



New South Wales

# Roads Amendment (Tolling Transparency) Bill 2022

## 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—

- (a) require the prominent display of toll charges at each public entrance to a tollway, and
- (b) provide a tolling agreement may only be entered into if it is in the public interest, and
- (c) provide that clauses in tolling agreements, entered into after the commencement of the proposed amendments, limiting the provision of public transport services (an *exclusivity clause*) are of no effect, and
- (d) require the Minister to make publicly available, including by tabling in Parliament, a range of information about tolling agreements, including information about exclusivity clauses in existing agreements, and
- (e) require the Minister, by 1 November in specified years, to table in Parliament a report with information about the following—
  - (i) the tolls collected in the preceding financial year,
  - (ii) toll relief in the preceding financial year,
  - (iii) an estimate of tolls that will be collected over the duration of existing tolling agreements, and
- (f) enable the Auditor-General to conduct performance audits of tolling agreements.

## 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 on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Roads Act 1993 No 33**

**Schedule 1[1]** requires toll operators to prominently display at each public entrance to a tollway a sign providing information about the tolls payable for using the tollway.

**Schedule 1[2]** inserts proposed Part 13A and provides for transparency in tolling agreements as follows—

- (a) proposed section 227A provides for necessary definitions,
- (b) proposed section 227B provides a tolling agreement must not be entered into unless it is in the public interest,
- (c) proposed sections 227C and 227D require the Minister to make information about tolling agreements publicly available, including by tabling a report in both Houses of Parliament,
- (d) proposed section 227E requires the Minister to table in both Houses of Parliament a report on the collection of tolls, and on applications for and provision of toll relief in the preceding financial year,
- (e) proposed sections 227F–227I provide for the Auditor-General to conduct performance audits of tolling agreements and for a toll operator to meet costs associated with an audit,
- (f) 227J provides that an exclusivity clause entered into after the commencement of the proposed section is of no effect and for the Minister to table in both Houses of Parliament a report containing information about each exclusivity clause entered into before the commencement of the proposed section,
- (g) proposed section 227K provides that no compensation is payable to a toll operator as a consequence of the enactment of proposed Part 13A.

**Schedule 1[3]** makes consequential amendments to the Dictionary.

## **Schedule 2      Amendment of Roads Regulation 2018**

**Schedule 2** makes a consequential amendment to the *Roads Regulation 2018* to allow information collected from toll service providers to be used for the purposes of the Minister's report to Parliament under proposed section 227E of the principal Act.



New South Wales

# Roads Amendment (Tolling Transparency) Bill 2022

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Roads Act 1993 No 33</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Roads Regulation 2018</b>	<b>8</b>



New South Wales

# Roads Amendment (Tolling Transparency) Bill 2022

No. \_\_\_\_\_, 2022

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## **A Bill for**

An Act to amend the *Roads Act 1993* to require the prominent display of toll charges at each public entrance to a tollway; and to provide for transparency in and scrutiny of agreements entered into for the operation of tollways.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Roads Amendment (Tolling Transparency) Act 2022*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Roads Act 1993 No 33</b>	1
[1]	<b>Section 216A</b>	2
	Insert after section 216—	3
	<b>216A Display of tolls</b>	4
	(1) A toll operator must prominently display, at every public entrance to a tollway, a sign providing information about the tolls payable for use of the tollway. Maximum penalty—100 penalty units.	5 6 7
	(2) The sign must comply with requirements prescribed by the regulations.	8
[2]	<b>Part 13A</b>	9
	Insert after Part 13—	10
	<b>Part 13A Transparency in tolling</b>	11
	<b>Division 1 Preliminary</b>	12
	<b>227A Definitions</b>	13
	In this Part—	14
	<i>IPART</i> means the Independent Pricing and Regulatory Tribunal established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> .	15 16
	<i>performance audit</i> has the same meaning as it has in the <i>Government Sector Audit Act 1983</i> , Part 3, Division 2A.	17 18
	<i>private sector entity</i> means a person other than a public authority.	19
	<i>tolling agreement</i> 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 a tollway, proposed tollway, bridge or tunnel.	20 21 22 23 24
	<b>Division 2 Transparency in tolling</b>	25
	<b>227B Tolling agreement to be in the public interest</b>	26
	(1) The Minister must ensure a tolling agreement is not entered into or substantially amended unless—	27 28
	(a) the Minister has referred the proposed agreement or amendment to IPART for investigation, and	29 30
	(b) IPART has provided a report to the Minister stating that, in its opinion, it is in the public interest for the Crown or the relevant public authority to enter into or amend the agreement as proposed.	31 32 33
	(2) A referral may require IPART to investigate and report on specific matters.	34
	(3) The <i>Independent Pricing and Regulatory Tribunal Act 1992</i> , Part 3, Division 7 applies to an investigation under this section.	35 36
	(4) The Minister must table the report in both Houses of Parliament within 1 month after receiving the report from IPART.	37 38

