



North East Link Bill 2020

Bill Brief

Research Note
No. 2, March 2020

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Parliamentary Library & Information Service

Department of Parliamentary Services
Parliament of Victoria



Introduced: 4 March 2020

House: Legislative Assembly

Second reading: 5 March 2020

Commencement: On the earlier date of the day of Proclamation or 1 March 2021.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found at the Library's Infolink [page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary Documents website](#).

Acknowledgments

The authors would like to thank Debra Reeves and Caley Otter for their help with the preparation of this publication.

Image source: freepik

ISSN 2204-4779 (Print) 2204-4787 (Online)

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Executive summary

The North East Link is one of the largest road infrastructure projects in Victorian history. At 26 kilometres, including a major tunnel, and an estimated cost of \$15.8 billion, the new toll road will join the Eastern Freeway with the Metropolitan Ring Road (M80) in Melbourne's north-eastern suburbs, completing the cross-city orbital road network. It is expected to open in 2027.

In March 2020, the Victoria Government introduced the North East Link Bill to establish the governing framework for the road. Most significantly, the Bill seeks to establish the North East Link State Tolling Corporation to manage the collection, enforcement and regulation of tolls on the road. This arrangement departs from the procurement and delivery models of past major road infrastructure projects. The North East Link is the first major road project in Australia whose tolling rights are held by the state government since public-private partnerships (PPPs) became popular to develop road infrastructure in the 1990s.

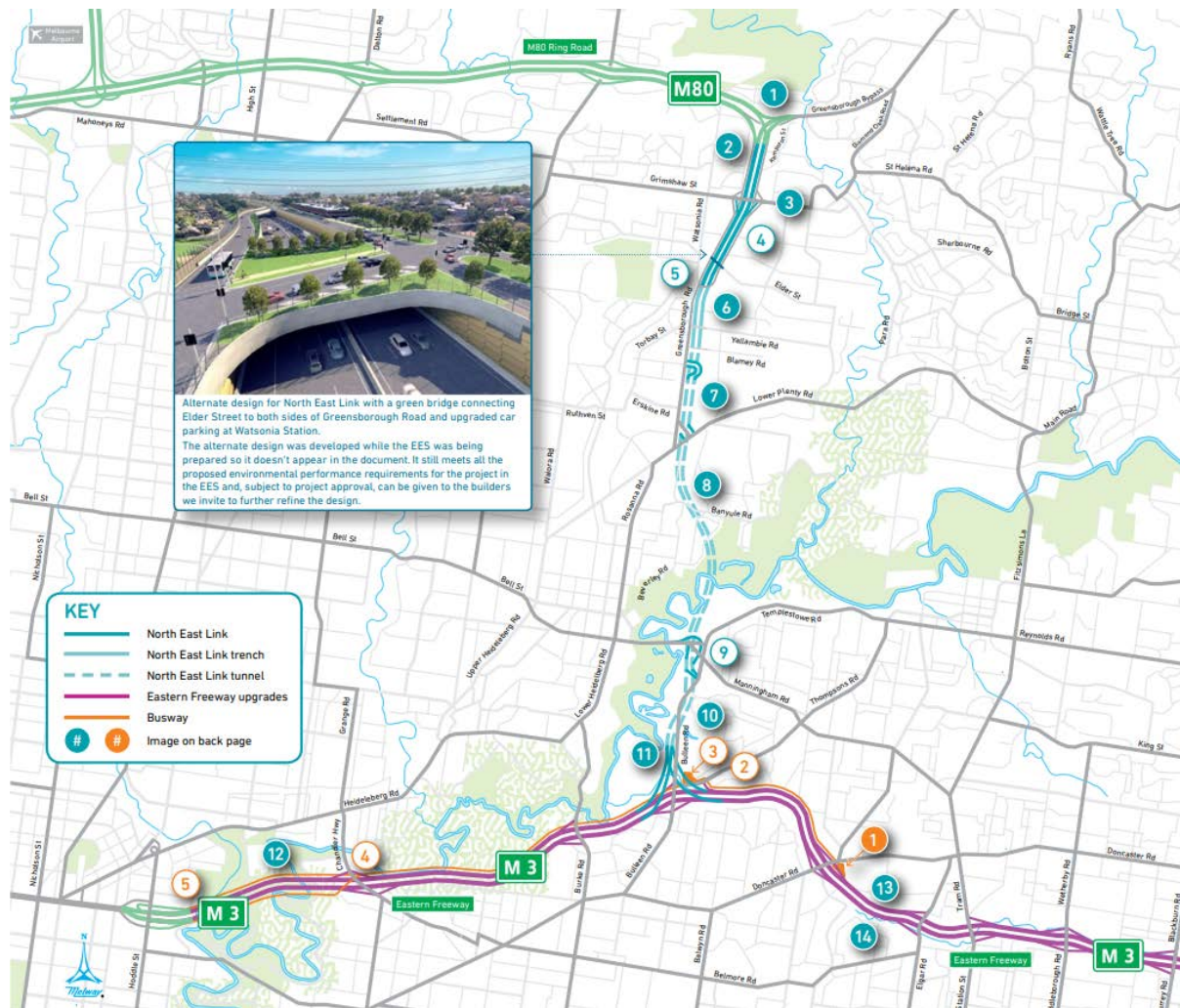
Most of Australia's existing toll roads, including Melbourne's City Link and EastLink, have been developed using a greenfield toll road model, under a user-charge PPP arrangement. Under this arrangement, private consortia gain the right, and bear the risk, to collect the revenue from the toll road that they finance and build. In contrast, this Bill proposes the North East Link will be delivered as an 'availability-PPP', where the Victorian Government retains the revenue stream and associated risks of tolls, while making payments to a private consortium to build, operate and maintain the road in return for keeping specified key performance indicators. Notably, the toll-free Peninsula Link is delivered as an availability-PPP, while the aborted East West Link was likely to be tolled by a state-owned entity under an arrangement similar to that proposed by this Bill.

This Bill Brief contextualises the proposed North East Link State Tolling Corporation in the recent history of PPP toll road projects in Victoria, and summarises the business case for the Corporation. Two chief developments—the Global Financial Crisis (GFC), and the recent failure of several user-charge PPP toll road projects in Sydney and Brisbane—have significantly diminished private-sector appetite for bearing the risk and reward of greenfield tolls. Accordingly, the 2018 North East Link Business Case recommended tolling operations be controlled by a separate state-owned entity that would allow the Victorian Government to retain toll revenue and then possibly divest the revenue stream to the private sector in the future, once toll revenues have matured. Experts agree the likely intention of government is to sell the State Tolling Corporation at a later date, while others have some concerns regarding the overall viability of the project. A jurisdictional comparison highlights the relative novelty of this model in both Australian and international contexts.

The North East Link project has generated significant public and political scrutiny in relation to several other matters, especially regarding the Victorian Government's response to an Environmental Effects Statement (EES). However, this Bill Brief focuses exclusively on the proposed State Tolling Corporation.

Introduction

Described by the Victorian Government as filling the ‘missing link’ in Melbourne’s road network, the North East Link is a planned 26-kilometre tolled freeway that will connect the Metropolitan Ring Road (M80) to the Eastern Freeway at Bulleen Rd. The project involves the state’s longest road tunnels—twin three-lane six-kilometre tunnels equipped to allow GPS technology to work underground—several interchanges and express bus lanes on the Eastern Freeway. It is expected to open in 2027.¹



Source: North East Link Project (2020) ‘North East Link Melways Map - April 2019’, NELP website.

