

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

HIGHWAYS (MISCELLANEOUS) AMENDMENT ACT 2000

No. 48 of 2000

[Assented to 20 July 2000]

An Act to amend the Highways Act 1926.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Highways (Miscellaneous) Amendment Act 2000*.

(2) The *Highways Act 1926* is referred to in this Act as "the principal Act".

Commencement

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

Substitution of ss. 2 to 6

3. Sections 2 to 6 (inclusive) of the principal Act are repealed and the following section is substituted:

Act not to apply to City of Adelaide

2. (1) This Act does not apply to or in relation to the City of Adelaide.

(2) However, the Adelaide City Council must comply with any notice in writing given by the Commissioner to the Council requiring the Council to construct or reconstruct a portion of road in the City of Adelaide so as to conform with the construction or reconstruction of an adjoining portion of road under the care, control and management of the Commissioner.

(3) In this section, "Adelaide City Council" and "City of Adelaide" have the same meaning as in the *City of Adelaide Act 1998*.

Amendment of s. 7—Interpretation

4. Section 7 of the principal Act is amended—

(a) by striking out the definition of "Commissioner" and substituting the following definition:

"Commissioner" means the Commissioner of Highways appointed under Part 2;;

(b) by striking out the definition of "district" and substituting the following definition:

"district" means the area of a council;;

(c) by striking out the definition of "inspector";

(d) by striking out the definition of "main road";

(e) by inserting after the definition of "means of access" the following definition:

"privately owned land" includes land held from the Crown under a lease or licence;;

(f) by striking out from the definition of "road" "main road" and substituting "a part of a road";

(g) by striking out the definition "work" and substituting the following definition:

"roadwork" means—

- (a) the construction of a road; or
- (b) the maintenance or repair of a road; or
- (c) the alteration of a road; or
- (d) the construction of drains and other structures for the drainage of water from a road; or
- (e) the installation of fences, railings, barriers or gates; or
- (f) the installation of traffic control devices, traffic islands or parking bays; or
- (g) the improvement of a road including (for example)—
 - (i) landscaping and beautification; or
 - (ii) installation of road lighting; or
- (h) the installation of amenities or equipment on or adjacent to a road for the use, enjoyment or protection of the public; or
- (i) the installation of signs on or adjacent to a road for the use or benefit of the public; or
- (j) any work in connection with a road.

Substitution of s. 10

5. Section 10 of the principal Act is repealed and the following section is substituted:

Appointment of Commissioner

10. (1) The Governor may appoint a person as Commissioner of Highways.

(2) A person appointed under this section will, subject to this Act, hold office for a term of five years from the date of appointment, and is, on expiration of a term of office, eligible for reappointment.

Substitution of s. 13

6. Section 13 of the principal Act is repealed and the following section is substituted:

Ministerial control

13. (1) The Commissioner is subject to the control and direction of the Minister.

(2) A direction given by the Minister under this section must be in writing.

Substitution of ss. 14 and 15

7. Sections 14 and 15 of the principal Act are repealed and the following section is substituted:

Staff

14. The Commissioner may—

(a) with the approval of the Minister administering an administrative unit of the Public Service of the State, on terms mutually arranged, make use of the services of an employee or use any facilities of the administrative unit;

(b) make use of the services of any other employees engaged for the purposes of this Act.

Repeal of s. 17

8. Section 17 of the principal Act is repealed.

Repeal of ss. 18 and 19

9. Sections 18 and 19 of the principal Act are repealed.

Amendment of s. 20—General powers of Commissioner

10. Section 20 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraphs:

(a) subject to the approval of the Minister, acquire by agreement or compulsory process any land or interest in land for the purposes of present or future roadwork or any other purposes connected with this Act (including, without limitation, quarrying or the erection, storage or maintenance of plant, equipment or material used in connection with roadwork or quarrying); and

(ab) subject to the approval of the Minister, contract for the right to remove materials from any land for the purposes of this Act; and

(ac) subject to the approval of the Minister, sell, transfer, lease or otherwise deal with or dispose of any land or interest in land vested in the Commissioner; and;

(b) by striking out from subsection (3) "Notwithstanding anything in paragraph (a) of subsection (1) of this section" and substituting "Despite subsection (1)(ac)";

(c) by inserting after subsection (4) the following subsection:

(5) The *Development Act 1993* does not apply in relation to land acquired under this section.