(5)	The Minister must make the report publicly available by having the report published on the website of TfNSW within a reasonable time of its tabling in Parliament.	1 2 3
<b>227C</b>	<b>Publication by Minister of information about tolling agreement</b>	4
(1)	The Minister must ensure information is published to describe the way in which the public interest is promoted by entering into a tolling agreement or by the amendment or replacement of a tolling agreement.	5 6 7
(2)	In particular, if a tolling agreement provides for differential tolling for heavy vehicles, the methodology to justify the differential tolling must be published.	8 9
(3)	The information required by this section must be published on a website maintained by TfNSW, within 7 days after the tolling agreement is entered into, amended or replaced.	10 11 12
(4)	This section is in addition to other obligations under the <i>Government Information (Public Access) Act 2009</i> .	13 14
(5)	In this section— <b>heavy vehicle</b> has the same meaning as it has in the <i>Heavy Vehicle National Law (NSW)</i> .	15 16 17
<b>227D</b>	<b>Summary of tolling agreement and business case to be tabled</b>	18
(1)	Within 12 months after entering into a tolling agreement, the Minister must table in both Houses of Parliament a report summarising—	19 20
(a)	the agreement, and	21
(b)	the business case supporting the agreement.	22
(2)	The Minister may delay the tabling of the report for 12 months, but only if the Minister tables in both Houses of Parliament a notice of the delay.	23 24
(3)	The Minister may delay the tabling of the report a maximum of 2 times.	25
<b>227E</b>	<b>Tabling of report on tolls paid</b>	26
(1)	The Minister must, for each financial year 2021–2022, 2022–2023 and 2023–2024, table in both Houses of Parliament a report that includes the following—	27 28 29
(a)	the total amount of tolls paid under Part 13, Division 2 for—	30
(i)	trucks, and	31
(ii)	all other vehicles,	32
(b)	the amount of tolls paid under Part 13, Division 2 by persons resident in each local government area,	33 34
(c)	the average of tolls paid per household for each local government area,	35
(d)	the average of tolls paid per household for the 10% of households paying the most in tolls,	36 37
(e)	the amount of tolls paid under Part 13, Division 2 by users of each tollway, bridge, tunnel, road-ferry and the Sydney Harbour Bridge for—	38 39 40
(i)	trucks, and	41
(ii)	all other vehicles,	42
(f)	the Minister’s estimate of the amount of tolls that will be collected in accordance with leases under sections 213(2), 214(3) and 216(3) for the duration of all leases in force in the financial year for—	43 44 45

