

Passed by both Houses



New South Wales

# Transport Administration Amendment (NSW Motorways) Bill 2024

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council  
2024*

*Clerk of the Parliaments*



New South Wales

## **Transport Administration Amendment (NSW Motorways) Bill 2024**

Act No           , 2024

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An Act to amend the *Transport Administration Act 1988* to establish NSW Motorways and make provision for its functions, management and status; and for related purposes.

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

**1 Name of Act**

This Act is the *Transport Administration Amendment (NSW Motorways) Act 2024*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Transport Administration Act 1988 No 109

### [1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

*NSW Motorways* means NSW Motorways constituted under this Act.

*toll operator* has the same meaning as in the *Roads Act 1993*.

*toll road* has the same meaning as in the *Roads Act 1993*.

*toll service provider* means a person that provides accounts, products or related services to enable the payment of tolls for the use of toll roads, tollways, bridges, tunnels or road-ferries by persons who are required to pay the tolls.

### [2] Section 3B Ministerial responsibility and delegation

Insert after section 3B(1)(f)—

(f1) NSW Motorways,

### [3] Section 3G, heading

Omit the heading. Insert instead—

#### **3G Directions by TfNSW to certain transport authorities**

### [4] Section 3G(1)(f3)

Insert after section 3G(1)(f2)—

(f3) NSW Motorways,

### [5] Section 3I Delegation of TfNSW's functions

Insert before section 3I(3), definition of *authorised person*, paragraph (b)—

(a3) NSW Motorways or a member of staff of NSW Motorways, or

### [6] Section 3J Acceptance of delegated functions by TfNSW

Insert “, NSW Motorways” after “public transport agency” in section 3J(1).

### [7] Section 3J(6) and (7)

Insert in appropriate order in the section—

(6) NSW Motorways is authorised to delegate a function of NSW Motorways to TfNSW.

(7) NSW Motorways may accept a delegation of the functions of TfNSW.

### [8] Section 3K Disclosure of information by agencies to TfNSW

Insert before section 3K(2)—

(1B) NSW Motorways is authorised to disclose information held by it to TfNSW if the disclosure assists TfNSW in the exercise of its functions under this Act or another Act.

### [9] Section 3K(2)

Insert “, NSW Motorways” after “agency concerned”.

**[10] Part 3E**

Insert after Part 3D—

**Part 3E NSW Motorways**

**Division 1 Constitution of NSW Motorways**

**39 Constitution of NSW Motorways**

- (1) There is constituted by this Act a corporation with the corporate name of NSW Motorways.
- (2) NSW Motorways is a NSW Government agency.

**Division 2 Objectives of NSW Motorways**

**39A Objectives of NSW Motorways**

- (1) The principal objective of NSW Motorways is to deliver safe and reliable toll roads and toll road services in a fair, efficient, effective and financially responsible way.
- (2) The other objectives of NSW Motorways are as follows—
  - (a) to be a successful business and, to that end—
    - (i) to operate at least as efficiently as any comparable business, and
    - (ii) to maximise the net worth of the State's investment in NSW Motorways,
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in the *Protection of the Environment Administration Act 1991*, section 6(2),
  - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
  - (e) to operate as transparently as possible and in the public interest.
- (3) The other objectives of NSW Motorways are of equal importance, but are not as important as the principal objective of the corporation.

**Division 3 Functions of NSW Motorways**

**39B NSW Motorways functions**

- (1) NSW Motorways has the following functions—
  - (a) to operate toll roads in the State and provide toll road services in the State,
  - (b) to facilitate the collection of tolls by it and other toll operators,
  - (c) to collect and publish information about toll roads and the provision of toll road services in the State,
  - (d) to advocate on behalf of toll road customers,
  - (e) to administer toll relief schemes,

- (f) to enter into or administer arrangements involving the collection of tolls,
  - (g) to charge and recover fees relating to its functions,
  - (h) other functions conferred or imposed on it by or under this Act or another Act.
- (2) NSW Motorways also has the following functions—
- (a) to conduct a business or activity, whether or not related to a function under subsection (1), that it considers will further its objectives,
  - (b) to make and enter into contracts or arrangements with other persons to enable it to carry out its functions,
  - (c) to appoint agents and act as agents for other persons.
- (3) The *Roads Act 1993*, sections 158(2) and 177 extend to NSW Motorways as if the references in the sections to TfNSW were references to NSW Motorways.
- (4) NSW Motorways cannot employ any staff.

**39C Effect of division**

This division does not limit the functions of NSW Motorways apart from this division, but is subject to the provisions of this Act and other Acts and laws.

