



New South Wales

Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996 No 56

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New South Wales

Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996 No 56

Act No 56, 1996

An Act to amend the *Transport Administration Act 1988* to restructure the State Rail Authority, to establish statutory State owned corporations to grant access to the NSW rail network and to operate rail freight services and to establish statutory bodies to provide goods and services to the rail industry and to advise on development, coordination and regulation of public passenger services throughout the State; to make consequential amendments to other legislation; and for other purposes. [Assented to 28 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*.

2 Commencement

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

3 Amendment of Transport Administration Act 1988 No 109

The *Transport Administration Act 1988* is amended as set out in Schedule 1.

4 Amendment of other Acts and instruments

Each Act and instrument specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Transport Administration Act 1988

(Section 3)

[1] Long title

Omit the long title. Insert instead:

An Act to constitute the State Rail Authority, Rail Access Corporation, Freight Rail Corporation, the Railway Services Authority, the State Transit Authority and the Roads and Traffic Authority and to make provision for their management and functions; to establish the Public Transport Authority and a Roads and Traffic Advisory Council; to provide for the administration of public transport in New South Wales; and for other purposes.

[2] Section 3 Definitions

Insert “the Railway Services Authority,” after “State Rail Authority,” in the definition of *Authority* in section 3 (1).

[3] Section 3 (1)

Insert the following definitions in alphabetical order:

Freight Rail Corporation (or *FRC*) means Freight Rail corporation constituted under this Act.

Ministerial Holding Corporation means the Ministerial Holding Corporation constituted by section 37B of the *State Owned Corporations Act 1989*.

Public Transport Authority (or *PTA*) means the Public Transport Authority of New South Wales constituted under this Act.

Rail Access Corporation (or *RAC*) means Rail Access Corporation constituted under this Act.

Rail Corporation means Freight Rail Corporation or Rail Access Corporation.

Railway Services Authority (or ***RSA***) means the Railway Services Authority of New South Wales constituted under this Act.

[4] Section 3 (1)

Omit “or a railway freight service” from the definition of ***railway service***.

[5] Section 3 (3)

Insert after section 3 (2):

- (3) Notes in the text of this Act do not form part of this Act.

[6] Part 2, Division 1A

Insert after Division 1 of Part 2:

Division 1 A Objectives of State Rail Authority

4A Objectives of SRA

- (1) The principal objectives of the State Rail Authority are:
- (a) to operate efficient, safe and reliable railway passenger services, and
 - (b) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State’s investment in the Authority, and
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and

- (d) where its activities affect the environment; to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of the State Rail Authority is of equal importance.

[7] Section 5 Railway services

Omit “and railway freight services” from section 5 (1).

[8] Section 6 Other transport services

Omit “and road freight services” from section 6 (1).

[9] Section 7 General duties with respect to services

Omit the section.

[10] Section 8 Miscellaneous functions of SRA

Omit “construct railways” from section 8 (1) (a).
Insert instead “construct stations, passenger service facilities, rolling stock maintenance facilities”.

[11] Section 8 (1) (g)

Omit “persons; and”. Insert instead “persons.”.

[12] Section 8 (1) (h)

Omit the paragraph.

[13] Section 8A National Rail Corporation (Agreement) Act 1991

Omit “is, in the exercise of its functions”.

Insert instead “, Rail Access Corporation, Freight Rail Corporation and the Railway Services Authority are, in the exercise of their functions”.

[14] Section 9 Constitution of SRA Board

Omit section 9 (2) (b).

[15] Section 9(3)

Omit subsection (3). Insert instead:

- (3) The persons appointed by the Minister must each or together have such expertise as the Minister considers necessary in order to realise the principal objectives of the State Rail Authority.

[16] Section 15 Corporate plans

Insert after section 15 (2):

- (2A) During the preparation of a corporate plan after the commencement of this subsection, the State Rail Authority is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
- (2B) The State Rail Authority is to make the completed corporate plan available for public inspection. However, the Authority is not required to include in any draft or completed plan made available for public comment or inspection information that is of a commercially sensitive nature or that it would otherwise not be required to disclose under the *Freedom of Information Act 1989*.

[17] Section 15 Corporate plans

Insert “in relation to each such separate activity” after “objectives” in section 15 (4) (c).

[18] Section 15 (4A)

Insert after section 4:

- (4A) A corporate plan must specify strategies for dealing with the integration of passenger services and passenger safety, security and conduct and any other similar issues that the Minister directs are to be addressed by the corporate plan.

[19] Parts 2A and 2B (sections 19A–19AH)

Insert after Part 2:

Part 2A Establishment of Rail Corporations

Division 1 Interpretation

19A Definitions

- (1) In this Part and Schedule 6A:

NSWrail network means the railway lines vested in or owned by Rail Access Corporation (including passing loops and turnouts from those lines and loops and associated rail infrastructure facilities that are so vested or owned).

portfolio Minister has the same meaning as in the *State Owned Corporations Act 1989*.

rail infrastructure facilities:

- (a) includes railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment, and (subject to section 19B (2))

- (b) does not include any stations, platforms, rolling stock maintenance facilities, office buildings or housing, freight centres or depots, private sidings and spur lines connected to premises not vested in or owned by Rail Access Corporation.

rail operator means a person who is responsible for the operation or moving, by any means, of any rolling stock on a railway track.

rolling stock means a vehicle that operates on or uses a railway track and that is used or proposed to be used to transport passengers or freight (or both) on a railway track for reward.

voting shareholders has the same meaning as in the *State Owned Corporations Act 1989*.

- (2) Words and expressions used in this Act and also in the *State Owned Corporations Act 1989* have the same meanings as they have in that Act.

19B Meaning of “NSW Rail Access Regime”

- (1) In this Part and Schedule 6A, **NSW Rail Access Regime** means an access regime established from time to time by the Minister and approved by the Premier for the purpose of implementing the Competition Principles Agreement in respect of third party access to the NSW rail network by persons as rail operators, including the use of such rail infrastructure facilities that are vested in or owned by Rail Access Corporation as are necessary for the safe operation of rolling stock on that network.
- (2) The portfolio Minister may, by order in writing, direct that facilities specified in the order that are vested in or owned by Rail Access Corporation be treated as rail infrastructure facilities for the purposes of this Act and an access regime established under this section.
- (3) An access regime established in accordance with this section may, in respect of the carriage of coal, provide for special access pricing principles during the period

that a government coal-carrying service is, by section 78 of the *Competition Policy Reform Act 1995* of the Commonwealth, not a service for the purposes of Part IIIA of the *Trade Practices Act 1974* of the Commonwealth. Those special access pricing principles may continue, for the whole or any part of that period, the level of prices applicable to those services before the establishment of that access regime.

- (4) An access regime established in accordance with this section must make provision with respect to the application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* to a dispute with respect to third party access to the NSW rail network by persons as rail operators. In any arbitration of such a dispute, the arbitrator must:
- (a) give effect to the access regime, and
 - (b) take into account (in addition to the matters referred to in section 24B (3) of that Act) the desirability of ensuring priority and certainty of access for passenger services.

Note. Section 19E (5) of this Act requires the Rail Access Corporation to act in accordance with the NSW Rail Access Regime when exercising its functions.

- (5) The Minister is to cause a copy of an access regime established in accordance with this section (and any amendment or replacement of that regime) to be published in the Gazette as soon as practicable after it has been established (or amended or replaced).
- (6) Before any such access regime is amended or replaced the Minister is to make a draft of the amendment or the replacement regime available for public comment for at least 30 days and is to have regard to any submissions the Minister receives about the draft within that period. The arrangements for obtaining or inspecting the draft and for making submissions are to be advertised in a daily newspaper circulating throughout the State. This subsection does not apply if the Minister is satisfied that the matter is minor or urgent.

- (7) Without limiting this section, the Minister is to take into account all the public benefits arising from an access regime (including those that do not have a direct commercial value) when establishing, amending or replacing the access regime.
- (8) In this section, *Competition Principles Agreement* has the same meaning as in the *Independent Pricing and Regulatory Tribunal Act 1992*.

Division 2 Rail Access Corporation

19C Establishment of RAC as statutory State owned corporation

- (1) There is constituted by this Act a corporation with the corporate name of Rail Access Corporation.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words “Rail Access Corporation”.

Note. The *State Owned Corporations Act 1989* contains many provisions that apply to RAC (and FRC) as statutory State owned corporations. In particular, Part 3 contains provisions relating to their status, the application of the *Corporations Law*, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions as to the performance of non-commercial activities or the carrying out of public sector policies), the memorandum and articles, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

19D Objectives of RAC

- (1) The principal objectives of Rail Access Corporation are:
 - (a) to hold, manage and establish efficient, safe and reliable rail infrastructure facilities, and
 - (b) to promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime, and

- (c) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Corporation, and
 - (d) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (e) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (f) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates, and
 - (g) to maintain reasonable priority and certainty of access for passenger services.
- (2) Each of the principal objectives of Rail Access Corporation is of equal importance.