Repeal of s. 20A

11. Section 20A of the principal Act is repealed.

Amendment of s. 20B—Power to acquire land in excess of requirements

12. Section 20B of the principal Act is amended by striking out "opening, widening, altering, diverting, or extending any road" and substituting "roadwork".

Amendment of s. 20BA—Acquisition in case of hardship

13. Section 20BA of the principal Act is amended by striking out from subsection (3) "section 20A of".

Substitution of s. 20C

14. Section 20C of the principal Act is repealed and the following section is substituted:

Commissioner may exercise powers of councils under section 294 of the Local Government Act 1999

20C. The Commissioner may, with the approval of the Minister, exercise the powers of a council under section 294 of the *Local Government Act 1999* and, in the exercise of those powers, the provisions of that section (other than subsection (6)(a)) apply to the Commissioner as if a reference in that section to a council were a reference to the Commissioner.

Amendment of s. 24—Advice to councils

15. Section 24 of the principal Act is amended by striking out "the construction, reconstruction, maintenance, or repair of roads or works" and substituting "roadwork".

Substitution of ss. 26 to 27A

16. Sections 26 to 27A (inclusive) of the principal Act are repealed and the following sections are substituted:

Powers of the Commissioner to carry out roadwork

26. (1) The Commissioner may carry out roadwork outside districts.

(2) The Commissioner may, with the approval of the Minister, carry out roadwork in a district provided that the Commissioner first gives the council notice in writing of the proposed roadwork and of the date on which it is proposed to commence the roadwork.

(3) The Commissioner may, with the approval of the Minister, by notice published in the *Gazette*, assume the care, control and management of any road in a district for a specified period (which may be until further notice published in the *Gazette*).

(4) The Commissioner may, with the approval of the Minister, by notice published in the *Gazette*, vary or revoke a notice under subsection (3).

(5) The Commissioner may carry out roadwork in relation to a road under the care, control and management of the Commissioner (and in the case of a road in a district may do so without complying with subsection (2)).

(6) The provisions of Part 2 of Chapter 11 of the *Local Government Act 1999* apply to roads under the care, control and management of the Commissioner—

(a) as if references to a council were references to the Commissioner; and

- (b) subject to such modifications and exclusions as are prescribed by the regulations.

(7) A council must not exercise its powers under Part 2 of Chapter 11 of the *Local Government Act 1999* in relation to a road under the care, control and management of the Commissioner except to such extent (if any) as the Commissioner may approve by written notice to the council.

(8) Any action that a council takes or has taken to exclude vehicles generally or vehicles of a particular class from a road under the care, control and management of the Commissioner is of no effect unless approved by the Commissioner by written notice to the council.

(9) The provisions of this section applying to roads under the care, control and management of the Commissioner apply to such roads whether the roads are under the care, control and management of the Commissioner by virtue of this section or otherwise.

(10) The Commissioner may, when carrying out roadwork in a district, carry out such further roadwork as the council may request and any expenses incurred by the Commissioner in carrying out that further roadwork may be recovered from the council as a debt due to the Commissioner.

(11) If the Commissioner installs or causes the installation of street lighting in a district in the exercise of the Commissioner's powers under this section, the Commissioner may require the council to pay to the Commissioner for payment into the Highways Fund (by payments made at times specified from time to time by the Commissioner) half of the reasonable costs paid by the Commissioner to an electricity entity for the operation and maintenance of the lighting.

(12) The powers of the Commissioner under this section are in addition to the Commissioner's general powers under this Act.

