised person may accept a known user statement or a sold vehicle statement that does not contain the information under subsection (4) as an effective statement if the authorised person is satisfied that it contains sufficient information for the nominated person to be identified and located.
- (6) In any proceedings for the recovery of a toll or relevant toll administration fee, an effective statement that is a known user statement or a sold vehicle statement is evidence that the person

named in the statement was the driver of the vehicle or operator of the trailer at all the relevant times relating to the matter specified in the statement, if the proceedings are—

- (a) against the person named in the statement; and
- (b) in respect of the matter named in the statement.

**32 Cancellation of authorised person's acceptance of statement as effective**

- (1) An authorised person may cancel the acceptance of a known user statement or a sold vehicle statement as an effective statement if—
  - (a) the person nominated in the statement as being the responsible person gives the authorised person within the prescribed period a nomination rejection statement; and
  - (b) the authorised person is satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect.
- (2) If the acceptance of a statement as an effective statement is cancelled under subsection (1)—
  - (a) the statement ceases to be an effective statement for the purpose of this Part and cannot be used by an authorised person to make a tolling nomination statement; and
  - (b) the operator who would, but for the statement, have continued to be the responsible person in relation to the vehicle or the trailer becomes again the responsible person.

### **33 Offence to provide false or misleading information**

- (1) A person must not in a relevant statement provide information that the person knows to be false or misleading.

Penalty: 60 penalty units.

- (2) In this section *relevant statement* means an illegal user statement or a known user statement or a sold vehicle statement or a nomination rejection statement.

### **34 Charging of tolls**

- (1) The relevant West Gate Tunnel Corporation may request the payment of a toll for the use of a vehicle in a toll zone and any relevant toll administration fee from—

- (a) the operator of the vehicle; and
- (b) in the case that the vehicle is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer; and
- (c) the person nominated in a known user statement or a sold vehicle statement that is an effective statement.

- (2) A request for payment must—

- (a) be in writing; and
- (b) identify separately each use for which a toll or a toll administration fee is payable.

### **35 Tolling device is not surveillance device**

A tolling device used in accordance with this Act and the West Gate Tunnel Agreement is not a surveillance device within the meaning of the **Surveillance Devices Act 1999**.

### **36 Debt recovery arrangements**

- (1) The Minister may approve the minimum requirements to be met by the relevant West Gate Tunnel Corporation in carrying out an action to recover a toll or a toll administration fee from a responsible person.
- (2) The minimum requirements approved by the Minister under subsection (1) must be published in the Government Gazette.

## **Division 4—Tolling offences and registration of vehicles**

### **37 Offence to drive unregistered vehicle in toll zone**

- (1) A person must not drive a vehicle in a toll zone unless the vehicle is registered in respect of that toll zone by the relevant West Gate Tunnel Corporation at that time.  
Penalty: 10 penalty units.
- (2) If during the course of one trip a person commits an offence against subsection (1), the person is guilty of only one offence against that subsection regardless of how many toll zones the person drives in during the course of the trip.
- (3) In a proceeding for an offence against subsection (1), it is a defence to the charge for the driver to prove that the driver believed on reasonable grounds, at the time the offence is alleged to have been committed, that the vehicle—
  - (a) was registered under this Part in respect of the relevant toll zone by the relevant West Gate Tunnel Corporation; or
  - (b) was covered by a tollway billing arrangement that was not suspended at the

time the offence is alleged to have been committed.

- (4) A certificate purporting to be given by the tollway operator certifying that, at the time the offence is alleged to have been committed, the tollway billing arrangement was suspended, is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, at that time, the tollway billing arrangement was suspended.
- (5) In a proceeding for an offence against subsection (1), it is a defence to the charge for the driver to prove—
- (a) that the driver received, or was issued, an invoice in respect of the trip that is the subject of the charge; and
  - (b) that the invoice was paid in full (even though it may also have related to trips other than the trip that is the subject of the charge) in any manner, and within the time, permitted by the invoice.
- (6) Despite anything to the contrary in this Act or any other Act (other than the Charter of Human Rights and Responsibilities) in a 7-day period, unless another period is prescribed, then during that prescribed period—
- (a) only one criminal proceeding may be commenced in respect of an offence constituted by the driving of any one vehicle in a toll zone; and
  - (b) only one infringement notice may be issued in respect of an offence constituted by the driving of any one vehicle in a toll zone—
- regardless of how many toll zones the vehicle is driven in during the course of the period and how many trips the vehicle makes during the course of

the period and how many different individuals drive the vehicle during the course of the period.

- (7) For the purposes of subsection (6), a criminal proceeding commenced against, or an infringement notice served on, a person in respect of an offence against subsection (1) is to be disregarded if the charge or infringement notice is withdrawn.
- (8) Subsection (1) does not apply in respect of—
  - (a) a vehicle that is exempted, in accordance with the regulations, from the requirement to be registered under this Part; and
  - (b) a vehicle that under the regulations is exempt from the payment of tolls; and
  - (c) a vehicle that is covered by a tollway billing arrangement that was not suspended at the time the offence is alleged to have been committed.
- (9) On a person being found guilty of an offence under subsection (1), any debt that arose under this Part as a result of the person driving in the toll zone in the vehicle that was the subject of the offence is extinguished.

### **38 Registration of vehicles**

- (1) The relevant West Gate Tunnel Corporation may register a vehicle in accordance with the regulations (if any)—
  - (a) for a specified period; or
  - (b) until the happening of a specified event; or
  - (c) for an unlimited period; or
  - (d) in respect of all toll zones or a specified toll zone or toll zones.

- (2) A person may seek the registration under this Part of a vehicle or more than one vehicle by application made to the relevant West Gate Tunnel Corporation in writing or orally or partly in writing and partly orally.
- (3) The relevant West Gate Tunnel Corporation may, in accordance with this Part, cancel or suspend the registration of a vehicle.

### **39 Ongoing registration agreements**

- (1) Without limiting its discretion otherwise to do so, the relevant West Gate Tunnel Corporation may refuse to register a vehicle if the vehicle is not the subject of an ongoing registration agreement that is wholly or partly in writing between the relevant West Gate Tunnel Corporation and the person seeking registration.
- (2) Without limiting the matters for which an ongoing registration agreement may provide, it may—
  - (a) be expressed as having force for a specified period or until the happening of a specified event or for an unlimited period; and
  - (b) contain specified terms including conditions of use and procedures to be followed to settle disputes that arise under the agreement; and
  - (c) specify the circumstances in which, and procedures by which, the agreement, or the registration under this Part of a vehicle that is subject of the agreement, may be cancelled or suspended.
- (3) The agreement by a relevant West Gate Tunnel Corporation to register a vehicle under this Part is sufficient consideration on the part of the relevant West Gate Tunnel Corporation for an ongoing registration agreement.

#### **40 Temporary registration**

- (1) The relevant West Gate Tunnel Corporation may register a vehicle for a specified period of up to 14 days without an ongoing registration agreement being in force in respect of the vehicle.
- (2) A temporary registration is subject to the conditions of use notified to the person seeking the registration either orally or in writing or partly orally and partly in writing.
- (3) If a temporary registration is sought on a particular day for a period of 24 hours, the commencement of the temporary registration may be back-dated to a time not earlier than the beginning of the day that is 3 days before the day on which temporary registration is sought.
- (4) If a temporary registration is sought for a specified period (other than a period of 24 hours) and is sought—
  - (a) before the end of that specified period or within the period of 2 days immediately following the end of that specified period; or
  - (b) not later than 6 days after the beginning of that specified period—(whichever is the earlier), the commencement of registration may be back-dated to a time not earlier than the beginning of that specified period.
- (5) The agreement by the relevant West Gate Tunnel Corporation to register a vehicle under this Part is sufficient consideration on the part of the relevant West Gate Tunnel Corporation for a temporary registration entered into under this section.

#### **41 Information to be given in relation to ongoing registration or temporary registration**

- (1) If the relevant West Gate Tunnel Corporation agrees to register a vehicle under this Part, it must



give the following information to the person who sought the registration—

- (a) confirmation that the vehicle has been, or will be at a specified time, registered or of the circumstances in which the vehicle becomes registered;
  - (b) the whole or that part of the licence plate number of the vehicle that is stated to the relevant West Gate Tunnel Corporation by that person;
  - (c) an identifying number, or combination of letters and numbers, for the registration;
  - (d) except in the case of a temporary registration, the conditions of use (if any);
  - (e) except in the case of a temporary registration, information about how the registration may be cancelled or suspended;
  - (f) in the case of a temporary registration—
    - (i) the period to which the temporary registration applies; or
    - (ii) if the period to which the temporary registration applies cannot be determined at the time the information is given, information which enables the person to determine the period to which the temporary registration applies;
  - (g) the toll zone or toll zones in respect of which the vehicle has been or will be registered.
- (2) The required information must be given—
- (a) in the case of the information referred to in subsection (1)(a), (b), (c), (f) or (g), orally or in writing;
  - (b) in any other case, in writing.

- (3) The relevant West Gate Tunnel Corporation must give any required information that it has not given to the person seeking registration before registering a vehicle, to that person—
- (a) as soon as practicable after registering the vehicle; and
  - (b) in the case of required information that must be given in writing, by sending a notice containing that required information to the person by post to an address nominated by that person within 5 business days after the date the registration is effected.

Penalty: 100 penalty units.

#### **42 Cancellation or suspension of registration**

- (1) If the relevant West Gate Tunnel Corporation cancels or suspends the registration of a vehicle under this Part, it must do so—
- (a) by any method stated for that purpose in an agreement relating to the vehicle; or
  - (b) by giving notice of the cancellation or suspension in one of the following ways—
    - (i) by personal service of written notice on the person who sought the registration;
    - (ii) by personal service of written notice at the last address given to the relevant West Gate Tunnel Corporation by the person who sought the registration on a person who appears to be at least 16 years of age;
    - (iii) by written notice posted to the last address given to the relevant West Gate Tunnel Corporation by the person who sought the registration;

- (iv) by written notice posted to the address of the owner of the vehicle to which the registration applies;
  - (v) if the person who sought the registration is a corporation—
    - (A) by personal service of written notice at the registered office of the corporation on a person who appears to be at least 16 years of age; or
    - (B) by written notice posted to the registered office of the corporation.
- (2) A person is taken to have been given a notice of cancellation or suspension—
- (a) under subsection (1)(b)(ii) on the next business day after the notice was served; or
  - (b) under subsection (1)(b)(iii), (iv) or (v)(B) on the third business day after the envelope containing the notice was posted; or
  - (c) under subsection (1)(b)(v)(A) on the day the notice was served.

#### **43 Offence to tamper with tolling devices**

A person must not, without just cause, tamper or interfere with a tolling device or any part of a tolling device in a manner that in respect of the use of a toll zone by a vehicle in which that tolling device is or may be situated—

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

Penalty: 10 penalty units.

**44 Offence to fraudulently induce registration**

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

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

**Division 5—Tolling enforcement**

**45 Payment of prescribed administrative amount**

- (1) Subject to subsection (2), if a charge against a person for an offence against section 37(1) is found proven, whether or not a conviction is recorded or a penalty imposed for that offence, the court must make an order requiring the person to pay to the relevant West Gate Tunnel Corporation an amount that is the prescribed administrative amount, if any.
- (2) The court is not required to make an order under subsection (1) if having regard to the prescribed criteria (if any), the court is satisfied—
- (a) that the person is experiencing acute financial hardship; or
  - (b) that special circumstances apply to the person.
- (3) An amount required to be paid under an order made under subsection (1) must be taken to be a judgment debt due by the person to the relevant West Gate Tunnel Corporation and payment of any amount remaining unpaid under the order is to be enforceable in the court by which it was made.

**46 Relevant West Gate Tunnel Corporation or authorised person may notify enforcement agency of non-payment of toll**

- (1) If the relevant West Gate Tunnel Corporation or an authorised person believes on reasonable grounds that a person has committed an offence against section 37(1), the relevant West Gate Tunnel Corporation or the authorised person may do any or all of the following—
- (a) send a request for payment of the toll and the toll administration fee payable in respect of the use of the vehicle in the toll zone to any person who appears to be liable to pay the toll and toll administration fee; or
  - (b) if the toll and the toll administration fee have not been paid in accordance with the processes set out in the West Gate Tunnel Agreement, notify the enforcement agency of that belief and request the enforcement agency—
    - (i) to serve an infringement notice in accordance with this Part on—
      - (A) the operator of the vehicle involved in the offence; or
      - (B) in the case of a vehicle that is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer; or
      - (C) the person nominated by an authorised person in a tolling nomination statement; or
    - (ii) to commence proceedings in respect of that offence in accordance with this Act.