## **Division 4 Management of NSW Motorways**

**39D Chief Executive of NSW Motorways**

The Transport Secretary may, with the approval of the Minister, appoint a Chief Executive of NSW Motorways.

**Note—** Schedule 2 contains ancillary provisions relating to the Chief Executive of NSW Motorways.

**39E Chief Executive to manage NSW Motorways**

- (1) The affairs of NSW Motorways must be managed and controlled by the Chief Executive of NSW Motorways in accordance with any directions of TfNSW under section 3G.
- (2) An act, matter or thing done in the name of, or on behalf of, NSW Motorways by the Chief Executive is taken to have been done by NSW Motorways.

**39F NSW Motorways to supply information to Minister**

NSW Motorways must—

- (a) supply the Minister or a person nominated by the Minister with information relating to its activities that the Minister or person requires, and
- (b) keep the Minister informed of the general conduct of its activities and of significant developments in its activities.

**39G Common objectives and service delivery priorities**

- (1) NSW Motorways must also, in the exercise of its functions, have regard to the common objectives of public transport agencies set out in section 2B(1).
- (2) NSW Motorways must determine its service delivery priorities having regard to the Transport Secretary's expectations for service delivery established by a Statement of Expectations issued annually to NSW Motorways by the Transport Secretary.

### 39H Corporate plans

- (1) NSW Motorways must, at least 3 months before the beginning of each financial year, prepare and give to TfNSW a draft corporate plan for the financial year.
- (2) NSW Motorways must—
  - (a) consider comments on the draft corporate plan that were made by TfNSW within 2 months after the draft plan was given to TfNSW, and
  - (b) give the completed corporate plan to TfNSW before the beginning of the financial year.
- (3) NSW Motorways must—
  - (a) make the draft plan available for public comment for at least 30 days, and
  - (b) consider the submissions it receives about the draft plan within that period.
- (4) NSW Motorways must make the completed corporate plan available for public inspection.
- (5) However, NSW Motorways is not required to include in any draft or completed plan made available for public comment or inspection information that—
  - (a) is of a commercially sensitive nature, or
  - (b) would otherwise not be required to be disclosed under the *Government Information (Public Access) Act 2009*.
- (6) NSW Motorways must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (7) A corporate plan must specify—
  - (a) the separate activities of NSW Motorways and, in particular, the separate commercial and non-commercial activities, and
  - (b) the objectives of each separate activity for the financial year and for future financial years, and
  - (c) the strategies, policies and budgets for achieving the objectives in relation to each separate activity, and
  - (d) the targets and criteria for assessing NSW Motorways' performance.
- (8) This section is subject to requirements made by or under this Act, including a requirement of a direction by the Minister or TfNSW under this Act.

### 39I Delegation of functions of NSW Motorways

- (1) NSW Motorways may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person a function delegated by NSW Motorways if the delegate is authorised in writing to do so by NSW Motorways.
- (3) In this section—

**authorised person** means—

  - (a) a member of staff of NSW Motorways, or
  - (b) a person of a class prescribed by the regulations or approved by TfNSW.

**39J Sharing and obtaining information**

- (1) NSW Motorways may collect, use and disclose information, including personal information, obtained in the exercise of its functions for the purpose of administering the following—
  - (a) a toll relief scheme,
  - (b) another scheme prescribed by the regulations.
- (2) A toll entity must give NSW Motorways the information, including personal information, required by NSW Motorways to enable NSW Motorways to administer the following—
  - (a) a toll relief scheme,
  - (b) another scheme prescribed by the regulations.Maximum penalty—
  - (a) for an individual—20 penalty units, or
  - (b) otherwise—200 penalty units.
- (3) The toll entity must give the information to NSW Motorways within the time specified by NSW Motorways.
- (4) In this section—

*personal information* has the same meaning as in the *Government Information (Public Access) Act 2009*.

*toll entity* means the following—

  - (a) a toll operator,
  - (b) a toll service provider.

**[11] Section 55A Definition of “transport authority”**

Insert after section 55A, definition of *transport authority*, paragraph (f)—

- (f1) NSW Motorways,

**[12] Section 65 Definitions**

Insert after section 65, definition of *transport authority*, paragraph (f)—

- (f1) NSW Motorways,

**[13] Section 68C Employment in the Transport Service**

Insert before section 68C(1)(d)—

- (c1) NSW Motorways,

**[14] Section 68Q Miscellaneous provisions relating to the Transport Service**

Insert “NSW Motorways,” after “State Transit Authority,” wherever occurring in section 68Q(5) and (6).