Powers of Commissioner in relation to trees, etc. on roads

26A. The Commissioner may, for the purposes of road safety, remove or cut back any tree or other vegetation on or overhanging—

- (a) a road under the care, control and management of the Commissioner; or
(b) an adjoining portion of road.

Total or partial closure of roads to ensure safety or prevent damage

26B. (1) If the Commissioner is of the opinion that a road under the care, control and management of the Commissioner is unsafe for pedestrians or vehicles or vehicles of a class, or is likely to be damaged if used by vehicles or vehicles of a class, the Commissioner—

- (a) may close the road to pedestrians or vehicles or vehicles of a class; and
(b) may for that purpose erect fences or barriers.

(2) If the Commissioner closes or proposes to close a road in a district under this section, the Commissioner must, as soon as practicable, give written notice of the closure to the council.

(3) If the Commissioner closes a road under this section, the Commissioner must display such signs and make such provision for lights or other warning devices as is necessary in the interests of public safety.

(4) A sign under subsection (3) may state—

- (a) that the road is closed to all pedestrians or all vehicles or both; or
- (b) that the road is closed to vehicles of a specified class.

(5) A person must not, except with the permission of the Commissioner—

- (a) drive, ride or propel a vehicle on or over a road in contravention of a sign under subsection (3); or
- (b) drive, ride or lead any horse or stock on a road that is closed to all vehicles under this section; or
- (c) remove or damage any fence, barrier, sign, light or other warning device erected, displayed or provided under this section.

Maximum penalty: For a first offence—\$1 250;
For a subsequent offence—\$2 500.

(6) A court may, on finding a person guilty of an offence against subsection (5), order the person to pay compensation to the Commissioner for loss or damage arising from the offence.

Certain road openings, etc. require Commissioner's concurrence

26C. If—

- (a) a council has excluded vehicles generally or vehicles of a particular class from a road (whether at all times or specified times only); and
- (b) the road runs into or intersects with—
 - (i) a road vested in the name of the Commissioner or the Minister; or
 - (ii) a road under the care, control and management of the Commissioner,

the council must not remove that exclusion without the concurrence of the Commissioner.

Amendment of s. 27CA—Vesting of roads outside districts

17. Section 27CA of the principal Act is amended—

- (a) by striking out from subsection (1) "(whether main roads or not)";
- (b) by striking out the second sentence of subsection (1).

Amendment of s. 27F—Power of entry on land

18. Section 27F of the principal Act is amended—

- (a) by striking out from subsection (2) "the Commissioner an inspector or other officer authorised by the Commissioner" and substituting "the Commissioner or a person authorised in writing by the Commissioner";
- (b) by striking out subsection (5) and substituting the following subsection:

(5) The amount of the compensation will, despite section 29 of this Act, be determined in accordance with section 29 of the *Land Acquisition Act 1969* as if the Commissioner had entered or temporarily occupied the land as an Authority pursuant to Part 5 of that Act.

Substitution of ss. 28 and 29

19. Sections 28 and 29 of the principal Act are repealed and the following sections are substituted:

Annual report

28. (1) Subject to subsection (3), the Commissioner must, on or before 30 September in each year, submit to the Minister a report on the operation of this Act during the preceding financial year.

(2) Subject to subsection (3), the Minister must, as soon as practicable after receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

(3) It is sufficient compliance with this section if a report referred to in subsection (1) is incorporated in the annual report of an administrative unit of the Public Service of the State for which the Minister is responsible and the report is laid before each House of Parliament in accordance with the *Public Sector Management Act 1995*.

Protection from liability

29. (1) No civil liability attaches to the Commissioner, any officer or any employee engaged for the purposes of this Act for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.

(2) A liability that would, but for subsection (1), lie against a person on whom immunity is conferred by that subsection lies instead against the Crown.