¹ R. David (2020) ‘Your guide to the NE Link’, *Maroondah Leader*, 3 March.

Background

North East Link

History

Plans for a metropolitan freeway network linking the north-eastern parts of Melbourne were first developed with the 1954 Melbourne Planning Scheme.² This Scheme provided the basis for a more comprehensive Melbourne Transportation Plan, delivered by the Melbourne Transportation Committee for the Bolte Government in 1969.³ The Plan, recently described by two experts as Melbourne's 'most influential' and 'comprehensive' transport plan, provided the first outline of the need for a freeway-standard road link through Melbourne's north east.⁴ From this plan, a corridor of land was reserved for a proposed (but never built) F18 freeway route, and now provides access for parts of today's planned North East Link.

These plans were met by strong community opposition to the building of freeways in urban environments, prompting then-Planning Minister Rupert Hamer, in 1970, to review the plan and minimise its social and environmental effects, as well as its overall cost.⁵ When Hamer succeeded Bolte as Premier in 1972, Victoria's metropolitan freeway policy was overhauled.⁶ The Hamer Government stipulated that freeways were to exist 'only in the outer suburbs where road reservations have been planned and no disruption is caused'.⁷ Subsequently, in 1973 plans for the F18 freeway as well as a number of unbuilt urban freeways were cancelled.⁸

For the next several decades, plans for a north eastern freeway took a back seat to other infrastructure project proposals, including CityLink, East Link and East West Link. The project was revived in 2008, when the Brumby Government announced its commitment to an estimated \$6 billion, nine-kilometre North East Link.⁹ This proposal was one of many projects approved under a larger planning framework—the Victorian Transport Plan—which set out to address the challenges of population growth and road congestion.¹⁰ The North East Link was 're-evaluated' by the Baillieu Government in 2011; and was reported as still 'under consideration' in 2012 and 2013.¹¹

² M. Lay (2003) *Melbourne Miles: The Story of Melbourne's Roads*, Melbourne, Australian Scholarly Publishing Press; Town Planning Committee (1953) *Melbourne Metropolitan Planning Scheme 1954*, final report, Melbourne, The Committee.

³ The Metropolitan Transportation Committee (1969) *The Transportation Plan*, final report, Melbourne, The Committee.

⁴ L. Davies & I. Woodcock (2019) '50 years on from the Melbourne Transportation Plan, what can we learn from its legacy', *The Conversation*, 9 December; M. Lay (2003) op. cit.; (2019) *Seven ways the 1969 Transportation Plan shaped Melbourne*, RMIT University, 12 December; The Metropolitan Transportation Committee (1969) op. cit.

⁵ I. Hamilton (1973) 'Freeways slashed', *The Herald*, 28 March; M. Lay (2003) op. cit., p. 201.

⁶ L. Money (1978) 'Freeway plan may be scrapped', *The Herald*, 2 August.

⁷ M. Lay (2003) op. cit., p. 201.

⁸ *ibid.*

⁹ (2008) '6 Billion Super Link', *Herald Sun*, 8 December.

¹⁰ Victorian Government (2008) *The Victorian Transport Plan*, Melbourne, Department of Transport.

¹¹ C. Lucas (2011) 'Baillieu shelves transport plan', *The Age*, 7 January; C. Brooks (2012) 'Bulleen: freeway link', *Debates*, Victoria, Legislative Assembly, 24 May, p. 2364; Victorian Government (2013) *Victoria – The Freight State*, Melbourne, Department of Transport, Planning and Local Infrastructure, p. 53.

In 2016, the Andrews Government released its 30-year blueprint for infrastructure across Victoria, which included plans for a North East Link.¹² The North East Link Authority was established to manage and deliver the project in December 2016, before the 2017–18 State Budget provided the project with its first \$100 million.¹³ Following re-election in 2018, Premier Andrews announced the government's plan to invest heavily in Victoria's infrastructure, including building the North East Link.¹⁴

Current project

In 2017, several corridor options were considered through a series of community surveys and engagements, and an assessment report. One option linked the M80 Ring Road in Greensborough to the Eastern Freeway in Bulleen, while three alternative routes linking the M80 Ring Road in Greensborough to EastLink in Ringwood were also proposed. In November 2017, the Andrews Government announced that the Bulleen option had been selected.¹⁵

From May 2018 to June 2019, the North East Link Authority (NELA) prepared an Environmental Effects Statement (EES), based on public consultations and submissions. The EES was then subject to an independent Inquiry and Advisory Committee (IAC). The Committee was tasked with the review of the EES and public submissions to provide recommendations to inform the Minister's assessment of the project. The IAC submitted a report of recommendations in October 2019.¹⁶ The outcomes of the EES have been the subject of some controversy since the end of 2019, with four local government areas—Banyule, Boroondara, Whitehouse and Manningham—issuing a Supreme Court challenge over the government's environmental approval for the road.¹⁷

In May 2018, the North East Link Authority released its Business Case, indicating tolling revenue would be retained by the state through the establishment of a state-owned tolling entity. In November 2018, the Andrews Government issued a tender to build and operate the road.¹⁸ Transurban, the owner and operator of CityLink and the West Gate Tunnel project, ruled itself out of bidding in February 2019.¹⁹ In September 2019, the government announced that three consortia had been shortlisted for the contract.²⁰

In recent months, the government has been in dispute with the consortia bidding for the project over the allocation of risks. Construction company John Holland has threatened to pull its bid in response to government demand that the private partner be liable for cost blowouts.²¹ Treasurer Tim Pallas says the Andrews Government is willing to build the North East Link itself if contractors insist on taxpayers carrying too much financial risk.²²

¹² Infrastructure Victoria (2016) '[Victoria's 30-year Infrastructure Strategy](#)', Melbourne, Infrastructure Victoria.

¹³ Department of Economic Development, Jobs, Transport and Resources (2017) *Annual Report 2016-17*, Melbourne, DEDJTR; Victorian Government (2017) *Service Delivery: Budget Paper No. 3: 2017-18*, Melbourne, Department on Treasury and Finance, p. 41.

¹⁴ D. Andrews, Premier (2017) *Victorian Chamber – Premier's Speech*, media release, 23 November.

¹⁵ D. Andrews, Premier (2017) *North East Link – Victoria's biggest ever transport project*, media release, 24 November.

¹⁶ Inquiry and Advisory Committee (2020) *North East Link Project*, Melbourne, Planning Panels Victoria, October.

¹⁷ T. Minear & J. Dagge (2020) '[Councils unite over NEL issues](#)', *Herald Sun*, 12 February; C. Lucas (2020) '[Councils justified in Link legal challenge](#)', *The Age*, 12 February; C. Lucas & T. Jacks (2020) '[Approval of "draft" Link a mistake, say councils](#)', *The Age*, 19 February.

¹⁸ D. Andrews, Premier (2018) *Day one: North East Link Starts Now*, media release, 26 November.

¹⁹ P. Hatch (2019) *Transurban rules itself out of North East Link build*, *The Age*, 12 February.

²⁰ J. Allan, Minister for Transport Infrastructure (2019) *World's best builders compete to build North East Link*, media release, 2 September 2019.

²¹ T. Jacks & B. Priess (2020) '[Link road builder looks to shift risk](#)', *The Age*, 5 March.

²² T. Jacks (2020) '[States ready to go it alone one North East Link: Treasurer](#)', *The Age*, 6 March.

In March 2020, the Andrews Government announced it would be retaining the revenue generated by the road tolls by establishing a state tolling corporation with the introduction of the North East Link Bill 2020.