19E Functions of RAC

- (1) Rail Access Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of Rail Access Corporation are:
 - (a) to hold, manage and establish rail infrastructure facilities on behalf of the State, and
 - (b) to provide persons with access as rail operators to the NSW rail network.
- (3) In providing access to the NSW rail network, Rail Access Corporation must, in a manner that is consistent with the NSW Rail Access Regime, provide for:
 - (a) the development and maintenance of an access pricing policy, and

- (b) the compilation of the master timetable for the allocation of train paths, and
 - (c) the establishment of systems to ensure that train paths are allocated in an efficient and impartial manner under the master timetable, and
 - (d) the preparation and application of standards for the allocation of train priorities and the resolution of conflicts if the master timetable cannot apply for any reason.
- (4) Rail Access Corporation may:
 - (a) provide facilities or services that are ancillary or incidental to its principal functions, and
 - (b) conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (5) In exercising its functions, Rail Access Corporation must act in accordance with the NSW Rail Access Regime.
- (6) Each annual report of Rail Access Corporation prepared under the Annual Reports (Statutory Bodies) Act 1984 must include a section that:
 - (a) identifies the trends in access for passenger and freight services on the NSW rail network, and
 - (b) having regard to those trends, identifies any parts of the NSW rail network where there is or is likely to be insufficient capacity for passenger or freight services, and
 - (c) sets out what Rail Access Corporation proposes should be done to ensure sufficient capacity for those services.
- (7) This section does not limit the functions of Rail Access Corporation apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

19F Powers of RAC relating to rail infrastructure facilities and land

Schedule 6A (Powers of RAC relating to rail infrastructure facilities and land) has effect.

Division 3 Freight Rail Corporation

19G Establishment of FRC as statutory State owned corporation

- (1) There is constituted by this Act a corporation with the corporate name of Freight Rail Corporation.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words “Freight Rail Corporation”.

Note. See note to section 19C concerning the operation of the *State Owned Corporations Act 1989* in relation to FRC and RAC.

19H Objectives of FRC

- (1) The principal objectives of Freight Rail Corporation are:
 - (a) to operate efficient, safe and reliable rail freight services, and
 - (b) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State’s investment in the Corporation, and
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of Freight Rail Corporation is of equal importance.

19I Functions of FRC

- (1) Freight Rail Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal function of Freight Rail Corporation is to operate rail freight services.
- (3) Freight Rail Corporation may:
 - (a) provide facilities or services that are ancillary or incidental to its principal function, and
 - (b) conduct any business (whether or not related to its principal function) that it considers will further its objectives.
- (4) This section does not limit the functions of Freight Rail Corporation apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

Division 4 General matters relating to Rail Corporations

19J Transfer of SRA assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the State Rail Authority or any State Rail Authority subsidiary corporation, as are specified or referred to in the order, be transferred to a Rail Corporation.
- (2) Assets, rights or liabilities may not be transferred under this section to a Rail Corporation unless the Rail Corporation is a statutory State owned corporation.
- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this section.
- (4) For the purposes of this section, the assets, rights and liabilities of the State Rail Authority and any State Rail Authority subsidiary corporation include:
 - (a) any assets, rights or liabilities of the State Rail Authority and any State Rail Authority subsidiary corporation that have vested in the Ministerial Holding Corporation under this Act, and

- (b) any assets, rights or liabilities used by or attaching to the State Rail Authority and any State Rail Authority subsidiary corporation and belonging to the State or an authority of the State.
- (5) An order under this section may be made on such terms and conditions as are specified in the order.
- (6) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the SRA or a SRA subsidiary corporation.

19K Transfer of other assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such other assets, rights or liabilities used by or attaching to the State Rail Authority or any State Rail Authority subsidiary corporation as are specified or referred to in the order, be transferred to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) An order under this section may be made on such terms and conditions as are specified in the order.
- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this section.

19L Restriction on sale of shares

Shares in a Rail Corporation may not be sold or otherwise disposed of except to eligible Ministers.

19M Transfer of certain SRA staff

Schedule 6 (Transfer of certain SRA staff (other than certain chief executives)) has effect with respect to a transfer of members of staff of the State Rail Authority to a Rail Corporation.

19N Foundation charter of Rail Corporations for purposes of SOC Act

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of a Rail Corporation is this Part of this Act (but not the remainder of this Act).

Note. Section 3 of the *State Owned Corporations Act 1989* defines the foundation charter of a statutory SOC as the whole of the Act by which a SOC is established for the purposes of the SOC Act and, in particular, for the purpose of the provisions relating to the legal capacity of statutory SOCs and assumptions that they have complied with that Act and their foundation charter.

19O Board of directors

- (1) The board of directors of a Rail Corporation is to be appointed by the voting shareholders and is to consist of not fewer than 3 and not more than 7 directors.
- (2) One director of the board is to be appointed by the voting shareholders on the recommendation of a selection committee comprising:
 - (a) 2 persons nominated by the portfolio Minister, and
 - (b) 2 persons nominated by the Labor Council of New South Wales,being a person selected by the committee from a panel of 3 persons nominated by the Labor Council.
- (3) The members of the selection committee and the nominees of the Labor Council for the panel are to be representatives of industrial organisations of employees that have members employed in the public sector of the rail industry.
- (4) The procedures for constituting a selection committee for the purposes of subsection (2), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.
- (5) The other directors appointed by the voting shareholders must each or together have such expertise as the voting shareholders consider necessary in order to realise the principal objectives of the relevant Rail Corporation.

- (6) The voting shareholders may remove a director from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (7) Subject to subsection (8), section 20J of and Schedule 8 to the *State Owned Corporations Act 1989* have effect with respect to the board of a Rail Corporation and its constitution and procedure.
- (8) Section 20J (2), (3) (a) and (4) of, and clauses 4 and 7 (1) (d) and (2) of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of a Rail Corporation.

19P Portfolio Minister not to be shareholder of Rail Corporations

The portfolio Minister of a Rail Corporation must not be, and is not eligible for nomination as, a shareholder of the Rail Corporation.

19Q Shareholders of Rail Corporations

- (1) The same Minister (other than the Treasurer) may not be nominated as, and may not be, a shareholder of both of the Rail Corporations at the same time.
- (2) This section applies despite anything in section 20H (5) of the *State Owned Corporations Act 1989*.

19R Chief executive officer

- (1) The chief executive officer of a Rail Corporation is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.

- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Public Sector Management Act 1988* (Part 8 included) does not apply to the chief executive officer.
- (6) Subject to subsection (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) The provisions of section 20K (2) of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.
- (8) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

19S Acting chief executive officer

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
 - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer.

- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of a Rail Corporation.
- (6) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

19T Dividends

- (1) The voting shareholders of a Rail Corporation, in consultation with the board, are to determine the Rail Corporation's share dividend scheme.
- (2) The dividends to be paid by a Rail Corporation are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to a Rail Corporation.

Part 2B Railway Services Authority

Division 1 Constitution of Railway Services Authority

19U Constitution of RSA

- (1) There is constituted by this Act a corporation with the corporate name of the Railway Services Authority of New South Wales.
- (2) The Railway Services Authority:
 - (a) has the functions conferred or imposed on it by or under this or any other Act, and
 - (b) is a statutory body representing the Crown.

Division 2 Objectives of Railway Services Authority

19V Objectives of RSA

- (1) The principal objectives of the Railway Services Authority are:
 - (a) to be an efficient, safe and reliable supplier of goods and provider of services to the rail industry in New South Wales, and

- (b) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Authority, and
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of the Railway Services Authority is of equal importance.

Division 3 General functions of Railway Services Authority

19W Functions of RSA

- (1) The principal function of the Railway Services Authority is to supply goods and provide services to the rail industry in New South Wales.
- (2) Subsection (1) does not limit the power of the Railway Services Authority to provide goods and services to other industries or to the rail industry outside New South Wales.
- (3) Without limiting subsections (1) and (2) and any other functions conferred or imposed on it, the Railway Services Authority may:
 - (a) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials, and

- (b) conduct any business, whether or not related to the operation of a railway, and for that purpose use any property or the services of any staff of the Authority, and
 - (c) acquire and build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment, and
 - (d) make and enter into contracts or arrangements with any person for the operation by the person, on such terms and subject to such conditions as may be agreed, of any of the services or businesses of the Railway Services Authority, and
 - (e) appoint agents, and act as agent for other persons, and
 - (f) acquire, by lease, licence or otherwise, land for the purpose of carrying out its functions.
- (4) The Railway Services Authority may exercise its functions within or outside New South Wales and, without limiting this subsection, may enter into contracts with persons outside New South Wales for the performance of any of its functions outside the State.

19X Duty with respect to safe operations

The exercise of functions by the Railway Services Authority is subject to the requirements of the *Rail Safety Act 1993*.

Division 4 Management of Railway Services Authority

19Y Chief Executive of RSA

- (1) The Governor may appoint a Chief Executive of the Railway Services Authority.
- (2) Schedule 2 (Provisions relating to Chief Executives) has effect with respect to the Chief Executive.

19Z Chief Executive to manage and control affairs of RSA

- (1) The affairs of the Railway Services Authority are to be managed and controlled by the Chief Executive of that Authority.

