

South Australia

Highways (Authorised Transport Infrastructure Projects) Amendment Act 2003

An Act to amend the *Highways Act 1926*; and to make a related amendment to the *Local Government Act 1999*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Highways (Authorised Transport Infrastructure Projects) Amendment Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Highways Act 1926*

4—Amendment of section 20—General powers of Commissioner

- (1) Section 20(1)(a)—delete "(including, without limitation, quarrying or the erection, storage or maintenance of plant, equipment or material used in connection with roadwork or quarrying)"
- (2) Section 20(1)—after paragraph (a) insert:

Example—

The powers of acquisition might be used for any of the following purposes:

- (a) quarrying for road materials;
- (b) the erection or installation of plant or equipment for roadwork or quarrying;
- (c) the storage of plant, equipment or material used in connection with roadwork or quarrying;
- (d) the relocation of residents or businesses displaced by the exercise of any of the Commissioner's powers.

5—Substitution of Part 3A

Part 3A—delete the Part and substitute:

Part 3A—Authorised Transport Infrastructure Projects

Division 1—Preliminary

39A—Interpretation

In this Part, unless the contrary intention appears—

authorised person means a person authorised by the Minister or a project authority to exercise the powers of an authorised person under this Part;

authorised project means—

- (a) the Port River Expressway Project; or
- (b) any other project declared by the Governor to be an authorised project for the purposes of this Part;

emergency vehicle means—

- (a) a vehicle used by—
 - (i) a member of the police force; or
 - (ii) a person who is an emergency worker as defined by regulation under the *Road Traffic Act 1961*; or
- (b) any other vehicle of a kind declared by regulation to be an emergency vehicle;

government agency means—

- (a) the Commissioner; or
- (b) the Chief Executive of any department or administrative unit of the Public Service; or
- (c) an agency or instrumentality of the Crown;

operator of a vehicle means—

- (a) the driver of the vehicle; or
- (b) a person registered under the law of this State, another State or the Commonwealth as operator of the vehicle; or
- (c) a person who directs or controls the operation of the vehicle;

owner of a vehicle means—

- (a) a person in whom ownership of the vehicle is vested at law or in equity; or
- (b) a person who is registered under the law of this State, another State or the Commonwealth as the owner of the vehicle; or
- (c) a person who has possession of the vehicle under a contract of hire or bailment;

project means a project involving any one or more of the following elements:

- (a) designing or planning transport infrastructure;
- (b) establishing, extending or improving transport infrastructure (including the acquisition of land and other property for the purpose);
- (c) maintaining and repairing transport infrastructure;
- (d) operating transport infrastructure;
- (e) financing the establishment, extension, improvement, maintenance, repair or operation of transport infrastructure,

and a project may include incidental elements, such as the relocation of residents or businesses displaced by the acquisition of land for the purposes of the project;

project agreement means an agreement to which a project authority is a party for implementing an authorised project or any part of an authorised project;

project authority means a government agency to which responsibility for carrying out an authorised project or a particular part or aspect of an authorised project is assigned under this Part;

project description—see section 39B(5);

project participant means—

- (a) a project authority; or
- (b) a party to a project agreement who is, under the terms of the agreement, to carry out work for the implementation of an authorised project; or
- (c) any other person identified in a project description as a participant in an authorised project;

project property means—

- (a) property of the Crown that is to be used for the purposes of an authorised project; or
- (b) property acquired by or for the Crown for the purposes of an authorised project;

State includes the Australian Capital Territory and the Northern Territory;

traffic control device means a traffic control device within the meaning of the *Road Traffic Act 1961*;

transport infrastructure means infrastructure enabling or facilitating the transport of freight or passengers;

Examples—

1. A highway or road (and associated structures and equipment).
2. A railway, tramway or busway (and associated structures and equipment).
3. A bridge or overpass (and associated structures and equipment).

vehicle means a vehicle designed or adapted for the carriage of freight or persons.

Examples—

1. A bicycle, motorcycle, car, bus, truck or semi-trailer.
2. Rolling stock (whether self-propelled or not) for use on a railway or tramway.

