

Melbourne City Link (Exhibition Street Extension) Bill

EXPLANATORY MEMORANDUM

OVERVIEW

The main purposes of the Bill are:

To ratify an Agreement for the Exhibition Street Extension Project ("the Extension Agreement"). The Extension Agreement grants a concession to City Link Extension Pty Ltd (A.C.N. 082 058 615), a subsidiary of Transurban City Link Ltd., to operate and maintain the Extension road. The Extension road is a new connection to the south-east part of the Central Business District. It consists of a four-lane road which connects the intersection of Flinders and Exhibition Streets with the City Link.

To ratify the Integration and Facilitation Agreement, which is an agreement between the parties to the Melbourne City Link Agreement and the Extension Agreement dealing with the interaction of those two Agreements.

To make consequential amendments to legislation extending the legislative framework for the operation and management of the Melbourne City Link to the Exhibition Street Extension.

NOTES ON CLAUSES

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill.
- Clause 2 provides for the commencement of the Bill on Royal Assent.

PART 2—AMENDMENTS TO THE MELBOURNE CITY LINK ACT 1995

- Clause 3 defines the Principal Act as the **Melbourne City Link Act 1995**.

Clause 4 amends section 3 of the Principal Act, which contains definitions. New definitions include:

"Extension corporation" refers to the company appointed as the Extension corporation under the new section 12A, to be inserted by clause 8. The Extension corporation is the company that will hold the concession to operate the Extension road, namely "City Link Extension Pty Ltd" (A.C.N. 082 058 615), or its successor.

"Extension road" refers to the road to be leased to the Extension corporation under the Extension Agreement. This road, which is currently under construction by the State, will run from the corner of Flinders and Exhibition Streets in the City, across a new bridge over the Jolimont railyards and along an upgraded section of Batman Avenue.

"the Extension Agreement" refers to the Agreement between the State and City Link Extension Pty Ltd (the Extension corporation), and the Exhibit to that Agreement. The Extension Agreement (but not the Exhibit) will be set out in a new Schedule 6 to Principal Act. The Extension Agreement will grant a concession to the Extension corporation to operate and maintain the Extension road.

"the Integration and Facilitation Agreement" refers to an agreement between the State, the other parties to the Melbourne City Link Agreement and the Extension corporation in relation to the interaction of the Melbourne City Link Agreement and the Extension Agreement. The Integration and Facilitation Agreement will be set out in a new Schedule 5 to the Principal Act.

The definition of "**public body**" in the Principal Act is to be amended to include certain privately owned utilities.

Clause 5 amends section 4 of the Principal Act to add two new items to the list of the objects of the Principal Act, namely—

- to authorise and facilitate the operation and management of the Extension road by the Extension corporation; and
- to grant a concession to City Link Extension Pty Ltd in accordance with the Extension Agreement.

Clause 6 amends section 7 of the Principal Act to increase the Project area for the purposes of the Melbourne City Link Project. The additional area is the stratum of underground land below the depth of 15.24 metres (or 50 feet) under the land shown on the map in the new Schedule 7 to the Principal Act.

Clause 7 amends section 12 of the Principal Act to facilitate the integration of the operation of the Extension road with the operation of the Link road by enabling delegation of road operation powers.

A number of clauses deal with the delegation arrangements and the following is an overview of these arrangements.

Section 12 of the Principal Act currently authorises the Link corporation, the holder of the City Link concession, to delegate its powers to the company contracted to operate the Link ("the Link operator"). A similar arrangement will exist between the Extension corporation and the Extension operator under the new section 12C to be inserted by clause 8.

TransLink Operations Pty Ltd (A.C.N. 069 691 514) will be both the Link operator and the Extension operator, unless another company or companies are subsequently appointed to these roles.

To facilitate integrated operation of the two roads, the Extension corporation may also delegate operation of the Extension road to the Link corporation (see clause 8 below). The amendments to section 12 made by clause 7 will enable the Link corporation to sub-delegate these powers to both the Link corporation and the Extension corporation. A sub-delegation must be in writing and a notice must be published in the Government Gazette.