(i)	trucks, and	1
(ii)	all other vehicles,	2
(g)	the total value of toll relief claimed,	3
(h)	the value of toll relief claimed for each local government area,	4
(i)	the number of applications for toll relief.	5
(2)	The report must be tabled on or before 1 November immediately following the financial year to which the report relates.	6 7
(3)	In this section—	8
	<i>toll relief</i> means—	9
(a)	an exemption from, or reduction of, motor vehicle tax for the registration of a registrable light motor vehicle given as a consequence of the recipient of the relief having paid a minimum amount in tolls for the previous financial year, or	10 11 12 13
(b)	the M5 Cashback scheme conducted by the NSW Government, or	14
(c)	another scheme established by the NSW Government designed to provide households with financial compensation or relief from toll charges.	15 16 17
<b>Division 3</b>	<b>Scrutiny of tolling agreements by Auditor-General</b>	18
<b>227F</b>	<b>Ongoing role of Auditor-General</b>	19
(1)	The Auditor-General may undertake a performance audit of a tolling agreement.	20 21
(2)	Each tolling agreement is to be the subject of a performance audit under this section at least once—	22 23
(a)	during the term of the agreement, and	24
(b)	every 10 years.	25
<b>227G</b>	<b>Auditor-General may require information</b>	26
(1)	The Auditor-General may by written notice require a private sector entity that is a party to a tolling agreement subject to a performance audit under this Division to do 1 or more of the following—	27 28 29
(a)	produce, or cause to be produced, material required for the performance audit,	30 31
(b)	answer questions for the purposes of the performance audit.	32
(2)	A private sector entity must not fail, without lawful excuse, to comply with a requirement of the Auditor-General made under this section. Maximum penalty—200 penalty units.	33 34 35
(3)	A provision in a tolling agreement purporting to restrict the Auditor-General's access to information is of no effect.	36 37
<b>227H</b>	<b>Conduct of performance audits</b>	38
	The <i>Government Sector Audit Act 1983</i> , sections 38C and 38E apply to a performance audit conducted under this Division.	39 40



<b>227I</b>	<b>Costs of performance audit</b>	1
(1)	The Minister may require a private sector entity that is a party to a tolling agreement subject to a performance audit under this Division to pay to the Auditor-General a contribution for the Auditor-General's costs of conducting the audit.	2 3 4 5
(2)	The amount of the contribution must be determined in the way prescribed by the regulations.	6 7
(3)	A contribution under this section is recoverable as a debt due to the Crown in a court of competent jurisdiction.	8 9
	<b>Division 4</b>	
	<b>Miscellaneous</b>	10
<b>227J</b>	<b>Exclusivity clauses</b>	11
(1)	Within 6 months of the commencement of this section, the Minister must table in both Houses of Parliament a report containing the following information about each exclusivity clause in a tolling agreement entered into before the commencement of this section—	12 13 14 15
(a)	the parties to the tolling agreement,	16
(b)	the duration of the exclusivity clause,	17
(c)	the limits the exclusivity clause places on the operation or development of public transport,	18 19
(d)	an estimate of the financial impact on the businesses and communities affected by the limits placed on the operation or development of public transport by the exclusivity clause.	20 21 22
(2)	An exclusivity clause entered into after the commencement of this section is of no effect.	23 24
(3)	In this section—	25
	<i>exclusivity clause</i> means a provision in a tolling agreement that in any way limits the development or continued operation of public transport arrangements that may compete with or otherwise impact on the operation or financial viability of a tollway.	26 27 28 29
<b>227K</b>	<b>Compensation not payable</b>	30
(1)	Compensation is not payable by or on behalf of the State—	31
(a)	because of the enactment or operation of this Part, or for a consequence of that enactment or operation, or	32 33
(b)	because of a statement or conduct relating to the enactment or operation of this Part.	34 35
(2)	In this section—	36
	<i>compensation</i> includes damages or another form of monetary compensation.	37
	<i>operation of this Part</i> includes the operation of—	38
(a)	an inquiry, notice or order under this Part and	39
(b)	a contract or other agreement entered into under or for the purposes of this Part.	40 41
	<i>statement</i> includes a representation of any kind—	42
(a)	whether made verbally or in writing, and	43
(b)	whether negligent, false, misleading or otherwise.	44

*the State* means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

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2

**[3] Dictionary**

3

Insert in alphabetical order—

4

*IPART*, for Part 13A—see section 227A.

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*performance audit*, for Part 13A—see section 227A.

6

*private sector entity*, for Part 13A—see section 227A.

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*tolling agreement*, for Part 13A—see section 227A.

8

<b>Schedule 2</b>	<b>Amendment of Roads Regulation 2018</b>	1
	<b>Clause 78 Provision of information by toll service providers to TfNSW and its delegates</b>	2
		3
	Insert “and for the purpose of the Minister’s report to Parliament under the Act, section 227E” after “fee waiver” in clause 78(1).	4
		5