



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.



New South Wales

Roads Amendment (Transparent Tolling) Bill 2016

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New South Wales

Roads Amendment (Transparent Tolling) Bill 2016

No. , 2016

A Bill for

An Act to amend the *Roads Act 1993* to impose requirements relating to the scrutiny and transparency of agreements or orders that set tolls and charges in connection with tollways, bridges, tunnels or road-ferries.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Roads Amendment (Transparent Tolling) Act 2016*.

3

2 Commencement

4

This Act commences on the day that is 3 months after the date of assent to this Act.

5

Schedule 1	Amendment of Roads Act 1993 No 33	1
[1] Part 13, Division 2 Tolls and charges for tollways, bridges, tunnels and road-ferries		2
Insert after the heading to the Division:		3
Note. This Division contains provisions that:		4
(a) give RMS and roads authorities the power to fix, levy and collect certain tolls and charges by making orders, and		5 6
(b) provide for the scrutiny and transparency of those orders by requiring them to be approved by the Minister and published in the Gazette and by requiring further information about tolling under them to be made publicly available.		7 8 9
Part 13A provides for the further scrutiny and transparency of those orders by:		10
(a) preventing them from being made unless they have been investigated by IPART and found to be in the public interest, and		11 12
(b) requiring the Auditor-General to conduct a performance audit in relation to them after they are made.		13 14
[2] Section 213 Tolls and charges for tollways		15
Insert after section 213 (1):		16
(1A) RMS is to fix the amount of those tolls and charges, with the approval of the Minister, by order published in the Gazette.		17 18
(1B) An order cannot be made under this section if it results in an increase in a toll or charge, since the toll or charge was last fixed, that exceeds the proportionate increase in the Consumer Price Index over the same period.		19 20 21
[3] Section 214 Tolls and charges for bridges, tunnels and road-ferries		22
Omit “, with the approval of the Minister,” from section 214 (2).		23
[4] Section 214 (2A) and (2B)		24
Insert after section 214 (2):		25
(2A) RMS is to fix the amount of those tolls and charges, with the approval of the Minister, by order published in the Gazette.		26 27
(2B) An order cannot be made under this section if it results in an increase in a toll or charge, since the toll or charge was last fixed, that exceeds the proportionate increase in the Consumer Price Index over the same period.		28 29 30
[5] Section 214 (6)		31
Omit the subsection.		32
[6] Section 215 Tolls and charges for the Sydney Harbour Bridge		33
Omit the section.		34
[7] Section 215A		35
Insert before section 216:		36
215A Publication by RMS of information about RMS tolling orders		37
(1) RMS must ensure that information is published that describes the way in which the public and consumer interest is protected by any order made by RMS under section 213 or 214.		38 39 40
(2) In particular, if an order provides for differential tolling for heavy vehicles, the methodology to justify that differential tolling must be published.		41 42

(3)	The information required by this section must be made publicly available free of charge by publishing it on a website maintained by RMS on or before the date on which the order commences.	1 2 3
(4)	This section is in addition to any other obligations under the <i>Government Information (Public Access) Act 2009</i> .	4 5
[8]	Section 216 Roads authorities may levy tolls on road-ferries	6
	Insert after section 216 (2):	7
(2A)	The appropriate roads authority is to fix the amount of those tolls and charges, with the approval of the Minister, by order published in the Gazette.	8 9
(2B)	An order cannot be made under this section if it results in an increase in a toll or charge, since the toll or charge was last fixed, that exceeds the proportionate increase in the Consumer Price Index over the same period.	10 11 12
[9]	Section 216 (5)–(7)	13
	Insert after section 216 (4):	14
(5)	A roads authority must ensure that information is published that describes the way in which the public and consumer interest is protected by an order made by the authority under this section.	15 16 17
(6)	In particular, if an order provides for differential tolling for heavy vehicles, the methodology to justify that differential tolling must be published by the appropriate roads authority.	18 19 20
(7)	The information required by this section must be made publicly available free of charge by publishing it on a website maintained by the appropriate roads authority on or before the date on which the order commences.	21 22 23
[10]	Part 13A	24
	Insert after Part 13:	25
	Part 13A Transparency of tolling	26
	Note. This Part contains provisions about the scrutiny and transparency of future tolling agreements between the government and the private sector entity and of orders made by RMS and roads authorities about tolling. Those provisions:	27 28 29
(a)	prohibit tolling agreements from allowing increases in tolls that exceed increases in the Consumer Price Index, and	30 31
(b)	require information about tolling agreements, and about tolling under them, to be made publicly available, and	32 33
(c)	prevent tolling agreements and tolling orders being entered into, made or amended unless they have been investigated by IPART and found to be in the public interest, and	34 35
(d)	require the Auditor-General to conduct a performance audit in relation to tolling agreements and tolling orders and amendments to them.	36 37
	Division 1 Preliminary	38
227A	Definitions	39
	In this Part:	40
	<i>IPART</i> means the Independent Pricing and Regulatory Tribunal.	41
	<i>performance audit</i> , in relation to a tolling agreement or tolling order, means an evaluation of the implementation of the agreement or order by assessing how tolls and charges are fixed and how the system of levying and collecting	42 43 44