Clause 8 inserts new sections 12A to 12C into the Principal Act dealing with nomination of the Extension corporation and the Extension operator and delegations by the Extension corporation to the Link corporation and the Extension operator.

Proposed new section 12A provides that City Link Extension Pty Ltd (A.C.N. 082 058 615) is the Extension corporation for the purposes of the Principal Act. A number of provisions of the Principal Act, as amended by this Bill, will confer powers, duties and functions on the Extension corporation as the body holding the concession to manage and operate the Extension road in

accordance with the Extension Agreement. The new section 12A also allows for the termination of the Extension corporation's appointment and the appointment of a new Extension corporation in certain circumstances.

Proposed new section 12B provides that TransLink Operations Pty Ltd (A.C.N. 069 691 514) is the Extension operator for the purposes of the Principal Act. The section will also allow for the termination of the appointment of the Extension operator and the appointment of a new Extension operator in a similar manner to the Extension corporation.

Proposed new section 12C authorises the Extension corporation to delegate certain of its powers and functions to either the Extension operator or the Link corporation, namely—

- road operation and management powers under section 93I;
- powers in relation to tolls, other than the power to fix tolls; and
- any powers and functions conferred under regulations under section 56 of the **Transport Act 1983**.

To ensure that the fact of a delegation is placed on the public record, notice of a delegation must be published in the Government Gazette. As with all delegations, the Extension corporation as principal will retain responsibility for the proper exercise of the delegated power of function.

Clause 9 substitutes the heading to Part 2 of the Principal Act.

Clause 10 inserts a new sub-section (1AAA) into section 15 of the Principal Act. This new sub-section provides that the Integration and Facilitation Agreement, which is to be set out in the new Schedule 5, operates to vary the Melbourne City Link Agreement. The Integration and Facilitation Agreement deals with the interaction of the Melbourne City Link Agreement and the Extension Agreement. In particular, Article 2 of the Integration and Facilitation Agreement sets out how that Agreement affects the other two agreements.

Clause 11 inserts new section 15A to 15D into the Principal Act. The new sections deal with the ratification of, and the process for future variations to, the Integration and Facilitation Agreement and the Extension Agreement.

Proposed new section 15A ratifies the Integration and Facilitation Agreement and provides that it is to take effect as if it were enacted as part of the Principal Act, on a similar basis to the existing Melbourne City Link Agreement. For the purposes of certainty, the section deems that the Minister for Planning and Local Government was authorised to enter into the Integration and Facilitation Agreement for and on behalf of the State. State agencies are required to facilitate the implementation of the Integration and Facilitation Agreement. There is a standing appropriation of the Consolidated Fund to pay any amount the State is required to pay under the Integration and Facilitation Agreement.

Proposed new section 15B deals with the process for varying the Integration and Facilitation Agreement, which will be similar to the existing process for varying the Melbourne City Link Agreement. Variations may be made by agreement between the parties or in accordance with the provisions of the Agreement. Notice of amending agreements or variations must be published in the Government Gazette and come into operation at that time or a later day as specified. Agreements and variations must also be made available for inspection by the public. Copies of amending agreements and variations must be tabled in Parliament and may be disallowed by either House.

Proposed new section 15C ratifies the Extension Agreement as if it were enacted as part of the Principal Act, on a similar basis to the other agreements.

Proposed new section 15D deals with the process for varying the Extension Agreement, which is essentially the same as for the other agreements. The Integration and Facilitation Agreement will operate to vary the Extension Agreement in the same way it varies the Melbourne City Link Agreement.

Clause 12 amends section 16 of the Principal Act to provide that the provisions of the Integration and Facilitation Agreement and the Extension Agreement, in addition to the Melbourne City Link Agreement, prevail over the provisions of the Principal Act to the extent of any inconsistency. This does not apply to the provisions ratifying the agreements nor to emergency powers.

Clause 13 amends section 17 of the Principal Act to provide that the provisions of the Integration and Facilitation Agreement and of

the Extension Agreement will prevail over the provisions of Victorian legislation and other laws to the extent of any inconsistency, in the same manner as the Melbourne City Link Agreement.

