



New South Wales

# Roads Amendment (Transparent Tolling) Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Roads Act 1993* to impose requirements relating to the scrutiny and transparency of the following arrangements about tolling:

- (a) tolling agreements (that is, agreements between a private sector entity and the government under which the private sector entity agrees to design, finance, construct (or re-build) and operate a tollway, bridge or tunnel, or to pay money, in exchange for the right to set and collect private tolls and charges),
- (b) tolling orders (that is, orders made by Roads and Maritime Services (*RMS*) or roads authorities fixing the amount of tolls and charges for traffic using tollways, bridges, tunnels and road-ferries).

The requirements imposed by this Bill, which apply only to future tolling agreements and tolling orders, are as follows:

- (a) the Minister will be required to ensure that tolling agreements are not entered into or amended, and tolling orders are not made, unless they have been investigated by the Independent Pricing and Regulatory Tribunal (*IPART*) and found to be in the public interest,
- (b) the Auditor-General will be required to conduct performance audits of tolling agreements and tolling orders after they have been made or amended,
- (c) tolls and charges will not be permitted to increase by more than the Consumer Price Index,

- (d) reports of IPART and the Auditor-General will be tabled in Parliament and information about tolling agreements and tolling orders will be published in the Gazette or otherwise made publicly available.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act 3 months after the date of assent to the proposed Act.

## Schedule 1 Amendment of Roads Act 1993 No 33

**Schedule 1 [1]** inserts a note explaining the operation of the proposed amendments that relate to the power of RMS and roads authorities to levy and collect tolls and charges.

**Schedule 1 [2]** requires RMS to fix any tolls and charges for traffic that uses tollways by making an order published in the Gazette after obtaining the approval of the Minister. The amendment also prevents increases in such tolls and charges from exceeding increases in the Consumer Price Index (a term that is proposed to be defined in the Dictionary).

**Schedule 1 [3] and [4]** require RMS to fix any tolls and charges for traffic that uses bridges, tunnels and road-ferries by making an order published in the Gazette, after obtaining the approval of the Minister. The amendments also prevent increases in such tolls and charges from exceeding increases in the Consumer Price Index.

**Schedule 1 [5] and [6]** omit provisions that allow RMS to fix tolls and charges for traffic that uses the Sydney Harbour Bridge. The amended section 214 will extend to the Sydney Harbour Bridge.

**Schedule 1 [7]** requires the publication of information about tolling orders made by RMS, including any methodology for differential tolling for heavy vehicles. The provision also makes it clear that the proposed requirements do not affect existing obligations regarding public access to government information.

**Schedule 1 [8]** requires roads authorities to fix any tolls and charges for traffic that uses road-ferries by making an order published in the Gazette after obtaining the approval of the Minister. The amendment also prevents increases in those tolls and charges from exceeding increases in the Consumer Price Index.

**Schedule 1 [9]** requires the publication of information about tolling orders made by roads authorities, including any methodology for differential tolling for heavy vehicles.

**Schedule 1 [10]** inserts a new Part containing the following provisions about the scrutiny and transparency of tolling agreements and tolling orders:

(a) **Division 1 Preliminary**

Proposed section 227A defines terms used in the proposed Part.

Proposed section 227B provides that the proposed Part applies only to agreements entered into, or proposed to be entered into, after the commencement of the proposed Part and to tolling orders published in the Gazette after that commencement.

(b) **Division 2 Transparency of tolling agreements**

Proposed section 227C provides that a tolling agreement is not to be entered into, amended or replaced unless it has been referred to IPART, which has investigated the agreement or amendment and reported that it is in the public interest to enter into, amend or replace the agreement.

Proposed section 227D provides that increases in tolls or charges under a tolling agreement must not exceed increases in the Consumer Price Index.

Proposed section 227E requires the publication of information about tolling agreements, including any methodology for differential tolling for heavy vehicles under a tolling

agreement. The provision also makes it clear that the proposed requirements do not affect existing obligations regarding public access to government information.

(c) **Division 3 Scrutiny of proposed tolling agreements and tolling orders by IPART**

Proposed section 227F provides for the Minister to refer to IPART each proposed tolling agreement, proposed amendment to such an agreement, or tolling order proposed to be made by RMS or a roads authority.

Proposed section 227G provides for the investigation of a proposed tolling agreement or amendment, or a proposed tolling order, by IPART.

Proposed section 227H requires IPART to report on the outcome of an investigation within 4 weeks of a referral and requires the Minister to table IPART's report in Parliament and to publish it online.

(d) **Division 4 Scrutiny of existing tolling agreements and tolling orders by Auditor-General**

Proposed section 227I requires the Minister to ensure that the Auditor-General conducts a performance audit in relation to tolling agreements or tolling orders after they are made or amended.

Proposed section 227J provides for the conduct of the performance audit by the Auditor-General.

Proposed section 227K requires the Auditor-General to report to the Minister on the results of any performance audit conducted.

Proposed section 227L establishes an ongoing role for the Auditor-General with respect to tolling agreements.

Proposed section 227M provides for the Minister, the Auditor-General and certain authorised persons, to require information in relation to a performance audit dealing with a tolling agreement or tolling order.

Proposed section 227N requires the private sector entity that is a party to the tolling agreement to pay the costs of the performance audit.

Proposed section 227O makes it an offence to obstruct the Auditor-General's conduct of a performance audit.

**Schedule 1 [11]** ensures that the Minister cannot delegate any of the Minister's functions under the provisions that are proposed to be amended or under the proposed Part.

**Schedule 1 [12]** inserts a definition of *Consumer Price Index*—a term used in the proposed provisions.