

## Major Transport Projects Facilitation Bill 2009: Issues and concerns

### BACKGROUND

The Victorian Major Transport Projects Facilitation Bill was introduced into Parliament on 12 August 2009. It has passed the Lower House and is currently at the second reading speech stage in the Upper House. Debate on the Bill will resume on 15 September 2009. If the Bill passes, the Government would like the legislation to commence operation on 1 November 2009 so it can start fast-tracking transport projects such as the 50-kilometre Regional Rail Express from West Werribee to Southern Cross Station and the 100-kilometre Outer Metropolitan Ring Road from Avalon to the Hume.

The Bill establishes a new assessment process for major transport projects<sup>1</sup> that overrides almost all current assessment and approval processes for these kinds of projects. It is the 'cornerstone' of the Government's Victorian Transport Plan which seeks to deliver a range of major projects.

This Bill represents a major shift in the way transport projects are assessed and approved and yet there has been no formal public consultation on this Bill. A Bill of this nature would normally have significant public consultation during its development and be released as an exposure draft for public comment. Although the parallel Transport Integration Bill has undergone extensive consultation, the Major Transport Projects Facilitation Bill has not.

It is not clear whether the Government intends at some stage extend the operation of the Bill to other projects, however the Bill is drafted in a way in which the removal of the word 'transport' throughout the Bill would make it open to be used for any major project approval.

### SUMMARY OF THE BILL

The Bill allows the Premier to decide which transport projects will come under this process. The Premier must appoint a Minister to be the project Minister and the project Minister must appoint a public body to be the proponent of the project. The Planning Minister has all approval powers under this Bill. He or she decides whether a project must go through an impact management plan (IMP) process or a comprehensive impact statement (CIS) process. The CIS process is more onerous with a requirement for a panel review of the assessment and more public consultation.

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<sup>1</sup> Transport projects include road projects, rail projects, infrastructure for the movement of goods and persons & ports (s3) but note that a transport project under this Bill can include non-transport infrastructure.

In most cases, an IMP or CIS will replace all other approvals needed for the project including planning approvals and Flora and Fauna Guarantee Act approvals. The Environmental Effects Act is not mentioned but our presumption is that the Planning Minister will not require an EES for any project assessed under this Act. In any case, if an EES was required the Planning Minister would essentially be making a recommendation under the EES to him or herself as the approving Minister under the Major Transport Project Bill.

## EDO CONCERNS WITH THE BILL

There are many aspects of the Bill which are of concern for public participation, environmental protection and good governance. Some of these are set out below.

- The Planning Minister effectively becomes the decision maker under all relevant legislation (see list below – although not all approvals under these Acts are excluded) (s 77 & 84):
  - *Coastal Management Act 1995*
  - *Conservation, Forests and Lands Act 1987*
  - *Environment Protection Act 1970*
  - *Flora and Fauna Guarantee Act 1988*
  - *Forests Act 1958*
  - *Heritage Act 1995*
  - *National Parks Act 1975*
  - *Planning and Environment Act 1987*
  - *Road Management Act 2004*
  - *Water Act 1989*
  - *Wildlife Act 1975*
- Any criteria that are mandatory considerations under the above Acts become non-mandatory when the Minister for Planning is making those decisions under this Act (s 77).
- The requirements of what must actually be assessed are largely left to be designated in guidelines, and there is nothing in the Act that states what the guidelines must include.
- The Minister for Planning only has to 'have regard to' the assessment & views of the EPA when making effective decisions under the Environment Protection Act.
- There are indications that the Government will seek to have this process included under the bilateral for the EPBC Act to exempt these projects from approval (not just assessment) under the EPBC Act (see s31).
- Rights to participate in the decision making process are compromised by short timeframes for public comment, the ability of the Minister to exclude cross examination in an assessment committee hearing, etc.
- There is no requirement for public consultation for major transport projects being assessed on the lower level of assessment (impact management plans).
- The Bill specifically excludes all judicial review and merits review for all decisions in Parts 1-4 except the Minister's s77 approval decision. No other decision can be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal.

- There is no judicial review or merits review of the parts of the Minister's s77 approval decision that are actually decisions under the other laws listed above.
- Judicial review of s77 approval decisions must be commenced within 21 days. There is no ability to review the Minister's failure to make a decision under s77.
- While limited judicial review is available for the s77 approval decision, there is no appeal to VCAT from this decision.

## NEXT STEPS

If the Bill passes the Upper House the Government intends the Bill to come into force on 1 November 2009. The Premier will shortly release guidelines for the assessment of projects for declaration under the Bill. As there was no public consultation on this Bill, the only opportunity for the public to express their concerns before the Bill is passed is to encourage Legislative Council members to move changes or refuse to support the Bill.

If you would like further information or advice about the Major Transport Projects Facilitation Bill please contact Nicola Rivers, EDO Policy and Law Reform Director on 03 8341 3100.

## ABOUT THE ENVIRONMENT DEFENDERS OFFICE (VICTORIA) LTD

The Environment Defenders Office (Victoria) Ltd ('EDO') is a community legal centre specialising in public interest planning and environment law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest environmental law.

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