Clause 14 amends section 18 of the Principal Act in relation to the enforceability of the Integration and Facilitation Agreement and the Extension Agreement. New sub-sections 18(1A) and (1B) provide that those agreements may only be enforced by the parties to them.

Section 18(2) of the Principal Act is substituted. It will provide that the State and its public authorities are not liable for the acts or omissions of—

- other parties to the Melbourne City Link Agreement;
- other parties to the Integration and Facilitation Agreement;
- other parties to the Extension Agreement; or
- a licensee in relation to the Melbourne City Link Project.

These immunities already apply in relation to the Melbourne City Link Agreement and licensees. Note that clause 35 will insert a new section 117A which proposes to alter or vary section 85 of the **Constitution Act 1975** in relation to the new section 18(2).

Clause 15 amends section 19 of the Principal Act. The amendment makes it clear that section 23(1) of the **Crown Proceedings Act 1958** will authorise the granting and enforcement of a decree of specific performance against the State in respect of its obligations under the Integration and Facilitation Agreement and the Extension Agreement.

Clause 16 repeals section 27A of the Principal Act, which excised a small portion of Olympic Park for the purposes of the Project. That land is no longer required for the Project and is being returned to Olympic Park. Clauses 39, 41 and 42 also relate to this issue.

Clause 17 inserts a new section 30A into the Principal Act, which will reserve a small additional stratum of underground land in South Richmond. The stratum is required for the emergency egress tunnel for the Burnley Tunnel. The new Schedule 7 contains a plan of the area affected. Only the stratum below a depth of

15-24 metres (or 50 feet) from the surface is affected. This will bring the relevant titles into line with the common depth of modern titles.

- Clause 18 inserts a new section 34A into the Principal Act, which creates a right of compensation, on the application of the person concerned, in respect of any private property acquired by the new section 30A. The **Land Acquisition and Compensation Act 1986** will apply in determining the amount of compensation payable.
- Clause 19 amends section 62 of the Principal Act, which confers road operation powers on the Link corporation. The amendment will restrict these powers to the Link road, as the Extension road is to come under the administration of the Extension corporation.
- Clause 20 amends section 65 of the Principal Act to replace references to the **Historic Buildings Act 1981** with references to the **Heritage Act 1995**.
- Clause 21 amends section 89 of the Principal Act to replace a reference to the former Department of Transport with a reference to the Department of Infrastructure.
- Clause 22 amends the definition of the "**Exhibition Street Extension Project**" in section 93A of the Principal Act so that it includes the scope of the ESEP Project as defined in the Extension Agreement itself.
- Clause 23 amends section 93G of the Principal Act to empower the Governor in Council to grant a Crown lease over the Extension road in accordance with the Extension Agreement. The requirements in respect of leases are similar to the requirements for leases over the Link road.
- Clause 24 substitutes section 93I of the Principal Act. This section will enable the Extension corporation to exercise, in relation to the Extension road, statutory road operation and management powers of the kind applicable to State highways.
- Clause 25 substitutes section 93J of the Principal Act. This section applies the tolling provisions of Part 4 of the Act to the Extension road, with modifications reflecting the fact that the Extension road will be administered under a separate agreement.

Clause 26 amends section 94 of the Principal Act to confer on the Extension corporation the same immunities and protections as the Roads Corporation ("VicRoads") has under the **Transport Act 1983** and at common law in relation to the operation, maintenance, management and control of highways. These protections and immunities are also extended to persons exercising the Extension corporation's powers under delegation or sub-delegation.

The Link corporation and the Link operator already have such immunities and protections under section 94 and these are maintained.

Note that clause 35 will insert a new section 117A which proposes to alter or vary section 85 of the **Constitution Act 1975** in relation to the amended section 94.

Clause 27 amends section 96 of the Principal Act to exempt land leased to the Extension corporation from land tax, as with land leased to the Link corporation. The amended section will also appropriate the Consolidated Fund to the extent necessary to pay any amount the State is required to pay under clause 11.5 of the Extension Agreement.