- (2) Any act, matter or thing done in the name of, or on behalf of, the Railway Services Authority by the Chief Executive is taken to have been done by the Railway Services Authority.

19AA Ministerial control

The Railway Services Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

19AB RSA to supply information to Minister

The Railway Services Authority must:

- (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require, and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

19AC Corporate plans

- (1) The Railway Services Authority must, at least 3 months before the beginning of each financial year of the Authority, prepare and deliver to the Minister a draft corporate plan for the financial year.
- (2) The Railway Services Authority must:
 - (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister, and
 - (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
- (3) The Railway Services Authority must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.

- (4) A corporate plan must specify:
 - (a) the separate activities of the Railway Services Authority and, in particular, the separate commercial and non-commercial activities, and
 - (b) the objectives of each such separate activity for the financial year concerned and for future financial years, and
 - (c) the strategies, policies and budgets for achieving those objectives in relation to each such separate activity, and
 - (d) targets and criteria for assessing the Authority's performance.
- (5) This section is subject to any requirement made by or under this Act.
- (6) As soon as practicable after the commencement of this section, the Railway Services Authority must carry out a review of the existing railway-related services that were provided by the State Rail Authority before the commencement of this Part and that are to be provided by the Railway Services Authority in accordance with this Part and provide the Minister with a report on:
 - (a) any of its activities that are not in the commercial interests of the Authority, and
 - (b) the estimated amount of the annual financial loss resulting from those activities, and
 - (c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.

19AD Exercise of functions through subsidiary corporations, joint ventures or other associations

- (1) In this section, *subsidiary corporation* means:
 - (a) a public subsidiary corporation referred to in section 19AE, or

- (b) a private subsidiary corporation referred to in section 19AF.
- (2) Any function of the Railway Services Authority may be exercised:
 - (a) by the Authority itself, or
 - (b) by a subsidiary corporation, or
 - (c) by the Authority or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

19AE Public subsidiary corporations

- (1) In this section, *public subsidiary corporation* means a corporation constituted in accordance with this section.
- (2) The regulations may constitute a corporation for the purposes of this section with the corporate name specified in the regulations.
- (3) A public subsidiary corporation:
 - (a) has such of the functions of the Railway Services Authority as are specified in the regulations or delegated to it under this Act, and
 - (b) is a statutory body representing the Crown.
- (4) The provisions of or made under this Act or any other Act relating to the Railway Services Authority apply to and in respect of a public subsidiary corporation in such manner and to such extent as are prescribed by the regulations.
- (5) With the approval of the Treasurer and the Minister:
 - (a) the Railway Services Authority may transfer any of its assets, rights or liabilities to a public subsidiary corporation, and
 - (b) a public subsidiary corporation may transfer any of its assets, rights or liabilities to the Railway Services Authority or to another public subsidiary corporation.

- (6) The regulations may make provision for or with respect to the vesting of those assets, rights and liabilities in the transferee without any transfer, conveyance or assignment.
- (7) A public subsidiary corporation is dissolved by the repeal of the regulations by which it is constituted (unless continued in existence by the regulations), and on any such dissolution the assets, rights and liabilities of the corporation become the assets, rights and liabilities of the Railway Services Authority.

19AF Private corporations and private subsidiary corporations

- (1) In this section:

private corporation means a corporation within the meaning of the *Corporations Law* formed in or outside New South Wales.

private subsidiary corporation means a private corporation in which the Railway Services Authority has a controlling interest.

- (2) The Railway Services Authority may, subject to subsection (3):
 - (a) form, or participate in the formation of, private corporations, and
 - (b) acquire interests in private corporations, and
 - (c) sell or otherwise dispose of interests in private corporations,

whether or not the activities or proposed activities of any such private corporation are related to railway or other transport services or engineering services.

- (3) The Railway Services Authority must not, without the approval of the Treasurer and the Minister:
 - (a) form, or participate in the formation of, a private subsidiary corporation, or

- (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
 - (c) sell or otherwise dispose of any interest in a private corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (4) A private subsidiary corporation is not, and does not, represent the Crown.

19AG Delegation of functions of RSA

- (1) The Railway Services Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Railway Services Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section, *authorised person* means:
 - (a) an officer of the Railway Services Authority, or
 - (b) a person of a class prescribed by the regulations or approved by the Chief Executive of the Authority.

Division 5 Transfer of SRA assets, rights and liabilities to RSA

19AH Transfer of SRA assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the State Rail Authority or any State Rail Authority subsidiary corporation, as are specified or referred to in the order, be transferred to the Railway Services Authority.
- (2) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this section.

- (3) For the purposes of this section, the assets, rights and liabilities of the State Rail Authority or any State Rail Authority subsidiary corporation include:
- (a) any assets, rights or liabilities of the State Rail Authority or any State Rail Authority subsidiary corporation that have vested in the Ministerial Holding Corporation under this Act, and
 - (b) any assets, rights or liabilities used by or attaching to the State Rail Authority or any State Rail Authority subsidiary corporation and belonging to the State or an authority of the State.
- (4) An order under this section may be made on such terms and conditions as are specified in the order.

[20] Part 3, Division 1A

Insert after Division 1 of Part 3:

Division 1A Objectives of State Transit Authority

20A Objectives of STA

- (1) The principal objectives of the State Transit Authority are:
- (a) to operate efficient, safe and reliable bus and ferry services, and
 - (b) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Authority, and
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and

Schedule 1 Amendment of Transport Administration Act 1988

- (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of the State Transit Authority is of equal importance.

[21] Section 23 General duties with respect to services

Omit the section.

[22] Section 25 Constitution of STA Board

Omit section 25 (2) (b).

[23] Section 25 (3)

Omit subsection (3). Insert instead:

- (3) The persons appointed by the Minister must each or together have such expertise as the Minister considers necessary in order to realise the principal objectives of the State Transit Authority.

[24] Section 31 Corporate plans

Insert after section 31 (2):

- (2A) During the preparation of a corporate plan after the commencement of this subsection, the State Transit Authority is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
- (2B) The State Transit Authority is to make the completed corporate plan available for public inspection. However, the Authority is not required to include in any draft or completed plan made available for public comment or inspection information that is of a commercially sensitive nature or that it would otherwise not be required to disclose under the *Freedom of Information Act 1989*.

[25] Section 31 Corporate plans

Insert “in relation to each such separate activity” after “objectives” in section 31 (4) (c).

[26] Section 31 (4A)

Insert after section 31 (4):

(4A) A corporate plan must specify strategies for dealing with the integration of passenger services and passenger safety, security and conduct and any other similar issues that the Minister directs are to be addressed by the corporate plan.

[27] Section 38 Functions of ensuring provision of appropriate passenger services

Omit “transport services” wherever occurring.
Insert instead “passenger services”.

[28] Section 38 (4)

Omit the subsection.

[29] Section 42 STA to provide staff etc for Director-General

Omit the section.

[30] Part 5 (sections 44 and 45)

Insert after Part 4:

Part 5 Public Transport Authority of New South Wales

44 Constitution of PTA

- (1) There is constituted by this Act a corporation with the corporate name of the Public Transport Authority of New South Wales.
- (2) The Public Transport Authority consists of:
 - (a) subject to subsection (3), 5 ex-officio members, being:

- (i) the Director-General of the Department of Transport, and
 - (ii) the Chief Executive of the State Rail Authority, and
 - (iii) the Chairperson of the State Rail Authority Board, and
 - (iv) the Chief Executive of the State Transit Authority, and
 - (v) the Chairperson of the State Transit Authority Board, and
- (b) not more than 5 members appointed by the Minister, including:
- (i) a representative of bus and coach proprietors, and
 - (ii) a representative of taxi-cab and private motor vehicle hire operators, and
 - (iii) a representative of marine passenger transport operators, and
 - (iv) a representative of the Public Transport Advisory Council nominated by that Council, and
- (c) another member appointed by the Minister, by the member's instrument of appointment, as Chairperson of the Authority.
- (3) If, pursuant to clause 3 of Schedule 1 (Constitution and procedure of State Rail Authority Board and State Transit Authority Board):
- (a) the Chief Executive of the State Rail Authority is appointed as the Chairperson of the Board of the State Rail Authority, or
 - (b) the Chief Executive of the State Transit Authority is appointed as the Chairperson of the Board of the State Transit Authority,
- the number of ex-officio members of the Public Transport Authority is to be reduced accordingly.

- (4) Schedule 3 (Provisions relating to Public Transport Authority and Roads and Traffic Advisory Council) has effect with respect to the constitution and procedure of the Authority.

45 Function of PTA

- (1) The function of the Public Transport Authority is to advise the Minister on any matter relating to the development, coordination and regulation of public passenger services throughout the State.
- (2) Any such advice may be given either at the request of the Minister or without any such request.
- (3) In this section, *public passenger services* means the carriage of passengers for a fare or other consideration by motor vehicle, vessel or train.

[31] Part 5A (sections 45A–45D)

Insert before Part 6:

Part 5A Public Transport Advisory Council

45A Meaning of “public passenger services”

In this Part, *public passenger services* means the carriage of passengers for a fare or other consideration by motor vehicle, vessel or train.