Repeal of ss. 29A and 30 and heading

20. Sections 29A and 30 of the principal Act and the heading above section 30 are repealed.

Amendment of s. 30A—Power to proclaim controlled-access roads

21. Section 30A of the principal Act is amended by striking out subsections (2), (3) and (4) and substituting the following subsections:

(2) Before recommending the making of a proclamation under subsection (1) that has the effect of closing off or reducing any means of access to privately owned land from a controlled-access road, the Commissioner must—

(a) —

- (i) be satisfied that no means of access to the land from the controlled-access road is reasonably required for the land; or
 - (ii) be satisfied that some other reasonably convenient means of access to the land from the controlled-access road is available for the land; or
 - (iii) be of the opinion that access to the land from the controlled-access road is undesirable; and
- (b) give every person who has a registered interest in the land at least 30 days written notice of the proposed proclamation and invite the person to make written submissions to the Commissioner with respect to the proposed proclamation within the period specified in the notice (which must be at least 30 days); and
- (c) consider all submissions made in accordance with paragraph (b) and give each person making a submission a written reply indicating whether the proposed proclamation will proceed.

(3) A controlled-access road is under the care, control and management of the Commissioner.

(4) A person must not, without the consent of the Commissioner, construct, form or pave a means of access to—

- (a) a controlled-access road; or
- (b) a road in respect of which notice has, within the preceding period of 60 days, been given under subsection (2)(b) of a proposed proclamation declaring the road to be a controlled-access road.

(5) If construction, formation or paving of a means of access to a road has been commenced before notice is given under subsection (2)(b) of a proposed proclamation declaring the road to be a controlled-access road, the Commissioner must not withhold consent to the completion of that work except on the payment of compensation under this Part.

Repeal of s. 30C

22. Section 30C of the principal Act is repealed.

Amendment of s. 30D—Powers of Commissioner to erect fences and barriers

23. Section 30D of the principal Act is amended—

- (a) by striking out from subsection (1) "In addition to the powers conferred by section 26A of this Act and notwithstanding the provisions of the *Local Government Act 1934-1959*, the" and substituting "The";
- (b) by striking out from subsection (1a) "In addition to the powers conferred by section 26A of this Act and notwithstanding the provisions of the *Local Government Act 1934-1971*, the" and substituting "The";

(c) by inserting after subsection (2) the following subsection:

(3) This section has effect despite the provisions of the *Local Government Act 1999*.

Amendment of s. 30DA—Access to property

24. Section 30DA of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following section:

(3) The Commissioner must not close off a lawful means of access to any privately owned land from a controlled-access road unless the Commissioner—

- (a) is satisfied that no such means of access is reasonably required for the land; or
- (b) is satisfied that some other reasonably convenient means of access to the land from the controlled-access road is available for the land; or
- (c) is of the opinion that access to the land from the controlled-access road is undesirable.;

(b) by inserting after subparagraph (i) of subsection (5)(a) the following subparagraph:

(ia) as to the dimensions of the means of access;;

(c) by inserting in subsection (5)(b) "without the payment of compensation" after "at any time".

Amendment of s. 30E—Offences in relation to controlled-access roads

25. Section 30E of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) constructs, forms or paves a means of access to a road in contravention of section 30A or a condition of a consent given in writing by the Commissioner;;

(b) by inserting after paragraph (g) of subsection (1) the following paragraph:

(h) contravenes or fails to comply with a condition of a permit under section 30DA,;

(c) by striking out from subsection (2) "subsection (1)(b)" and substituting "section 30A".