Clause 28 amends section 98 of the Principal Act to deem the Extension corporation to be a government agency for the purposes of the **Emergency Management Act 1986**. The main effect of this is that, during a declared state of disaster, the Extension corporation, like the Link corporation, will be subject to the direction of the Minister administering that Act. This does not affect any compensation rights under that Act.

Clause 29 amends section 99 of the Principal Act to extend the operation of that section to land leased to the Extension corporation. Section 99 will require public bodies (being public authorities and certain private utilities and transport companies) to obtain the consent of the Link corporation or the Extension corporation (as appropriate) before exercising any power affecting land leased to the corporations under the Principal Act. This restriction does not apply to emergency powers. If the Link corporation or Extension corporation refuse consent or impose unacceptable conditions, the Minister may decide the matter.

- Clause 30 amends section 102 of the Principal Act to empower the Governor in Council to resolve disputes between agencies about the exercise of statutory functions in relation to the Exhibition Street Extension Project.
- Clause 31 amends section 103 of the Principal Act to provide that a municipal Council may not exercise certain road and traffic management powers inconsistently with the functions of the Extension corporation. It also makes the Extension corporation responsible for fire hydrants on the Extension road, instead of the local Council.
- Clause 32 amends section 104 of the Principal Act to restrict local laws affecting the use of the Extension road or the carrying out of Exhibition Street Extension Project works by or for the Extension corporation.
- Clauses 33 and 34 amend sections 108 and 114 of the Principal Act respectively. These amendments are consequential on recent amendments to the **Summary Offences Act 1966** in relation to trespass offences.
- Clause 35 inserts a new section 117A into the Principal Act. This section declares that it is the intention of sections 18 and 94 of the Principal Act (as amended by this Bill) to alter or vary section 85 of the **Constitution Act 1975** by limiting the jurisdiction of the Supreme Court.
- Clause 36 amends section 118 of the Principal Act to enable regulations under that Act to apply to the Extension road. The amendments will also enable the regulations to be of general or limited application, to differ in application according to time, place or circumstances and to confer administrative discretions.
- Clauses 37 and 38 repeal spent provisions of the Principal Act. The repealed provisions amended other legislation.
- Clause 39 repeals item 2 of Schedule 4 to the Principal Act. The repealed provision described the land which was excised from Olympic Park by section 27A of the Principal Act. That land is now being returned to Olympic Park (see notes on clauses 41 and 42).
- Clause 40 inserts into the Principal Act the three Schedules set out in the Schedule to this Bill.

PART 3—AMENDMENT OF THE MELBOURNE AND OLYMPIC PARKS ACT 1985

Clause 41 amends section 4 of the **Melbourne and Olympic Parks Act 1985**. The amendment includes in the definition of "**Olympic Park land**" the parcel of surplus land currently reserved under section 27A of the Principal Act.

Clause 42 inserts a new section 31A into the **Melbourne and Olympic Parks Act 1985**. Section 31A will—

- revoke the Project reservation over the portion of Olympic Park referred to in section 27A of the Principal Act; and
- permanently reserve that land as part of Olympic Park.

The land in question is a small triangular piece of land near the Punt road interchange.

PART 4—AMENDMENTS TO THE MELBOURNE CITY LINK AUTHORITY ACT 1994

Clause 43 defines the "Principal Act" as the **Melbourne City Link Authority Act 1994** for the purposes of Part 4 of the Bill.

Clause 44 inserts new definitions into the **Melbourne City Link Authority Act 1994** in relation to the Exhibition Street Extension Project, the Melbourne City Link Agreement and the Extension Agreement.

Clause 45 amends section 19 of the **Melbourne City Link Authority Act 1994** to make consequential amendments to the functions of the Melbourne City Link Authority.

Clause 46 amends section 20 of the **Melbourne City Link Authority Act 1994** to make consequential amendments to the powers of the Melbourne City Link Authority.

PART 5—AMENDMENTS TO OTHER ACTS

Clause 47 amends section 2 of the **Transport Act 1983** to amend the definition of "**declared road**" and to insert a new definition of "**Extension road**".

Clause 48 amends section 56A of **Transport Act 1983**, which deals with the application of that Act and regulations under that Act to the Link road.