**[15] Section 68Q(10)(d)**

Insert before section 68Q(10)(e)—

- (d) NSW Motorways or a public subsidiary corporation of NSW Motorways must be read as a reference to a person employed in the Transport Service to enable NSW Motorways or the public subsidiary corporation to exercise its functions, or



**[16] Part 8, Division 3AD**

Insert after Division 3AC—

**Division 3AD Financial provisions relating to NSW Motorways**

**80FJ NSW Motorways Fund**

A fund called the NSW Motorways Fund is established in the Special Deposits Account.

**80FK Payments into NSW Motorways Fund**

The following must be paid into the NSW Motorways Fund—

- (a) all money received by or on account of NSW Motorways,
- (b) all money advanced to NSW Motorways by the Treasurer,
- (c) all money—
  - (i) appropriated by Parliament for the purposes of TfNSW and allocated to NSW Motorways by TfNSW, or
  - (ii) otherwise appropriated by Parliament for the purposes of NSW Motorways,
- (d) the proceeds of the investment of money in the Fund,
- (e) all other money required by or under this Act or another Act to be paid into the Fund.

**80FL Payments from NSW Motorways Fund**

The following must be paid from the NSW Motorways Fund—

- (a) all payments made on account of NSW Motorways or otherwise required to meet expenditure incurred in relation to the functions of NSW Motorways,
- (b) all other payments required by or under this Act or another Act to be paid from the Fund.

**[17] Section 81A Definition**

Insert after section 81A, definition of *Authority*, paragraph (f)—

- (f1) NSW Motorways,

**[18] Part 9, Division 1A, heading**

Insert “**and other bodies**” after “**rail authorities**”.

**[19] Section 94 Transfers of assets, rights and liabilities**

Insert “, NSW Motorways” after “the Transport Secretary” in section 94(6).

**[20] Section 107 Definition of “transport authority”**

Insert after section 107(1), definition of *transport authority*, paragraph (b)—

- (c) NSW Motorways, or

**[21] Section 109 Seals of Authorities**

Insert after section 109(2), definition of *Authority*, paragraph (a1)—

- (b) NSW Motorways,

**[22] Section 112 Personal liability of certain persons**

Insert “NSW Motorways,” after “the State Transit Authority,” in section 112(2), definition of *member of a transport authority*, paragraph (a).

**[23] Schedule 1 Functions of Transport for NSW**

Insert “, NSW Motorways” after “RTC” wherever occurring in clause 1(i).

**[24] Schedule 2 Provisions relating to Chief Executives**

Insert in appropriate order in clause 1, definition of *Chief Executive*—

(b) NSW Motorways,

**[25] Schedule 7 Savings, transitional and other provisions**

Insert at the end of the schedule, with appropriate part and clause numbering—

**Part Provision consequent on enactment of Transport  
Administration Amendment (NSW Motorways) Act  
2024**

**NSW Motorways’ first corporate plan**

NSW Motorways must prepare its first corporate plan, in accordance with section 39H, within the period approved by the Transport Secretary for this clause.

## **Schedule 2 Amendment of Roads Act 1993 No 33**

### **[1] Section 7**

Omit the section. Insert instead—

#### **7 Roads authorities**

- (1) TfNSW is the roads authority for a freeway.
- (2) NSW Motorways is the roads authority for a toll road vested in NSW Motorways.
- (3) The Minister administering the *Crown Land Management Act 2016* is the roads authority for a Crown road.
- (4) The regulations may declare that a specified public authority is the roads authority for a specified public road, or for a public road within a specified area, other than the following—
  - (a) a freeway,
  - (b) a toll road vested in NSW Motorways,
  - (c) a Crown road.
- (5) The council of a local government area is the roads authority for a public road within the area, other than the following—
  - (a) a freeway,
  - (b) a toll road vested in NSW Motorways,
  - (c) a Crown road,
  - (d) a public road for which another public authority is declared by the regulations to be the roads authority.
- (6) A roads authority has the functions conferred on it by or under this Act or another Act or law.

### **[2] Section 52 Tollways**

Insert “or NSW Motorways” after “TfNSW” wherever occurring in section 52(1)(a) and (b).

### **[3] Section 52(4)**

Insert after section 52(3)—

- (4) To avoid doubt, a road remains a tollway even if it is vested in NSW Motorways.

### **[4] Section 213**

Omit the section. Insert instead—

#### **213 Tolls and charges for tollways**

- (1) A toll authority may levy and collect tolls and charges for traffic using a tollway vested in the toll authority.
- (2) A toll authority may, on the terms it decides—
  - (a) lease the operation of a tollway vested in the toll authority, or
  - (b) lease the collection of tolls and charges on a tollway vested in the toll authority.