Toll roads and PPPs in Victoria

History

Toll roads have been a key feature of Victoria's infrastructure since just after the colony's founding. Commonplace in England by the 1830s and levied in Sydney since 1811, Melbourne's earliest tolled roads include Thomas Main's bridge over Moonee Ponds Creek on Mt Alexander Road in 1839 and the Heidelberg Road Trust's tolls on Heidelberg Road in 1847. Through the nineteenth century, responsibility for financing, building and maintaining roads was largely in the hands of district road boards, municipal councils and rural shires, which raised funds through a complex system of bridge and road tolls. These levying powers had been granted in the early 1850s but proved so unpopular and unequitable—road-building became highly parochial and competitive across the colony—that the central government abolished them in 1875. As roads fell into disrepair, from the early twentieth century the central government progressively took control of all road infrastructure projects.²³

Tolls returned to Melbourne almost a century later when the West Gate Bridge opened as a tolled road in 1978. However, the tolls were removed in late 1985 due to poor patronage and to enable the Bridge Authority's financial liabilities to be transferred to the Road Construction Authority.²⁴

Toll roads had their third coming in Victoria with the CityLink project, completed in 1999. This project also marked the Victorian Government's first experiment in delivering a major road infrastructure project as a public-private partnership, following a number of PPP road projects in Sydney in the early 1990s.²⁵ Since then, further projects—including EastLink, Peninsula Link, the aborted East West Link, and the West Gate Tunnel—have been delivered or proposed as PPPs. To contextualise the novelty of the arrangement proposed by the North East Link Bill 2020, we can briefly overview these four projects.

Public-Private Partnerships

Types of PPPs

There are two general models of PPPs, both of which have been used in Victorian road infrastructure projects. First, user-charge PPP contracts (or 'economic infrastructure' PPPs) provide the private sector party with the right to levy tolls or other charges on users once construction is complete in order to generate revenue from the project, usually by obtaining a long-term lease or concession to the infrastructure. Second, service-payment PPP contracts (also known as 'availability' or 'social infrastructure' PPPs) require the government to pay a monthly or quarterly service payment for meeting stipulated key performance indicators. This model tends to be used in building social infrastructure including hospitals, schools and courts, but also has been applied to some of Victoria's road projects.

²³ Lay (2003) op. cit., p. 44-47; W.K. Anderson (1994) *Roads for the People: A History of Victoria's Roads*, South Melbourne, Hyland House.

²⁴ Lay (2003), op. cit., p. 47.

²⁵ Ernst & Young (2008) *The economic contribution of Sydney's toll roads to NSW and Australia*, Sydney, Ernst & Young Australia, p. 9.

PPPs may take several different contractual arrangements, depending on whether the private partner takes ownership of part or all of the asset to recoup its investments. These include DCM (design–construct–maintain), DCMO (design–construct–maintain–operate), BOO (build–own–operate) and BOOT (build–own–operate–transfer) forms of project delivery.²⁶ Either way, the PPP contract typically requires the private sector to finance part or all of the project costs before receiving the government service payment or user charges to recoup its investments.

The Victorian Government established Partnerships Victoria in 2001 to provide guidelines and administer PPP projects.

CityLink

CityLink is the pre-eminent example of a BOOT—Build-Own-Operate-Transfer—public-private partnership arrangement with the Victorian Government. In 1992, the Kennett Government called for tenders for a user-charge PPP arrangement for the CityLink project. In 1995, it entered an agreement with ASX-listed Transurban, a consortium formed by Australia’s Transfield Holdings and Japan’s Obayashi Corporation, to build and toll CityLink. The terms are contained in the *Melbourne City Link Concession Deed*. CityLink was constructed between 1996 and 2000, and Transurban authorised to collect toll revenue from road users to January 2035, before ownership of the road was scheduled to transfer back to the state at no cost. In February 2017, the Victorian Government extended the concession until 2045 as part of a deal with Transurban for the consortium to build and operate the West Gate Tunnel project.²⁷

EastLink

In 2003, the Victorian Government established the Southern and Eastern Integrated Transport Authority (SEITA) to oversee the building of the EastLink freeway project in eastern Melbourne. In 2004, SEITA awarded a design, construct, own and operate user-charge PPP to ConnectEast. This company was established specifically for the EastLink project and was listed on the ASX in November 2004. ConnectEast engaged Theiss Contractors and John Holland to design and construct the road. Construction began in 2005 and the road opened in June 2008. As owner of the road, ConnectEast is now responsible for its day-to-day management until the concession expires in 2043.²⁸ In late 2011, the company was sold to Horizon Roads, a consortium of eight international investors.²⁹

Peninsula Link

Peninsula Link, a 25-kilometre freeway joining the southern end of Eastlink at Seaford with the Mornington Peninsula Freeway, was opened in 2013. The road is not tolled but has been delivered as an availability-PPP. A consortium, Southern Way, financed, designed, built, and now operates and maintains the freeway under a 25-year agreement with the Victorian Government. The Government makes regular payments to Southern Way based on Key Performance Indicators for the operation and maintenance of the road.³⁰

²⁶ D. Donnelly, N. Ng & T. Leschk (2016) ‘Australia’, in B. Weniack & M. Saadi (eds) *The Public-Private Partnership Law Review*, Second Edition, London, Law Business Research, pp. 10-19.

²⁷ R. Millar and B. Schneiders (2016) ‘[Transurban: the making of a monster](#)’, *The Age*, 14 March; Transfield Holdings (2019) [Investments: Melbourne CityLink](#), Transfield website; M. Hore and M. Johnstone (2019) ‘[Transurban to toll CityLink for another decade](#)’, *Herald Sun*, 6 March.

²⁸ EastConnect (2009) [Eastlink: Melbourne’s Motorway Masterpiece](#), Dartford (UK), World Highways.

²⁹ (2011) [Horizon takeover of ConnectEast approved](#), *Sydney Morning Herald*, 27 September.

³⁰ Peninsula Link (2020) ‘[FAQs](#)’, Peninsula Link website.

East West Link

The terminated East West Link project, designed to join the Eastern Freeway and the Western Ring Road, was intended to be an availability-PPP. The plan was for a private contractor to build and operate the road with the state retaining the toll revenue, along with associated risks that demand for the road might be lower than expected. According to the project's business case, this delivery model was determined by a reluctance among private operators to risk actual demand not meeting traffic forecasts. This assessment is similar to the North East Link Project Business Case, discussed below. While a Victorian Auditor-General's inquiry into the project found the overall business case unsound, it described this procurement plan as 'robust'.³¹

West Gate Tunnel

Originally known as the Western Distributor, the West Gate Tunnel Project (WGTP), presently under construction, is a five-kilometre toll road linking the West Gate Freeway at Yarraville with the Port of Melbourne and CityLink at Docklands via twin tunnels. The project was first proposed by Transurban in March 2015. In December 2015, the Victorian Government released the Business Case announcing it would proceed with Transurban's proposal. In early 2017, the Victorian Government entered into the West Gate Tunnel Project Agreement with Transurban to design, finance, construct, toll and operate the tunnel until 2045. The *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019* aligns the WGTP and CityLink toll enforcement regimes, while an amendment to the *Melbourne City Concession Deed* extends Transurban's CityLink deed to 2045, in line with its WGTP concession.³²

Second reading speech

Treasurer Tim Pallas introduced the North East Link Bill 2020 in the Legislative Assembly on 4 March 2020 and tabled the second reading the following day. In the second reading speech, Mr Pallas described the project as 'the biggest road transport project in Victoria's history', expected to cut travel time by up to 35 minutes for 135,000 vehicles per day, create 10,000 jobs, take 15,000 trucks off local roads, and supply more than 25 kilometres of new and upgraded walking and cycling paths.³³

Of the arrangements governing North East Link, Mr Pallas said: 'Establishing the State Tolling Corporation as a Government entity will build the State's capability and capacity in relation to the operation and management of toll roads. The State Tolling Corporation will also be the direct recipient of toll revenues'.³⁴

³¹ Department of Transport (2013) *East West Link Business Case*, with input from the Department of Treasury and Finance (DTF), Department of Premier and Cabinet (DPC), Department of Planning and Community Development (DPCD), VicRoads and Public Transport Victoria (PTV), Melbourne, DoT; Victorian Auditor-General (2015) *East West Link Project*, Melbourne, Victorian Auditor-General, December, pp 22-29.