A new sub-section (7A) is inserted to make it clear that clause 13 of Schedule 5 to the **Transport Act 1983** will not operate to extinguish or to vest in the Crown any interests in the land which is referred to in paragraphs (a) or (b) of that sub-section.

Clause 49 inserts a new section 56B into the **Transport Act 1983**. This provision will modify the application of that Act in relation to the Extension road. It also modifies regulation making powers under the Act in relation to Extension road.

Clause 50 inserts a new section 207F(3)(aa) into the **Local Government Act 1989** so that damages cannot be claimed under section 207F in relation to the operation or effect of the Extension road. See notes on clause 51.

Clause 51 inserts a new section 242A into the **Local Government Act 1989**. This section declares that it is the intention of the new section 207F(3)(aa) (to be inserted by clause 50) to alter or vary section 85 of the **Constitution Act 1975** by limiting the jurisdiction of the Supreme Court.

SCHEDULES

The Schedule to the Bill contains three Schedules which are to be inserted into the Principal Act by operation of clause 40, namely—

- new Schedule 5, which contains a copy of the Integration and Facilitation Agreement;
- new Schedule 6, which contains a copy of the Extension Agreement; and
- new Schedule 7, which is a map of the area in South Richmond affected by the reservation by clause 17 (new section 30A of the Principal Act) of an additional stratum of underground land.

Notes on the provisions of Schedule 5 (the Integration and Facilitation Agreement) and Schedule 6 (the Extension Agreement) follow.

NEW SCHEDULE 5

AGREEMENT FOR INTEGRATING AND FACILITATING THE PROJECT AND THE EXHIBITION STREET EXTENSION PROJECT

The new Schedule 5 sets out a copy of the Integration and Facilitation Agreement, which is an agreement between the parties to the Melbourne City Link Agreement and the Extension Agreement dealing with the interaction of those two Agreements.

- Article 1 contains the definitions of terms used in the Integration and Facilitation Agreement and provisions relating to the interpretation and operation of the Integration and Facilitation Agreement. It also incorporates provisions of the Concession Deed setting out the Trustee's obligations and the capacity in which the Trustee enters into the Integration and Facilitation Agreement.
- Article 2 provides that the parties to each of the Concession Deed and the ESEP Deed agree that the City Link Project Documents and the ESEP Project Documents should be construed, and their rights, remedies, obligations and responsibilities under those documents determined, in accordance with the provisions in Part C of the Integration and Facilitation Agreement (Articles 3 to 16).
- Article 3 deals with the concept of Material Adverse Effect under the Concession Deed and the ESEP Deed. In determining whether an event has a material adverse effect, consideration must be given to the effect of the relevant event on the ESEP Project and the City Link Project, taken as a whole. Circumstances are specified which will not be considered to constitute or give rise to a Material Adverse Effect. Article 3 contains other provisions relating to the integration of the Concession Deed and ESEP Deed Material Adverse Effect regimes, including a prohibition on a concessionaire making a claim in relation to an event in relation to which a claim has already been made by the other concessionaire.
- Article 4 relates to the Base Case Financial Model and the Base Case Traffic Model and amendments to those models to reflect, and incorporate, the Exhibition Street Extension Project.

- Article 5 outlines what will constitute "Project Debt" so as to include funding for the Exhibition Street Extension Project. This Article also provides that matters relating to Equity Return and Material Adverse Effect issues shall be determined on the basis that Clepco and the Company are the same entity.
- Article 6 deals with traffic management and enhancements. In assessing the effects of removal of an Agreed Traffic Management Measure, alteration of any Existing Traffic Environment or implementation of a Non-Agreed Traffic Management Measure, account must be taken of the effect on revenue of both projects. Each project is to be ignored in determining application of non-discrimination provisions to the other project.
- Article 7 deals with termination. In effect, it aggregates the projects to determine the amount payable in certain circumstances by the State. It outlines the position to apply should the ESEP Project be terminated and the City Link Project continue. It limits the parties' capacity to terminate the respective projects in certain circumstances.
- Article 8 deals with default and provides that in determining whether a breach constitutes a default, regard must be had to the effect of such breach on both the City Link Project and the ESEP Project, as if they were one project. It also deals with claims by the State under the letter of credit contemplated in respect of the City Link Project.
- Article 9 applies to those provisions in the Concession Deed and the ESEP Deed dealing with the risk of law to the extent that it prevents absolutely the doing of certain things so that Clepco and the Company, and the roads under both projects, are treated as one.
- Article 10 deals with tolling. The tolling system and toll payment mechanisms are to operate in relation to both projects. Schedule 4 sets out the tolls for both the City Link and the Exhibition Street Extension.
- Article 11 provides for the position of each concessionaire in respect of disputes under the project deed.

