



## 3 Legislative Framework and Approval Requirements

### 3.1 Introduction

This chapter outlines the environmental assessment process and the principal planning, environmental and heritage approvals required for Melbourne Metro.

The key Victorian legislation governing the environmental assessment of Melbourne Metro is the *Environment Effects Act 1978*. The Minister for Planning has determined that an EES is required for Melbourne Metro. This EES has been prepared in response to the Minister's decision requiring an EES and the Scoping Requirements issued by the Minister to set out specific matters to be investigated and documented in the EES.

The EES will be scrutinised by an independent Inquiry before the Minister for Planning completes his assessment of Melbourne Metro. While neither this EES nor the Minister for Planning's assessment are binding on decision-makers, they will provide those decision-makers with information to assist them in determining whether they should issue the principal approvals for Melbourne Metro, and on what conditions.

The key approvals for Melbourne Metro are:

- Planning scheme amendment under the *Planning and Environment Act 1987*
- Permits and consents under the *Heritage Act 1995*.

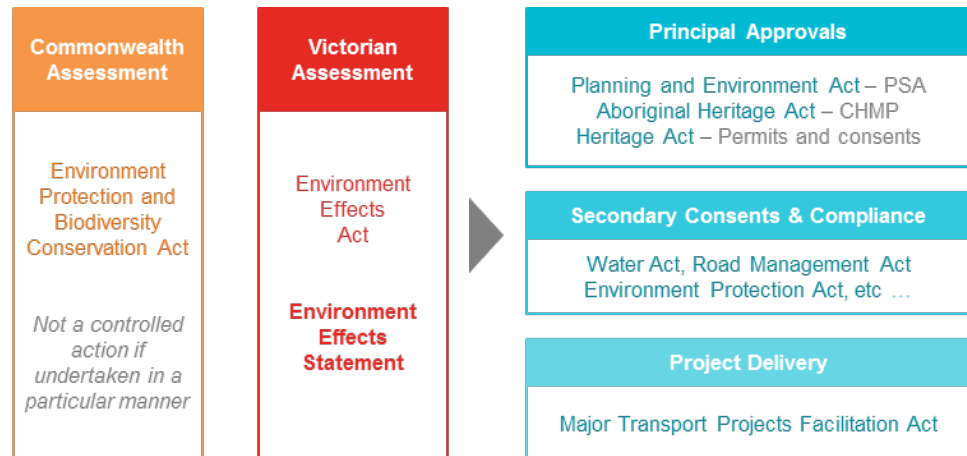
A Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006* is also being prepared in parallel to the EES.

A range of secondary consents would also be required for the project to proceed. These are outlined in Chapter 3.3. Melbourne Metro has been declared under the *Major Transport Projects Facilitation Act 2009* for delivery purposes only. A Project Area under this Act would be designated following the gazettal of the planning scheme amendment.

As discussed in Section 1.7.2, the proposed Melbourne Metro is not a 'controlled action' as it would be 'undertaken in a particular manner' under the Commonwealth *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* and therefore no further assessment or approval of Melbourne Metro is required under this legislation. The EPBC Act requirements are discussed further in Chapter 13 *Noise and Vibration*, Chapter 14 *Historical Cultural Heritage* and Chapter 21 *Biodiversity*.

The relationship between the various approvals potentially required for Melbourne Metro is shown in Figure 3-1.

Figure 3-1 Key project legislation and approvals



## 3.2 Environment Effects Act 1978

The *Environment Effects Act 1978* establishes an administrative process under which the Minister for Planning may require the proponent of a project to prepare an EES.

On 3 September 2015, the Minister for Planning declared Melbourne Metro to be 'public works' under Section 3(1) of the Act. The Minister made this decision on the basis that he was satisfied that Melbourne Metro 'could reasonably be considered to have or to be capable of having a significant effect on the environment' (see Section 1.3.1 in Chapter 1 for further detail about this decision).

Following this decision, draft EES Scoping Requirements were released for public comment before they were finalised and approved by the Minister. An EES must be prepared in accordance with Scoping Requirements issued by the Minister for Planning.

This EES assesses the potential effect of Melbourne Metro on the environment in accordance with the Scoping Requirements (discussed in Section 1.3.2 in Chapter 1). It has also been prepared in consultation with stakeholders (as required by the Minister's Scoping Requirements) and with the assistance of a Technical Reference Group (TRG). The role and membership of the TRG is discussed in Chapter 7 *Community and Stakeholder Engagement*.