³² Inquiry and Advisory Committee (2017) *West Gate Tunnel Project*, Melbourne, Planning Panels Victoria, October; Victorian Parliamentary Budget Office (2019) *West Gate Tunnel Project and CityLink tolls*, Melbourne, Parliamentary Budget Office.

³³ T. Pallas, Treasurer (2020) 'Second reading speech: North East Link Bill 2020', *Debates*, Victoria, Legislative Assembly, 4 March, p. 806.

³⁴ *ibid.*

The Bill

The North East Link Bill 2020 is described in its explanatory memorandum as having five main purposes³⁵. These are:

- To establish the North East Link State Tolling Corporation.
- To provide the Corporation with powers to fix, collect and enforce tolls and administration fees on the North East Link, as well as the operation and management of the North East Link. In this respect, the Bill mirrors the provisions and reforms to toll enforcement adopted in the *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019*.
- To provide for the tabling and amendment of North East Link tolling agreements between the Victorian Government and the State Tolling Corporation, which authorise and regulate tolling on the North East Link. Parliament will have oversight of these agreements, which may be revoked by a resolution of both Houses.
- To amend and modify the operation of the Road Management Act 2004 in relation to the North East Link road, which includes excluding the North East Link State Tolling Corporation from the definition of State road authority.
- To make several minor amendments to the *EastLink Project Act 2004*, the *Melbourne City Link Act 1995*, and the *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019*, that aligns the regulation and practices of tollways in Victoria. To make the North East Link State Tolling Corporation operational, the Bill also amends the *Accident Towing Services Act 2017*, the *Borrowing and Investment Powers Act 2014*, the *Children Youth and Families Act 2005*, the *Criminal Procedure Act 2009*, the *Fines Reform Act 2014*, the *Heavy Vehicle National Law Application Act 2013*, the *Infringements Act 2005*, the *Road Safety Act 1986*, and the *Transport Integration Act 2010*.

North East Link State Tolling Corporation

The centrepiece of the Bill is the creation of a new state-owned corporation, the North East Link State Tolling Corporation. As noted above and outlined below, the establishment of a government-owned entity marks a significant break in the management of Melbourne's toll roads, which for the past 25 years have been levied and operated by private firms as user-charge PPPs.

In announcing the plan, the Victorian Government said the North East Link will be the first road in Victoria whose tolling rights are held by the state government.³⁶ Minister for Transport Infrastructure, Jacinta Allan, said the government wants to ensure 'that the tolling revenue that is raised by motorists and trucks using the new North East Link project ... be reinvested back into the road'.³⁷ Toll revenue 'will not fund all of the project', the Minister said, but 'will fund part of the project', contributing towards both the building of the road and its ongoing maintenance.³⁸ *The Age* reports that the revenue stream generated by tolls will contribute 22 per cent of the project's funding.³⁹

³⁵ Explanatory Memorandum, North East Link Bill 2020, p. 1.

³⁶ J. Allen, Minister for Transport Infrastructure (2020) [A new tolling structure to get on with North East Link](#), media release, 4 March.

³⁷ Kieran Rooney (2020) [State keeps tolls at last: North East Link charges help pay for the project](#), *Herald Sun*, 5 March.

³⁸ *ibid.*

³⁹ T. Jacks & B. Priess (2020) *op. cit.*

Toll prices have not yet been set—the Bill provides powers to the Corporation to do this. The Minister told *The Age* they would be ‘comparable’ to current tolls on CityLink and EastLink. The lifetime of the tolling arrangement would be the decision of future governments, the Minister said.⁴⁰

Plans for a state-owned entity to toll the North East Link were first outlined in the North East Link Authority’s Business Case, released in May 2018 (see below).

As with other government-owned corporations, the Bill establishes the State Tolling Corporation as a body corporate with an official seal, stipulates it may acquire, hold and dispose of real and personal property, can sue and be sued, and certifies that all amounts collected by the Corporation, including tolls, administration fees, and any other fees or charges, are the personal property of the Corporation.⁴¹ The Bill provides for the functions of the Corporation, its governance structure including a board of directors, chief executive officer and other employees, its corporate duties relating to its capital outlay and repayment, reporting to relevant ministers and annual reports, procedures with Parliament for setting and tabling tolls, and the regulation of toll collection and enforcement. The Bill also allows for the name of the corporation to be changed. The functions and powers of the Corporation are variously regulated by the *Road Management Act 2004*, the *Transport Integration Act 2010* and the *Major Transport Project Facilitation Act 2009*.⁴²

The State Tolling Corporation is distinct from the statutory bodies governments have tended to establish to procure, manage and deliver major road infrastructure projects, in that it functions as a contractor to deliver and operate a specific aspect of the project, rather than a statutory authority overseeing the project’s overall delivery. The North East Link road project was initiated under the purview of the North East Link Authority, established in December 2016, before that agency became the North East Link Project, a dedicated team working within the ambit of the Major Transport Infrastructure Authority. The Authority is a new administrative office established in January 2019 to oversee the procurement and management of multiple transport projects.⁴³

Previously, the Melbourne City Link Authority, legislated for in 1994, procured the City Link Project, while the procurement and contracts for EastLink and Peninsula Link were awarded and managed during the delivery phase by the Linking Melbourne Authority (legislated for in 2002 as the Southern and Eastern Integrated Transport Authority) and are now administered by EastConnect and VicRoads, respectively. The Linking Melbourne Authority was disbanded in 2015 after the termination of the East West Link project.⁴⁴

⁴⁰ B. Preiss (2020) [State to set up new toll road company for North East Link](#), *The Age*, 4 March; *North East Link Bill 2020*, clause 58.

⁴¹ *Bill*, Part 2, clause 8.

⁴² It is also regulated by the *Borrowing and Investment Powers Act 1987*, and the *Public Administration Act 2004*; *Financial Management Act 1994*. Tolling enforcement is regulated by the *Surveillance Devices Act 1999*; *Infringements Act 2006*; *Fines Reform Act 2014*; and *Road Safety Act 1986*.

⁴³ These include the Level Crossing Removal Project, Major Roads Victoria, North East Link Project, Rail Projects Victoria and West Gate Tunnel Project. Department of Transport (2019) [Annual Report 2018-19](#), Melbourne, DoT, p. 10; Department of Economic Development, Jobs, Transport and Resources (2017) [Annual Report 2016-17](#), Melbourne, DEDJTR, p. 6.

⁴⁴ T. Pallas (2015) [Linking Melbourne Authority to be disbanded](#), media release, 7 January.