- Article 12 deals with Variations to the Link and the Exhibition Street Extension and provides that in assessing the cost or effect upon traffic flow of a Variation, regard must be had to the costs of both concessionaires and the effect on traffic flow across both the Link and the Exhibition Street Extension.
- Article 13 deals with the calculation of revenue in determining liability for additional concession fees where aggregate revenue exceeds that projected in the Base Case Financial Model.
- Article 14 integrates the insurance requirements imposed under the Concession Deed and the ESEP Deed to allow for a single policy covering potential exposures under both the Concession Deed and the ESEP Deed. Article 14 also integrates the requirement under each Deed for certain bank accounts to allow for the existence of one such account in satisfaction of the requirement under both Deeds.
- Article 15 relates to Environmental Impact Statements under Commonwealth law, and restricts the circumstances in which the State may exercise rights of termination of the Concession Deed and the ESEP Deed.
- Article 16 is a general provision. It ensures that satisfaction by a party of a claim under one Deed precludes liability for the claim under the other Deed, and that the fulfilment of certain obligations which are common to both Deeds may be done through one act.
- Article 17 provides for certain representations and warranties by the parties to be repeated as at the date of the Integration and Facilitation Agreement. Clepco also represents that it has irrevocably appointed the Company as its agent.
- Article 18 deals with the status of the notice given by the State to the Company under clause 2.4(d) of the Concession Deed on 30 June 1997.
- Article 19 establishes the date on which Parts B and C and clause 18 of the Integration and Facilitation Agreement take effect.
- Article 20 provides for termination of the Integration and Facilitation Agreement upon termination of the Fourth Amending Deed or the Concession Deed, and not otherwise.

- Article 21 provides that each party shall do all acts and things as may reasonably be required to give full effect to the Integration and Facilitation Agreement.
- Article 22 provides that the Integration and Facilitation Agreement may be executed in a number of counterparts.
- Article 23 provides for each person executing the Integration and Facilitation Agreement as an attorney to state that he or she has no notice of revocation of the power of attorney under which he or she acts.

Schedules to the Integration and Facilitation Agreement

- Schedule 1 identifies the map referred to in the definition of "CLEP Termination Area".
- Schedule 2 sets out the provisions of the Concession Deed and the ESEP Deed which are primarily affected by certain of the provisions of the Integration and Facilitation Agreement.
- Schedule 3 contains the provision relating to termination for failure to reinstate to apply in substitution for the corresponding provisions of the Concession Deed and the ESEP Deed.
- Schedule 4 sets out the Toll Calculation Schedule. This Schedule applies to both the City Link and the Exhibition Street Extension.

NEW SCHEDULE 6

AGREEMENT FOR THE EXHIBITION STREET EXTENSION PROJECT

The new Schedule 6 sets out a copy of the Agreement for the Exhibition Street Extension Street Extension Project ("the Extension Agreement").

The Extension Agreement grants a concession to City Link Extension Pty Ltd (A.C.N. 082 058 615) (referred to in the Extension Agreement as "Cleppo") to operate and maintain the Extension road, a four-lane road connecting the intersection of Flinders and Exhibition Streets with the City Link. Cleppo is a subsidiary of Transurban City Link Ltd. (A.C.N. 070 810 678), one of the parties to the Melbourne City Link Agreement.