Division 2—Authorised projects

39B—Authorised projects

- (1) The Governor may make a regulation declaring a particular project to be an authorised project.
- (2) A regulation declaring a project to be an authorised project must contain an outline of the project—
 - (a) containing—
 - (i) reasonable particulars of the principal features of the project; and
 - (ii) any information about the project required under the regulations; and
 - (b) specifying the land to which the project applies.
- (3) A regulation must be made containing a project outline for the Port River Expressway Project.
- (4) The Minister may, by notice in the Gazette—
 - (a) supplement the particulars contained in a regulation with further details of a particular project; and
 - (b) vary a notice previously published under this section.
- (5) The project outline together with any supplementary particulars contained in a Ministerial notice under this section together constitute the project description for a particular project.
- (6) Before work on an authorised project commences, a detailed description of the project and how it is to be funded must be referred to the Public Works Committee of the Parliament for inquiry and consideration.
- (7) The Governor is not required to have the recommendation of the Commissioner for the making of a regulation under this section.

39C—Responsibility for carrying out authorised project

- (1) Responsibility for carrying out an authorised project must be assigned in the project description to a particular government agency or to particular government agencies (the *project authority* or *project authorities*).
- (2) The responsibility may be divided between a number of government agencies so that each one has responsibility for a particular part or aspect of the project.
- (3) A project authority to which responsibility is assigned for carrying out an authorised project, or a particular part or aspect of an authorised project, has all the powers necessary for, and reasonably incidental to, carrying out the authorised project or the relevant part or aspect of the authorised project.

- (4) A project authority may, with the Minister's approval, delegate its powers and functions.
- (5) A delegation may be made, if the Minister approves, on terms that allow the delegate to subdelegate powers and functions.
- (6) If the Commissioner is a project authority, the Commissioner may exercise statutory powers that the Commissioner has apart from this section for the implementation of the authorised project.

Division 3—Implementation of authorised projects

39D—Acquisition of project property

- (1) The Minister—
 - (a) may acquire land by agreement or compulsorily for the purposes of an authorised project; and
 - (b) may acquire personal property by agreement for the purposes of an authorised project.
- (2) The *Land Acquisition Act 1969* applies in relation to the acquisition of land under subsection (1).

39E—Power to transfer property etc

- (1) The Minister may exercise any one or more of the following powers for the purpose of giving effect to an authorised project:
 - (a) the Minister may, by order in writing, vest project property in a project participant;
 - (b) the Minister may, by order in writing—
 - (i) grant a lease or licence over project property; or
 - (ii) grant other rights in respect of project property; or
 - (iii) place project property under the care, control and management of a person named in the order.
- (2) The Minister may, by order in writing, declare that property that would, apart from the declaration, merge with, and form part of, the land on which it is situated is to be regarded as personal property severed from the land.
- (3) The Minister may, by order in writing, exempt a project agreement or any transaction that takes effect under a project agreement wholly or partly from stamp duty.
- (4) An order of the Minister under this section—
 - (a) takes effect on the date of the order or a later date specified in the order; and
 - (b) has effect according to its terms by force of this section and despite the provisions of any other law.

- (5) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions relating to land must, on application by the Minister or a person authorised by the Minister to make the application, register or record a transfer or vesting of land or an interest in land effected by an order of the Minister under this section.

39F—Declaration of public roads etc

- (1) The Minister may, by notice in the Gazette, exercise any one or more of the following powers:
- (a) declare project land to be a public road for all purposes;
 - (b) vest the land subject to the declaration in fee simple in a nominated project authority or the relevant council;
 - (c) place the land subject to the declaration under the care, control and management of a nominated project authority or the relevant council.
- (2) Despite any other law to the contrary, project land declared to be a public road under this section—
- (a) vests in accordance with a declaration under subsection (1)(b);
 - (b) if the Minister does not exercise the power to vest the land in a nominated project authority or the relevant council— vests (or remains vested) in the Crown.
- (3) Subject to any limitation or restriction imposed by the Minister, a project authority may exercise, in relation to land vested in the project authority under this section, all the powers that the Commissioner may exercise in relation to a road under the Commissioner's care, control and management.
- (4) In this section—
- relevant council*, in relation to project land, means the council in whose district the land is situated.