- (2) Nothing in subsection (1) requires the relevant West Gate Tunnel Corporation or an authorised person to notify an enforcement agency of an offence against section 37(1).
- (3) If the relevant West Gate Tunnel Corporation or an authorised person believes, on reasonable grounds, that a vehicle that is not registered has been driven in a toll zone in contravention of this Part, the relevant West Gate Tunnel Corporation may notify the enforcement agency to send a notice of the requirement to be registered in respect of that toll zone to the operator of the vehicle or trailer concerned.

#### **47 Disputes in relation to payment of tolls**

- (1) If the relevant West Gate Tunnel Corporation or an authorised person has notified the enforcement agency under section 46(1)(b), the enforcement agency may send, by post, a request for payment of the toll and toll administration fee payable in respect of the use of the vehicle in the toll zone to the operator of the vehicle or trailer to which the offence relates.
- (2) If the relevant West Gate Tunnel Corporation or an authorised person has notified the enforcement agency under section 46(3), the enforcement agency may send, by post, a notice of the requirement to be registered in respect of the toll zone to the operator of the vehicle or trailer concerned.
- (3) If a dispute resolution process set out in an ongoing registration agreement or established by the relevant West Gate Tunnel Corporation relating to the registration, or non-registration, at a particular time of a vehicle under this Part is in progress, proceedings (other than civil proceedings) cannot be commenced under this

Part relating to the contravention of section 37(1) at that time.

**48 Enforcement officers**

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

**49 Identification of enforcement officers**

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

Penalty: 10 penalty units.

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

## **50 Power to serve an infringement notice**

- (1) An enforcement officer may serve or cause to be served an infringement notice on any person whom the enforcement officer has reason to believe has committed an offence against section 37(1).
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) In addition to and without limiting section 12 of the **Infringements Act 2006**, an infringement notice referred to in subsection (1) may be served by sending the infringement notice by post addressed to—
  - (a) the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; or
  - (b) the person nominated in a tolling nomination statement that has been made by an authorised tolling person and accepted by an enforcement official as an effective statement under Part 6AA of the **Road Safety Act 1986**.
- (4) An enforcement officer may cause to be served together with an infringement notice a notice containing information about the requirements arising under this Act in relation to the use of a vehicle in a toll zone.

## **51 Toll administration infringement notice**

- (1) If an enforcement officer has reason to believe that a relevant agency (other than the enforcement agency) has committed an offence against section 65(1) or (3), the enforcement officer may cause an



infringement notice to be served on that relevant agency.

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

### **52 Infringement penalty**

- (1) The infringement penalty for an offence against section 37(1) is 1 penalty unit.
- (2) The infringement penalty for an offence against section 65(1) or (3) is 20 penalty units.

### **53 Additional effect of expiation**

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

- (a) within the time stated in the notice; or
- (b) if the enforcement officer allows, at any time before the service of a summons in respect of the offence—

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

### **54 Effect of conviction for non-payment of penalty**

If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the infringement notice and a conviction is imposed by the court, the conviction must not be taken to be a conviction for any purpose except in relation to—

- (a) the making of the conviction itself; and

- (b) subsequent proceedings that may be taken in respect of the conviction itself, including proceedings by way of appeal.

**55 Application of Infringements Act 2006, Fines Reform Act 2014 and Children, Youth and Families Act 2005 procedure**

- (1) The procedure set out in the **Infringements Act 2006** or the **Fines Reform Act 2014** or in Schedule 3 to the **Children, Youth and Families Act 2005** may be used instead of commencing a proceeding against—
  - (a) a person for an offence against section 37(1) of this Act; or
  - (b) a relevant agency (other than an enforcement agency) for an offence against section 65(1) or (3).
- (2) The **Children, Youth and Families Act 2005** applies as if—
  - (a) an infringement notice under this Part were an infringement notice within the meaning of Schedule 3 to that Act; and
  - (b) an offence against section 37(1) or section 65(1) or (3) were an offence that is the subject of an infringement notice within the meaning of that Schedule; and
  - (c) the infringement penalty for the offence were the infringement penalty for the purposes of that Schedule.

**56 Operator onus offence**

An offence against section 37(1) is an operator onus offence for the purposes of Part 6AA of the **Road Safety Act 1986**.

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

- (1) If an infringement notice for an offence against section 37(1) is not served by delivering it personally to the person to whom it was issued, and that person is not in fact aware that it had been issued, the person may apply to a Magistrates' Court registrar or a Children's Court registrar, as the case may be, to have an extension of time of 28 days to deal with the notice in accordance with this Act.
- (2) An application under subsection (1) must—
  - (a) be made within 14 days of the applicant becoming aware of the notice; and
  - (b) be filed with the Magistrates' Court registrar or the Children's Court registrar, as the case may be; and
  - (c) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the extension is sought.
- (3) If an application is made under subsection (1) to a Magistrates' Court registrar, the registrar must—
  - (a) refer the application to the Magistrates' Court constituted by a magistrate; and
  - (b) cause a notice of the time and place of the hearing of the application to be given or sent to—
    - (i) the person who served the infringement notice on the applicant or caused it to be served; and
    - (ii) the applicant.
- (4) A Magistrates' Court registrar or a Children's Court registrar, as the case may be, may grant an

extension of time if satisfied that the person was not in fact aware, more than 14 days before making the application, that the infringement notice had been issued.

### **58 Granting extension of time**

- (1) On an extension of time being granted—
  - (a) the infringement notice continues to have effect, unless withdrawn under section 18 of the **Infringements Act 2006**, despite the doing of any thing or the taking of any step in relation to it under Schedule 3 to the **Children, Youth and Families Act 2005** before the extension of time was granted, but if an enforcement order had been made in relation to it before the extension of time was granted and the person does not take a relevant action in relation to the notice within the extended period, the notice ceases to have effect at the end of that period; and
  - (b) the infringement notice continues to have effect, unless withdrawn under section 18 of the **Infringements Act 2006**, despite the doing of any thing or the taking of any step in relation to it under the **Fines Reform Act 2014** before the extension of time was granted, but if a notice of final demand has been served in relation to it before the extension of time was granted and the person does not take a relevant action in relation to the notice within the extended period, the notice ceases to have effect at the end of that period; and
  - (c) the period specified in the infringement notice as the period for payment of the infringement penalty does not apply and the extended period becomes the period in which

- payment of the infringement penalty must be made; and
- (d) any infringement fine or part of an infringement fine within the meaning of the **Fines Reform Act 2014**, any infringement penalty or part of an infringement penalty and penalty reminder notice fee under the **Infringements Act 2006** or Schedule 3 to the **Children, Youth and Families Act 2005** that has been paid in relation to the infringement notice must be refunded (and the Consolidated Fund is, to the necessary extent, appropriated accordingly), if the person takes a relevant action in relation to the notice within the extended period; and
  - (e) any of the procedures set out in the **Fines Reform Act 2014** or Schedule 3 to the **Children, Youth and Families Act 2005** that are being used for the enforcement of an infringement fine or infringement penalty must be discontinued and any notice of final demand served or enforcement order made ceases to have effect if the person takes a relevant action in relation to the notice within the extended period.
- (2) For the purposes of subsection (1), a person who is granted an extension of time takes a relevant action in relation to an infringement notice if the person—
- (a) pays the whole of the penalty shown on the infringement notice; or
  - (b) gives a statement under section 84BE of the **Road Safety Act 1986** to an enforcement official within the meaning of Part 6AA of that Act; or

- (c) elects to have the matter heard and determined in the Magistrates' Court under Part 2 of the **Infringements Act 2006**, or if the person is a child, elects to have the matter heard and determined in the Children's Court; or
  - (d) is offered a payment plan in accordance with the **Infringements Act 2006** and the enforcement agency under that Act received the first payment under that plan from the person; or
  - (e) makes a payment arrangement in accordance with the **Fines Reform Act 2014** and the Director receives the first payment under that payment arrangement from the person; or
  - (f) in the case of a person who applies under section 22 of the **Infringements Act 2006** for an internal review, is notified of a decision in accordance with section 25(1)(b), (c) or (d) or (2) or (2A) of that Act.
- (3) If a Magistrates' Court registrar or a Children's Court registrar, as the case may be, grants an extension of time, an infringement notice may be withdrawn under section 18 of the **Infringements Act 2006** even though the outstanding amount of an infringement fine is registered with the Director under the **Fines Reform Act 2014** or registered under Schedule 3 to the **Children, Youth and Families Act 2005**.
- (4) Despite anything to the contrary in section 57 and this section or the **Infringements Act 2006**, the 28 day extension period is suspended and no step may be taken in the enforcement of an infringement notice to which section 57 and this section applies if a person has—

- (a) applied for an internal review under section 22 of the **Infringements Act 2006** which has not been determined, until the application is determined and the applicant notified of the outcome; or
- (b) applied for a payment plan under section 46 of the **Infringements Act 2006**, until—
  - (i) the person is notified that their application for a payment plan has been refused; or
  - (ii) in the case of a payment plan that has been offered, the payment plan is cancelled under section 48(2) of the **Infringements Act 2006**; or
  - (iii) in the case of a payment plan that has commenced—
    - (A) the payment plan is cancelled under section 49(2)(b) of the **Infringements Act 2006**; or
    - (B) the infringement penalty in respect of that infringement notice is removed from the payment plan under section 49(2)(a) of the **Infringements Act 2006**; or
    - (C) the person receives written notice under section 52(2) of the **Infringements Act 2006** advising the person that the person is in default.
- (5) Despite anything to the contrary in section 57 and this section, the 28 day extension period is suspended and no step may be taken in the enforcement of an infringement notice to which section 57 and this section applies if a person has—

- (a) applied for an enforcement review under section 32 of the **Fines Reform Act 2014** which has not been determined, until the application is determined and the applicant notified of the outcome; or
- (b) applied for a payment arrangement under section 42 of the **Fines Reform Act 2014**, until—
  - (i) the person is notified that the person's application for a payment arrangement has been refused; or
  - (ii) in the case of a proposed payment arrangement, the payment arrangement does not commence, in accordance with section 47 of the **Fines Reform Act 2014**; or
  - (iii) in the case of a payment arrangement that has commenced—
    - (A) the payment arrangement is cancelled under section 49(2) of the **Fines Reform Act 2014**; or
    - (B) the infringement fine in respect of that infringement notice is removed from the payment arrangement under section 48 of the **Fines Reform Act 2014**; or
    - (C) the person receives written notice under section 56(2) of the **Fines Reform Act 2014** advising the person that the person is in default.

## **59 The Consolidated Fund**

- (1) Any amount payable or received under this Act in respect of an infringement penalty and penalty



reminder notice fee in relation to an infringement notice must be paid into the Consolidated Fund.

- (2) Any amount to be paid or refunded under this Act is payable out of the Consolidated Fund which is, by virtue of this section, appropriated to the necessary extent.

### **Division 6—Evidentiary provisions**

#### **60 Proof that vehicle driven in a toll zone**

Without prejudice to any other method of proving the relevant fact, if the fact that a vehicle was driven or a trailer was towed in a toll zone is relevant in proceedings for an offence against section 37(1) or for the recovery of a debt, evidence of that fact as indicated or determined by—

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

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

#### **61 Evidentiary certificates**

- (1) A certificate in the prescribed form purporting to be issued by VicRoads, the Head, Transport for Victoria or the Department of Economic Development, Jobs, Transport and Resources or an authorised officer certifying that on a particular date a vehicle or trailer was registered under the **Road Safety Act 1986** in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, on that date, the person was the operator of the vehicle or trailer.

- (2) A certificate or document that purports to have been issued under a corresponding law certifying that on a particular date a vehicle or trailer was registered under that law in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that, on that date, the person was the operator of the vehicle or trailer.
- (3) A certificate containing the prescribed particulars purporting to be issued by VicRoads or the Department of Economic Development, Jobs, Transport and Resources or an authorised officer certifying that on a particular date—
- (a) a particular registration number was assigned to a particular vehicle or trailer; or
  - (b) a particular person was entitled, or last entitled, to use or possess a number plate bearing a particular registration number—
- is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that vehicle or trailer or that person was entitled, or last entitled, to use or possess that number plate.
- (4) A certificate or document that purports to have been issued under any corresponding law certifying that on a particular date—
- (a) a particular registration number was assigned under the corresponding law to a particular vehicle or trailer; or
  - (b) a particular person was entitled, or last entitled, under the corresponding law to use or possess a number plate bearing a particular registration number—
- is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof

that on that date that registration number was assigned to that vehicle or trailer or that person was entitled, or last entitled, to use or possess that number plate, as the case requires.

- (5) For the purposes of this section an *authorised officer* is a person who is authorised or who is the holder of a position authorised for the purposes of this section by VicRoads.

### **62 Evidentiary certificates relating to tolls**

A certificate in the prescribed form purporting to be issued by the enforcement agency certifying as to any matter related to a toll that appears in or may be calculated from the records kept by the enforcement agency is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matter.