45B Constitution of Council

- (1) The Minister is to establish a Public Transport Advisory Council.
- (2) The Council is to consist of part-time members appointed by the Minister, of whom:
- (a) 1 is to be the person appointed as Chairperson under clause 3 of Schedule 3, and
- (b) 2 are to be representatives of the users of public transport, selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to represent the interests of public transport users, and

- (c) 1 is to be a representative of the users of public transport who have disabilities, selected from a panel of at least 3 persons nominated by the Accessible Transport Forum established by the Minister or other body designated by the Minister, and
 - (d) 1 is to be a representative of the users of public transport, selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to represent the interests of consumers generally, and
 - (e) 1 is to be selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to protect the environment, and
 - (f) 1 is to be a representative of local government, selected from a panel of at least 3 persons nominated by the Local Government Association of New South Wales, and
 - (g) 1 is to be selected by the Minister because of the person's expertise in public transport planning, and
 - (h) 1 is to be a person with expertise in urban planning nominated by the Minister for Urban Affairs and Planning.
- (3) Schedule 3 has effect with respect to the constitution and procedure of the Council.

45C Functions of Council

- (1) The principal function of the Council is to advise the Minister and the Public Transport Authority on community requirements for public passenger services.
- (2) The Council may, in particular:
 - (a) advise on appropriate performance targets for public passenger services, and
 - (b) advise on arrangements for community participation in the planning and development of public passenger services, and

- (c) advise on any changes to the NSW Rail Access Regime referred to in section 19B.
- (3) The Council may undertake public consultation for the purpose of exercising its functions.
- (4) Any advice by the Council may be given either at the request of the Minister or the Public Transport Authority, or without any such request.
- (5) The Council is required to keep minutes of proceedings at its meetings and to furnish to the Minister a copy of the minutes of each meeting within 14 days after the meeting was held.

45D Annual report by Council

- (1) The Council is to prepare an annual report on the performance of public passenger services, including an assessment of the extent to which the services are meeting their targets and are taking into account relevant environmental and social factors.
- (2) The Minister is to be provided with a draft of the report and given at least 30 days to make any observations the Minister wishes to make to the Council on the draft report.
- (3) The Council is to publish its annual report in such manner as it thinks fit. However, any observations of the Minister on the draft report are to be appended to the report.

[32] Part 7, Division 1A (sections 59–59C)

Insert after Division 1:

Division 1 A Staff of Railway Services Authority

59 Employment of staff

The Railway Services Authority may employ such staff as it requires to exercise its functions.

59A Salary, wages and conditions of staff

The Railway Services Authority may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

59B Regulations relating to staff

- (1) The regulations may make provision for or with respect to the employment of the staff of the Railway Services Authority, including the conditions of employment and discipline of any such staff.
- (2) Any such regulations relating to the conditions of employment or the discipline of staff:
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Railway Services Authority is (or is taken to be) a party, and
 - (b) have effect despite any determination of the Authority under section 59A, and
 - (c) may provide for appeals by members of staff in connection with their employment, including appeals to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*, and
 - (d) have effect subject to Part 2A of the *Public Sector Management Act 1988*.

59C Transfer of certain SRA staff to RSA

Schedule 6 (Transfer of certain SRA staff (other than certain chief executives)) has effect.

[33] Section 60 Employment of staff

Omit “and as the Director-General requires to exercise the Director-General’s functions under Part 4”.

[34] Part 8, Division 1A (sections 72A–72D)

Insert after Division 1:

Division 1A Financial provisions relating to Railway Services Authority

72A Railway Services Authority Fund

There is established a Special Deposits Account to be called the Railway Services Authority Fund.

72B Payments into Railway Services Authority Fund

There is payable into the Railway Services Authority Fund:

- (a) all money received by or on account of the Railway Services Authority, and
- (b) all money advanced to the Railway Services Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority, and
- (c) all other money required by or under this or any other Act to be paid into the Fund.

72C Payments from Railway Services Authority Fund

There is payable from the Railway Services Authority Fund:

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

72D Payment of dividend to Treasurer

The Railway Services Authority must pay to the Treasurer, out of any surplus for a financial year, such dividend as the Minister determines and the Treasurer approves.

[35] Section 86 Ministerial supervision of orders fixing charges

Omit “or freight” wherever occurring from section 86 (1) and (2).

[36] Part 9, Division 1, heading

Omit the heading.

Insert instead “**Division 1 Miscellaneous provisions relating to State Rail Authority, Railway Services Authority and Rail Access Corporation**”.

[37] Section 89 Sale, lease or other disposal of land

Insert “or the Railway Services Authority” after “State Rail Authority” in section 89 (1).

[38] Section 90 Acquisition of land

Omit “for the purposes of the construction or extension of a railway or for any other purposes of” from section 90 (1).

Insert instead “for any purposes of”.

[39] Section 92

Omit the section. Insert instead:

92 Maintenance of railway lines

Rail Access Corporation is not required to maintain a railway line on which no services are operated.

[40] Section 93 Closure and disposal of railway lines

Omit “The State Rail Authority” from section 93 (1).

Insert instead “Rail Access Corporation”.

[41] Section 93 (3)

Omit the subsection. Insert instead:

- (3) For the purposes of this section, a railway line is not closed merely because Rail Access Corporation has entered into a lease or other arrangement in respect of it pursuant to an agreement entered into by the Commonwealth and the State.

[42] Section 94

Omit the section. Insert instead:

94 Closure of level-crossings, bridges and other structures

- (1) Rail Access Corporation may, with the approval of the Minister, close any level-crossing, bridge or other structure for crossing or passing over or under any railway track if both the level-crossing, bridge or other structure and the railway track are owned by the Corporation.
- (2) Rail Access Corporation must notify the Minister of any proposal by it to close a level-crossing, bridge or other structure for crossing or passing over or under a railway track.
- (3) Rail Access Corporation must, before closing any such level-crossing, bridge or other structure:
 - (a) cause a notice of the proposed closure to be published in the Gazette, and
 - (b) notify the Roads and Traffic Authority and the council of the area concerned of the proposed closure.
- (4) On the closure of any such level-crossing, bridge or other structure, all rights, easements and privileges in relation to that level-crossing, bridge or other structure are extinguished.

[43] Section 95 Inquiries into railway accidents

Omit the section.

[44] Section 96 Limitation of compensation in respect of damage to property by fire

Insert “or Rail Access Corporation” after “State Rail Authority” where firstly and thirdly occurring.

[45] Section 96 (a)

Insert “or by Rail Access Corporation in the exercise of its functions under this Act” after “services”.

[46] Section 96

Insert “or such other amount as may be prescribed by the regulations” after “\$50,000”.

[47] Section 107, definition of “transport authority”

Insert after section 107 (a):

(a1) the Railway Services Authority, or

[48] Section 112 Personal liability of certain persons

Insert “the Railway Services Authority,” after “State Rail Authority,” in the definition of *member of a transport authority* in section 112 (2).

[49] Section 112 (2), definition of “transport authority”

Insert after section 112 (2) (a):

(a1) the Public Transport Authority, and

[50] Schedule 1 Constitution and procedure of State Rail Authority Board and State Transit Authority Board

Omit “and the Director-General” from the definition of *appointed member* in clause 1.

[51] Schedule 1, clause 1

Omit “, the Director-General” from the definition of *member*.

[52] Schedule 1, clause 7 (g)

Omit clause 7 (g). Insert instead:

(g) becomes a mentally incapacitated person, or

[53] Schedule 2 Provisions relating to Chief Executives

Omit “(Secs. 11 (3), 27 (3), 47 (2))”.

Insert instead “(Sections 11 (3), 19Y (2), 27 (3), 47 (2))”.

[54] Schedule 2, clause 1

Insert “the Chief Executive of the Railway Services Authority,” after “State Rail Authority,” in the definition of *Chief Executive*.

[55] Schedule 3, heading

Omit the heading.

Insert instead “**Schedule 3 Provisions relating to Public Transport Authority, Public Transport Advisory Council and Roads and Traffic Advisory Council**”.

[56] Schedule 3, clause 1

Insert “the Public Transport Authority, the Public Transport Advisory Council or” after “means” in the definition of *Advisory Council*.

[57] Schedule 3, clause 1

Omit “the Advisory Council” from the definition of *member*.
Insert instead “an Advisory Council”.

[58] Schedule 3, clause 3 (3) and (4)

Omit “the Roads and Traffic Advisory Council” wherever occurring.
Insert instead “an Advisory Council”.

[59] Schedule 3, clauses 4 (3), 11, 12 (2) and 14

Omit “the Advisory Council” wherever occurring.
Insert instead “an Advisory Council”.

[60] Schedule 3, clauses 7 (1) (e), 10, 12 (1) and 13

Omit “the Advisory Council” wherever firstly occurring.
Insert instead “an Advisory Council”.