Insertion of s. 30F

26. The following section is inserted after section 30E of the principal Act:

Evidentiary provision

30F. An apparently genuine document purporting to be signed by or on behalf of the Commissioner stating that—

- (a) a road was a controlled-access road;

- (b) a place was not a route or means of access specified in a proclamation under section 30A, or a means of access provided or approved by the Commissioner, for entering or leaving a controlled-access road;
- (c) a notice had been given under section 30A of a proposed proclamation declaring a road to be a controlled-access road;
- (d) a person did or did not have the consent of the Commissioner for the construction, formation or paving of a means of access to a controlled-access road or a road in respect of which notice had been given under section 30A of a proposed proclamation declaring the road to be a controlled-access road;
- (e) a provision was a condition of a consent of the Commissioner for the construction, formation or paving of a means of access to a road;
- (f) a fence, wall, post, barrier or other impediment to the passage of traffic was erected by the Commissioner;
- (g) a traffic sign or notice was erected by the Commissioner;
- (h) lines, words or signs were marked by the Commissioner on a road;
- (i) a sum of money constituted a loss suffered by the Commissioner as a result of the commission of an offence against this Part;
- (j) a sum of money was expended by the Commissioner in making good damage arising from the commission of an offence against this Part,

will be accepted in any legal proceedings, in absence of proof to the contrary, as proof of the matters stated in the document.

Substitution of s. 31 and heading

27. Section 31 of the principal Act and the heading above that section are repealed and the following section is substituted:

Highways Fund

31. (1) The *Highways Fund* continues in existence.

(2) The Fund consists of—

- (a) money paid into the Fund as required or authorised by this Act or any other Act; and
- (b) loans raised and appropriated for purposes of the Fund; and
- (c) any money (including interest) paid into the Fund to defray the cost of operations referred to in section 32(1)(g); and
- (d) any money (including interest) repaid by a council under section 32(1)(h); and
- (e) any other money received in repayment of money disbursed from the Fund or otherwise received under this Act; and

- (f) any amounts paid by way of fees or charges for the use of any ferry or sea transport service operated under this Act.

(3) The Treasurer must, at least once every three months, pay into the Fund the sum of all money collected or received in respect of licence fees and registration fees under the *Motor Vehicles Act 1959* after deducting from that sum such amount as is necessary to pay, during the financial year in which that money is collected or received—

- (a) any interest on the debit balance for the time being outstanding in accounts of the Treasurer in respect of loans raised for roads and bridges; and
- (b) any expenses incurred in connection with statutory or administrative powers, duties or functions exercised or performed by or under the direction of the Registrar of Motor Vehicles.

(4) The Treasurer may in any financial year advance out of the Consolidated Account and pay into the Fund any sum not exceeding the amount that the Treasurer anticipates will, in that financial year, be received or collected and be payable to the Fund under subsection (3).

(5) If an amount is paid into the Fund under subsection (4), that amount must be deducted from the amount to be paid into the Fund under subsection (3) during the relevant financial year.

Amendment of s. 31A—Adjustment of Highways Fund

28. Section 31A of the principal Act is amended—

- (a) by striking out from subsections (1) and (2) "Loan Fund" and substituting, in each case, "Consolidated Account";
- (b) by striking out from subsection (3) "Revenue".

Amendment of s. 32—Application of Highways Fund

29. Section 32 of the principal Act is amended—

- (a) by striking out paragraph (c) of subsection (1);
- (b) by striking out paragraphs (e) and (f) of subsection (1) and substituting the following paragraph:
- (e) in paying any grants to councils authorised by the Minister to be paid out of the Fund; and;
- (c) by striking out from subsection (1)(h) all the words appearing after "water".

Substitution of ss. 35 to 39

30. Sections 35 to 39 (inclusive) of the principal Act are repealed and the following sections are substituted:

Annual program of roadwork

35. (1) The Commissioner must, before the commencement of each financial year, prepare and submit to the Minister for approval a schedule setting out—

- (a) the program of roadwork proposed to be carried out by the Commissioner during that financial year; and
- (b) an estimate of the cost of the proposed roadwork.

(2) If after submitting a schedule to the Minister the Commissioner makes alterations to the program of roadwork proposed in respect of the financial year to which the schedule relates, the Commissioner must submit to the Minister for approval a further schedule setting out the proposed program of roadwork as altered and an estimate of the cost of the proposed roadwork.

(3) The Minister may approve a schedule submitted under this section with such alterations (if any) as the Minister thinks fit.