- (3) The amount of the toll or charge must not exceed the amount prescribed by or in accordance with the regulations.
- (4) In this section—  
*toll authority* means the following—
  - (a) TfNSW,
  - (b) NSW Motorways.

**[5] Section 214 Tolls and charges for bridges, tunnels and road-ferries**

Insert “or NSW Motorways” after “TfNSW” wherever occurring in section 214(1) and (2).

**[6] Part 15A**

Insert after Part 15—

**Part 15A Tollway ombudsman and IPART functions relating to toll roads**

**261A Tollway ombudsman scheme**

- (1) The Minister may, by order published in the Gazette, approve a tollway ombudsman scheme.
- (2) The scheme must provide for the appointment of a tollway ombudsman to deal with the disputes and complaints between toll road customers and toll operators.
- (3) Before approving a scheme, the Minister must be satisfied the scheme meets the following objectives—
  - (a) that the scheme has satisfactory arrangements in place to deal with the disputes and complaints referred to in subsection (2),
  - (b) that the tollway ombudsman will be able to operate independently of toll operators in exercising functions under the scheme,
  - (c) that the scheme will be accessible to toll road customers,
  - (d) that the scheme will operate expeditiously and without cost to toll road customers and to other persons prescribed by the regulations,
  - (e) that the scheme will allow toll road customers to choose whether or not the customers wish to be bound by determinations under the scheme,
  - (f) that the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day-to-day operations,
  - (g) that the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Minister,
  - (h) that the scheme will maintain the capacity of the tollway ombudsman, where appropriate, to refer disputes or complaints to other forums,
  - (i) that the scheme will require the tollway ombudsman to inform the Minister of substantial breaches of this Act or another Act or law covered by the scheme,
  - (j) other objectives prescribed by the regulations.
- (4) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.

- (5) All toll operators in the State are members of the tollway ombudsman and, as members, are bound by the scheme.
- (6) A toll operator is bound by a decision of the tollway ombudsman under the scheme and must not fail to comply with the decision.  
Maximum penalty—
  - (a) for an individual—25 penalty units, or
  - (b) otherwise—100 penalty units.
- (7) A toll operator must pay to the Minister a contribution towards the following—
  - (a) the costs of managing and administering the scheme,
  - (b) the costs of ensuring compliance with the scheme,
  - (c) other costs relating to the scheme.
- (8) The contribution is the amount prescribed by and payable in accordance with the regulations.
- (9) A contribution is recoverable by the Minister as a debt in a court of competent jurisdiction.
- (10) The Minister may waive payment, or extend the time for payment, of a contribution or part of a contribution payable under this section.
- (11) The tollway ombudsman must, if requested by the Minister, give the Minister a report detailing how the tollway ombudsman scheme is meeting its objectives.

**261B IPART functions**

- (1) IPART has the following functions—
  - (a) to investigate and report to the Minister on the operation of toll roads in the State, including the following—
    - (i) the costs of operating toll roads and providing toll services,
    - (ii) the demand for toll roads in the State,
    - (iii) the pricing, fees and penalties for toll services, including the levels, structure and impacts of the pricing, fees and penalties on customers,
    - (iv) the revenue generated by the provision of toll services,
    - (v) the impacts of tolls on different communities in the State,
    - (vi) the setting of tolls in the State,
    - (vii) other matters prescribed by the regulations,
  - (b) to investigate and report to the Minister on other matters relating to toll roads.
- (2) IPART may only exercise its functions under subsection (1) at the request of the Minister with the concurrence of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (3) Subject to this section, and except to the extent to which the regulations otherwise provide, the provisions of the *Independent Pricing and Regulatory Tribunal Act 1992*, Part 3, Divisions 6 and 7 apply to an investigation or report under this section in the same way as the provisions apply to an investigation or report under that Act.

- (4) The *Independent Pricing and Regulatory Tribunal Act 1992*, section 21(1) does not apply so as to require IPART to hold a hearing for an investigation under this section.
- (5) IPART may issue guidelines about the way in which it exercises its functions under this section.
- (6) IPART must keep the guidelines available for inspection by members of the public, free of charge, during normal office hours.
- (7) It is sufficient compliance with subsection (6) if a copy of the guidelines is made available to the public on IPART's website.

**[7] Dictionary**

Insert after the definition of *toll operator*, paragraph (a)—

- (a1) NSW Motorways, or

**[8] Dictionary**

Insert in alphabetical order—

*NSW Motorways* means NSW Motorways constituted under the *Transport Administration Act 1988*.

*toll road* means the following—

- (a) a road declared to be a tollway under section 52,
- (b) a bridge, tunnel or road-ferry, if, under section 214(2), a toll or charge may be levied in connection with traffic that uses the bridge, tunnel or road-ferry.