Following the public exhibition of this EES, it will be scrutinised by an independent Inquiry appointed by the Minister for Planning before the Minister undertakes his assessment of Melbourne Metro.

The administrative procedures for these steps in the assessment process are set out in the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978*.

Figure 3-2 provides an overview of the EES process for Melbourne Metro.

Figure 3-2 Melbourne Metro EES process



## 3.3 Principal approvals

### 3.3.1 Planning and Environment Act 1987

The *Planning and Environment Act 1987* regulates the use and development of land in Victoria. The Act sets out the structure and administration of planning in Victoria and authorises the preparation, approval and adoption of planning schemes and planning scheme amendments by planning authorities.

Melbourne Metro affects land in four planning schemes: Melbourne, Port Phillip, Stonnington and Maribyrnong. The various zones and overlays in these planning schemes that apply to Melbourne Metro are identified in the land use and planning impact assessment in Technical Appendix E of this EES.

A draft planning scheme amendment displayed with this EES includes:

- An Incorporated Document permitting the use and development of land for the purposes of Melbourne Metro. The Incorporated Document would exempt project works from the planning permit triggers in the four planning schemes, provided the works are within the defined Project Land and are carried out in accordance with conditions set out in the Incorporated Document. This type of planning control has frequently been used on major infrastructure projects (in particular, linear projects) and provides a straightforward legal and administrative mechanism for the State to regulate and control the development of Melbourne Metro
- A control to protect the tunnels, station and other infrastructure during the construction and operation of Melbourne Metro from inconsistent developments, thereby addressing these issues.

In relation to tunnel protection, it is considered desirable to apply a control given the scale of Melbourne Metro, the number of properties it passes under and its impact on multiple municipalities. MMRA's preference was to clearly identify the area in which tunnel protection considerations would arise in the planning schemes. This would ensure that proponents of future development that may affect Melbourne Metro assets would become aware of the potential issues through normal planning processes and vendor statements, and can plan development accordingly.

It was also considered desirable to test and seek public comment on whether the existing suite of legislations or Victoria Planning Provisions could be adapted for this purpose.

Three options to protect the tunnels have been considered. These options are not mutually exclusive:

- A legislative approach. This could include an amendment to the scope of section 54 of the *Transport (Compliance and Miscellaneous) Act 1983* to require persons who propose to develop land along or in the immediate proximity of Melbourne Metro to obtain approval from VicTrack (the authority owning and managing railway land and assets in Victoria) as was done for the Melbourne Underground Rail Link (City Loop). Alternatively, project-specific legislation could be enacted.
- Amending the Victoria Planning Provisions by including:
  - A new particular provision in Clause 52 of the relevant planning schemes to describe the type and location of permit applications that need to be referred to a referral authority
  - Introducing a project-specific overlay
  - Amending Clause 66.02 to describe the type and location of permit applications that need to be referred to a referral authority.
- Amending the planning schemes to introduce a schedule to the Design and Development Overlay.

When considering the preferred strategy, MMRA was concerned to balance the need to protect Melbourne Metro from inappropriate development, while also achieving visibility in the planning system and integration with the planning permit process. Early consideration of the project infrastructure by future developments will assist design and decision-making for those developments.

The Design and Development Overlay was considered the best option from existing overlay controls in the Victoria Planning Provisions. A draft Design and Development Overlay schedule has been prepared and is included in Technical Appendix A of the EES. The Design and Development Overlay is proposed to work in conjunction with the establishment of easements, title acquisition and strata acquisition.

The Design and Development Overlay schedule would clearly identify the land to which it applies in the accompanying planning scheme maps. A Design and Development Overlay can be used to trigger planning approval for buildings and works within the Design and Development Overlay area and can require referrals of applications to the Secretary of DEDJTR / VicTrack to ensure they have an opportunity to assess and advise on how a proposed development could impact on Melbourne Metro. The Cities of Melbourne, Port Phillip and Stonnington have all used this tool to manage design and built form within their municipalities and would be familiar with the Design and Development Overlay and its implementation.

Any application for review to VCAT would be required to clearly demonstrate on strong engineering grounds why the application should be approved or any condition designed to protect the Melbourne Metro be varied. It is also noted that the Minister for Planning retains the power to call in and determine planning or review applications.