(4) An approval of a schedule under this section constitutes, for the purposes of this Act, an approval to carry out the roadwork proposed in the schedule.

Standing approvals, etc.

36. If a provision of this Act confers a power on the Commissioner the exercise of which requires the approval or consent of the Minister, the Minister may, if the Minister thinks fit, give a standing approval or consent, subject to such conditions (if any) as the Minister thinks fit to impose, to cover the exercise of that power from time to time.

Substitution of Part 3A

31. Part 3A of the principal Act is repealed and the following Part is substituted:

PART 3A**GILLMAN HIGHWAY—THIRD PORT RIVER CROSSING PROJECT****Interpretation**

39A. (1) In this Part—

"Gillman Highway" means a road on land specified by proclamation under subsection (2), including a third bridge over the Port River (the "Third Port River Crossing");

"Project" means—

- (a) the design, construction, operation, maintenance and repair of Gillman Highway; and
- (b) the financing of any activity referred to in paragraph (a).

"Project Agreement" means an agreement, made by the Commissioner with the approval of the Minister, under which another person (the "private participant") undertakes the whole or any part of the Project on behalf of the Commissioner;

"Project property" means—

- (a) land specified by proclamation under subsection (2) or acquired by the Commissioner for the purposes of the Project;
- (b) any structures or things constructed or acquired for the purposes of the Project;

"relevant council", in relation to Project property, means the council in whose district the property is situated.

(2) The Governor may—

- (a) by proclamation, specify land for the purposes of the definition of **"Gillman Highway"**;
- (b) by subsequent proclamation, vary a proclamation under this subsection.

Status of Gillman Highway**39B.** Gillman Highway will be regarded—

- (a) as a public road for all purposes;
- (b) as a highway for the purposes of Part 2 of Chapter 11 of the *Local Government Act 1999*.

Gillman Highway not to vest in council

39C. Despite the provisions of the *Real Property Act 1886* or any other Act, neither Gillman Highway nor any part of Gillman Highway will vest in fee simple in the relevant council unless the Commissioner, by order under this Part, vests it in the council.

Care, control and management of Gillman Highway

39D. The Commissioner will have the care, control and management of Gillman Highway subject to any order of the Commissioner under this Part.

Power to obstruct right of navigation

39E. (1) The Commissioner or, in accordance with the terms of the Project Agreement, the private participant may, for the purpose of carrying out work in relation to the Third Port River Crossing, obstruct temporarily any right of navigation.

(2) No claim lies against the Crown, the Commissioner, the private participant or any agency or instrumentality of the Crown arising out of any obstruction of a right of navigation by reason of roadwork under this section.

Dealings with property under Project Agreement

39F. (1) The Commissioner may, by written order, do one or more of the following:

- (a) in accordance with the terms of the Project Agreement, transfer to and vest in any of the following Project property (including an estate in fee simple in land):
 - (i) the private participant;

- (ii) a person nominated for the purpose in the Project Agreement;
 - (iii) the Commissioner;
 - (iv) the relevant council;
- (b) in accordance with the terms of the Project Agreement—
- (i) grant a lease, licence or other interest or right in respect of Project property to the private participant or a person nominated for the purpose in the Project Agreement;
 - (ii) vary or terminate a lease, licence or other interest or right that has been granted under this section;
- (c) in accordance with the terms of the Project Agreement, declare that the Third Port River Crossing or a structure that is part of Project property is for all purposes to be regarded as personal property severed from the land to which it is affixed or annexed and owned separately from the land;
- (d) in accordance with the terms of the Project Agreement, declare that the private participant has the care, control and management of all or part of Gillman Highway for the purposes of this Act or any other Act for a specified period or until further order of the Commissioner.

(2) An order may be made by the Commissioner under this section in respect of Project property—

- (a) that is owned by the Commissioner, the Crown or an agency or instrumentality of the Crown; or
- (b) that has, by order under this section, been transferred to and vested in the private participant or a person nominated for the purpose in the Project Agreement,

(and if the Commissioner makes an order in respect of property not owned by the Commissioner, the Commissioner is to be taken to be acting as the agent of the owner of the property).