Business case for a state-owned tolling corporation

The reasons to establish the North East State Tolling Corporation have been outlined in the North East Link Business Case, delivered in May 2018 by the then-named North East Link Authority.⁴⁵ While the Business Case offers a comprehensive assessment of the entire project, this Bill Brief is exclusively concerned with those arguments made for a state-owned tolling corporation. As summarised below, the Business Case found that, in contrast to the earlier CityLink and EastLink projects, there is very limited private sector appetite for bidding on ‘greenfield’ (unproven) toll revenues. This reluctance is informed both by a post-GFC business context and recent toll road failures in Sydney and Brisbane. It therefore recommended the State retain toll revenues for at least the initial period after the road’s opening, establishing the viability of the toll revenue, and then potentially seek to sell the Corporation and tolling rights to the private sector later.

Toll roads: key assumptions

Having identified the North East Link as a tolled road, an early commercial decision within the procurement process was whether government would gain greater value from selling the toll revenue and its associated risks upfront to a private partner, or by retaining that revenue and potentially selling the tolling rights later. The value of the toll revenue at market depends upon the government and private sectors’ assessments of the risks that the actual usage of the road will meet projected traffic forecasts.⁴⁶

Importantly, the Business Case stressed that tolls are not relevant to determining the overall economic benefits that justify building a road, which instead relate to travel time, safety and vehicle operating cost savings. Tolling has an indirect impact on an economic evaluation through its impact on traffic volumes (that is, an individual’s choice to use the road), which flows through to travel time and other savings.

Market scoping and solutions

In determining the most appropriate tolling regime for the North East Link project, the NELA conducted a market sounding process involving 22 domestic and international construction firms, toll road operators and financial sponsors and debt and equity providers. The NELA considered a range of procurement options, including:

- State retains toll revenues (long-term)
- State retains toll revenues (ramp-up period only—two to three years after construction)
- State underwrites toll revenue for the private sector using a range of approaches, including cap and collar toll revenue mechanism, variable concession length, regulated utility model, state funding or liquidity support, and State ‘equity’ sell down
- State sells toll revenue risk to the private sector.

The market-scoping process established several key constraints to the procurement options. Most significantly, the financial failure of several traditional user-paid PPP road projects in recent years have sapped market appetite for greenfield tolling projects. These failed projects included:

⁴⁵ Department of Economic Development, Jobs, Transport and Resources (2018) *Annual Report 2017-18*, Melbourne, DEDJTR, p. 22.

⁴⁶ North East Link Authority (2018) *North East Link Business Case, Section 4: Taking Action*, Melbourne: Victorian Government, pp. 11-12.

- **Cross City Tunnel**, Sydney, which has been sold twice since opening in 2005. Initial projections expected 70,000 motorists per day would use the tunnel, yet it attracted only about 20,000 users per day in its first year, forcing the builder-owner, CrossCity Motorways, into receivership in December 2006. The tunnel was sold a second time in 2014 to Transurban, when traffic volume was still only about 40,000 vehicles per day.⁴⁷
- **Lane Cove Tunnel**, Sydney, which was sold by builder-operator Connector Motorways in 2010 for \$630 million (having cost \$1 billion to build) to Transurban. Connector Motorways went into receivership after failing to meet debt repayments because traffic volumes had not met the original forecast of 100,000 vehicles per day.⁴⁸
- **Clem7 Tunnel**, Brisbane, was the city's first privately-financed inner city toll road, built and operated by RiverCity Motorway Limited. Building commenced in 2006 and the tunnel opened in 2010. In 2013, the tunnel was sold to the then-state-owned Queensland Motorways for \$618 million, about one-fifth of what it cost RiverCity to build the road. Road usage was about half the forecast traffic volume when the tunnel was sold. In late 2013, Queensland Motorways was sold to a consortium in which Transurban has a majority share.⁴⁹
- **Airport Link**, Brisbane, was purchased by Transurban from builder-owner-operator BrisConnections for \$2 billion in 2015, almost 60 per cent less than the \$4.8 billion it cost to build the road. Initial forecasts projected 170,000 vehicles a day using the road within six months of opening; however, fewer than 50,000 vehicles were using the tollway when BrisConnections went into receivership in 2013.⁵⁰

More generally, the market sounding process found that a post-Global Financial Crisis business context continues to minimise corporate appetite for risk. The Business Case observed: 'Accordingly, the project's procurement options developed in the context of a PPP market with a much more limited appetite for greenfield toll revenues than it has had historically'.⁵¹

This assessment echoed the 2013 East West Link Business Case, which found the private sector was reluctant to carry the demand risk of an untested greenfield toll road in the wake of the Sydney and Brisbane failures.⁵² In 2017, a PwC report noted a general change in attitudes towards risk management of public infrastructure since the GFC:

Australian governments have long realised that transferring as much risk as possible to the private sector doesn't provide the best value for money outcome to government, at times when private sector bidders are fully pricing the risks. Rather, when risks are being fully priced by bidders, the government achieves a better value for money outcome if it retains those risks that it can manage for a lower cost than the price the private sector will charge for taking the risk.⁵³

⁴⁷ J. Saulwick (2013) 'Cross City Tunnel in administration'. *Sydney Morning Herald*, 13 September; N. Walsh (2013) 'Sydney's Cross City Tunnel enters voluntary administration, blames Government for financial woes', *ABC News*, 14 September; AAP (2014) 'Cross City tunnel sold to Transurban for \$475m', *Sydney Morning Herald*, 27 March.

⁴⁸ ABC (2010) 'Lane Cove Tunnel sold for \$630 million', *ABC News*, 10 May.

⁴⁹ M. O'Sullivan (2013) 'Turning \$3b into \$618m: Brisbane's failed Clem7 tunnel sold off', *Sydney Morning Herald*, 27 September; A. Edwards (2014) 'Queensland Motorways sells for more than \$7b to private consortium', *ABC News*, 25 April; C. Atfield (2017) 'Gap between Brisbane tunnel expectation and reality continues to widen', *Brisbane Times*, 9 March.

⁵⁰ S. Letts, *Brisbane's troubled Airportlink sold for \$2.8 billion less than construction cost*, *ABC News*, 24 November.

⁵¹ North East Link Authority (2018) op. cit., pp. 11-2.

⁵² Department of Transport (2013) op. cit., pp. 176-199.

⁵³ PwC (2017) *Reimagining Public Private Partnerships*, Sydney, PricewaterhouseCoopers, p. 23.

The Business Plan concluded that the value of future toll revenue is likely to be optimised when it has been ‘substantially de-risked—that is, it can be forecast with sufficient accuracy either because there is an established traffic history or because the State has provided some form of protection in the form of a floor’.⁵⁴ Monetising proven toll revenues after the road is open, the Business Case said, is likely to achieve better value and attract a larger pool of bidders than asking a narrower field of PPP bidders to value upfront, unproven toll revenues as part of a PPP bid where construction costs are a dominant competitive factor. In such circumstances, bidders would be expected to apply a significant discount or risk premium to unproven revenues, greatly diminishing the return for government.⁵⁵

Accordingly, the Business Plan endorsed an availability-PPP that separates the toll entity from the consortium that builds and operates the road for two reasons. First, to establish clear lines of accountability in delivering the project; and second, to offer flexibility regarding the monetisation and divestment options in the future, once toll revenues have matured.⁵⁶