The schedules to the Design and Development Overlay are proposed to be introduced into the relevant planning schemes at Clause 43.02. By including a referral requirement, the schedule to Clause 66.04 of the relevant planning schemes also need to be amended. The draft planning scheme amendment lists the Secretary to DEDJTR as a Determining Referral Authority within the Project Area and the Minister for Planning as the Responsible Authority for the project. When construction of Melbourne Metro has finished, VicTrack would take over as Determining Referral Authority for the Design and Development Overlay. VicTrack is the owner and manager of railway land and infrastructure in Victoria. Technical Appendix A contains the draft planning scheme amendment and associated documentation.

If approved, the planning scheme amendment for Melbourne Metro will have significant implications for Victoria's transport system. Accordingly, the Minister for Planning, as an interface body under the *Transport Integration Act 2010*, must have regard to the transport system objectives and decision making principles set out in that Act and the appropriate weight to be given to them, when undertaking his assessment of Melbourne Metro. Chapter 24 *Conclusion* of this EES includes an assessment of Melbourne Metro against the transport system objectives and decision making principles as set out in the *Transport Integration Act 2010*.

### 3.3.2 Aboriginal Heritage Act 2006

If a project proponent is required to prepare an EES under the *Environment Effects Act 1978*, it must also prepare a CHMP for the area in which works are to be carried out. Technical Appendix K contains the Aboriginal heritage impact assessment describing Melbourne Metro's potential impact upon Aboriginal heritage within the Project Area.

MMRA is preparing a CHMP in consultation with the Office of Aboriginal Affairs Victoria and the Traditional Landowners. The CHMP would be submitted to the Office of Aboriginal Affairs Victoria (as there is no Registered Aboriginal Party within the Activity Area), for approval after the Minister's EES Assessment. The CHMP is not being exhibited with this EES.

As required by Section 49 of the *Aboriginal Heritage Act 2006*, construction of the Melbourne Metro works assessed in this EES cannot commence until the CHMP has been approved.

### 3.3.3 Heritage Act 1995

The *Heritage Act 1995* regulates the protection and conservation of places of heritage significance listed on the Victorian Heritage Register and archaeological sites and relics listed on the Victorian Heritage Inventory. The impact assessment for Historical Cultural Heritage is contained within Technical Appendix J.

Under the *Heritage Act 1995*, MMRA would seek permits for places on the Victorian Heritage Register under Section 74 of the Act, and seek consents for places on the Victorian Heritage Inventory under Section 129 of the Act. Working closely with Heritage Victoria, MMRA would seek permits and consents as soon as possible following the Minister for Planning's EES Assessment to appropriately manage potential impacts on heritage or archaeological values.

## 3.4 Secondary Approvals and Compliance

### 3.4.1 Crown Land (Reserves) Act 1978

The *Crown Land (Reserves) Act 1978* provides for the reservation of Crown Land for certain purposes by the Governor in Council and sets out the administrative and legal framework for managing reserved Crown land and the processes for revoking Crown land. Crown land can be reserved for a range of public purposes, including public parks and gardens, the beds and banks of waterways and railways.

Melbourne Metro affects reserved Crown land such as the Domain Parklands and the Shrine of Remembrance Reserve. Approval is required from the Minister for Environment or the relevant Committee of Management to use and occupy land prior to designation of the Project Area. However, once reserved Crown land has been surrendered, divested or acquired under the *Major Transport Projects Facilitation Act 2009*, the land becomes unalienated and freed from the reservation.

### 3.4.2 Environment Protection Act 1970

The *Environment Protection Act 1970* establishes the legislative framework for protecting the environment in Victoria, having regard to the principles of environment protection as set out in the Act.

A number of State Environment Protection Policies (SEPPs) have been prepared under this Act, which typically set standards, guidelines and environmental quality objectives and indicators to protect the beneficial uses of specific environmental media. These include noise (noting that operational rail noise is covered by the Victorian *Passenger Rail Infrastructure Noise Policy*, April 2013), surface and ground water, land contamination and air quality. SEPPs aim to preserve environmental values and maintain a safe physical environment in which Victorians can live.

The Act also provides that works approvals and waste discharge licences are required for certain activities. No works approval or licence is required for Melbourne Metro; however, the delivery of the project must comply with appropriate regulations, SEPPs and guidelines under the Act where they apply to works and other project activities.