(3) An order of the Commissioner under this section takes effect on the date of the order or a later date specified in the order.

(4) An order of the Commissioner under this section 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, or documents relating to such transactions, must, on application by the Commissioner or a person nominated by the Commissioner for the purpose, register or record a transfer and vesting, grant, variation or termination effected by an order of the Commissioner under this section.

(6) No stamp duty is payable under a law of the State in respect of a transfer and vesting, grant, variation or termination effected by an order of the Commissioner under this section, and no person has an obligation under such a law to lodge a statement or return relating to such a transaction or include information about such a transaction in a statement or return.

Payments to private participant

39G. The Project Agreement may provide for the private participant to retain the proceeds of tolling under this Part (including expiation fees and prescribed reminder notice fees paid in respect of alleged offences against this Part).

Toll for access by motor vehicles to the Third Port River Crossing

39H. (1) The Minister may, by notice in the *Gazette*, fix a toll for access by motor vehicles to the Third Port River Crossing (the toll being of an amount that may vary according to the type of vehicle or any other factor specified in the notice).

(2) The Minister may, by further notice in the *Gazette*, vary or revoke a toll fixed under subsection (1).

(3) A toll fixed under subsection (1) (including expiation fees and prescribed reminder notice fees paid in respect of alleged offences against this Part)—

- (a) may be collected by the Commissioner and paid into the Highways Fund; or
- (b) if the Project Agreement so provides—
 - (i) may be collected by the private participant on behalf of the Commissioner and be paid into the Highways Fund; or
 - (ii) may be collected and retained by the private participant.

(4) A person must not, unless exempted under this section, drive a motor vehicle on the Third Port River Crossing without paying the appropriate toll (if any) fixed under subsection (1).

Maximum penalty: \$1 250.

Expiation fee: \$160.

(5) A toll fixed under subsection (1) is not payable in respect of—

- (a) an emergency vehicle; or
- (b) a motor vehicle owned or driven by a person, or a person of a specified class, exempted by the Minister from the operation of this section; or
- (c) a motor vehicle, or a motor vehicle of a specified class, exempted by the Minister from the operation of this section.

(6) An exemption under subsection (5)(b) or (c)—

- (a) must be given by notice in the *Gazette*;
- (b) may be given on conditions determined by the Minister.

(7) The Minister may, by further notice in the *Gazette*—

- (a) vary or revoke an exemption under subsection (5)(b) or (c);
- (b) vary or revoke a condition of an exemption under that subsection.

(8) A person must not contravene or fail to comply with a condition imposed under subsection (6).

Maximum penalty: \$1 250.

Expiation fee: \$160.

(9) The Minister may authorise a person or body to carry out such works as the Minister thinks fit in relation to the operation of this section.

(10) Works authorised under subsection (9) may include—

- (a) the erection or installation of devices for the collection of tolls; and
- (b) the erection or installation of notices or signs; and
- (c) the erection or installation of traffic control devices.

(11) A person must not operate a device erected or installed for the purposes of this section contrary to any operating instructions displayed on or in the vicinity of the device.

Maximum penalty: \$1 250.

Expiation fee: \$160.

(12) A person must not intentionally deface, damage or interfere with a device erected or installed for the purposes of this section.

Maximum penalty: \$5 000 or imprisonment for one year.

(13) If the Project Agreement so provides—

- (a) a person authorised in writing by the private participant may give expiation notices for alleged offences against this Part;
- (b) the private participant is to be taken to be an issuing authority for the purposes of the *Expiation of Offences Act 1996* in relation to alleged offences against this Part.

(14) In this section—

"emergency vehicle" has the meaning given by the regulations.