### **63 Evidentiary certificate issued by relevant West Gate Tunnel Corporation**

A certificate in the prescribed form purporting to be issued by the relevant West Gate Tunnel Corporation, or a person authorised by the relevant West Gate Tunnel Corporation, certifying any of the following matters is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate—

- (a) that a specified vehicle was, or was not, registered in respect of a specified toll zone at a specified time;
- (b) that the relevant West Gate Tunnel Corporation was, or was not, a party to an agreement relating to the use of a specified vehicle in a toll zone at a specified time;
- (c) that an agreement between a person and the relevant West Gate Tunnel Corporation

- relating to the use of a specified vehicle in a toll zone—
- (i) existed, or did not exist, at a specified time; or
  - (ii) contained, or did not contain, specified terms;
- (d) that a specified vehicle was, or was not, covered by a tollway billing arrangement at a specified time;
- (e) that a tolling device was used in the prescribed manner;
- (f) that an image or message was produced by a prescribed process;
- (g) as to any other matter that appears in, or that can be determined or calculated from, the records kept by the relevant West Gate Tunnel Corporation.

## **Division 7—Disclosure and keeping of records**

### **64 VicRoads may disclose certain information**

- (1) VicRoads or a relevant person may disclose information about a vehicle or trailer registered under Part 2 of the **Road Safety Act 1986** for the purposes of this Part—
  - (a) to an enforcement agency; or
  - (b) to a person who is employed by, or who is engaged to provide services for, VicRoads, a relevant person or an enforcement agency.
- (2) VicRoads or a relevant person may disclose information about a vehicle or trailer registered under Part 2 of the **Road Safety Act 1986** for the purpose of sending a request to a responsible person for the payment of a toll or a toll administration fee—

- (a) to the relevant West Gate Tunnel Corporation; or
  - (b) to a person who is employed by, or who is engaged to provide services for, the relevant West Gate Tunnel Corporation.
- (3) VicRoads or a relevant person may disclose the driver licence information of a responsible person for the purpose of taking an action for the recovery of a toll or a toll administration fee from the responsible person in accordance with the debt recovery arrangements—
- (a) to the relevant West Gate Tunnel Corporation; or
  - (b) to a person who is employed by, or who is engaged to provide services for, the relevant West Gate Tunnel Corporation.
- (4) Despite section 90N of the **Road Safety Act 1986**, VicRoads or a relevant person may disclose information under subsection (1) even if VicRoads or the relevant person has not entered into an information protection agreement with the enforcement agency or the person.
- (5) Sections 90N and 90Q(2) and (3) of the **Road Safety Act 1986** apply to a disclosure of information under subsection (2) or (3) as if it were a disclosure of information authorised under Part 7B of that Act.
- (6) In this section—
- driver licence information* means any of the following information held by VicRoads for the purpose of its licensing functions under Part 3 of the **Road Safety Act 1986**—
- (a) a person's name;
  - (b) a driver licence number;

- (c) a date of birth;
- (d) a telephone number;
- (e) an email address;
- (f) a residential address;

*information protection agreement* has the same meaning as it has in section 90I of the **Road Safety Act 1986**;

*relevant person* has the same meaning as it has in section 90I of the **Road Safety Act 1986**.

**65 Relevant West Gate Tunnel Corporation to keep proper records**

- (1) The relevant West Gate Tunnel Corporation must keep records that correctly record or enable the following to be determined or calculated—
  - (a) whether or not the relevant West Gate Tunnel Corporation has registered a vehicle and, if it has so registered a vehicle—
    - (i) the period of that registration; and
    - (ii) the toll zone or toll zones in respect of which the vehicle is registered; and
    - (iii) in the case of a temporary registration, the conditions of use notified to the person who sought the temporary registration and the manner in which those conditions were notified to that person;
  - (b) whether, and if so what, information has been given to a person who sought registration of a vehicle;
  - (c) any cancellation or suspension by the relevant West Gate Tunnel Corporation of a registration and the date and time on which

- that cancellation or suspension came into operation;
- (d) whether or not an ongoing registration agreement existed or exists between the relevant West Gate Tunnel Corporation and a person and, if so, the period for which that ongoing registration agreement had or has force and the terms of that ongoing registration agreement;
  - (e) any toll, fee or charge that has been paid, or that is due, to the relevant West Gate Tunnel Corporation under this Part and any amount that stands to the credit of a person in respect of any vehicle registered;
  - (f) whether or not a vehicle is exempted from the requirement to be registered and any conditions of that exemption.

Penalty: 100 penalty units.

- (2) A person authorised by the Minister may enter the offices of a relevant agency during ordinary business hours to inspect its records required by, or created for the purposes of, this Part.
- (3) A relevant agency must not prevent a person authorised by the Minister from carrying out an inspection under subsection (2).

Penalty: 100 penalty units.

## **66 Destruction of records**

- (1) Subject to subsection (2), the relevant West Gate Tunnel Corporation must cause any records it holds in relation to the non-payment of a toll to be destroyed within 2 years after the creation of the records or within any shorter or longer prescribed period.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to records that—
- (a) do not identify any person or vehicle or trailer; or
  - (b) are required for legal proceedings, being proceedings which commenced before the date on which the records would otherwise be required to be destroyed.

## **Division 8—Link roaming agreements**

### **67 Definitions**

In this Division—

***Link roaming agreement*** means an agreement between the relevant West Gate Tunnel Corporation and the relevant corporation relating to the use in a Link toll zone of a class or classes of vehicles that are registered with the relevant West Gate Tunnel Corporation;

***Link roaming service*** means a service relating to the billing and payment of amounts for tolls and charges relating to the use in a Link toll zone of a class or classes of vehicles that are registered with the relevant West Gate Tunnel Corporation;

***Link toll zone*** means a toll zone within the meaning of the **Melbourne City Link Act 1995**;

***net incremental marginal cost*** in relation to a Link roaming service, means—

- (a) the additional cost to the relevant West Gate Tunnel Corporation of providing the Link roaming service (net of any savings) calculated in accordance with a determination referred to in section 69(1); or



- (b) the amount that is determined to be the net incremental marginal cost to the relevant West Gate Tunnel Corporation of providing the Link roaming service as referred to in section 69(2); or
- (c) if neither paragraph (a) nor (b) applies, the additional cost to the relevant West Gate Tunnel Corporation of providing the Link roaming service (net of any savings);

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

#### **68 Roaming fees**

- (1) For the duration of the concession period (within the meaning of the West Gate Tunnel Agreement), the fee or charge that may be imposed by the relevant West Gate Tunnel Corporation on the relevant corporation under a Link roaming agreement for the provision of a Link roaming service must not exceed the amount that represents the net incremental marginal cost to the relevant West Gate Tunnel Corporation of providing that Link roaming service.
- (2) Any agreement or arrangement existing on or after the commencement of this section that is inconsistent with subsection (1) is void to the extent of the inconsistency.

#### **69 Determination of net incremental marginal cost**

- (1) The Secretary may, by notice published in the Government Gazette, determine the method and criteria to be used for calculating the additional cost to the relevant West Gate Tunnel Corporation of providing a Link roaming service.
- (2) The Secretary, on the joint application of the relevant West Gate Tunnel Corporation and the

relevant corporation, may, by notice published in the Government Gazette, determine an amount to be the net incremental marginal cost to the relevant West Gate Tunnel Corporation of providing a Link roaming service.

- (3) A determination of an amount to be the net incremental marginal cost may provide for the amount to be a variable amount to be determined in accordance with an agreement existing at the date of the determination between the relevant West Gate Tunnel Corporation and the relevant corporation.
- (4) The Secretary must not make a determination of an amount to be the net incremental marginal cost unless the Secretary is satisfied that the amount to be determined has been agreed to by the relevant West Gate Tunnel Corporation and the relevant corporation.
- (5) On the publication in the Government Gazette of any determination under this section, any existing determination under this section is revoked.

## **Division 9—Effect of certain provisions of the Major Transport Projects Facilitation Act 2009**

### **70 Designation of project contractor**

A project contractor may be designated under section 7 of the **Major Transport Projects Facilitation Act 2009** in relation to the West Gate Tunnel Project even though it was the State rather than the project authority that entered into the West Gate Tunnel Agreement with the project contractor.

### **71 Declaration or revocation of declaration as a road**

- (1) The revocation under section 194 of the **Major Transport Projects Facilitation Act 2009** of a declaration under section 193 of that Act in

respect of part of the land in the West Gate Tunnel tollway is not to be taken to affect any toll zone specified in relation to that part of the land which is the subject of that part of the declaration that has not been revoked.

- (2) On the revocation of a declaration under section 193 of the **Major Transport Projects Facilitation Act 2009** in respect of a part of the West Gate Tunnel tollway any reference to the West Gate Tunnel tollway in a notice of a toll zone specified under this Part to the extent that it relates to any period on or after the revocation, is taken not to include any land that was the subject of the revocation.
- (3) If the declaration of the West Gate Tunnel tollway as a road is revoked and remade under sections 193 and 194 of the **Major Transport Projects Facilitation Act 2009**, any notices in relation to toll zones existing before the revocation are to continue in effect.

## **Part 4—Administration, legal proceedings and enforcement**

### **Division 1—Use of statutory powers and functions for the West Gate Tunnel Project**

#### **72 Governor in Council may require bodies to act**

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

#### **73 Powers of certain bodies extended**

A Minister, a Department Head, a public authority or a Council is taken to have any powers that are necessary to enable the Minister, the Department Head, the public authority or the Council—

- (a) to comply with any direction under or requirement of this Act or the regulations; or

- (b) to do any other thing that is necessary or convenient to be done for the purposes of the West Gate Tunnel Project.

## **Division 2—Emergency management**

### **74 Emergency management**

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

## **Division 3—No liability for obstruction of rivers**

### **75 No liability for obstruction of rivers**

No action lies against the West Gate Tunnel Corporation, or a licensee or lessee under the **Major Transport Projects Facilitation Act 2009** for the West Gate Tunnel Project, for or in respect of any obstruction to the navigation of any river occasioned or alleged to be occasioned by—

- (a) the West Gate Tunnel tollway or its associated structures or facilities; or
- (b) any construction work carried out in connection with the West Gate Tunnel Project.

## **Division 4—Service of documents**

### **76 Service of documents**

- (1) If a notice or other document is required or permitted to be served on any person under this Act or the regulations, the notice or other

document may, unless the contrary intention appears, be served in or out of Victoria—

- (a) by delivering it personally to the person; or
  - (b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of 16 years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or
  - (c) by sending it by post, addressed to the person at the usual or last known place of residence or business of that person; or
  - (d) if the person has given an address to an enforcement agency or the relevant West Gate Tunnel Corporation that is not the person's place of residence or business, by sending it by post addressed to the person at that address.
- (2) This section does not apply to the service of infringement notices for offences against section 37(1) or section 65(1) or (3) or the service of notices in relation to the cancellation or suspension of registration under section 42.

## **Division 5—Proceedings for offences**

### **77 Proceedings for offences under Part 3**

- (1) A proceeding for an offence under Part 3 may only be commenced by—
  - (a) a police officer; or
  - (b) an enforcement agency; or
  - (c) a person authorised by the Minister.
- (2) The Minister may authorise a person to commence a proceeding for an offence against Part 3.

**78 Extension of period for commencing prosecution for summary offences**

Despite section 7 of the **Criminal Procedure Act 2009**, proceedings for an offence against section 37(1) may be commenced not more than 15 months after the commission of the alleged offence.

## **Part 5—The Better Freight Outcomes Fund**

### **78A Better Freight Outcomes Fund**

There must be established in the Public Account as part of the Trust Fund an account to be known as the Better Freight Outcomes Fund.

### **78B Payments into the Fund**

There must be paid into the Better Freight Outcomes Fund all money directed or authorised to be paid into the Fund by or under this or any other Act.

### **78C Payments out of the Fund**

- (1) There must be paid out of the Better Freight Outcomes Fund—
  - (a) amounts authorised by the Minister in consultation with the Treasurer to fund the cost of all or any of—
    - (i) transport programs for the local community; and
    - (ii) transport projects for the local community; and
  - (b) all money directed or authorised to be paid out of the Fund by or under this or any other Act.
- (2) In this section—

*local community*, in relation to transport programs and transport projects, means a municipal district within the West Gate Tunnel Project area;

*municipal district* has the same meaning as in the **Local Government Act 1989**.