tolls and charges operates, which may include (but is not limited to) consideration of any the following:	1
(a) economy (that is, minimising cost),	2
(b) efficiency (that is, maximising the ratio of outputs to inputs),	3
(c) effectiveness (that is, the extent to which intended outcomes were achieved),	4
(d) performance measures,	5
(e) monitoring systems,	6
(f) legislative and policy compliance,	7
(g) any other matter prescribed by the regulations.	8
private sector entity means any person or body (whether incorporated or unincorporated) who or which is not a public authority.	9
tolling agreement means an agreement, or any one of a series of agreements, between the Crown or a public authority and a private sector entity under which the private sector entity agrees to provide consideration in exchange for the right to set and collect private tolls or charges, on an on-going basis, in connection with traffic using any tollway, proposed tollway, bridge or tunnel.	10
tolling order means any of the following:	11
(a) an order made by RMS under section 213 fixing tolls and charges for traffic using a tollway,	12
(b) an order made by RMS under section 214 fixing tolls and charges for traffic using a bridge (including the Sydney Harbour Bridge), a tunnel or a road-ferry,	13
(c) an order made by a roads authority under section 216 fixing tolls and charges for traffic using a road-ferry.	14
227B Application to future orders and agreements only	15
This Part applies only to:	16
(a) tolling agreements entered into, or proposed to be entered into, after the commencement of this Part, and	17
(b) tolling orders published in the Gazette after the commencement of this Part.	18
Division 2 Transparency of tolling agreements	19
227C Tolling agreements not to be entered into unless IPART establishes public interest	20
The Minister must ensure that a tolling agreement is not entered into, published, amended or replaced unless:	21
(a) the Minister has referred the proposed agreement, amendment or replacement to IPART, and	22
(b) IPART has investigated the proposed agreement, amendment or replacement, and	23
(c) IPART has provided a report to the Minister stating that, in the opinion of IPART, it is in the public interest for the Crown or the relevant public authority to enter into, amend or replace the agreement as proposed.	24

227D	Increases in tolls and charges under tolling agreements must not exceed CPI increases	1 2
(1)	The Minister must ensure that the Crown or a public authority does not enter into a tolling agreement if it may result in an increase in a toll or charge, since the toll or charge was last fixed, that exceeds the proportionate increase in the Consumer Price Index over the same period.	3 4 5 6
(2)	Any such provision in a tolling agreement entered into after the commencement of this section is of no effect.	7 8
227E	Publication by Minister of information about tolling agreements	9
(1)	The Minister must ensure that information is published that describes the way in which the public and consumer interest is protected by a tolling agreement or by the amendment or replacement of a tolling agreement.	10 11 12
(2)	In particular, if a tolling agreement provides for differential tolling for heavy vehicles, the methodology to justify that differential tolling must be published.	13 14
(3)	The information required by this section must be made publicly available free of charge by publishing it on a website maintained by RMS, within 7 days after the tolling agreement is entered into.	15 16 17
(4)	This section is in addition to any other obligations under the <i>Government Information (Public Access) Act 2009</i> .	18 19
Division 3	Scrutiny of proposed tolling agreements and tolling orders by IPART	20 21
227F	Minister to refer proposed tolling agreement or tolling order or amendment to IPART	22 23
(1)	The Minister is to refer each of the following to IPART for investigation and report:	24 25
(a)	a proposed tolling agreement, or amendment to or replacement of such an agreement, that has been finalised, but not entered into,	26 27
(b)	a proposed tolling order that has been submitted to the Minister for approval but has not been made.	28 29
(2)	A referral may require IPART to consider specified matters when conducting its investigations for the purposes of its report.	30 31
227G	Investigation by IPART	32
(1)	IPART is to conduct an investigation of each of the following that is referred to it under this Division:	33 34
(a)	a proposed tolling agreement, or amendment or replacement to such an agreement, that has been finalised, but not entered into,	35 36
(b)	a proposed tolling order that has been submitted to the Minister for approval.	37 38
(2)	Without limiting the factors to which IPART may have regard in such an investigation, IPART must have regard to:	39 40
(a)	whether or not it is in the public interest:	41
(i)	for the Crown or the relevant public authority to enter into, amend or replace the agreement as proposed, or	42 43
(ii)	for RMS or the relevant roads authority to make the relevant order as proposed, and	44 45