[61] Schedule 3, clause 7 (g)

Omit clause 7 (g). Insert instead:

(g) becomes a mentally incapacitated person, or

[62] Schedule 4

Insert after Schedule 3:

**Schedule 4 Transfer of assets, rights and liabilities
of SRA and its subsidiaries**

(Sections 19J, 19K and 19AH)

1 Definitions

In this Schedule:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

2 Application and interpretation

- (1) This Schedule applies to the following orders under this Act:
 - (a) an order under section 19J transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to a Rail Corporation,
 - (b) an order under section 19K transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to the Ministerial Holding Corporation or to any person on behalf of the State,
 - (c) an order under section 19AH transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to the RSA.
- (2) In this Schedule, the body or person from whom any assets, rights or liabilities are so transferred is called the ***transferor*** and the body or person to whom they are being so transferred is called the ***transferee***.

3 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Schedule applies, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights and liabilities of the transferor become by virtue of this Schedule the rights and liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to regulations or other provisions under Schedule 7), to be read as, or as including, a reference to the transferee.

4 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the making of an order to which this Schedule applies.

5 Date of vesting

An order to which this Schedule applies takes effect on the date specified in the order.

6 Consideration for vesting

- (1) An order to which this Schedule applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) The consideration and value or values cannot exceed the optimised deprivation of those assets, rights or liabilities.
- (3) In this clause, optimised deprivation value means a value determined by the application of the Guidelines on Accounting Policy for Valuation of Government Trading Enterprises prepared by the Steering Committee on National Performance Monitoring of Government Trading Enterprises, agreed on by the Commonwealth and States and published in October 1994.

7 Stamp duty

Stamp duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a Rail Corporation, the Ministerial Holding Corporation or other person on behalf of the State or the RSA by an order to which this Schedule applies, or

- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

8 Transfer of interest in land

- (1) An order to which this Schedule applies may transfer an interest in respect of land vested in the SRA or any SRA subsidiary corporation without transferring the whole of the interests of the SRA or subsidiary corporation in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

9 Determinations of Minister for purposes of orders

For the purposes of any order to which this Schedule applies, a determination by the Minister as to which entity to which any assets, rights or liabilities relate is conclusive.

10 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

[63] Schedule 5 Extended leave for staff of each Authority

Omit “*Conciliation and Arbitration Act 1904*” from subparagraph (i) of paragraph (a) of the definition of *service as an adult* in clause 3 (5).

Insert instead “*Industrial Relations Act 1988*”.

[64] Schedule 5, clause 3 (5) (a) (ii)

Omit “*Industrial Arbitration Act 1940*”.
Insert instead “*Industrial Relations Act 1991*”.

[65] Schedule 5, clause 3 (7) (a) and (8) (a)

Omit “the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*” wherever occurring.
Insert instead “13 December 1963”.

[66] Schedule 6

Insert after Schedule 5:

Schedule 6 Transfer of certain SRA staff (other than certain chief executives)

(Sections 19M and 59C)

1 Definitions

In this Schedule:

former SRA staff means the members of staff of the SRA immediately before the commencement of this Schedule (other than the holder of a position specified in clause 48 or 49 of Part 3 of Schedule 7) who, after that commencement, are transferred to a Rail Corporation or the RSA by an order made under this Schedule.

the SRA enterprise agreements means:

- (a) the State Rail Authority of New South Wales—State—Enterprise Agreement 1995, and
- (b) the State Rail Authority of New South Wales Enterprise Agreement 1996,

or, if any such agreement expires or is replaced before the commencement of this Schedule, any new enterprise agreement entered into by the SRA or a SRA subsidiary corporation to replace that agreement (as so in force).

2 Transfer of former SRA staff to Rail Corporations

- (1) The Minister may, by order in writing, provide that such former SRA staff as are specified or described in the order are transferred to a Rail Corporation specified in the order.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the Rail Corporation, in accordance with the terms of the order, on the day on which this Schedule commences.

3 Transfer of former SRA staff to RSA

- (1) The Minister may, by order in writing, provide that such former SRA staff as are specified or described in the order are transferred to the RSA.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the RSA, in accordance with the terms of the order, on the day on which this Schedule commences.

4 Preservation of SRA enterprise agreements

- (1) Despite anything contained in the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*, the SRA enterprise agreements continue in force for the terms of the agreements, but subject to this clause.
- (2) The Rail Corporations and the RSA (and their successors) are, for the purposes of this clause, taken to be parties to the SRA enterprise agreements.

5 Preservation of remuneration and other conditions of employment on transfer from SRA

- (1) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which former SRA staff become employed on being transferred under this Schedule (including terms and conditions as to remuneration, allowances and duration of employment) are those on which they were employed by the SRA immediately before the commencement of this Schedule.

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- (2) The terms and conditions of employment referred to in subclause (1) apply to new employees of a Rail Corporation or the RSA in the same way as they apply to former SRA staff of the same class or classification who are transferred to the Rail Corporation or the RSA.
 - (3) The terms and conditions of employment referred to in subclause (1) may be varied but only by the means by which they could be varied immediately before the commencement of this Schedule.
 - (4) Despite subclauses (1)–(3), a person who is the subject of an order under clause 2 and who, immediately before the making of the order, held an executive position under Part 2A of the *Public Sector Management Act 1988* (other than a position referred to in clause 48 of Part 3 of Schedule 7) in the SRA is not entitled to exercise a right to return to the public sector or to seek the benefit of section 42R or 42S of the *Public Sector Management Act 1988*:
 - (a) on ceasing, on the making of the order, to hold that position, or
 - (b) on ceasing to be employed with a Rail Corporation.

6 Preservation of leave and other entitlements for previous service of SRA staff and mobility entitlements of former SRA staff for future service with one or more new employers

- (1) Continuous service of former SRA staff with the SRA and with one or more new employers is taken, for all purposes, as service with their current new employer.
- (2) This clause applies, without limiting its operation, for the purpose of the accrual of leave with the new employer and for the purpose of any entitlements to redundancy payments from the current new employer.
- (3) In particular, former SRA staff retain, on transfer under this Schedule (or on subsequent transfer) to a new employer, any rights to annual leave, long service leave and sick leave accrued or accruing in their previous employment with the SRA or a new employer.

- (4) A person's entitlement to any such leave is to be calculated:
- (a) for such part of any period during which that leave accrued or was accruing as occurred before the day of transfer to the new employer—at the rate for the time being applicable to the person before that day (as an employee of the SRA or of the former new employer), and
 - (b) for such part of the period as occurred after the day of transfer to the current employer—at the rate for the time being applicable to the person after that day (as an employee of the current new employer).
- (5) For the purposes of this clause, a *new employer* is any Rail Corporation, the RSA or the SRA.

7 Special provision relating to long service leave and sick leave for staff of Rail Corporations

- (1) For the purposes of this Schedule, terms and conditions, in relation to former SRA staff who are transferred to a Rail Corporation pursuant to an order to which this Schedule applies and to other employees of the Rail Corporation, include the provisions of:
- (a) Schedule 5 (Extended leave for staff of each Authority) as if the references in that Schedule to:
 - (i) an officer included references to an employee of the Rail Corporation, and
 - (ii) a relevant Authority included references to the Rail Corporation, and
 - (b) clause 10 (relating to sick leave) of the *Transport Administration (Staff) Regulation 1995* as if the references in that clause to:
 - (i) SRA officers and other employees of the SRA included references to employees of the Rail corporation, and
 - (ii) the SRA included references to the Rail Corporation.

- (2) The provisions referred to in subclause (1) are, in so far as they relate to a Rail Corporation, taken to have been fixed by an award.

8 Applications for transfer by former SRA staff

- (1) This clause applies, in the period of 4 years after the commencement of this Schedule, to the filling of any vacant position in a Rail Corporation, the RSA or the SRA if the applicants eligible to apply for the vacancy are limited to the staff of the Rail Corporation, the RSA or the SRA, as the case may be.
- (2) Any former SRA staff who are transferred under this Schedule are eligible to apply for a vacancy to which this clause applies as if they were members of the staff of the relevant Rail Corporation, the RSA or the SRA.
- (3) This clause does not apply to former SRA staff who are no longer employed by a Rail Corporation, the RSA or the SRA.
- (4) Any former SRA staff who are employed by a Rail Corporation and who apply for any vacant position to which this clause applies in the RSA or the SRA have the same rights of appeal against the filling of the position as they would have if they were employees of the Authority concerned.
- (5) Any former SRA staff who are employed by the RSA or the SRA and who apply for any vacant position to which this clause applies in a Rail Corporation have the same rights of appeal (if any) against the filling of the position as they would have if they were employees of the Rail Corporation concerned.

Note. Entitlements to superannuation for former SRA staff are preserved by amendments made by Schedule 2 to the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996* that declare the Rail Corporations to be employers for the purposes of the State's superannuation schemes.

9 No payment out on transfer or dual benefits

- (1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of a Rail Corporation, the RSA or the SRA.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the SRA.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

10 Transport Appeal Boards Act 1980 not to apply to Rail Corporations

The *Transport Appeal Boards Act 1980* does not apply in relation to a Rail Corporation.