## **Part 6—Regulations**

### **79 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing requirements with respect to placing notices on or in the vicinity of the West Gate Tunnel tollway outside a toll zone and prescribing the information to be provided by those notices;
  - (b) prescribing as a tolling device any system, equipment or thing (including any equipment or thing to be placed in or on a vehicle) for recording the use of a vehicle or a trailer in a toll zone;
  - (c) prescribing the manner in which the tolling devices are to be installed, set up, tested, operated, used, maintained or repaired;
  - (d) prescribing the manner in which information from the tolling devices is to be processed, stored, transferred, produced, re-configured, used to produce reports, images or other forms of information, destroyed or otherwise handled;
  - (e) exempting from the payment of tolls and toll administration fees vehicles or classes of vehicle that under the West Gate Tunnel Agreement may be exempted from the payment of tolls and toll administration fees;
  - (f) the registration of vehicles and the exemption by the relevant West Gate Tunnel Corporation of vehicles from the requirement to be registered;
  - (g) prescribing methods of recording the payment of tolls;

- (h) prescribing the period in which records in relation to the non-payment of a toll are to be destroyed;
  - (i) prescribing fees;
  - (j) prescribing a period of time for the purpose of section 37(6);
  - (k) prescribing an amount for the purposes of section 45(1);
  - (l) prescribing criteria for the purposes of section 45(2);
  - (m) generally any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstances; and
  - (c) may confer a discretionary authority or impose a duty on a specified person or class of person; and
  - (d) may exempt specified persons or things or classes of persons or things from complying with all of any of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (3) A power conferred by this Act to make regulations prescribing fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
  - (b) maximum fees;
  - (c) minimum fees;

- (d) the payment of fees either generally or under specified conditions or in specified circumstances;
  - (e) the payment of fees by a specified manner of payment.
- (4) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application and savings nature, arising as a result of the enactment of this Act, including any repeals and amendments made as a result of the enactment of this Act.
- (5) Regulations made under subsection (4) may have a retrospective effect to a day on or after the commencement of this section.
- (6) To the extent that regulations made under subsection (4) have a retrospective effect, the regulations do not operate so as—
- (a) to affect, in a manner prejudicial to any person, the rights of that person existing before the date of the regulations coming into operation; or
  - (b) to impose liabilities on any person in respect of anything done or omitted to be done before the date of the regulations coming into operation.
- (7) Regulations made under subsection (4) have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities or in any subordinate instrument).

### **80 Repeal of transitional regulation making powers**

Section 79(4), (5), (6) and (7) are **repealed** on the first anniversary of the commencement of section 79.

## **Part 7—Consequential amendments to other Acts and repeal of amending Part**

### **Division 1—Accident Towing Services Act 2007**

#### **81 Definitions**

- (1) In section 3(1) of the **Accident Towing Services Act 2007**, in the definition of *designated road* after paragraph (ca) **insert**—

"(cb) the West Gate Tunnel tollway;"

- (2) In section 3(1) of the **Accident Towing Services Act 2007**, in the definition of *limited tow truck licence*, for "section 10(2) or 10(3) or a heavy tow truck licence issued under section 11(2) or 11(3)" **substitute** "section 10(2), 10(3) or 10(4) or a heavy tow truck licence issued under section 11(2), 11(3) or 11(4)".

- (3) In section 3(1) of the **Accident Towing Services Act 2007** **insert** the following definitions—

*relevant West Gate Tunnel agency* means the West Gate Tunnel Corporation or the West Gate Tunnel operator within the meaning of the **West Gate Tunnel Project Act 2017**;

*West Gate Tunnel Corporation* has the same meaning as it has in the **West Gate Tunnel Project Act 2017**;

*West Gate Tunnel tollway* has the same meaning as it has in the **West Gate Tunnel Project Act 2017**."

#### **82 Power to issue regular tow truck licences**

- (1) In section 10(1) of the **Accident Towing Services Act 2007**, for "(2) and (3)" **substitute** "(2), (3) and (4)".

(2) After section 10(3) of the **Accident Towing Services Act 2007** insert—

- "(4) In the case of a licence authorised by the Minister to be issued under section 14(2)(f), VicRoads may license the relevant West Gate Tunnel agency or contractor (as the case requires) to operate a tow truck that is specified in the licence on the West Gate Tunnel tollway or on any other designated road specified in the licence, in the course of conducting an accident towing service business—
- (a) to provide accident towing services to vehicles of any gross vehicle mass that the tow truck is capable of towing; and
  - (b) from the depot specified in the licence; and
  - (c) on the whole or any part of the West Gate Tunnel tollway, as specified in the licence, or on any other designated road that is specified in the licence."

**83 Power to issue heavy tow truck licences**

After section 11(3) of the **Accident Towing Services Act 2007** insert—

- "(4) In the case of a licence authorised by the Minister to be issued under section 15(2)(f), VicRoads may license the relevant West Gate Tunnel agency or contractor (as the case requires) to operate a tow truck specified in the licence, in the course of conducting an accident towing service business—
- (a) to provide accident towing services to vehicles that the tow truck is capable of towing that have a gross vehicle mass of 4 tonnes or more; and

- (b) from the depot specified in the licence;  
and
- (c) on the whole or any part of the West Gate Tunnel tollway, as specified in the licence, or on any other designated road that is specified in the licence."

**84 Issue of new licences and re-issue of certain limited licences**

In section 12(2) of the **Accident Towing Services Act 2007**—

- (a) for "or 13(3)" **substitute** ", 13(3) or 13(4);";
- (b) for "section 10(2) or 10(3), or 11(2) or 11(3)" **substitute** "section 10(2), 10(3) or 10(4), or 11(2), 11(3) or 11(4)".

**85 Period for which licence remains in force**

After section 13(3) of the **Accident Towing Services Act 2007** **insert**—

- "(4) If a limited tow truck licence held by a relevant West Gate Tunnel agency or a contractor ceases to be held by the relevant West Gate Tunnel agency or contractor, the licence ceases to be in force."

**86 Ministerial authorisation for the issue of regular tow truck licences**

(1) In section 14(2)(d) of the **Accident Towing Services Act 2007**—

- (a) after "to enable the relevant agency" **insert** "or person contracted to the relevant agency";
- (b) after "perform its obligations" **insert** "under any other agreement between the State and the relevant agency that makes provision with respect to towing services on the Link

road or the Extension road or any other designated road".

(2) In section 14(2)(e) of the **Accident Towing Services Act 2007**—

- (a) after "to enable the Freeway Corporation" **insert** "or person contracted to the Freeway Corporation";
- (b) after "perform its obligations" **insert** "under any other agreement between the State and the relevant agency that makes provision with respect to towing services on the EastLink or any other designated road";
- (c) for "that Act." **substitute** "that Act; or".

(3) After section 14(2)(e) of the **Accident Towing Services Act 2007** **insert**—

- "(f) in the case of the West Gate Tunnel tollway, the licences are to be issued to—
- (i) a relevant West Gate Tunnel agency; or
  - (ii) a person who is contracted by the relevant West Gate Tunnel agency to provide accident towing services for the whole or a part of the West Gate Tunnel tollway—

and the Minister is of the opinion that the issue of the licences is necessary to enable the relevant West Gate Tunnel agency or person contracted to the relevant West Gate Tunnel agency to perform its obligations under any other agreement between the State and the relevant West Gate Tunnel agency that makes provision with respect to towing services on the West Gate Tunnel tollway or any other designated road, exercise its rights or carry out its functions under this Act or the **West Gate Tunnel Project Act 2017** or

regulations made under this Act or that Act or the West Gate Tunnel Agreement within the meaning of that Act."

- (4) In section 14(5) of the **Accident Towing Services Act 2007**, for "(2)(d) or (2)(e)" substitute "(2)(d), (2)(e) or (2)(f)".

**87 Ministerial authorisation for the issue of heavy tow truck licences**

- (1) In section 15(2)(d) of the **Accident Towing Services Act 2007**—
- (a) after "to enable the relevant agency" insert "or person contracted to the relevant agency";
  - (b) after "perform its obligations" insert "under any other agreement between the State and the relevant agency that makes provision with respect to towing services on the Link road or the Extension road or any other designated road";
- (2) In section 15(2)(e) of the **Accident Towing Services Act 2007**, for "that Act." substitute "that Act; or".
- (3) After section 15(2)(e) of the **Accident Towing Services Act 2007** insert—
- "(f) in the case of the West Gate Tunnel tollway, the licences are to be issued to—
    - (i) a relevant West Gate Tunnel agency; or
    - (ii) a person who is contracted by the relevant West Gate Tunnel agency to provide accident towing services for the whole or a part of the West Gate Tunnel tollway—

and the Minister is of the opinion that the issue of the licences is necessary to enable



the relevant West Gate Tunnel agency or person contracted to the relevant West Gate Tunnel agency to perform its obligations or person contracted to the relevant West Gate Tunnel agency to perform its obligations under any other agreement between the State and the relevant West Gate Tunnel agency that makes provision with respect to towing services on the West Gate Tunnel tollway or any other designated road, exercise its rights or carry out its functions under this Act or the **West Gate Tunnel Project Act 2017** or regulations made under this Act or that Act or the West Gate Tunnel Agreement within the meaning of that Act."

- (4) In section 15(4) of the **Accident Towing Services Act 2007**, for "(2)(d) or (2)(e)" substitute "(2)(d), (2)(e) or (2)(f)".

**88 Transfer of tow truck licence to another person**

- (1) In section 29(2)(d) of the **Accident Towing Services Act 2007**, for "Corporation." substitute "Corporation; and".

- (2) After section 29(2)(d) of the **Accident Towing Services Act 2007** insert—

"(e) in the case of a licence issued under section 10(4) or 11(4), is a relevant West Gate Tunnel agency or a person who is contracted to provide accident towing services to the relevant West Gate Tunnel agency."

**89 Allocation offences in controlled areas**

After section 42(3)(b)(iia) of the **Accident Towing Services Act 2007** insert—

- "(iib) in the case of a road accident scene that is on the West Gate Tunnel tollway, the tow truck driver is authorised by the West Gate Tunnel

Corporation to attend road accident scenes  
on that road; or".

## **Division 2—Children, Youth and Families Act 2005**

### **90 Application for registration of infringement penalty**

- (1) In clause 3(2)(m) of Part 2 of Schedule 3 to the **Children, Youth and Families Act 2005**, for "in the offence." **substitute** "in the offence; and".
- (2) After clause 3(2)(m) of Part 2 of Schedule 3 to the **Children, Youth and Families Act 2005** **insert—**
  - "(n) if the infringement notice was issued in respect of an offence under section 37(1) of the **West Gate Tunnel Project Act 2017**, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence."

### **91 Decision to go to Court**

- (1) In clause 17(1)(e) of Part 4 of Schedule 3 to the **Children, Youth and Families Act 2005**, for "or the **EastLink Project Act 2004**" **substitute** ", the **EastLink Project Act 2004** or the **West Gate Tunnel Project Act 2017**".
- (2) For clause 17(1)(f) of Part 4 of Schedule 3 to the **Children, Youth and Families Act 2005** **substitute—**
  - "(f) if a nomination of a kind specified in paragraph (e) is made and subsequently cancelled under section 84BF(1) of the **Road Safety Act 1986** so that liability reverts to the person who made the nomination—
    - (i) for an offence committed under the **Road Safety Act 1986**, within 6

- months after the date of cancellation of the nomination or 12 months after the date of the alleged offence (whichever is the earlier); or
- (ii) for an offence committed under section 204 of the **EastLink Project Act 2004**, section 73 of the **Melbourne City Link Act 1995** or section 37(1) of the **West Gate Tunnel Project Act 2017**, within 6 months after the date of cancellation of the nomination or 15 months after the date of the alleged offence (whichever is the earlier); or".
- (3) In clause 17(1)(g) of Part 4 of Schedule 3 to the **Children, Youth and Families Act 2005**, for "12 months" **substitute** "15 months".
- (4) In clause 17(1)(h) of Part 4 of Schedule 3 to the **Children, Youth and Families Act 2005**—
- (a) for "12 months" **substitute** "15 months";
- (b) for "earlier." **substitute** "earlier); or".
- (5) After clause 17(1)(h) of Part 4 of Schedule 3 to the **Children, Youth and Families Act 2005** **insert**—
- "(i) subject to paragraph (e), if the offence is against section 37(1) of the **West Gate Tunnel Project Act 2017**, within 6 months after the date of service of the infringement notice under section 50(1) of that Act or 15 months after the date of the alleged offence (whichever is the earlier)."