(b)	any other related matters specified by the Minister.	1
(3)	An investigation under this section in relation to a tolling agreement is to be limited to the provisions of the proposed agreement or amendment that relate to the calculation and charging of tolls and charges and the duration of the agreement.	2 3 4 5
(4)	Except to the extent that the regulations otherwise provide, Division 7 of Part 3 of the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> applies to and in respect of an investigation under this section in the same way as it applies to an investigation or report under that Part.	6 7 8 9
227H	Report by IPART	10
(1)	A report on the outcome of an investigation under this Division, and on such matters as are referred by the Minister, is to be provided to the Minister within 4 weeks after the referral by the Minister.	11 12 13
(2)	Without limiting what the report may contain, the report must indicate what regard IPART has had to the matters specified in section 227G (2).	14 15
(3)	The Minister is to table the report (or cause it to be tabled) in both Houses of Parliament within 1 month after the Minister receives the report.	16 17
(4)	The Minister is to make the report publicly available free of charge by publishing it on a website maintained by RMS.	18 19
Division 4	Scrutiny of existing tolling agreements and tolling orders by Auditor-General	20 21
227I	Auditor-General to audit tolling agreements and tolling orders	22
	The Minister must ensure that the Auditor-General conducts a performance audit in relation to each of the following:	23 24
(a)	a tolling agreement, or amendment or replacement of such an agreement, beginning no later than 12 months after the agreement is entered into or amended,	25 26 27
(b)	a tolling order, beginning no later than 12 months after the order is made.	28 29
227J	Performance audits of tolling agreements and tolling orders	30
(1)	The Auditor-General is to conduct a performance audit:	31
(a)	in relation to a tolling agreement that has been entered into, amended or replaced, and	32 33
(b)	in relation to a tolling order that has been approved by the Minister and made.	34 35
(2)	A performance audit under this section in relation to a tolling agreement is not required to be limited to the provisions of the proposed agreement that relate to the calculation and charging of tolls.	36 37 38
(3)	The Auditor-General is to report to the Minister as to the result of any such performance audit and as to such irregularities or other matters as, in the opinion of the Auditor-General, call for special notice.	39 40 41
(4)	The Minister is to ensure that the Auditor-General has access to such information as may be necessary to enable the Auditor-General to conduct the performance audit.	42 43 44

227K	Report on performance audit of tolling agreements and tolling orders	1
(1)	The Auditor-General is to report to the Minister and to each House of Parliament on the results of a performance audit under section 227J as soon as practicable after the performance audit is completed.	2 3 4
(2)	If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.	5 6 7
227L	Ongoing role of Auditor-General with respect to tolling agreements	8
(1)	The Minister may refer to the Auditor-General for a second or subsequent performance audit any tolling agreement that has been entered into and that has been the subject of a previous performance audit.	9 10 11
(2)	A referral may require the Auditor-General to consider specified matters when conducting a performance audit for the purposes of the Auditor-General's report.	12 13 14
(3)	The Auditor-General is to conduct a performance audit in relation to the relevant tolling agreement.	15 16
(4)	Without limiting the factors to which the Auditor-General may have regard in such a performance audit, the Auditor-General must have regard to any matters specified by the Minister.	17 18 19
(5)	In addition, the Auditor-General may conduct a performance audit in relation to a tolling agreement at any time, on his or her own initiative.	20 21
(6)	The Auditor-General is to report to the Minister and to each House of Parliament on the results of a performance audit under this section as soon as practicable after the performance audit is completed.	22 23 24
(7)	If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.	25 26 27
227M	Auditor-General and others may require information	28
(1)	An authorised person may require a private sector entity that is a party to a tolling agreement subject to a performance audit under this Division, or a roads authority that makes an order subject to this Division:	29 30 31
(a)	to produce, or cause to be produced, any material required for the performance audit, or	32 33
(b)	to answer any question required for the performance audit.	34
(2)	The material may include any books, accounts, agreements, vouchers, letters or other documents kept or held by the private sector entity or roads authority that relates to any matter under the tolling agreement or tolling order concerned.	35 36 37 38
(3)	A person must not fail, without lawful excuse, when requested to do so by an authorised person, to produce any account, book or record in the person's possession or under the person's control or to answer any question. Maximum penalty: 50 penalty units.	39 40 41 42
(4)	In this section:	43
	authorised person means:	44
(a)	the Minister, or	45

	(b) the Auditor-General, or	1
	(c) a person authorised by the Minister or the Auditor-General.	2
227N	Cost of performance audit	3
(1)	A private sector entity that is a party to a tolling agreement must pay to the Auditor-General such amounts, at such times, as the Minister decides towards defraying the costs and expenses of any performance audit under this Division that relates to that agreement.	4 5 6 7
(2)	Without limitation, a tolling agreement may include terms and conditions relating to the determination of the cost of conducting a performance audit.	8 9
227O	Offence of obstructing Auditor-General	10
	A person must not obstruct the Auditor-General, or any other person acting on behalf of the Auditor-General, in the exercise of functions under this Division.	11 12
	Maximum penalty: 50 penalty units.	13
[11]	Section 252 Delegation of functions	14
	Insert “or any of the Minister’s functions under Division 2 of Part 13, or under Part 13A” after “delegation”.	15 16
[12]	Dictionary	17
	Insert in alphabetical order:	18
	Consumer Price Index means:	19
(a)	the index known as the “Weighted Average of Eight Capital Cities: All Groups Consumer Price Index” that is published quarterly by the Australian Bureau of Statistics, or	20 21 22
(b)	if the Australian Bureau of Statistics no longer publishes that index—such other index as may be prescribed by the regulations for the purposes of this paragraph.	23 24 25