[67] Schedule 6A

Insert after Schedule 6:

Schedule 6A Powers of RAC relating to rail infrastructure facilities and land

(Section 19F)

1 Definitions

In this Schedule:

SRA building means a building owned by, vested in or under the control of the SRA but does not include any building of which the SRA is the lessor.

SRA land means land owned by, vested in or under the control of the SRA but does not include any land of which the SRA is the lessor.

2 Ownership of rail infrastructure facilities

- (1) RAC is the owner of all rail infrastructure facilities installed in or on land, in or on rivers and other waterways and in or on the beds of rivers and waterways by RAC and of all rail infrastructure facilities vested in or transferred to RAC (whether or not the place on which the facilities are situated is owned by RAC).
- (2) RAC may, subject to this Act, inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing that is necessary or appropriate to any of its rail infrastructure facilities that are situated on SRA land or on or in a SRA building to ensure that, in the opinion of RAC, the rail infrastructure facilities are established, held and managed in an efficient, safe and reliable manner.
- (3) RAC may, subject to this Act, the NSW Rail Access Regime and the *State Owned Corporations Act 1989*, sell or otherwise deal with rail infrastructure facilities that it owns.

3 Entry on to land

- (1) RAC may, by persons issued with certificates of authority under this Schedule, enter and occupy SRA land or a SRA building in accordance with this Schedule for the purpose of exercising its functions including:
 - (a) to inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing that RAC considers is necessary or appropriate to any of its rail infrastructure facilities or to construct new rail infrastructure facilities and, for these purposes, to carry out any work on, below or above the surface of the land, and
 - (b) to ascertain the character and condition of the land or a building to enable RAC to inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing to RAC's rail infrastructure facilities, and

- (c) to ascertain the condition or location of any rail infrastructure facilities to enable RAC to inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing that RAC considers necessary or appropriate to any of its rail infrastructure facilities.
- (2) Material that has been excavated from SRA land for the purposes of this clause may be removed from the land by RAC.
- (3) Without limiting this clause, the power of entry conferred by it includes the right of RAC to pass or repass unimpeded, with or without vehicles, plant or equipment, over, on or through SRA land and SRA buildings.
- (4) RAC must, on completion of an inspection or the carrying out of other work referred to in this clause, remove, at its own cost, from the SRA land or SRA building all unused stores, materials, construction equipment and portable buildings that it has placed on or in the SRA land or SRA building.
- (5) However, RAC is not required to remove unused stores, materials, construction equipment or portable buildings that are situated on or in SRA land or a SRA building on the commencement of this Schedule.

4 Certificates of authority

- (1) RAC may authorise an officer or employee of RAC, or any other person, to issue certificates of authority for the purposes of this Schedule.
- (2) A certificate of authority must:
 - (a) state that it is issued under this Act, and
 - (b) specify the person or class of persons who are authorised to exercise the power of entry under this Act, and

- (c) describe the nature of the powers proposed to be exercised, and
- (d) state the date (if any) on which it expires, and
- (e) bear the signature of the person by whom it is issued.

5 Party to access agreement with RAC authorised to enter SRA land

- (1) A person who is a party to an access agreement is authorised to have access to the rail infrastructure facilities to which the access agreement relates, even if the facilities are situated in or on SRA land, if access is exercised in accordance with and as permitted by the access agreement.
- (2) A person to whom this clause applies does not require a certificate of authority under this Schedule to enter the SRA land concerned.
- (3) In this clause, *access agreement* means an agreement, entered into by RAC pursuant to the NSW Rail Access Regime, that permits a person to operate rolling stock on the NSW rail network.

6 Exercise of powers of entry

- (1) Before a person enters any SRA building under a power conferred by this Schedule, RAC or another person must serve on the SRA reasonable notice in writing of the intention to enter the building on a day or days specified in the notice unless:
 - (a) entry to the building is made with the consent of the SRA, or
 - (b) entry is required for an emergency inspection or the taking of urgent remedial action to rail infrastructure facilities, in which event the chief executive officer of RAC or a person nominated by the chief executive officer of RAC (either generally or in the particular case) must give SRA as much notice (oral or otherwise) as is practicable in the circumstances.

- (2) Nothing in this clause authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling-house.
- (3) Nothing in this clause requires RAC to give the SRA notice of the entry of a person onto SRA land under a power conferred by this Schedule.

7 Compensation

- (1) RAC is, in exercising its functions under this Schedule, to do as little damage as practicable.
- (2) RAC must, subject to this Schedule, compensate the SRA for damage suffered by the SRA as the result of the exercise of functions by RAC. However, RAC is required to pay compensation to the SRA only if the construction or maintenance work damages or interferes with a SRA building or other structure owned by the SRA on the land.
- (3) Any claim for compensation by the SRA for damage caused by the exercise of functions by RAC under this Schedule must be made in writing to the chief executive officer of RAC within 12 months after the construction or maintenance work concerned is completed or within such further time as may be agreed on by the chief executive officer of RAC.
- (4) Compensation may be made by reinstatement, repair, construction of works or payment.
- (5) If compensation is to be made by payment, the amount of the compensation is the amount agreed on by RAC and the SRA. However, the amount of compensation for damage to a SRA building or other structure owned by the SRA must not exceed the value of the building or structure.
- (6) If RAC and the SRA cannot, within a reasonable time, agree on the amount of compensation or the value of the building or other structure concerned, the matter is to be referred to the Minister for settlement in accordance with clause 11.

- (7) RAC may, in exercising its functions under this Schedule, do anything that is necessary or desirable to minimise disruption to the operation of railway passenger services by the SRA. However, RAC is not required to compensate the SRA for any loss suffered or cost or expense incurred by the SRA as a result of any such disruption.
- (8) For the removal of doubt, the SRA is not entitled to claim or recover any payment or other benefit merely because rail infrastructure facilities owned by RAC are situated on or in SRA land or a SRA building.

8 Protection of rail infrastructure facilities

- (1) Any SRA land (or any SRA land on which a SRA building is erected) in or on which rail infrastructure facilities owned by RAC are installed is taken to be the subject of a covenant in favour of RAC pursuant to which the SRA must ensure that:
 - (a) the rail infrastructure facilities are not wilfully or negligently destroyed, damaged or interfered with by any employee, agent or contractor of the SRA or any other person within its control, and
 - (b) RAC or any person issued with a certificate of authority is not delayed or obstructed in and about the taking, in relation to the rail infrastructure facilities, of any step referred to in clause 2 (2), and
 - (c) no structure or object is placed in, on or near the rail infrastructure facilities in a manner that interferes with their operation, and
 - (d) RAC is notified in writing of any proposed construction, repair, maintenance, alteration, removal, demolition or other similar work on SRA land that threatens or is likely to threaten the safety or operational capacity or efficiency of RAC's rail infrastructure facilities and that RAC has consented in writing to any such work before it is undertaken, and

- (e) RAC is notified in writing of any proposal to sell or otherwise dispose of SRA land or SRA buildings on or in which RAC's rail infrastructure facilities are situated and that RAC has consented in writing to any such sale or other disposal before it is effected.
- (2) A covenant to which this clause relates is enforceable as a duly created covenant.
- (3) A lease or licence entered into, whether before or after the commencement of this clause, by the SRA as lessor or licensor is taken to include a term requiring the lessee or licensee to comply with the same obligations, in relation to the land and buildings, the subject of the lease or licence, as are imposed by subclause (1) on the SRA in relation to SRA land and buildings.
- (4) It is a defence to proceedings by RAC under this clause that the SRA or, in a case to which subclause (3) applies, the lessee or licensee from the SRA, could not reasonably have prevented action taken by any person that would, if capable of prevention by the SRA, lessor or licensee, have resulted in a breach of covenant by the SRA, lessor or licensee.
- (5) If a person:
 - (a) places a structure or object in, on or near rail infrastructure facilities owned by RAC that are situated in or on SRA land or a SRA building in a manner that interferes with the operation of the facilities, or
 - (b) carries out, or proposes to carry out, any construction, repair, maintenance, alteration, removal, demolition or other similar work in, on or near rail infrastructure facilities owned by RAC that are situated in or on SRA land or a SRA building in a manner that threatens or is likely to threaten the safety or operational capacity or efficiency of RAC's rail infrastructure facilities,

RAC may give the person a written notice requiring removal of the structure or object or that the work not be undertaken or, if the work has commenced, that it be stopped, altered or removed within a time and (if appropriate) in the manner specified in the notice.

(6) On the receipt of such a notice, the person to whom it has been given must:

- (a) remove the structure or object, or
 - (b) not undertake, or stop, alter or remove the work,
- and compensate RAC for all loss or damage suffered by it as a result of the placement of the structure or object on, in or near the facilities or as a result of the undertaking of the work.

(7) If a person fails to comply with a notice under subclause (5) within the period and (if appropriate) the manner specified in the notice or within any extension of that period allowed by RAC in writing, the Corporation may:

- (a) remove the structure or object, or
- (b) alter or remove the work,

and recover from the person the cost of the alteration or removal together with compensation for all loss or damage referred to in that subclause.