Government risk

The Business Case acknowledges that while retaining toll revenues has the greater potential to maximise the value of the toll asset to government, it also means the State remains exposed to the risk of toll revenues being lower than forecast, ‘which could result in a funding deficit for the State’.⁵⁷ In this instance, it is possible that the value expected to be created by selling the toll asset to the private sector later may be offset or diminished by poor traffic performance up to the point of transfer. The Business Case notes that the toll revenue forecasting risk is particularly high in the ramp-up phase during the first 12–24 months of operation. As recent private sectors experiences have shown, actual traffic volumes have ranged from 23 per cent to 45 per cent lower than the forecasts for the first year of operations.⁵⁸

The Business Case remains positive:

... to mitigate its own traffic forecasting risk, the State has access to sophisticated traffic forecasting capabilities, both internal to Transport for Victoria and externally via its independent traffic forecasters. In addition, the State also has broader transport network behaviour information and data that can support forecasting; as such, it is in a position to forecast the potential traffic on North East Link more accurately than the broader market.⁵⁹

Finally, the Business Case also notes that given the project will be delivered as an availability-PPP, the interests of the state tolling corporation and the PPP company are not totally aligned—more traffic means more revenue for the state, but additional operational and maintenance costs for the PPP company. The Business Case states that a preliminary scoping analysis has been conducted regarding how best to align these interests through a range of performance incentives and contractual frameworks.⁶⁰

⁵⁴ North East Link Authority (2018) op. cit., p. 11-16.

⁵⁵ *ibid.*, pp. 11-27,28, 29.

⁵⁶ *ibid.*

⁵⁷ *ibid.* pp. 11-19.

⁵⁸ North East Link Authority (2019) *North East Link Business Case: Appendix S, Procurement Options Assessment*, Melbourne, Victorian Government, pp. S-33.

⁵⁹ North East Link Authority (2018) op. cit., pp. 11-19.

⁶⁰ *ibid.*, pp. 11.25, 11.26.

Responses

Inquiry and Advisory Committee

During the Inquiry and Advisory Committee's assessment of the environmental effects of the North East Link project, several submissions were made scrutinising the traffic forecasts used in the project's Business Case.

The most explicit concerns were tabled by economist Terry Rawnsley, Principal and Partner of SGS Economic & Planning, in his Net Community Benefit Review prepared on behalf of the Banyule, Boroondara and Whitehorse city councils. According to Mr Rawnsley, the benefit cost ratio (BCR) projected by the North East Link Business Case, which is estimated to be 1.25—meaning for every \$1 invested, \$1.25 is made in community benefits—was calculated using the same standardised approach for assessing toll road projects as was used on the four recent failed projects in Sydney and Brisbane. These projects also modelled a net community benefit, before traffic volumes proved to be up to less than half of what was estimated for the benefit-cost-ratio analysis. Subsequently, these projects faced 'rapid financial collapse'.⁶¹

Mr Rawnsley said the North East Link shares similarities to these failed projects in terms of not offering large travel time savings and competing with a free road as an alternative. Given these circumstances, together with other questionable economic assumptions in the BCR, Mr Rawnsley concluded 'it is very possible that there is no net community benefit from the North East Link'.⁶² As noted, the Business Case discusses the same failed toll roads examined by Mr Rawnsley. Mr Rawnsley does not discuss the merits or demerits of how a state-owned tolling entity would offset these risks.⁶³

Media and expert commentary

Media and expert commentary has largely focused on the distinctiveness of the state-owned model, the likely sale of the corporation, and concerns that the failure to find a bidder raises doubts over the project's viability.

At the time of the legislation's introduction, the *Australian Financial Review* noted the striking differences between Victoria's and New South Wales' approach to major infrastructure procurement. As Mr Pallas introduced the Bill into Parliament to establish Victoria's first government-owned tolling company, his NSW counterpart, Treasurer Dominic Perrottet, was looking to sell the state's remaining stake in the \$16 billion WestConnex road project.⁶⁴

Infrastructure lawyer David Donnelly, from Allens law firm, has been quoted several times saying the likely strategy for establishing the Corporation is a future sale after the road opens in 2027. He told the *Australian Financial Review* this approach exposes government to risks that traffic projections and revenue streams are overestimated, but also means the government is more likely to get full value for the tolling rights than if they were sold upfront. Speaking to *The Age*, he said: 'By separating the tolling

⁶¹ Mr Rawnsley's report summarises: Brisbane Airport Link – Forecasted opening traffic 136,000 vehicles per day, actual traffic 53,000 vehicles; Clem7 Tunnel in Brisbane – Forecasted opening traffic 126,000 vehicles per day, actual traffic 53,000 vehicles; Lane Cove in Sydney – Forecasted opening traffic 115,000 vehicles per day, actual traffic 58,000 vehicles; Cross City Tunnel in Sydney – Forecasted opening traffic 90,000 vehicles per day, actual traffic 34,000 vehicles.

⁶² T. Rawnsley (2019) *North East Link Project – New Community Benefit Review*. SGS Economics Planning.

⁶³ For a discussion, see, T. Jacks (2019) 'NE Link financial warning', *The Age*, 28 July.

⁶⁴ T. Burton (2020) 'Tale of two cities as road tolls first for Victoria', *Australian Financial Review*, 9 March.

rights ... it gives them [the Victorian Government] the opportunity to build up some traffic data and prove demand so that hopefully those rights are more valuable than they would have been'.⁶⁵

John Pesutto, Senior Fellow at the Melbourne School of Government and former shadow attorney-general, in a *Herald Sun* opinion piece, criticised the plan to establish a state-owned tolling corporation on three fronts. First, at a 'superficial level', he suggested it simply meant to 'anticipate and assuage' public antipathy towards tolling titans like Transurban. Second, and more significantly, he echoed Mr Rawnsley's concerns that overestimated traffic volumes would expose the government to raising tolls. Third, Mr Pesutto pre-empted that the toll rights will be sold anyway, speculating it may lose out on a better deal that may be struck if toll rights formed part of the contract sold to private bidders now (a position not supported by the Business Case). Mr Pesutto further argued that threats by construction firm Jon Holland to pull its bid from the project in its dispute with the Victorian Government over risk allocation, indicates 'issues of risk ... have become so intractable [on this project] bidders would rather withdraw than secure the tender'.⁶⁶

In an editorial, the *Herald Sun* agreed with the Minister for Transport Infrastructure that 'a government body to collect the tolls will at least keep that revenue in public hands to help pay massive North East Link construction and maintenance costs', but acknowledged that 'questions about Labor's handling of the gigantic suite of projects now being rolled out to meet rampant population growth are also beginning to mount'. The newspaper argued 'toll settings should reflect a non-profit approach to recoup construction costs and must not become a Trojan horse to foist tolls on other, new arterial builds [sic] without public mandate'.⁶⁷

Industry

Infrastructure Australia elevated the North East Link as a High Priority Project in October 2018, giving a 'green light' to the project's business case released earlier that year.⁶⁸ Being included under this category on the Infrastructure Priority List deems the project a nationally significant investment that Australian needs over the next 15 years.

While Transurban, the owner of CityLink, ruled itself out of potentially building North East Link in February 2019, at the time the company's chief executive Scott Charlton said Transurban would be open to 'look at how we can support the government through operations or tolling' in the future.⁶⁹

Party responses

Responding to the government's legislation for a state tolling corporation, the Shadow Minister for Transport Infrastructure, David Davis, raised concerns over the government's ability to manage major projects. He was quoted in the *Herald Sun* saying: 'Labor botched Myki, wasting hundreds of millions of Victorian taxpayers' money. Why would Victorians trust Labor to set up another new toll company without stuffing it up?'.⁷⁰ Earlier in the year, Mr Davis issued a media release that drew attention to Infrastructure Australia's listing of East West Link as a 'high priority' project to be completed in the

⁶⁵ P. Hatch (2019) op. cit.