39G—Power to close roads or railway lines

- (1) A project authority may—
- (a) if authorised to do so by the Minister, close a road temporarily to enable or facilitate the carrying out of the authorised project; or
 - (b) if authorised to do so under the project description, close a road permanently.
- (2) A project authority may—
- (a) if authorised to do so by the Minister—
 - (i) temporarily close a particular government railway line; or

- (ii) temporarily limit the use of a particular government railway line; or
- (b) if authorised to do so under the project description—
 - (i) permanently close a particular government railway line; or
 - (ii) permanently limit the use of a particular government railway line.
- (3) In order to give effect to a closure or limitation under subsection (2), the project authority may give directions to an operator who uses the railway line.
- (4) The operator must not contravene a direction under subsection (2).
Maximum penalty: \$50 000.
- (5) No liability is incurred by the Crown or a project authority as a result of the exercise of powers under this section.
- (6) In this section—
a government railway line means a railway line that is the property of the Crown.

39H—Power to obstruct navigation

- (1) A project authority may, if authorised to do so by the Minister, temporarily obstruct navigation to enable or facilitate the carrying out of the authorised project.
- (2) A project authority may, if the project description declares the permanent obstruction of navigation over a specified area of water to be necessary for the implementation of an authorised project, permanently obstruct navigation over that water.
- (3) No liability is incurred by the Crown or a project authority as a result of the exercise of powers under this section.

39I—Power to enter and temporarily occupy land

- (1) For the purpose of—
 - (a) determining whether land is suitable for use for a proposed authorised project; or
 - (b) carrying out an authorised project,an authorised person may exercise the powers conferred by Part 5 of the *Land Acquisition Act 1969*.
- (2) The Crown is liable for any compensation payable in respect of the exercise of those powers.

Division 4—Tolls

39J—Tolls

- (1) The Minister may, by notice in the Gazette, fix a toll for vehicular access to transport infrastructure forming part of the Port River Expressway Project.
- (2) The Minister may, by further notice in the Gazette, vary or revoke a toll fixed under subsection (1).
- (3) The toll may vary according to any one or more of the following factors:
 - (a) whether the vehicle is a road or rail vehicle;
 - (b) the gross laden mass of the vehicle;
 - (c) any other factor or factors stated in the notice.
- (4) A toll imposed under this section—
 - (a) is to be collected by a project authority to whom the responsibility for collection of the toll is assigned by the Minister; and
 - (b) is to be dealt with in accordance with the project description.
- (5) A toll is not payable in respect of—
 - (a) an emergency vehicle; or
 - (b) a vehicle owned by a person, or persons of a class, exempted by the Minister, by notice in the Gazette, from the application of the toll; or
 - (c) a vehicle, or vehicles of a class, exempted by the Minister, by notice in the Gazette, from application of the toll.
- (6) The Minister may, by notice in the Gazette—
 - (a) grant or revoke an exemption for the purposes of subsection (5); and
 - (b) impose conditions in respect of any such exemption.

39K—Traffic control devices and other structures

- (1) A project authority may, with the Minister's approval—
 - (a) erect or install traffic control devices; and
 - (b) erect or install other structures and equipment,that may be necessary or desirable to facilitate the collection of tolls.
- (2) The provisions of the *Road Traffic Act 1961* apply in relation to traffic control devices erected or installed under this section as if the project authority were an Authority authorised to install the devices under Part 2 of that Act.

6—Amendment of section 43—Regulations

Section 43(2)—delete subsection (2) and substitute:

- (2) Subject to subsection (2a), the regulations may fix penalties (not exceeding \$1 250) for breach of a regulation.
- (2a) A regulation that provides for an offence against Part 3A may—
 - (a) impose a maximum penalty not exceeding—
 - (i) for a natural person—\$5 000;
 - (ii) for a body corporate—\$25 000;
 - (b) fix expiation fees for offences not exceeding—
 - (i) for a natural person—\$1 000;
 - (ii) for a body corporate—\$5 000.

Part 3—Amendment of *Local Government Act 1999*

7—Amendment of section 4—Interpretation

Section 4(1), definition of *highway*—after paragraph (c) insert:

- (d) land (other than land vested in a council) declared to be a public road under Part 3A of the *Highways Act 1926*;

8—Amendment of section 211—Highways

- (1) Section 211(a)—delete "Commissioner of Highways" and substitute:

relevant authority

- (2) Section 211—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) In this section—

relevant authority means the Commissioner of Highways or other authority that has the care, control and management of the highway.