- Article 1 contains the definitions of terms used in the ESEP Deed and provisions relating to the interpretation and operation of the ESEP Deed.
- Article 2 sets out the objectives of the Exhibition Street Extension Project and the intentions of the parties in relation to the Exhibition Street Extension Project. It also provides for the grant of the concession, the State making changes to the transport network, the alteration of the existing traffic environment, the relationships between the Exhibition Street Extension and transport policy, action to be taken and the remedies to be adopted if an event causes a Material Adverse Effect and the obligations of Clepco. Each event described in the Appendix is capable of having a Material Adverse Effect.
- Article 3 provides for the payment to the State of the Contract Sum for design, construction and delivery of the Exhibition Street Extension. It also provides for the requirements to obtain and maintain approvals and the terms for the surrender of the Exhibition Street Extension on expiry, or termination, of the Concession Period.
- Article 4 deals with ESEP Land and the grant of a Lease to Clepco. It sets out the obligation of the State to make access to certain land available, the terms of that access and the grant of, and terms of, the Lease to Clepco. It outlines the obligations of Clepco in relation to land to which it is given access and the obligations of Clepco in relation to Services. Article 4 also sets out obligations concerning, in particular, disturbance to or caused by ESEP Ancillary Works and Operations.
- Article 5 sets out the obligations of the State and Clepco in relation to Planning Scheme Amendments. It also outlines Clepco's obligations to comply with clean-up or similar notices issued in relation to the environment.
- Article 6 is not used (to maintain consistency in numbering between the agreements).
- Article 7 deals with matters related to the design and construction of the Exhibition Street Extension. It sets out provisions relating to the grant to the State of a licence to use documentation used in the operation, maintenance and repair of the Exhibition Street

Extension, and changes to the specifications of the Exhibition Street Extension before and after Delivery of the Exhibition Street Extension.

- Article 8 deals with construction and the process for Delivery of the Exhibition Street Extension. It provides for termination, and a payment by the State, should Delivery not occur by the Sunset Date. It also provides for the State's obligations concerning the quality of the Exhibition Street Extension Works, rectification of defects by the State and the coordination of the Exhibition Street Extension Works and tolling and traffic management works carried out by and on behalf of Clepco.
- Article 9 deals with Clepco's obligations in relation to the operation of the Exhibition Street Extension and Tolling System. It also provides for the application of laws to the Exhibition Street Extension, the rights of the State in risk situations and the rights of Clepco to erect and display signs. Article 9 allows Clepco to levy tolls, but only in accordance with the Toll Calculation Schedule. The Article sets out the procedure for the levying and varying of tolls and the process for opening the Exhibition Street Extension for public use. Article 9 also governs the continued operation of the Exhibition Street Extension.
- Article 10 deals with Clepco's obligations to maintain and repair the Exhibition Street Extension. Clepco must maintain and repair the Exhibition Street Extension to agreed standards and must provide a six monthly report to the State detailing the maintenance and repair work carried out by Clepco in the previous six months. Further, Clepco is required to inspect the Exhibition Street Extension monthly and report to the State any material damage, defects or disrepair, any serious accidents and actions proposed to remedy material damage, defects or disrepair. Clepco may subcontract the performance of its obligations under this Article.
- Article 11 provides for the establishment and maintenance of the Maintenance and Repair Account and the Insurance Proceeds Account. Article 11 provides that Clepco must pay certain taxes levied on it or referable to it by reason of the ownership or occupation of the ESEP Land. Article 11 also sets out Clepco's and the State's respective liabilities for the payment of stamp duty. Article 11 makes provision for the payment of interest by

Cleppo and the State on amounts owing under ESEP Project Documents.