⁶⁶ J. Pesutto (2020) 'Infrastructure shadows lengthen', *Herald Sun*, 10 March.

⁶⁷ (2020) 'Wary of Trojan horse', *Herald Sun*, 6 March.

⁶⁸ Infrastructure Australia (2018) *Infrastructure Australia gives green light to North East Link business case*, media release, 29 October. See also, Infrastructure Australia (2018) *Project Evaluation Summary: North East Link*, Infrastructure Australia website.

⁶⁹ P. Hatch (2019) op. cit.

⁷⁰ K. Rooney (2020) op. cit.

next five years, as opposed to the North East Link, listed as a priority to be delivered in the next ten years.⁷¹

Rod Barton MLC, of the Transport Matters Party, has raised questions about possible slight modifications to the route to save the relocation of Bulleen businesses.⁷²

The Victorian Greens have called for the scrapping of the North East Link in favour of building a Melbourne Metro 2 Rail Project.⁷³ In December 2016, a Parliamentary Budget Office policy costing, requested by the Greens, estimated that cancelling the North East Link would increase the state's budgeted net position by almost \$15 billion.⁷⁴

The Nationals have drawn attention to delayed and underfunded roads in Gippsland, which are estimated to be a fraction of the cost of the North East Link.⁷⁵

The Liberal Party, Transport Matters Party and the Victorian Greens have all expressed concern over the North East Link project in relation to its Environmental Effects Statement.⁷⁶

Other jurisdictions

Australian toll roads

Victoria, New South Wales and Queensland are the only Australian states with toll roads. All have been built as public-private partnerships, with the private firm retaining control of the toll revenue and risk. As discussed above, and reflected below, not all these operations have been successful, with several private operators failing in recent years and selling to a new owner. Transurban now has a monopoly on toll roads in Australia, with a majority ownership of 14 of the 19 toll roads.

⁷¹ D. Davis (2020) *Davis – Infrastructure Australia is talking, is Andrews listening?* media release, 26 February.

⁷² R. Barton (date unknown) *Rework the North East Link to save Bulleen businesses and 1200 jobs says MP*, media release.

⁷³ S. Hibbins (2019) *Scrap mega toll roads, build Metro 2 instead: Greens*, media release, 25 February; S. Ratnam (2018) *Budget an opportunity to learn the mistakes of past privatisation*, media release, 10 April.

⁷⁴ Victorian Parliamentary Budget Office (2019) *Cancelling the North East Link*, Melbourne, Parliamentary Budget Office.

⁷⁵ D. O'Brien (2019) *Gippsland road projects delayed, unfunded by city-centric Labor*, media release, 31 May.

⁷⁶ S. Hibbins (2019) *North East Link approval highlights Victoria's broken environmental laws*, media release, 6 December; R. Barton (2019) *North East Link – Dismay at early works, community hopes rest on recommendations*, media release, 30 October; R. Barton (2019) *North East Link "Lawyering Up" for EES panel hearings under fire*, media release, 18 June; M. O'Brien, Leader of the Opposition (2019) *Daniel Andrews ignores his own EES*, media release, 31 May.

Table 1: Australian toll roads

State	Name	Length (km)	Original Owner ⁷⁷	Majority Owner	Operator ⁷⁸	Under concession until
VIC	CityLink	22.0	Transurban	Transurban	Transurban	2045
	EastLink	39.0	Connect East Pty Ltd.	Horizon Roads ⁷⁹	ConnectEast Group	2043
	West Gate Tunnel (project)	17	Transurban ⁸⁰	Transurban	Transurban	2045
NSW	City Cross Tunnel	2.1	CCT Motorways ⁸¹	Transurban (100%)	Transurban	2035
	M1 (Eastern Distributer)	1.7	Airport Motorway Pty Ltd	Transurban (75.15%)	Transurban	2048
	M2 (Hills)	21	Hills Motorway Pty Ltd	Transurban (100%)	Transurban	2048
	Lane Cove Tunnel	3.6	Connector Motorways ⁸²	Transurban (100%)	Transurban	2048
	M5 (South West)	22	Interlink Roads Pty Ltd	Transurban (50%)	Transurban	2026

⁷⁷ Unless otherwise stated, the original owner is taken from: Bureau of Infrastructure, Transport and Regional Economics, *Toll Roads in Australia*, information sheet, Canberra, Department of Infrastructure and Regional Development.

⁷⁸ All Transurban operator information is taken from the Transurban [website](#).

⁷⁹ ConnectEast is now owned by Horizon Roads. It was purchased in 2011 for \$2.17 billion. Horizon Roads is an investment vehicle managed by infrastructure investment manager CP2 who already owned or controlled 35 per cent of ConnectEast. Source: (2011) [Horizon takeover of ConnectEast approved](#), *Sydney Morning Herald*, 27 September.

⁸⁰ Transurban (2020) [‘West Gate Tunnel’](#), Transurban website.

⁸¹ Cross City Motorway purchased the tunnel in 2007 after the original owner collapsed due to lower usage numbers. City Cross Motorways is owned by the Bank of Scotland, EISER Infrastructure and Leighton Contractors. The tunnel was then purchased by Transurban in 2014. Source: N. Walsh (2013) op. cit.; AAP (2014) [‘Cross City tunnel sold to Transurban for \\$475m’](#), *Sydney Morning Herald*, 27 March.

⁸² Transurban purchased the Lane Cove Tunnel after Connector Motorways was unable to meet debt repayments as traffic volumes did not meet the original forecasts of 100,000 per day. Source: (2010) [‘Lane Cove Tunnel sold for \\$630 million’](#), *ABC News*, 10 May.

	M7 (Westlink)	40	Western Sydney Orbital Pty Ltd	Transurban (50%)	Transurban	2048
	New M4	7.5		Transurban (25.5%)	Transurban	2060
	North Connex (under construction)	9	Transurban (50%) ⁸³			
	WestConnex (under construction) Consists of: <ul style="list-style-type: none"> ▪ M4 East ▪ New M5 ▪ M4-M5 link 		Sydney Transport Partners ⁸⁴ (51%)			
QLD	Airport Link M7	6.7	BrisConnections ⁸⁵	Transurban Queensland ⁸⁶	Transurban	2053
	Clem7	6.8	RiverCity Motorway ⁸⁷	Transurban Queensland	Transurban	2051

⁸³ Transurban (2020) 'Sydney', Transurban website.

⁸⁴ At time of purchase, Sydney Transport Partners was a consortium comprising: Transurban (50%), AustralianSuper (20.5%), Canadian Pension Plan Investment Board (20.5%) and Tawreed Investments (9%). Source: J. Saulwick, P. Hatch & L. Visentin (2018) 'Transurban wins bid for majority control of Sydney's WestConnex', *Sydney Morning Herald*, 31 August.

⁸⁵ Transurban purchased the AirportLink from BrisConnections in 2015 for \$2 billion. Source: S. Letts (2015) *Brisbane's troubled Airportlink sold for \$2.8 billion less than construction cost*, *ABC News*, 24 November.

⁸⁶ Transurban Queensland is comprised of Transurban (62.5%), AustralianSuper (25%) and Tawreed Investments, wholly owned subsidiary of the Abu Dhabi Investment Authority (12.5%). In 2014, they purchased Queensland Motorways for \$7.057 billion. Queensland Motorways owned Gateway and Logan motorways, Go Between Bridge, Clem7 and Legacy Way tunnels. Source: Transurban (2018), *Inquiry into the operations of toll roads in Queensland: Transurban Queensland submission*, Transport and Public Works Committee, 7 August.