### **Division 3—Criminal Procedure Act 2009**

#### **92 Definitions**

In section 3 of the **Criminal Procedure Act 2009** in the definition of *traffic camera offence*—

- (a) in paragraph (c), for "that Act;" **substitute**  
"that Act; or";
- (b) after paragraph (c) **insert—**
  - "(d) an offence under the **West Gate Tunnel Project Act 2017** that is detected by a tolling device or process prescribed for the purposes of Part 3 of that Act;"

## **Division 4—EastLink Project Act 2004**

### **93 Definitions**

- (1) In section 3(1) of the **EastLink Project Act 2004**, for the definition of *illegal user statement* **substitute—**

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

- (2) In section 3(1) of the **EastLink Project Act 2004**, for the definition of *known user statement* **substitute—**

*"known user statement*, in relation to the use of a vehicle or trailer, means a statement in writing made by a person—

- (a) to the effect that the person was not driving at the relevant time, or did not at that time have possession or control of, the vehicle or trailer or the vehicle to which the trailer was attached; and
- (b) containing sufficient information to identify and locate the person who the

person making the statement last knew to have, before the relevant time, possession or control of the vehicle or trailer or the vehicle to which the trailer was attached;"

- (3) In section 3(1) of the **EastLink Project Act 2004**, for the definition of *nomination rejection statement substitute*—

*"nomination rejection statement* means a statement in writing made by a person nominated in a known user statement, a sold vehicle statement or a tolling nomination statement as being the responsible person in respect of a vehicle or trailer to the effect that if nominated—

- (a) in a known user statement, the person had not had possession or control of the vehicle or trailer at the relevant time, as stated in the known user statement; and
  - (b) in a sold vehicle statement, the vehicle or trailer had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vehicle statement; and
  - (c) in a tolling nomination statement, the person was not the responsible person in relation to the vehicle or trailer at the time of the tolling offence as stated in the tolling nomination statement;"
- (4) In section 3(1) of the **EastLink Project Act 2004**, for the definition of *operator substitute*—

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

- (a) the registered operator of the vehicle or trailer at that time or the person

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recorded at that time on a register of vehicles or trailers maintained under a corresponding law as the person responsible for the vehicle or trailer;

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

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whether or not that vehicle or trailer is the same as the vehicle or trailer involved in the offence; or

(ii) the person whose name is disclosed in the records kept by VicRoads or a corresponding body as being entitled, or last entitled, at that time to use or possess that number plate;

(e) if the vehicle or trailer displays a general identification mark by means of a special identification plate issued by VicRoads under the regulations under the **Road Safety Act 1986** or by a corresponding body under a corresponding law, the person to whom the mark is assigned at that time;".

(5) In section 3(1) of the **EastLink Project Act 2004** for the definition of *responsible person* substitute—

*"responsible person*, in relation to a vehicle or trailer, means—

(a) the operator of the vehicle or the trailer;  
or

(b) the person nominated as the responsible person in relation to the vehicle or trailer in an effective known user statement or an effective sold vehicle statement;".

(6) In section 3(1) of the **EastLink Project Act 2004**, for the definition of *sold vehicle statement* substitute—

*"sold vehicle statement*, in relation to the use of a vehicle or trailer, means a statement in writing made by a person—

- (a) to the effect that—
- (i) the person had sold or otherwise disposed of the vehicle or trailer before the relevant time or that any interest in the vehicle or trailer had otherwise ceased to be vested in the person before that time; and
  - (ii) the person was not at that time driving, or had not at that time possession or control of, the vehicle or trailer; and
- (b) containing sufficient information to identify and locate the person to whom the vehicle or trailer was sold or disposed of, or in whom an interest in the vehicle or trailer was otherwise vested, and the date and, if relevant, the time of sale, disposal or vesting;".
- (7) In section 3(1) of the **EastLink Project Act 2004** insert the following definitions—
- "special circumstances* has the same meaning as it has in the **Infringements Act 2006**;
- trailer* has the same meaning as it has in the **Road Safety Act 1986**;".

#### **94 Liability to pay toll charged**

In section 197(2) of the **EastLink Project Act 2004**, for "the person who was the operator of a vehicle at the time it was driven in a toll zone" substitute "the operator of the vehicle, or in the case of a vehicle that is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device the operator of the trailer,".

#### **95 Operator not liable if effective tolling statement made**



- (1) In section 199(1) of the **EastLink Project Act 2004**, for "vehicle is not liable under section 197 to pay a toll or toll administration fee for the use of the vehicle" **substitute** "vehicle or trailer is not liable under section 197 to pay a toll or toll administration fee for the use of the vehicle or the trailer".
- (2) In section 199(6) of the **EastLink Project Act 2004**, for "driving the vehicle" **substitute** "the driver of the vehicle or the operator of the trailer".

#### **96 Charge of toll**

- (1) In section 200(1)(b) of the **EastLink Project Act 2004**, for "statement." **substitute** "statement; and".
- (2) After section 200(1)(b) of the **EastLink Project Act 2004 insert—**
  - "(c) in the case that the vehicle is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer."

#### **97 New section 203A inserted**

After section 203 of the **EastLink Project Act 2004 insert—**

##### **"203A Debt recovery arrangements**

- (1) The Minister may approve the minimum requirements to be met by the Freeway Corporation in carrying out an action to recover a toll or a toll administration fee from a responsible person.
- (2) The minimum requirements approved by the Minister under subsection (1) must be published in the Government Gazette."

#### **98 Offence to drive unregistered vehicle in toll zone**

(1) For section 204(7) of the **EastLink Project Act 2004 substitute**—

"(7) Despite anything to the contrary in this Act or any other Act (other than the Charter of Human Rights and Responsibilities) in a 7-day period unless another period is prescribed, then during that prescribed period—

- (a) only one criminal proceeding may be commenced in respect of an offence constituted by the driving of any one vehicle in a toll zone; and
- (b) only one infringement notice may be issued in respect of an offence constituted by the driving of any one vehicle in a toll zone—

regardless of how many toll zones the vehicle is driven in during the course of the period and how many trips the vehicle makes during the course of the period and how many different individuals drive the vehicle during the course of the period."

(2) In section 204(12) of the **EastLink Project Act 2004 omit** "on the day of the offence".

**99 Court to require payment of toll and costs**

For section 206B of the **EastLink Project Act 2004 substitute**—

**"206B Payment of prescribed administrative amount**

- (1) Subject to subsection (2), if a charge against a person for an offence against section 204 is found proven, whether or not a conviction is recorded or a penalty imposed for that offence, the court must make an order requiring the person to pay to the Freeway

- Corporation an amount that is the prescribed administrative amount, if any.
- (2) The court is not required to make an order under subsection (1), if having regard to the prescribed criteria (if any) the court is satisfied—
- (a) that the person is experiencing acute financial hardship; or
  - (b) that special circumstances apply to the person.
- (3) An amount required to be paid under an order made under subsection (1) must be taken to be a judgment debt due by the person to the Freeway Corporation and payment of any amount remaining unpaid under the order is to be enforceable in the court by which it was made."

**100 Freeway Corporation may notify enforcement agency of non-payment of toll**

- (1) For section 207(1) and (2) of the **EastLink Project Act 2004 substitute**—

- "(1) If the Freeway Corporation or an authorised person believes on reasonable grounds that a person has committed an offence against section 204, the Freeway Corporation or the authorised person may do any or all of the following—
- (a) send a request for payment of the toll and toll administration fee payable in respect of the use of the vehicle in the toll zone to any person who appears to be liable to pay the toll and toll administration fee;
  - (b) if the toll and toll administration fees have not been paid in accordance with

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the processes set out in the Agreement, notify the enforcement agency of that belief and request the enforcement agency—

- (i) to serve an infringement notice in accordance with this Division on the operator of the vehicle or trailer involved in the offence; or
- (ii) to serve an infringement notice in accordance with this Division on the person nominated by an authorised person in a tolling nomination statement; or
- (iii) to commence proceedings in respect of that offence in accordance with this Act."

- (2) In section 207(5) of the **EastLink Project Act 2004**, for "subsection (2)" **substitute** "subsection (1)".

**101 Additional effect of expiation**

In section 215 of the **EastLink Project Act 2004** **omit** "on the day of the offence".

**102 Proof that vehicle driven on EastLink in a toll zone**

In section 220 of the **EastLink Project Act 2004**, for "vehicle was driven" **substitute** "vehicle was driven or a trailer was towed".

**103 Evidence of certificate or document from VicRoads**

In section 221 of the **EastLink Project Act 2004**—

- (a) in subsection (1)—
  - (i) for "a vehicle" **substitute** "a vehicle or a trailer";

- (ii) for "the vehicle" **substitute** "the vehicle or the trailer";
- (b) in subsection (2)—
  - (i) for "a vehicle" **substitute** "a vehicle or a trailer";
  - (ii) for "the vehicle" **substitute** "the vehicle or the trailer";
- (c) in subsection (3)—
  - (i) in paragraph (a), for "vehicle" **substitute** "vehicle or trailer";
  - (ii) for "that vehicle" **substitute** "that vehicle or trailer".

**104 VicRoads may disclose certain information to Freeway Corporation**

- (1) In the heading to section 223 of the **EastLink Project Act 2004** omit "to Freeway Corporation".
- (2) For section 223(1) of the **EastLink Project Act 2004** **substitute**—

- "(1) VicRoads or a relevant person may disclose information about a vehicle or trailer registered under Part 2 of the **Road Safety Act 1986**, for the purposes of this Part—
  - (a) to an enforcement agency; or
  - (b) to a person who is employed by, or who is engaged to provide services for, VicRoads, a relevant person or an enforcement agency.
- (1A) VicRoads or a relevant person may disclose information about a vehicle or trailer registered under Part 2 of the **Road Safety Act 1986**, for the purpose of sending a request to a responsible person for the

payment of a toll or a toll administration  
fee—

- (a) to the Freeway Corporation; or
  - (b) to a person who is employed by, or who is engaged to provide services for, the Freeway Corporation.
- (1B) VicRoads or a relevant person may disclose the driver licence information of a responsible person, for the purpose of taking an action for the recovery of a toll or a toll administration fee from the responsible person in accordance with the debt recovery arrangements—
- (a) to the Freeway Corporation; or
  - (b) to a person who is employed by, or who is engaged to provide services for, the Freeway Corporation.
- (1C) Despite section 90N of the **Road Safety Act 1986**, VicRoads or a relevant person may disclose information under subsection (1) even if VicRoads or the relevant person has not entered into an information protection agreement with the enforcement agency or the person."
- (3) In section 223(2) of the **EastLink Project Act 2004**, for "this section as if it were a disclosure" **substitute** "subsection (1A) or (1B) as if it were a disclosure of information authorised".
- (4) After section 223(2) of the **EastLink Project Act 2004 insert**—
- "(3) In this section—
- debt recovery arrangements* mean the minimum requirements approved by the Minister under section 203A(1);

***driver licence information*** means any of the following information held by VicRoads for the purpose of its licensing functions under Part 3 of the **Road Safety Act 1986**—

- (a) a person's name;
- (b) a driver licence number;
- (c) a date of birth;
- (d) a telephone number;
- (e) an email address;
- (f) a residential address;

***information protection agreement*** has the same meaning as it has in section 90I of the **Road Safety Act 1986**;

***relevant person*** has the same meaning as it has in section 90I of the **Road Safety Act 1986**."

#### **105 Proceedings for offences under Part 9**

After section 251(2) of the **EastLink Project Act 2004** insert—

- "(3) Despite section 7 of the **Criminal Procedure Act 2009**, a proceeding for an offence under section 204(1) may be commenced not more than 15 months after the commission of the alleged offence."

#### **106 Regulations**

(1) After section 258(1)(fa) of the **EastLink Project Act 2004** insert—

- "(fb) prescribing fees;
- (fc) prescribing a period of time for the purposes of section 204(7);

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- (fd) prescribing an amount for the purposes of section 206B;
  - (fe) prescribing criteria for the purposes of section 206B(2);
  - (ff) prescribing the period in which records in relation to the non-payment of a toll are be destroyed;".
- (2) For section 258(2) of the **EastLink Project Act 2004 substitute**—
- "(2) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may confer a discretionary authority or impose a duty on a specified person or class of person;
  - (d) may exempt specified persons or things or classes of persons or things from complying with all or any of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (3) A power conferred by this Act to make regulations prescribing fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
  - (b) maximum fees;
  - (c) minimum fees;



- (d) the payment of fees either generally or under specified conditions or in specified circumstances;
- (e) the payment of fees by a specified manner of payment."

### **Division 5—Fines Reform Act 2014**

*Draft Note: Consequential amendments will need to be made to the **Fines Reform Act 2014** to provide for any money paid in respect of a registered infringement fine or a registered court fine for a no-truck zone offence to be paid into the Better Freight Outcomes Fund.*

#### **107 Registration of infringement fine with Director**

- (1) In section 16(2)(i) of the **Fines Reform Act 2014**, for "the offence." **substitute** "the offence;"
- (2) After section 16(2)(i) of the **Fines Reform Act 2014** **insert—**
  - "(j) if the infringement notice was issued in respect of an offence against section 37(1) of the **West Gate Tunnel Project Act 2017**, the person was at the time of the infringement offence the responsible person in relation to the vehicle involved in the offence."