- Article 12 sets out the risks which are accepted by Cleppo in relation to the Exhibition Street Extension Project and the matters in respect of which Cleppo agrees to indemnify the State and Victorian Government Agencies. The State in turn indemnifies Cleppo in respect of local government rates imposed on Cleppo in reference to the ESEP Land, water and sewerage rates and (in certain circumstances) the reasonable costs of action taken to comply with clean-up notices which have been or are likely to be issued. Article 12 also provides for the State accepting some risk in relation to the operation of and changes to Victorian and Commonwealth Law.
- Article 13 allocates the risks of destruction or damage to the Exhibition Street Extension. The State is, generally, released from and indemnified against claims, demand, damage, expense, loss or liability in respect of the loss, destruction or damage of property, injury, disease or death, which arises out of the Exhibition Street Extension Project. It further provides for Cleppo to effect and maintain certain insurance policies prior to and after delivery of the Exhibition Street Extension. Article 13 also deals with Cleppo's obligations to reinstate a damaged or destroyed portion of the Exhibition Street Extension and sets out the circumstances in which the State may terminate the ESEP Deed for a failure to reinstate.
- Article 14 sets out the State's representations and warranties as well as Cleppo's representations, warranties and undertakings. Article 14 lists certain assumptions to be made when assessing or determining matters relating to Project Debt and also requires Cleppo to ensure that there is no change in the persons holding a beneficial interest in shares in Cleppo. Finally, Article 14 sets out the consequences if an Environmental Impact Statement is, or will be, required under Commonwealth law in relation to the Exhibition Street Extension Project.
- Article 15 sets out the grounds for which the State or Cleppo may terminate the ESEP Deed. Article 15 also specifies the amounts payable upon termination and provides for the suspension (and relief from liability) of Cleppo's obligations where the obligations cannot be performed because of certain "relevant" events.

- Article 16 sets out the dispute resolution procedure in respect of disputes under clauses identified in the Dispute Resolution Schedule or disputes to which Article 16 otherwise expressly applies. Disputes may be referred for expert determination or for conciliation and arbitration. Article 16 sets out the process for selecting experts and the rules that apply to expert determination, conciliation and arbitration.
- Article 17 sets out Clepco's accounting and reporting obligations. Clepco is obliged to keep books of account and all other records relating to the Exhibition Street Extension Project. The accounts and Clepco's financial statements must be made available to the State together with a copy of the Financial Model and the Traffic Model showing the actual performance of Clepco in the previous years and projections for the remaining years of the Concession Period. Clepco must also provide information relating to traffic figures and other specified information.
- Article 18 restricts the assignment of, and other dealings with, interests in or obligations arising under the ESEP Project Documents or Transaction Documents. Other than dealings under the ESEP Deed of Charge, an assignment or dealing may only be effected with the State's prior consent. Clepco may mortgage or charge its interests under the ESEP Project Documents and Transaction Documents to secure certain obligations to any Lender for as long as the Lender (or its trustee or agent) is a party to the Master Security Deed. Article 18 also restricts the State's right to assign and otherwise deal with its interest in, or obligations under, the ESEP Project Documents without first obtaining Clepco's approval.
- Article 19 provides that notices and approvals must be made in writing and sets out the circumstances in which they are deemed to be duly given. Article 19 further sets out when such notices and approvals are deemed to be received. Article 19 sets out the obligations of Clepco and the State not to disclose confidential or unpublished information. Finally, Article 19 sets out each party's obligation to do all things reasonably required to give full effect to the Concession Deed and the rights and obligations of the parties to it.

Schedules to the Extension Agreement

Schedule 1 contains the Toll Calculation Schedule in accordance with Article 9.

Schedule 2 contains the late delivery charges in accordance with Article 3.

Schedule 3 contains the sunset date payments in accordance with Article 8.

Schedule 4 contains the Dispute Resolution Schedule in accordance with Article 16.

Schedule 5 sets out the ESEP ETTM Works in accordance with Article 8.

Appendix to the Extension Agreement

The Appendix contains a table setting out applicable events, the Material Adverse Effect, negotiations and the applicable outcome in relation to each.

Exhibit to the Extension Agreement

The Exhibit contains the map referred to in the definition of the Exhibition Street Extension. This is not printed as part of the Bill, but the definition of "**the Extension Agreement**" (as inserted into section 3 of the Principal Act by clause 4 of the Bill) includes the Exhibit to the Extension Agreement. The Exhibit therefore forms part of the Extension Agreement being ratified by the Bill. Copies of the Exhibit are available for inspection in the Parliamentary Library and at the offices of the Melbourne City Link Authority.