Other project activities include the management and disposal of groundwater and the storage and transport of acid sulfate soils. These are addressed in the recommended Environmental Performance Requirements provided in Chapter 23 *Environmental Management Framework*.

### 3.4.3 Land Act 1958

The *Land Act 1958* provides for the management of unreserved Crown land and freehold land. This Act also regulates the grants of interest in, and alienation of, unreserved Crown land. This Act would apply to Melbourne Metro where any interest in land acquired for the project becomes Crown land under the *Land Acquisition and Compensation Act 1986*.

### 3.4.4 Road Management Act 2004

The *Road Management Act 2004* provides the statutory framework for VicRoads and local government to manage the Victorian road network and the coordination of road reserves for roadways, pathways, infrastructure and similar purposes. A road includes the reserve from boundary line to boundary line.

While the Minister for Roads and Road Safety is responsible for administering the Act, VicRoads is responsible for the management of roads within the Road Zone, Category 1 (this includes St. Kilda Road, Royal Parade / Elizabeth Street and Arden Street), while local councils are responsible for all other roads. Consent may be required under the *Road Management Act 2004* for works on, in or under any road.

### 3.4.5 Water Act 1989

The *Water Act 1989* promotes the orderly, equitable and efficient use of water resources to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians. The Act regulates the impacts on and use of surface water and groundwater.



Melbourne Metro would require the following approvals under this Act:

- A licence to construct, alter, operate or decommission works on, over or under the Yarra River and Moonee Ponds Creek (from Melbourne Water)
- A licence to construct a groundwater bore (from Southern Rural Water)
- A licence to extract groundwater for construction purposes (from Southern Rural Water)
- If groundwater recharge bores are required, an approval from the Minister for Environment under Section 76 of the Act.

### 3.4.6 Flora and Fauna Guarantee Act 1988

The *Flora and Fauna Guarantee Act 1988* provides a framework for biodiversity conservation in Victoria. The Act provides for the listing of threatened species, communities of flora and fauna and potentially threatening processes. A number of non-threatened flora species are also listed as protected under the Act.

A permit is required to take species protected under the Act from public land (and may also be required to remove protected species from private land in certain circumstances). However, no threatened or protected flora have been identified within the Melbourne Metro study area, so a permit under the Act would probably not be required.

### 3.4.7 Wildlife Act 1975

The *Wildlife Act 1975* establishes procedures for the protection and conservation of wildlife, the prevention of wildlife becoming extinct and the sustainable use of and access to wildlife. It also includes procedures to prohibit and regulate the conduct of persons engaged in activities concerning wildlife.

Given the very small amount of habitat that would be impacted by Melbourne Metro, no permits for the loss of wildlife or wildlife habitat would be required for the project. However, relevant permits would be required for Environmental Officers and / or Wildlife Handlers responsible for pre-clearance surveys prior to vegetation removal.

### 3.4.8 Catchment and Land Protection Act 1994

The *Catchment and Land Protection Act 1994* defines requirements to avoid land degradation, conserve soil, protect water resources and eradicate and prevent the spread and establishment of noxious weed and pest animal species.

While no major noxious weed infestations were observed at the time of conducting the flora and fauna assessment for Melbourne Metro, and the project has a low probability of promoting the spread of noxious weeds, management measures would need to be implemented to minimise the prospect of this occurring. These measures would be included in the Construction Environmental Management Plan (CEMP) for the project.

### 3.5 Major Transport Projects Facilitation Act 2009

Melbourne Metro was declared by the Premier under Section 10 of the *Major Transport Projects Facilitation Act 2009* on 4 September 2015. The effect of this declaration is that this Act applies to Melbourne Metro with the exception of Part 3 (Assessment and approval of major transport projects) and Part 8 (Assessment Committees). This means that if Melbourne Metro is granted the principal environmental and planning approvals, the project authority will be able to use the project delivery and utilities interface powers in Parts 6 and 7 of the Act to deliver Melbourne Metro.

The Minister for Public Transport was declared to be the Project Minister under Section 14 of the Act on 4 September 2015. In due course, the Minister will appoint a project authority under Section 6 of the Act. Following the Minister for Planning's designation of a Project Area, the project authority will be able to exercise the project delivery powers described above.