#### **108 Extended period for registration**

- (1) In section 17(i) of the **Fines Reform Act 2014**, for "or the **EastLink Project Act 2004**" **substitute** ", the **EastLink Project Act 2004** or the **West Gate Tunnel Project Act 2017**".
- (2) After section 17(1) of the **Fines Reform Act 2014** **insert—**
  - "(la) subject to paragraph (i), in the case of an alleged offence against section 37(1) of the **West Gate Tunnel Project Act 2017**, no

more than 6 months after the date of service  
of the infringement notice;"

**109 Ministers may enter into administrative services  
agreements**

- (1) In section 173B(1)(e) of the **Fines Reform Act 2014**, for "paragraph (c)." **substitute** "paragraph (c); or".
- (2) After section 173B(1)(e) of the **Fines Reform Act 2014 insert—**
  - "(f) Victoria Police under Part 3 of the **West Gate Tunnel Project Act 2017** that are of a similar nature to the functions of Victoria Police referred to in paragraph (c)."

**Division 6—Heavy Vehicle National Law  
Application Act 2013**

**110 Road manager**

- (1) After section 18(1)(a)(vi) of the **Heavy Vehicle National Law Application Act 2013 insert—**

"(vii) the West Gate Tunnel tollway;"
- (2) In section 18(4) of the **Heavy Vehicle National Law Application Act 2013**, for the definition of *Peninsula Link Freeway* **substitute—**

*"Peninsula Link Freeway* has the same meaning as in the **Road Management Act 2004**;  
*West Gate Tunnel tollway* has the same meaning as in the **West Gate Tunnel Project Act 2017**."

**111 Toll road authority**

After section 28(b) of the **Heavy Vehicle National Law Application Act 2013 insert—**

"(ba) the West Gate Tunnel Corporation within the meaning of the **West Gate Tunnel Project Act 2017**;"

### **Division 7—Infringements Act 2006**

*Draft Note: Consequential amendments will need to be made to the **Infringements Act 2006** to provide for any money paid in respect of an infringement penalty for a no-truck zone offence to be paid into the Better Freight Outcomes Fund.*

#### **112 Application of Division**

- (1) In section 21(2)(e) of the **Infringements Act 2006**, for "Act 2004." substitute "Act 2004;"
- (2) After section 21(2)(e) of the **Infringements Act 2006** insert—

"(f) section 57 of the **West Gate Tunnel Project Act 2017**."

#### **113 Service of documents**

- (1) In section 162(4)(e)(ii) of the **Infringements Act 2006**, for "the vehicle." substitute "the vehicle; or".
- (2) After section 162(4)(e) of the **Infringements Act 2006** insert—

"(f) if the infringement notice was issued in respect of an offence against section 37(1) of the **West Gate Tunnel Project Act 2017**—

  - (i) to the last address of the operator of the vehicle within the meaning of that Act; or
  - (ii) if a statement has been supplied under section 28 of that Act, to the last address of the person alleged in the statement to have been the driver of the vehicle or trailer."

## **Division 8—Major Transport Projects Facilitation Act 2009**

### **114 Declaration of roads**

After section 193(4) of the **Major Transport Projects Facilitation Act 2009** insert—

"(5) This section does not affect the grant or operation of a lease or licence of any part of any land within the project area that is declared to be a road despite anything to the contrary in Schedule 5 of the **Road Management Act 2004**".

## **Division 9—Magistrates' Court Act 1989**

### **115 Certain agencies may give information for enforcement purposes**

In section 99A(1) of the **Magistrates' Court Act 1989**, for "person or body listed in section 90A(1)" substitute "relevant agency within the meaning of section 69".

## **Division 10—Melbourne City Link Act 1995**

### **116 Repeal of Division 6 of Part 2B**

Division 6 of Part 2B of the **Melbourne City Link Act 1995** is repealed.

### **117 Definitions**

(1) In section 69 of the **Melbourne City Link Act 1995**, for the definition of *operator* substitute—

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

- (a) the registered operator of the vehicle or trailer at that time or the person recorded at that time on a register of vehicles or trailers maintained under a

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corresponding law as the person responsible for the vehicle or trailer;

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

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- not that vehicle or trailer is the same as the vehicle or trailer involved in the offence; or
- (ii) the person whose name is disclosed in the records kept by the Roads Corporation or a corresponding body as being entitled, or last entitled, at that time to use or possess that number plate;
- (e) if the vehicle or trailer displays a general identification mark by means of a special identification plate issued by the Roads Corporation under the regulations under the **Road Safety Act 1986** or by a corresponding body under a corresponding law, the person to whom the mark is assigned at that time;"
- (2) In section 69 of the **Melbourne City Link Act 1995**, in the definition of *tollway operator*, for "is in force" **substitute** "is in force or the West Gate Tunnel Corporation within the meaning of the **West Gate Tunnel Project Act 2017** unless a West Gate Tunnel roaming agreement (within the meaning of section 93AD) is in force".
- (3) In section 69 of the **Melbourne City Link Act 1995** **insert** the following definitions—
- special circumstances* has the same meaning as it has in the **Infringements Act 2006**;
- tolling device* means any system, equipment or thing prescribed as a tolling device for the purposes of this Part;
- trailer* has the same meaning as it has in the **Road Safety Act 1986**;"

- (4) In section 69 of the **Melbourne City Link Act 1995**, for the definition of *illegal user statement substitute*—

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

- (5) In section 69 of the **Melbourne City Link Act 1995**, for the definition of *known user statement substitute*—

*"known user statement*, in relation to the use of a vehicle or trailer, means a statement in writing made by a person—

- (a) to the effect that the person was not driving at the relevant time, or did not at that time have possession or control of, the vehicle or trailer or the vehicle to which the trailer was attached; and
- (b) containing sufficient information to identify and locate the person who the person making the statement last knew to have, before the relevant time, possession or control of the vehicle or trailer or the vehicle to which the trailer was attached;"
- (6) In section 69 of the **Melbourne City Link Act 1995**, for the definition of *nomination rejection statement substitute*—

*"nomination rejection statement* means a statement in writing made by a person nominated in a known user statement, a sold vehicle statement or a tolling nomination

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statement as being the responsible person in respect of a vehicle or trailer to the effect that if nominated—

- (a) in a known user statement, the person had not had possession or control of the vehicle or trailer at the relevant time, as stated in the known user statement; or
  - (b) in a sold vehicle statement, the vehicle or trailer had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vehicle statement; or
  - (c) in a tolling nomination statement, that the person was not the responsible person in relation to the vehicle or trailer at the time of the tolling offence as stated in the tolling nomination statement;"
- (7) In section 69 of the **Melbourne City Link Act 1995**, for the definition of *responsible person substitute*—
- "responsible person* in relation to a vehicle or a trailer means—
- (a) the operator of the vehicle or the trailer; or
  - (b) the person nominated as the responsible person in relation to the vehicle or the trailer in an effective known user statement or an effective sold vehicle statement;"
- (8) In section 69 of the **Melbourne City Link Act 1995** for the definition of *sold vehicle statement substitute*—



**"sold vehicle statement**, in relation to the use of a vehicle or trailer, means a statement in writing made by a person—

- (a) to the effect that—
  - (i) the person had sold or otherwise disposed of the vehicle or trailer before the relevant time or that any interest in the vehicle or trailer had otherwise ceased to be vested in the person before that time; and
  - (ii) the person was not at that time driving, or had not at that time possession or control of, the vehicle or trailer; and
- (b) containing sufficient information to identify and locate the person to whom the vehicle or trailer was sold or disposed of, or in whom an interest in the vehicle or trailer was otherwise vested, and the date and, if relevant, the time of sale, disposal or vesting;".

**118 Liability to pay toll and toll administration fees**

(1) For section 72(2) of the **Melbourne City Link Act 1995** substitute—

"(2) Subject to subsection (3), the operator of a vehicle or, in the case of a vehicle that is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer, is taken to be the driver of that vehicle for the purposes of subsection (1)."

(2) In section 72(3) of the **Melbourne City Link Act 1995**, after "vehicle" (where first and second occurring) **insert** "or trailer".

- (3) In section 72(4) of the **Melbourne City Link Act 1995**, for "driving the vehicle" **substitute** "the driver of the vehicle or the operator of the trailer".

#### **119 Charge of toll**

- (1) In section 72B(1)(b) of the **Melbourne City Link Act 1995**, for "statement." **substitute** "statement; and".
- (2) After section 72B(1)(b) of the **Melbourne City Link Act 1995**—
- "(c) in the case that the vehicle is attached to a trailer and the operator of the vehicle cannot be identified by a tolling device, the operator of the trailer."

#### **120 New section 72C inserted**

After section 72B of the **Melbourne City Link Act 1995** insert—

##### **"72C Debt recovery arrangements**

- (1) The Minister may approve the minimum requirements to be met by the relevant corporation in carrying out an action to recover a toll or a toll administration fee from a responsible person.
- (2) The minimum requirements approved by the Minister under subsection (1) must be published in the Government Gazette."

#### **121 Offence to drive unregistered vehicle in toll zone**

- (1) For section 73(4) of the **Melbourne City Link Act 1995** **substitute**—
- "(4) Despite anything to the contrary in this Act or any other Act (other than the Charter of Human Rights and Responsibilities) in a 7-day period or unless another period is

prescribed, then during that prescribed period—

- (a) only one criminal proceeding may be commenced in respect of an offence constituted by the driving of any one vehicle in a toll zone; and
- (b) only one infringement notice may be issued in respect of an offence constituted by the driving of any one vehicle in a toll zone—

regardless of how many toll zones the vehicle is driven in during the course of the period and how many trips the vehicle makes during the course of the period and how many different individuals drive the vehicle during the course of the period."

- (2) In section 73(8) of the **Melbourne City Link Act 1995** omit "on the day of the offence".

#### **122 Section 76 substituted**

For section 76 of the **Melbourne City Link Act 1995** substitute—

##### **"76 Payment of prescribed administrative amount**

- (1) Subject to subsection (2), if a charge against a person for an offence against section 73 is found proven, whether or not a conviction is recorded or a penalty imposed for that offence, the court must make an order requiring the person to pay to the relevant corporation an amount that is the prescribed administrative amount, if any.
- (2) The court is not required to make an order under subsection (1) if having regard to the prescribed criteria (if any) the court is satisfied—

- (a) that the person is experiencing acute financial hardship; or
  - (b) that special circumstances apply to the person.
- (3) An amount required to be paid under an order made under subsection (1) must be taken to be a judgment debt due by the person to the relevant corporation and payment of any amount remaining unpaid under the order is to be enforceable in the court by which it was made."

**123 Relevant corporation or authorised person may notify enforcement agency of non-payment of toll**

In section 77(1)(b) of the **Melbourne City Link Act 1995**, for "notify the enforcement agency" **substitute** "if the toll and toll administration fee have not been paid in accordance with the processes set out in the Agreement or the Extension Agreement, notify the enforcement agency".

**124 Proof that vehicle driven in toll zone**

In section 88 of the **Melbourne City Link Act 1995**, after "vehicle was driven" **insert** "or a trailer was towed".

**125 General evidentiary provisions**

- (1) In section 89(2) and (3) of the **Melbourne City Link Act 1995**, after "a vehicle" **insert** "or a trailer".
- (2) In section 89(3A) of the **Melbourne City Link Act 1995**, after "that vehicle" **insert** "or trailer".
- (3) In section 89(3B) of the **Melbourne City Link Act 1995**, after "vehicle" (where twice occurring) **insert** "or trailer".

**126 Roads Corporation may disclose certain  
information**

(1) For section 90(1) of the **Melbourne City Link  
Act 1995** substitute—

"(1) The Roads Corporation or a relevant person  
may disclose information about a vehicle or  
trailer registered under Part 2 of the **Road  
Safety Act 1986**, for the purposes of this  
Part—

(a) to an enforcement agency; or

(b) to a person who is employed by, or who  
is engaged to provide services for, the  
Roads Corporation, a relevant person or  
an enforcement agency.

(1A) The Roads Corporation or a relevant person  
may disclose information about a vehicle or  
trailer registered under Part 2 of the **Road  
Safety Act 1986**, for the purpose of sending  
a request to a responsible person for the  
payment of a toll or a toll administration  
fee—

(a) to the relevant corporation; or

(b) to a person who is employed by, or who  
is engaged to provide services for, the  
relevant corporation.