Liability of vehicle owners and expiation of certain offences

39I. (1) In this section—

"operator", in relation to a motor vehicle, means a person registered or recorded as the operator of the vehicle under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth;

"owner", in relation to a motor vehicle, means—

- (a) a person registered or recorded as an owner of the vehicle under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth; and
- (b) a person to whom a trade plate, a permit or other authority has been issued under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth, by virtue of which the vehicle is permitted to be driven on roads; and
- (c) a person who has possession of the vehicle by virtue of the hire or bailment of the vehicle,

and includes the operator of the vehicle.

(2) Without derogating from the liability of any other person, but subject to this section, if a motor vehicle is involved in an offence against section 39H(4) or (8), the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section.

(3) The owner and driver of a motor vehicle are not both liable through the operation of this section to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

(4) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a motor vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged offence against section 39H (4) or (8), to provide the person specified in the notice, within the period specified in the notice, with a statutory declaration—

- (a) setting out the name and address of the driver; or
- (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer setting out details of the transfer (including the name and address of the transferee).

(5) Before proceedings are commenced against the owner of a motor vehicle for an offence against this section involving the vehicle, the complainant must send the owner a notice—

- (a) setting out particulars of the alleged offence against section 39H(4) or (8); and
- (b) inviting the owner, if he or she was not the driver at the time of the alleged offence against section 39H(4) or (8), to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (4).

(6) Subsection (5) does not apply to—

- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
- (b) proceedings commenced against an owner of a motor vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

(7) Subject to subsection (8), in proceedings against the owner of a motor vehicle for an offence against this section, it is a defence to prove—

- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence against section 39H(4) or (8); or
- (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.

(8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

(9) If—

- (a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
- (b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

(10) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the motor vehicle at the time at which the alleged offence was committed.

(11) In proceedings against the owner or driver of a motor vehicle for an offence against this Part, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

Application of Part

39J. This Part does not apply in relation to a Project Agreement unless a detailed description of the Project and its funding has been referred to the Public Works Committee of the Parliament for its inquiry and consideration.

Substitution of ss. 41 and 41A

32. Sections 41 and 41A of the principal Act are repealed and the following section is substituted:

Maintenance of the Birkenhead Bridge

41. (1) The portion of the Birkenhead Bridge and its approaches vested in the Minister continues to be under the care, control and management of the Commissioner.

(2) The portion of the Birkenhead Bridge and its approaches vested in the council in whose area the Bridge is situated continues to be under the care, control and management of the council.

(3) The Commissioner may, for the purpose of carrying out work in relation to the portion of the Birkenhead Bridge and its approaches under the care, control and management of the Commissioner, obstruct temporarily any right of navigation.

(4) No claim lies against the Crown, the Commissioner or any agency or instrumentality of the Crown arising out of any obstruction of a right of navigation by reason of roadwork under this section.

Offences by body corporate

41A. If a body corporate commits an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty applicable to the principal offence unless it is proved that the member could not, by the exercise of reasonable diligence, have prevented the commission of that offence by the body corporate.

Amendment of s. 42—Right of council to recover costs for repair of road damaged by construction of public works

33. Section 42 of the principal Act is amended by striking out from subsection (1) "Where any main or other public road" and substituting "If a public road".

Amendment of s. 42A—Service of notices, etc.

34. Section 42A of the principal Act is amended by striking out "section 220" and substituting "section 109X".

Amendment of s. 43—Regulations

35. Section 43 of the principal Act is amended—

- (a) by striking out from subsection (1) "main roads" wherever occurring and substituting, in each case, "roads under the care, control and management of the Commissioner";
- (b) by striking out paragraph (f) of subsection (1).

Transitional provision**36. If—**

- (a) the Commissioner has, in accordance with section 26 of the principal Act as in force before the commencement of this section, undertaken the maintenance or repair of a road for a term; and
- (b) the term has not at that commencement expired,

the road will be taken to be the subject of a notice published in the *Gazette* under section 26 of the principal Act as in force after that commencement by which the Commissioner has assumed the care, control and management of the road until further notice published in the *Gazette* under that section.