9 Compensation to RAC for damage

(1) Without limiting clause 8, a person who, without the consent of RAC:

- (a) carries out any activity that causes destruction of, damage to or interference with any rail infrastructure facilities owned by RAC, and
- (b) does so in circumstances in which the person knew, or should have known, that the destruction, damage or interference would result from the carrying out of the activity,

is liable to compensate RAC for all loss or damage suffered by RAC as a result.

- (2) RAC is not entitled to compensation under this clause and another provision of this Schedule for the same destruction, damage or interference.
- (3) A reference in this clause to a person extends to any person:
 - (a) who caused the carrying out of the activity, or
 - (b) under whose order or direction the activity was carried out, or
 - (c) who aided, assisted, counselled or procured the carrying out of the activity.
- (4) RAC may proceed against a person for recovery of its loss or compensation for its damage under this clause whether or not RAC has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

10 RAC has certain rights under SRA agreements relating to works and facilities on SRA land

- (1) This clause applies to any agreement entered into by the SRA (or a predecessor of the SRA) before the commencement of this Schedule under which a person may construct, maintain or use works or facilities on SRA land or in an SRA building, being an agreement under which the SRA has the following rights (within the meaning of Schedule 4):
 - (a) the right to supervise the construction, maintenance or use of the works or facilities, or
 - (b) the right to direct (or carry out at the expense of the person) the repair, alteration, replacement, closure, removal or demolition of the works or facilities, or
 - (c) the right to be compensated for loss or damage suffered by the SRA because of any loss or damage, or other thing, that occurs during or as a result of the construction, maintenance or use (or the repair, alteration, replacement, removal or demolition) of the works or facilities, or

- (d) any other rights of a kind prescribed by the regulations.
- (2) RAC has and may exercise any such rights, in addition to the SRA, if the works or facilities are, or are to be, situated on or near land or a building where there are rail infrastructure facilities vested in or owned by RAC. For that purpose, references in the agreement to the SRA are taken to include references to RAC.
- (3) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities under the agreement, or
 - (c) as giving rise to any remedy by a party to the agreement, or as causing or permitting the termination of the agreement, or
 - (d) as an event of default under the agreement.

Without limiting this subclause, the operation of this clause is not to be regarded as giving rise to any right to compensation by a party to the agreement.

- (4) This clause does not limit the operation of clauses 8 and 9 or the operation of Schedule 4.
- (5) In this clause, *SRA land* or *SRA building* includes any land or building of which the SRA is the lessor.

11 Connections to NSW rail network

- (1) A person who proposes to connect railway track to the NSW rail network must obtain:
 - (a) the written consent of RAC, and
 - (b) if the work proposed involves crossing and placing railway track on SRA land in order to connect with the NSW rail network, the written consent of the SRA.

- (2) RAC may grant a consent under this clause on such terms and conditions as it thinks fit.

However, RAC must not unreasonably prevent a person who occupies land adjoining the NSW rail network connecting railway track to that network if RAC is satisfied that:

- (a) the connection accords with the principal objectives of RAC and, in particular, will not adversely affect the efficient, safe and reliable operation of that network, and
- (b) the NSW rail network has sufficient capacity to handle any additional traffic generated by the connection, and
- (c) the connection will comply with the requirements of the *Rail Safety Act 1993* and any other relevant legislation (including any planning legislation), and
- (d) the costs of making and maintaining the connection are paid by the person seeking the connection.

A consent under this clause to connect to the NSW rail network does not confer any rights of access to that network and a person does not have a right to make the connection unless access to that network from the connection is or will be authorised by an access agreement that has been made under Part 2A of this Act.

- (3) The SRA may grant a consent under this clause on such terms and conditions as it thinks fit. However, the SRA must not unreasonably prevent a person who occupies land that adjoins SRA land from constructing railway track on SRA land for the purpose of connecting it to the NSW rail network.
- (4) RAC or, in a case to which subclause (1) (b) applies, the SRA, may disconnect and remove railway track that has not been authorised as required by this clause.

12 Settlement of disputes

- (1) If a dispute arises between RAC and the SRA with respect to the operation of, or compliance with, the provisions of this Schedule and if, after diligent efforts on the part of RAC and the SRA, the dispute has not been resolved, either party may submit the dispute to the Minister for settlement in accordance with this clause.
- (2) On the submission of a dispute to the Minister, the Minister is to:
 - (a) consult with RAC and the SRA, and
 - (b) inquire into the matter or appoint a person to inquire into the matter and report to the Minister with respect to the dispute.
- (3) After the completion of an inquiry and, if a report is made to the Minister, after consideration by the Minister of that report, the Minister may make such order with respect to the dispute as the Minister thinks fit.
- (4) Without limiting subclause (3), the Minister may make an order:
 - (a) imposing conditions or restrictions on certificates of authority issued under this Schedule with respect to entry into SRA buildings, or
 - (b) subject to clause 7, determining that RAC is to compensate the SRA for damage suffered by the SRA as a result of the exercise of functions by RAC under this Schedule, or
 - (c) directing the SRA to permit a person to construct railway track on SRA land for the purpose of connecting it to the NSW rail network.
- (5) An order made by the Minister under this clause may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (6) RAC and the SRA must comply with any order given to them under this clause and RAC and the SRA are, despite the provisions of any Act, empowered to comply with any such order.

- (7) The provisions of any other Act relating to the settlement of disputes do not apply to the settlement of a dispute referred to in this clause.

13 Acquisition of land

- (1) RAC may acquire land (including an interest in land) for the purpose of establishing and maintaining rail infrastructure facilities.
- (2) The other purposes for which land may be acquired under subclause (1) include for the purposes of a future sale, lease or disposal, that is, to enable RAC to exercise its functions in relation to land under this Act.
- (3) Land that RAC is authorised to acquire under this clause may be acquired by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purpose referred to in subclause (1).
- (4) RAC may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the portfolio Minister.
- (5) For the purposes of the *Public Works Act 1912*, any such acquisition is taken to be for an authorised work and RAC is, in relation to that authorised work, taken to be the Constructing Authority.
- (6) Part 3 and section 91 (b) of the *Public Works Act 1912* do not apply in respect of works constructed for the purpose referred to in this clause.
- (7) Despite the exclusion by subclause (6) of the provisions of section 91 (b) of the *Public Works Act 1912* in respect of works constructed for the purpose referred to in this clause, RAC may in its discretion make and maintain such fences in connection with the works as it thinks fit.

14 Council approval not required for work on new or existing rail infrastructure facilities

- (1) This clause applies to work connected with:
 - (a) the erection or installation of new rail infrastructure facilities by RAC after the commencement of this clause, or
 - (b) the operation, repair, replacement, maintenance, removal, extension, expansion, alteration, connection or disconnection by RAC of rail infrastructure facilities that are vested in or transferred to RAC in accordance with this Act.
- (2) Work to which this clause applies is exempt from the requirement for an approval under the Local Government Act 1993.
- (3) However, no such work (other than routine repairs or maintenance work) may be carried out unless:
 - (a) reasonable notice of the proposal to carry out the work has been given to the local council (if any), and
 - (b) the local council (if any) has been given a reasonable opportunity to make submissions to RAC in relation to the proposal, and
 - (c) RAC has given due consideration to any submissions so made.
- (4) Subclause (3) does not apply to the carrying out of work:
 - (a) to cope with emergencies, or
 - (b) for which an approval under the Local Government Act 1993 is not required.

15 Regulations as concerning land and rail infrastructure facilities

The regulations may make provision for or with respect to the following:

- (a) the obligation of the SRA and RAC to enter into a memorandum of understanding concerning the management of SRA land on which rail infrastructure facilities vested in or owned by RAC are situated and that is not used by the SRA or a lessee or licensee of the SRA,
- (b) the use of rail infrastructure facilities vested in or owned by RAC,
- (c) the protection and preservation of rail infrastructure facilities.

[68] Schedule 7 Savings, transitional and other provisions

Omit “this Schedule” from clause 1. Insert instead “Part 2”.

[69] Schedule 7, clause 2 (1)

Omit “the cognate Acts.”. Insert instead:

the cognate Acts,

Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996,

[70] Schedule 7, Part 2, heading

Omit the heading. Insert instead:

Part 2 Provisions consequent on enactment of Transport Administration Act 1988 and cognate Acts

Division 1 Provisions relating to State Rail Authority

[71] Schedule 7, headings

Omit “Part 3”, “Part 4”, “Part 5”, “Part 6” and “Part 7”.
Insert instead “Division 3”, “Division 4”, “Division 5”, “Division 6” and “Division 7”.

[72] Schedule 7, Part 3

Insert after Division 7:

**Part 3 Provisions consequent on enactment of
Transport Administration Amendment (Rail
Corporatisation and Restructuring) Act 1996**

47 Definitions

In this Part:

amending Act means the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*.

former SRA officer means a person who was a member of the staff of the SRA immediately before 1 July 1996 and who, after that date, is transferred to a Rail Corporation or the RSA by an order made under Schedule 6.

rail business means a Rail Corporation, the RSA or the SRA.