(1B) The Roads Corporation or a relevant person  
may disclose the driver licence information  
of a responsible person, for the purpose of  
taking an action for the recovery of a toll or a  
toll administration fee from the responsible  
person in accordance with the debt recovery  
arrangements—

(a) to the relevant corporation; or

- (b) to a person who is employed by, or who is engaged to provide services for, the relevant corporation."
- (2) In section 90(2) of the **Melbourne City Link Act 1995**, for "(1)(a) or (1)(c)" substitute "(1)".
- (3) In section 90(3) of the **Melbourne City Link Act 1995**, for "under subsection (1)(b) as if it were a disclosure of information" substitute "under subsection (1A) or (1B) as if it were a disclosure of information authorised".
- (4) After section 90(3) of the **Melbourne City Link Act 1995** insert—
- "(4) In this section—
- debt recovery arrangements* mean the minimum requirements approved by the Minister under section 72C(1);
- driver licence information* means any of the following information held by the Roads Corporation for the purpose of its licensing functions under Part 3 of the **Road Safety Act 1986**—
- (a) a person's name;
- (b) a driver licence number;
- (c) a date of birth;
- (d) a telephone number;
- (e) an email address;
- (f) a residential address;
- information protection agreement* has the same meaning as it has in section 90I of the **Road Safety Act 1986**;
- relevant person* has the same meaning as it has in section 90I of the **Road Safety Act 1986**."

**127 New Division 6 of Part 4 inserted**

After Division 5 of Part 4 of the **Melbourne City Link Act 1995** insert—

**"Division 6—West Gate Tunnel roaming agreements**

**93AD Definitions**

In this Division—

*net incremental marginal cost* in relation to a West Gate Tunnel roaming service, means—

- (a) the additional cost to the relevant corporation of providing the West Gate Tunnel roaming service (net of any savings) calculated in accordance with a determination referred to in section 93AF(1); or
- (b) the amount that is determined to be the net incremental marginal cost to the relevant corporation of providing the West Gate Tunnel roaming service as referred to in section 93AF(2); or
- (c) if neither paragraph (a) nor paragraph (b) applies, the additional cost to the relevant corporation of providing the West Gate Tunnel roaming service (net of any savings);

*Secretary* means the Secretary to the Department of Economic Development, Jobs, Transport and Resources;

*West Gate Tunnel Agreement* has the same meaning as in the **West Gate Tunnel Project Act 2017**;

***West Gate Tunnel Corporation*** has the same meaning as in the **West Gate Tunnel Project Act 2017**;

***West Gate Tunnel roaming agreement*** means an agreement between the relevant corporation and the West Gate Tunnel Corporation relating to the use in a West Gate Tunnel toll zone of a class or classes of vehicles that are registered with the relevant corporation;

***West Gate Tunnel roaming service*** means a service relating to the billing and payment of amounts for tolls and charges relating to the use in a West Gate Tunnel toll zone of a class or classes of vehicles that are registered with the relevant corporation;

***West Gate Tunnel toll zone*** means a toll zone within the meaning of the **West Gate Tunnel Project Act 2017**.

**93AE Roaming fees**

- (1) For the duration of the Concession Period (within the meaning of the Agreement), the fee or charge that may be imposed by the relevant corporation on the West Gate Tunnel Corporation under a West Gate Tunnel roaming agreement for the provision of a West Gate Tunnel roaming service must not exceed the amount that represents the net incremental marginal cost to the relevant corporation of providing that West Gate Tunnel roaming service.
- (2) Any agreement or arrangement existing on or after the commencement of this section that is inconsistent with subsection (1) is void to the extent of the inconsistency.

**93AF Determination of net incremental marginal cost**



- (1) The Secretary may, by notice published in the Government Gazette, determine the method and criteria to be used for calculating the additional cost to the relevant corporation of providing a West Gate Tunnel roaming service.
- (2) The Secretary, on the joint application of the relevant corporation and the West Gate Tunnel Corporation, may, by notice published in the Government Gazette, determine an amount to be the net incremental marginal cost to the relevant corporation of providing a West Gate Tunnel roaming service.
- (3) A determination of an amount to be the net incremental marginal cost may provide for the amount to be a variable amount to be determined in accordance with an agreement existing at the date of the determination between the relevant corporation and the West Gate Tunnel Corporation.
- (4) The Secretary must not make a determination of an amount to be the net incremental marginal cost unless the Secretary is satisfied that the amount to be determined has been agreed to by the relevant corporation and the West Gate Tunnel Corporation.
- (5) On the publication in the Government Gazette of any determination under this section, any existing determination under this section is revoked."

## **128 Proceedings**

After section 116(1A) of the **Melbourne City Link Act 1995** insert—

"(2) Despite section 7 of the **Criminal Procedure Act 2009**, a proceeding for an offence against section 73(1) may be commenced not more than 15 months after the commission of the alleged offence."

## **129 Regulations**

(1) After section 118(1)(f) of the **Melbourne City Link Act 1995** insert—

- "(fa) prescribing fees;
- (fb) prescribing a period of time for the purpose of section 73(4);
- (fc) prescribing criteria for the purposes of section 76(2);
- (fd) prescribing the period in which records in relation to the non-payment of a toll are to be destroyed;"

(2) For section 118(2) of the **Melbourne City Link Act 1995** substitute—

- "(2) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may confer a discretionary authority or impose a duty on a specified person or class of person;
  - (d) may exempt specified persons or things or classes of persons or things from complying with all of any of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

- (3) A power conferred by this Act to make regulations prescribing fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
  - (b) maximum fees;
  - (c) minimum fees;
  - (d) the payment of fees either generally or under specified conditions or in specified circumstances;
  - (e) the payment of fees by a specified manner of payment."

## **Division 11—Road Management Act 2004**

### **130 Definitions**

- (1) In section 3(1) of the **Road Management Act 2004** insert the following definitions—

*West Gate Tunnel Agreement* has the same meaning as it has in section 3 of the **West Gate Tunnel Project Act 2017**;

*West Gate Tunnel Corporation* has the same meaning as it has in section 3 of the **West Gate Tunnel Project Act 2017**;

*West Gate Tunnel operator* has the same meaning as it has in section 3 of the **West Gate Tunnel Project Act 2017**;

*West Gate Tunnel tollway* has the same meaning as it has in section 3 of the **West Gate Tunnel Project Act 2017**;"

- (2) In section 3(1) of the **Road Management Act 2004**, in the definition of *State road authority*, for "or Peninsula Link Freeway Corporation" substitute ", the Peninsula Link Freeway

Corporation or the West Gate Tunnel Corporation".

### **131 Interpretation and application of Act**

After section 5(8C) of the **Road Management Act 2004** insert—

"(8D) This Act is subject to the **West Gate Tunnel Project Act 2017** and the West Gate Tunnel Agreement.

(8E) The West Gate Tunnel Corporation and the West Gate Tunnel operator or their delegates must not exercise any power or carry out any duty under this Act in a manner that is not consistent with the **West Gate Tunnel Project Act 2017** or the West Gate Tunnel Agreement."

### **132 What is a public road?**

After section 17(1)(db) of the **Road Management Act 2004** insert—

"(dc) the West Gate Tunnel tollway; or".

### **133 Which road authority is the responsible road authority?**

After section 37(1B) of the **Road Management Act 2004** insert—

"(1C) The Link corporation is the responsible road authority for the Link road.

(1D) The Extension corporation is the responsible road authority for the Extension road.

(1E) The West Gate Tunnel Corporation is the responsible road authority for the West Gate Tunnel tollway."

### **134 Contents of a road management plan**

After section 52(2B) of the **Road Management Act 2004** insert—

- "(2C) A road management plan relating to the West Gate Tunnel tollway—
- (a) must be consistent with the **West Gate Tunnel Project Act 2017** and the West Gate Tunnel Agreement; and
  - (b) must facilitate the performance of obligations and duties under the **West Gate Tunnel Project Act 2017** and the West Gate Tunnel Agreement."

### **135 Interference with a road**

After section 63(2)(ba) of the **Road Management Act 2004** insert—

- "(bb) the person conducts the works authorised by, and conducted in accordance with, the Agreement; or
- (bc) the person conducts the works authorised by, and conducted in accordance with, the Extension Agreement; or
- (bd) the person conducts the works authorised by, and conducted in accordance with, the EastLink Agreement; or
- (be) the person conducts the works authorised by, and conducted in accordance with, the West Gate Tunnel Agreement; or".

### **136 Authorised officers**

- (1) In section 71(4)(a) of the **Road Management Act 2004**, for "requested; or" substitute "requested; and".
- (2) In section 71(5)(a) of the **Road Management Act 2004**, for "requested; or" substitute "requested; and".

(3) After section 71(5B) of the **Road Management Act 2004** insert—

"(5C) An authorised officer appointed under subsection (1) may exercise the powers of an authorised officer in respect of the West Gate Tunnel tollway as if VicRoads were the responsible road authority if—

- (a) the West Gate Tunnel Corporation has so requested; and
- (b) there is a written arrangement with the West Gate Tunnel Corporation."

**137 Principles concerning performance of road management functions**

After section 101(3) of the **Road Management Act 2004** insert—

- "(4) Subsection (1) applies to the West Gate Tunnel Corporation as if the reference to the principles specified in section 83 of the **Wrongs Act 1958** were excluded.
- (5) Subsection (1) applies to the Link corporation as if the reference to the principles specified in section 83 of the **Wrongs Act 1958** were excluded.
- (6) Subsection (1) applies to the Extension corporation as if the reference to the principles specified in section 83 of the **Wrongs Act 1958** were excluded."

**138 Right to recover for damage to road**

After section 112(3)(bb) of the **Road Management Act 2004** insert—

- "(bc) the West Gate Tunnel Corporation in respect of damage to a road arising because of the operation or effect of the West Gate Tunnel tollway; or"

**139 New section 133C inserted**

After section 133B of the **Road Management Act 2004 insert—**

**"133C Application of regulations to West Gate Tunnel tollway**

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

**140 Section 134 substituted**

For section 134 of the **Road Management Act 2004 substitute—**

**"134 Application of Act in respect of the Link road and Extension road**

- (1) This Act applies in respect of the Link road and the Extension road in accordance with this section and section 134AA.

- (2) Subject to this section, the Link corporation is, in respect of the Link road and the Extension corporation is, in respect of the Extension road, the coordinating road authority for the purposes of sections 19, 48(3) and 63(1) and clauses 7, 12 and 13 and Part 2 of Schedule 7.
- (3) Subject to subsection (2) and section 134AA, VicRoads has the powers and functions of a coordinating road authority in respect of the Link road if so requested by the Link corporation and in respect of the Extension road if so requested by the Extension corporation.
- (4) The functions and powers of an authorised officer appointed by VicRoads extend in respect of the Link road if so requested by the Link corporation in accordance with an arrangement between the Link corporation and VicRoads.
- (5) The functions and powers of an authorised officer appointed by VicRoads extend in respect of the Extension road if so requested by the Extension corporation in accordance with an arrangement between the Extension corporation and VicRoads.
- (6) A direction to the Link corporation or the Extension corporation under section 22 must not be inconsistent with the **Melbourne City Link Act 1995** or the Agreement or the Extension Agreement (as the case requires).
- (7) A Code of Practice under section 28 in its application to the Link corporation or the Extension corporation under section 22 must not be inconsistent with the **Melbourne City Link Act 1995** or the Agreement or the Extension Agreement (as the case requires).



- (8) A determination under section 41 must not be inconsistent with the **Melbourne City Link Act 1995** or the Agreement or the Extension Agreement.
- (9) Section 66 does not apply to the Link road or the Extension road if the placing of the structure, device, hoarding, advertisement, sign or bill is permitted under the **Melbourne City Link Act 1995** or the Agreement or the Extension Agreement (as the case requires).
- (10) Section 96 applies to the Link road and the Extension road as if VicRoads were the relevant road authority.
- (11) Sections 11, 12, 13, 14, 15, 18, 36, 38(1)(d), 39, 105(3), 118, 119, 120, 123 and 127 and clauses 2 and 3 of Schedule 2 and clauses 1, 2, 3, 5, 8, 9, 11 and 12 of Schedule 5 do not apply to the Link road or the Extension road or the Link corporation or the Extension corporation.
- (12) Clauses 1, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of Schedule 4 apply to the Link corporation in respect of the Link road as if the Link corporation were the responsible State road authority.
- (13) Clauses 1, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of Schedule 4 apply to the Extension corporation in respect of the Extension road as if the Extension corporation were the responsible State road authority.
- (14) Clause 10(1) of Schedule 5 applies to the Link road or the Extension road as if the reference to infrastructure did not include road-related infrastructure installed in

accordance with the Agreement or the Extension Agreement (as the case requires).

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

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

#### **141 New section 134AA inserted**

After section 134 of the **Road Management Act 2004** insert—

##### **'134AA Application of Schedule 7 in respect of the Link road and the Extension road**

- (1) Schedule 7 applies in respect of the Link road and the Extension road as modified by this section.
- (2) Clause 8 applies as if after subclause (4) there were inserted—
  - "(5) Subclause (1) does not apply to the carrying out of routine maintenance and inspection work.
- (6) For the purposes of this clause, work is not routine maintenance and inspection

work if it requires traffic management measures in order to be conducted safely."