⁸⁷ In 2013, Clem7 was sold to Queensland Motorways for \$618 million. At the time, Queensland Motorways, which is owned by the Queensland Investment Corporation controlled most of Brisbane's toll roads including the Gateway and Logan motorways, and Legacy Way. Source: M. O'Sullivan (2013), 'Turning \$3b into \$618m: Brisbane's

Gateway Motorway	23.1	Queensland Investment Corp.	Transurban Queensland	Transurban	2051
Logan Motorway	38.7	Logan Motorways Pty Ltd	Transurban Queensland	Transurban	2051
Toowoomba Bypass	41	Department of Transport and Main Roads ⁸⁸	Department of Transport and Main Roads	Transurban on behalf of the Department of Transport and Main Roads	N/A
Go Between Bridge	300m	Brisbane City Council	Transurban Queensland	Transurban	2063
Legacy Way	4.6	Brisbane city Council	Transurban Queensland	Transurban	2065

[failed Clem7 tunnel sold off](#), *Sydney Morning Herald*, 27 September. Queensland Motorways was sold to a consortium comprising Transurban, AustralianSuper and Tawreed Investments in 2014. Source: A. Edwards (2014) [‘Queensland Motorways sells for more than \\$7b to private consortium’](#), *ABC News*, 25 April.

⁸⁸ Transurban (2020) [‘Brisbane’](#), Transurban website; Department of transport and Main Roads (2020) [‘Toowoomba Bypass’](#), DTMR website.

International toll roads

Victoria's plan to operate a state-owned tolling corporation is also largely distinct from the tollways operated around the world, which remain, or have become, privatised over the past 30 years.

United Kingdom

While England has a prolific history of establishing toll roads, the collection of tolls on modern roads has been limited. The government has the authority to implement a toll on any road that has received consent for construction under the *Planning Act 2008*. Any revenue generated from tolls goes to the highway authority and must be used for the road network or related transportation measures. Local authorities may introduce tolls on roads, but only if there is a local transport plan in place to achieve such aims as reducing congestion or preventing traffic growth. The London congestion charge implemented in 2008 was introduced under such provisions. Tolls by private companies are regulated by the *New Roads and Street Works Act 1991*. This Act provides that in return for financing, constructing, building, or maintaining a road, the operator may charge a toll. These powers have barely been used. Only one section of the M6 corridor is subject to tolls, a section of the road built, owned and operated by Midland Expressway Ltd, under a 53-year concession.⁸⁹

United States

The US has had a long history of toll roads, including an infrastructure boom before World War II financed largely by tolls. However, legislation in 1956 for a national highway system was based on tax funding.

More recently, because of a growing infrastructure deficit and a perceived shortage of public funding, there is increasing interest in using tolls to finance road construction, with a large number of federal demonstration and pilot programs. For example, in 2005, the state of Indiana sold a 75-year tolling concession on the East-West Toll Road in order to raise funds for further road building. It was purchased through a joint venture between Cintra, a Spanish construction firm, and Macquarie Atlas Roads, for US\$3.8 billion. This was \$1 billion more than the next bid and proved to be based on unrealistic traffic forecasts.⁹⁰

France

Many French highways are funded by tolls and are managed by private companies under a concession system. Article L122-4 of the French Code of the Road System states that 'the use of highways is free in principle'; however, it also states that the State may install toll systems to help finance the construction, management, maintenance and development of that infrastructure.⁹¹ The *Caisse nationale des autoroutes* (CAN) (National Highway Fund) facilitates the financing of highways, and gives out loans for the purpose of construction and managing highways. In 2011, approximately 75 per cent of French highways had concessions.

⁸⁹ C. Feikert-Ahalt (2014) 'England and Wales' in The Law Library of Congress, Global Legal Research Center, *National Funding of Road Infrastructure*, Washington, Library of Congress, pp. 31-38; L. Burcher (2017) 'Road Tolls', *Briefing Paper*, no. SN442, London, House of Commons Library.

⁹⁰ Senate Economics Reference Committee (2017) *Toll roads: issues of building, financing and charging*, final report, Canberra, The Committee, September, p. 11; US Federal Highway Administration (2017) *Toll facilities in the United States*, Washington, Office of Highway Policy Information.

⁹¹ N. Boring (2014) 'France', in The Law Library of Congress, Global Legal Research Center, *National Funding of Road Infrastructure*, Washington, Library of Congress, pp. 40, 41.

Japan

The expressways system across Japan is largely tolled. It was intended that the system become toll free when the national expressway was completed, and debts repaid. From the 1950s, highways were constructed by statutory highway corporations which accumulated large debts and were reorganised in the early 2000s, with a government body to toll the existing assets and six private companies to build new roads and collect tolls. These private companies pay the government a lease fee which depends on the volume of traffic, so the risk remains with the government.⁹²

Italy

Italy has an extensive toll road network, which has been constructed and operated almost exclusively by semi-public companies with concession grants from *Arienda Nazionale Autonoma delle Strade* (ANAS). Most of the toll roads are in the more industrialised north. In the early 1990s the government privatised these companies.⁹³ In 2010, the toll system for federal highways and motorways previously managed by ANAS was changed from a concessionaire-operated toll system to a free-flow collection system. Concessionaires have been required to pay an annual fee to the state.

China

Tolling has been an important feature of the massive expansion of China's highway network in recent decades. Only a small share of funding has been provided by the central government for building the road network. Tolling revenue is required by law to be limited to the building and operation of highways. The Regulations on Administration of Toll Roads states tolls may be collected on two kinds of highway. The first are highways built by local governments that have borrowed from enterprises and individuals. These roads can be tolled for up to 15 years, with an extension to 20 years if in a western or central province. The second type are commercially operated highways constructed with investments provided by domestic or foreign firms. These roads can be tolled for up to 25 years, with an extension to 30 years in a central or western province.⁹⁴

⁹² S. Umeda (2014) 'Japan', in The Law Library of Congress, Global Legal Research Center *National Funding of Road Infrastructure*, Washington, Library of Congress, p. 60.

⁹³ The World Bank, & Ministry of Construction Japan (1999), [Asian Toll Road Development Program Review of Recent Toll Road Experience in Selected Countries and Preliminary Tool Kit for Toll Road Development](#), draft final report; D. Figueroa (2014) 'Italy', in The Law Library of Congress, Global Legal Research Center *National Funding of Road Infrastructure*, Washington, Library of Congress,

⁹⁴ L. Zhang (2014) 'China', in The Law Library of Congress, Global Legal Research Center *National Funding of Road Infrastructure*, Washington, Library of Congress, p. 25.

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Relevant legislation

Victoria

The North East Link Bill 2020 seeks to amend the following Acts:

- *Accident Towing Services Act 2007*
- *Borrowing and Investment Powers Act 1987*
- *Children Youth and Families Act 2005*
- *Criminal Procedure Act 2009*
- *EastLink Project Act 2004*
- *Fines Reform Act 2014*
- *Heavy Vehicle National Law Application Act 2013*
- *Infringements Act 2006*
- *Major Transport Projects Facilitation Act 2009*
- *Melbourne City Link Act 1995*
- *Road Management Act 2004*
- *Road Safety Act 1986*
- *Transport Integration Act 2010*
- *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019*.

Other jurisdictions

- *Commonwealth Act 1904 (Cth)*
- *NSW Amendment Act 2001 (NSW)*
- *Heritage Regulation 2006 (ACT)*

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