- (3) Clause 14 applies as if after subclause (1) there were inserted—

"(1A) The Link corporation and the Extension corporation must have regard to the principles specified in this clause in the provision of road infrastructure."

- (4) Clause 14 applies as if for subclause (2) there were substituted—

"(2) The Link road and the Extension road must be managed as far as is reasonably practicable in such a way as to minimise any adverse effects on—

(a) the use of the Link road or the Extension road by members of the public; and

(b) the provision of services by a Utility."

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

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

(i) minimise any risk to the property of Utilities;

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

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

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(7) Clause 16 applies as if after subclause (8) there were inserted—

"(8A) Conditions to which a consent is given under this clause may require an applicant to compensate the Link corporation or the Extension corporation for economic loss, subject to compliance with any prescribed requirements for the negotiation and resolution of disputes in relation to compensation, but must not require the applicant to pay any form of penalty."

(8) Clause 17 applies as if after subclause (4) there were inserted—

"(4A) A Code of Practice applying to the Link road or the Extension road must not be inconsistent with the **Melbourne City Link Act 1995** or the Agreement or the Extension Agreement (as the case requires)."

**142 Application of Schedule 7 in respect of the EastLink**

In section 134B(7) of the **Road Management Act 2004**—

- (a) for "must not" **substitute** "may";
- (b) for "or to pay any form of penalty" **substitute** ", subject to compliance with any prescribed requirements for negotiation and resolution of disputes in relation to compensation, but must not require the applicant to pay any form of penalty".

**143 Application of Schedule 7 in respect of the Peninsula Link Freeway**

In section 134E(7) of the **Road Management Act 2004**—

- (a) for "must not" **substitute** "may";

- (b) for "or to pay any form of penalty"  
**substitute** ", subject to compliance with any prescribed requirements for negotiation and resolution of disputes in relation to compensation, but must not require the applicant to pay any form of penalty".

**144 New sections 134F and 134G inserted**

After section 134E of the **Road Management Act 2004** insert—

**134F Application of Act in respect of the West Gate Tunnel tollway and the West Gate Tunnel Corporation**

- (1) This Act applies in respect of the West Gate Tunnel tollway in accordance with this section and section 134G.
- (2) Subject to this section, the West Gate Tunnel Corporation is, in respect of the West Gate Tunnel tollway, the coordinating road authority for the purposes of sections 19, 48(3) and 63(1) and clauses 7, 12 and 13 and Part 2 of Schedule 7.
- (3) Subject to subsection (2) and section 134G, VicRoads has the powers and functions of a coordinating road authority in respect of the West Gate Tunnel tollway if so requested by the West Gate Tunnel Corporation.
- (4) The functions and powers of an authorised officer appointed by VicRoads extend in respect of the West Gate Tunnel tollway if so requested by the West Gate Tunnel Corporation in accordance with an arrangement between the West Gate Tunnel Corporation and VicRoads.
- (5) A direction to the West Gate Tunnel Corporation under section 22 must not be inconsistent with the **West Gate Tunnel**

- Project Act 2017** or the West Gate Tunnel Agreement.
- (6) A Code of Practice under section 28 in its application to the West Gate Tunnel Corporation must not be inconsistent with the **West Gate Tunnel Project Act 2017** or the West Gate Tunnel Agreement.
- (7) A determination under section 41 must not be inconsistent with the **West Gate Tunnel Project Act 2017** or the West Gate Tunnel Agreement.
- (8) Section 66 does not apply to the West Gate Tunnel tollway if the placing of the structure, device, hoarding, advertisement, sign or bill is permitted under the **West Gate Tunnel Project Act 2017** or the West Gate Tunnel Agreement.
- (9) Section 96 applies to the West Gate Tunnel tollway as if VicRoads were the relevant road authority.
- (10) Sections 11, 12, 13, 14, 15, 18, 36, 38(1)(d), 39, 105(3), 118, 119, 120, 123 and 127 and clauses 2 and 3 of Schedule 2 and clauses 1, 2, 3, 5, 8, 9, 11 and 12 of Schedule 5 do not apply to the West Gate Tunnel tollway or the West Gate Tunnel Corporation.
- (11) Clauses 1, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of Schedule 4 apply to the West Gate Tunnel Corporation in respect of the West Gate Tunnel tollway as if the West Gate Tunnel Corporation were the responsible State road authority.
- (12) Clause 10(1) of Schedule 5 applies to the West Gate Tunnel tollway as if the reference to infrastructure did not include road-related

infrastructure installed in accordance with the West Gate Tunnel Agreement.

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

which is conferred on VicRoads in relation to a freeway is conferred on the West Gate Tunnel Corporation in respect of the West Gate Tunnel tollway.

**134G Application of Schedule 7 in respect of the West Gate Tunnel tollway**

- (1) Schedule 7 applies in respect of the West Gate Tunnel tollway as modified by this section.
- (2) Clause 8 applies as if after subclause (4) there were inserted—
  - "(5) Subclause (1) does not apply to the carrying out of routine maintenance and inspection work.
  - (6) For the purposes of this clause, work is not routine maintenance and inspection work if it requires traffic management measures in order to be conducted safely."
- (3) Clause 14 applies as if after subclause (1) there were inserted—

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- "(1A) The West Gate Tunnel Corporation must have regard to the principles specified in this clause in the provision of road infrastructure."
- (4) Clause 14 applies as if for subclause (2) there were substituted—
- "(2) The West Gate Tunnel tollway must be managed as far as is reasonably practicable in such a way as to minimise any adverse effects on—
- (a) the use of the West Gate Tunnel tollway by members of the public; and
  - (b) the provision of services by a utility."
- (5) Clause 14(3) applies as if after paragraph (g) there were inserted—
- "(h) minimise any damage to non-road infrastructure;
- (i) minimise any risk to the property of Utilities;
  - (j) ensure that the non-road infrastructure is reinstated as nearly as practicable to the condition existing before the works necessary for the provision of the road infrastructure were conducted."
- (6) Clause 16(5) applies as if the reference to the works and infrastructure management principles were a reference to clause 14(2).
- (7) Clause 16 applies as if after subclause (8) there were inserted—
- "(8A) Conditions to which a consent is given under this clause may require an applicant to compensate the West Gate



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Tunnel Corporation for economic loss, subject to compliance with any prescribed requirements for negotiation and resolution of disputes in relation to compensation, but must not require the applicant to pay any form of penalty."

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

"(4A) A Code of Practice applying to the West Gate Tunnel Project must not be inconsistent with the **West Gate Tunnel Project Act 2017** or the West Gate Tunnel Agreement.".'

**145 Schedule 1 amended**

After clause 1(ha) of Schedule 1 to the **Road Management Act 2004** insert—

"(hb) in relation to the West Gate Tunnel tollway, details of any toll zones specified under section 27 of the **West Gate Tunnel Project Act 2017**;"

**146 Schedule 7A amended**

After clause 3(1)(c) of Schedule 7A to the **Road Management Act 2004** insert—

"(ca) in the case of the West Gate Tunnel tollway—by the West Gate Tunnel Corporation; and"

**Division 12—Road Safety Act 1986**

**147 Definitions**

In section 3(1) of the **Road Safety Act 1986** insert the following definition—

"*no-truck zone* means a road or a road related area that is specified in a declaration made under section 65BE;"

**148 New sections 65BA, 65BB, 65BC, 65BD and 65BE  
inserted**

After section 65B of the **Road Safety Act 1986**  
**insert—**

**"65BA Driving of heavy vehicle in a no-truck  
zone**

- (1) A person must not drive a heavy vehicle in a no-truck zone, except in accordance with subsection (2).

Penalty: 20 penalty units.

- (2) A person may drive a heavy vehicle in a no-truck zone if the heavy vehicle is—
- (a) a bus; or
  - (b) a prescribed class of heavy vehicle; or
  - (c) being driven for the purpose of performing construction or maintenance works within a no-truck zone; or
  - (d) being driven in the course of making a delivery of goods to a place or from a place within a no-truck zone; or
  - (e) being driven to a place or from a place within a no-truck zone for the purpose of the repair or sale of the heavy vehicle.

**65BB Extended liability for driving of heavy  
vehicle in a no-truck zone**

- (1) Subject to subsection (2), if a driver of a heavy vehicle commits an offence against section 65BA(1), the following persons also commit an offence against section 65BA(1)—

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- (a) an employer of the driver of the heavy vehicle;
  - (b) an operator or registered operator of the heavy vehicle;
  - (c) the person who contracted with the driver of the heavy vehicle for provision of services for the consignment of goods for transport by road.
- (2) A person referred to in subsection (1)(a), (b) or (c) does not commit an offence against section 65BA(1) if the person took **reasonable steps** that include—
- (a) the person did not know, and could not reasonably be expected to have known, of the conduct the driver of the heavy vehicle that constituted the commission of the offence; and
  - (b) either—
    - (i) the person had taken all steps to prevent that conduct from occurring; or
    - (ii) there were no steps that the person could reasonably be expected to have taken to prevent the conduct from occurring.
- (3) Without limiting subsection (2), in determining whether a person referred to in subsection (1)(a), (b) or (c) has taken **reasonable steps**, a court may have regard to—
- (a) the circumstances of the offence; and
  - (b) without limiting paragraph (a), the measures available and measures taken for all or any of the following—

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- (i) to manage, reduce or eliminate the risk of the offence being committed;
  - (ii) to exercise supervision or control over the driver involved in the commission of the offence;
  - (iii) to exercise supervision or control over activities leading to the commission of the offence;
  - (iv) to include compliance assurance conditions in relevant commercial arrangements;
  - (v) to provide information, instruction, training and supervision to employees to ensure compliance with section 65BA(1);
  - (vi) to maintain work systems to enable compliance with section 65BA(1); and
- (c) the personal expertise and experience that the person had or ought to have had.

**65BC Prosecution**

- (1) If more than one person is liable to be found guilty of an offence against section 65BA(1), proceedings may be taken against all or any persons liable to be found guilty of the offence.
- (2) Proceedings may be taken against all or any persons liable to be found guilty of the offence—
  - (a) regardless of whether or not proceedings have been commenced against any person; and

- (b) if proceedings have commenced against a person, regardless of whether or not those proceedings have finished; and
- (c) if proceedings have finished against a person, regardless of the outcome of those proceedings.

**65BD Exclusion of double jeopardy**

A person may be punished only once for an act that constitutes an offence against section 65BA(1).

**65BE Declaration of area of land to be no-truck zone**

- (1) The Minister, by notice published in the Government Gazette, may declare an area of land specified in the declaration to be a no-truck zone.
- (2) A declaration under this section—
  - (a) may be of general or limited application; or
  - (b) may differ according to differences in time, place or circumstance.
- (3) The Minister, by notice published in the Government Gazette, may amend or revoke a declaration made under this section."

**149 Definitions**

- (1) In section 84BB of the **Road Safety Act 1986**, in the definition of *authorised tolling person*—
  - (a) in paragraph (b), after "Act;" **insert** "or";
  - (b) after paragraph (b) **insert**—
    - "(c) a person authorised in writing under section 25 of the **West Gate Tunnel**

**Project Act 2017** to carry out functions under Part 3 of that Act;".

- (2) In section 84BB of the **Road Safety Act 1986**, in the definition of *tolling offence*, for "**2004**;" substitute "**2004** or section 37(1) of the **West Gate Tunnel Project Act 2017**";".

#### **150 Use of effective statement to avoid liability**

In section 84BE(4A) of the **Road Safety Act 1986**—

- (a) for "Part 4 of the **Melbourne City Link Act 1995** or Part 9 of the **EastLink Project Act 2004**" substitute "Part 4 of the **Melbourne City Link Act 1995**, Part 9 of the **EastLink Project Act 2004** or Part 3 of the **West Gate Tunnel Project Act 2017**";
- (b) in paragraph (b), for "or the **EastLink Project Act 2004**" substitute ", the **EastLink Project Act 2004** or the **West Gate Tunnel Project Act 2017**".

### **Division 13—Transport Integration Act 2010**

#### **151 Definitions**

In section 3 of the **Transport Integration Act 2010**, in the definition of *transport legislation*, after paragraph (ra) insert—

"(rb) **West Gate Tunnel Project Act 2017**";".

#### **152 Delegation by Secretary**

After section 39(1) of the **Transport Integration Act 2010** insert—

- "(1A) The Secretary must not delegate a function of the Secretary under section 7 of the **West Gate Tunnel Project Act 2017** unless the Secretary is authorised to carry out that function."

## **Division 14—Repeal of amending Part**

### **156 Repeal of amending Part**

This Part is **repealed** on 1 January 2020.

#### **Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## **Endnotes**

### **1 General information**

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.