48 Chief executive officers of Rail Corporations

- (1) Despite section 19R (1), on the commencement of that subsection and this clause:
 - (a) the holder of the senior executive position of Director, Planning and Access in the SRA becomes, and is taken to be appointed as, the chief executive officer of RAC for the residue of the holder's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as those of the holder's appointment as, Director, Planning and Access with the SRA, and
 - (b) the holder of the senior executive position of Group General Manager, Freight Rail in the SRA becomes, and is taken to be appointed as, the chief executive officer of FRC for the residue of the holder's term of office as, and subject to the same conditions (including conditions as to

remuneration and duration of employment) as those of the holder's appointment as, Group General Manager, Freight Rail with the SRA.

- (2) Despite subclause (1), a person who is the holder of an executive position under Part 2A of the *Public Sector Management Act 1988* referred to in that subclause is not entitled to exercise a right to return to the public sector or to seek the benefit of section 42R or 42S of the *Public Sector Management Act 1988*:
 - (a) on ceasing, on the commencement of this clause, to hold that position, or
 - (b) on ceasing to be employed with a Rail Corporation.
- (3) The other provisions of section 19R apply to a chief executive officer taken to be appointed in accordance with this clause.

49 Chief executive officer of RSA

- (1) Despite section 19Y (1), on the commencement of that subsection and this clause, the holder of the senior executive position of General Manager, Railway Services in the SRA becomes, and is taken to be appointed as, the chief executive officer of the RSA for the residue of the holder's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as those of the holder's appointment as, General Manager, Railway Services with the SRA.
- (2) The provisions of section 19Y (2) and Schedule 2 apply to a chief executive officer taken to be appointed in accordance with this section.

50 Timetable for first statement of corporate intent

A period within which any matter is required to be done under section 21 of the State Owned Corporations Act 1989 in connection with the first statement of corporate intent of a Rail Corporation may be extended by the voting shareholders of the Rail Corporation.

51 Saving of Rail Safety Act 1993

Nothing in the amending Act affects the operation of the *Rail Safety Act 1993*.

52 Rail Corporations and RSA taken to hold certain authorisations and licences under Electricity Supply Act 1995

A Rail Corporation and the RSA are, on the commencement of this clause, taken to hold the same authorisations and licences, on the same terms and conditions, as the authorisations and licences that the SRA is taken to hold pursuant to clause 16 (3) of Schedule 6 to the *Electricity Supply Act 1995*.

53 References to Commissioner for Railways in provision dealing with supply of sufficient electricity for railways (sec 12, Electricity (Pacific Power) Act 1950 No 22)

- (1) On and from the commencement of this clause until the repeal of section 12 (Commission to supply sufficient electricity for railways and road transport) of the *Electricity (Pacific Power) Act 1950* by the operation of Schedule 5.2 [7] to the *Electricity Supply Act 1995*, references in that section to the Commissioner for Railways are to be read as references to:
 - (a) the SRA, and
 - (b) if a Rail Corporation requires electricity to be supplied for use in providing motive power for electric trains, the Rail Corporation.
- (2) If, on the commencement of Schedule 2 to the amending Act, the repeal of section 12 of the *Electricity (Pacific Power) Act 1950* made by Schedule 5.2 [7] to the *Electricity Supply Act 1995* has not commenced, the amendment contained in Schedule 2.5 [3] of the amending Act is taken to be of no effect until such time as the amendment to section 12 of the *Electricity (Pacific Power) Act 1950* commences.

54 References to SRA in Railway Construction (Maldon to Port Kembla) Act 1983 No 112

On and from the commencement of this clause:

- (a) a reference to the State Rail Authority in the *Railway Construction (Maldon to Port Kembla) Act 1983* (except in section 2 (2)) is to be read as a reference to RAC, and
- (b) a reference to the State Rail Authority is to be read as a reference to RAC.

55 Reference to Constructing Authority for purposes of certain easements for city underground railway

On and from the commencement of this clause, the reference to the Constructing Authority in section 19 of the *City and Suburban Electric Railways Act 1915* (the operation of which is saved by clause 12 of Division 1 of Part 2) is to be read as extending to RAC.

56 Applications for review of promotion appointments

- (1) If an application made by an SRA officer before 1 July 1996 under the review provision for a review of an appointment to a position is pending on the commencement of this clause, the review is to be conducted and disposed of, in accordance with the review provision, by the rail business in which the position is located on that commencement.
- (2) If, as a result of the review, a determination is made that the applicant for the review should be appointed to the position in place of the incumbent in the position and the applicant is not employed by the rail business in which the position is located on the commencement of this clause:
 - (a) the rail business by whom the applicant is employed and the rail business in which the position is located must arrange for the applicant to be transferred to the latter rail business, and

- (b) the rail businesses concerned must arrange for the placement of the displaced incumbent in the position that the incumbent occupied immediately before he or she was promoted to the position that was the subject of the review, whether the incumbent's former position is located, after the commencement of this clause, in the SRA or in another rail business.
- (3) An applicant whose application for a review is unsuccessful is, subject to any other arrangements that may be made concerning the employment of the applicant under this or any other Act or law, to remain employed with the rail business by whom the applicant was employed on commencement of this clause.
- (4) In this clause:

review provision means clause 7 of the *Transport Administration (Staff) Regulation 1995*.

57 Disciplinary proceedings pending against former SRA officers

- (1) A Rail Corporation or the RSA may, before 1 August 1996, in respect of conduct that occurred before 1 July 1996:
 - (a) impose on, in disciplinary proceedings, any one or more of the punishments referred to in clause 12 of the *Transport Administration (Staff) Regulation 1995*, or
 - (b) temporarily suspend from duty in accordance with clause 13 of that Regulation,any former SRA officer who has been transferred to the Rail Corporation or the RSA by a Ministerial order made under Schedule 6.
- (2) A former SRA officer may appeal, in accordance with Part 3 of the *Transport Appeal Boards Act 1980*, to a Transport Appeal Board against the imposition of any such punishment or suspension.

- (3) Except as provided by subclause (4), a decision of a Transport Appeal Board is final and conclusive and binding on a rail business.
- (4) Section 24 of the *Transport Appeal Boards Act 1980* applies with respect to the decision of a Transport Appeal Board on such an appeal as if
 - (a) the reference in that section to the SRA were a reference to a rail business, and
 - (b) the references in that section to that Authority or an Authority, in so far as they relate to the SRA, were references to the rail business by whom the former SRA officer is employed after 1 July 1996.

58 Pending appeals to Transport Appeal Boards

- (1) A Transport Appeal Board is to hear and determine any appeal lodged by a former SRA officer under the Transport Appeal Boards Act 1980 before 1 July 1996.
- (2) Clause 57 (3) and (4) applies to an appeal referred to in this clause.

59 No entitlement to review or appeal for ceasing to be member of staff of SRA

A former SRA officer is not entitled to apply for a review under the *Transport Administration (Staff) Regulation 1995*, to lodge an appeal under the *Transport Appeal Boards Act 1980* or to apply for or obtain any other relief merely because the officer ceases to be a member of the staff of the SRA because of the making of an order under Schedule 6.

60 Extension of certain provisions of Transport Administration (Staff) Regulation 1995 to staff of RSA

The provisions of Parts 1 and 2 of the *Transport Administration (Staff) Regulation 1995* apply to officers of the RSA in the same way that they apply to officers of the SRA and as if references in those Parts:

- (a) to the SRA were references to the RSA, and
- (b) to SRA officers were references to RSA officers.

61 Further amendment or repeal of regulations amended by Schedule 2 to amending Act

The amendments made by the amending Act to the regulations referred to in Schedule 2 to that Act do not affect the future amendment or repeal of those regulations.

62 Saving of Roads and Traffic Advisory Council

Nothing in the amending Act affects the constitution or procedure of the Roads and Traffic Advisory Council or the operation of Schedule 3 so far as it relates to that Council.

2.3 Clean Air Act 1961 No 69

[1] Section 5 Definitions

Insert “Railway Services Authority,” after “State Rail Authority,” in the definition of *Statutory body* in section 5 (1).

[2] Schedule 1 Prescribed uses, equipment and plant

Insert “or the Railway Services Authority” after “State Rail Authority” in clause 2.

2.4 Clean Waters Act 1970 No 78

Section 5 Definitions

Insert “the Railway Services Authority,” after “State Rail Authority,” in the definition of *statutory authority*.

2.5 Conveyancing Act 1919 No 6

[1] Section 88 Requirements for easements and restrictions on use of land

Insert “or by or for Rail Access Corporation referred to in the *Transport Administration Act 1988*,” after “*Irrigation Corporation Act 1994*,” in section 88 (4).

[2] Section 88A Easements in gross, other easements and restrictions appurtenant to easements

Insert after section 88A (7):

- (8) For the purposes of this section, Rail Access Corporation referred to in the *Transport Administration Act 1988* is taken to be a public authority constituted by an Act of Parliament.

2.6 Electricity (Pacific Power) Act 1950 No 22

[1] Section 3 Definitions

Omit paragraph (d) of the definition of Electricity supply authority in section 3 (1).

[2] Section 3 (1), definition of “Statutory body” or “Statutory body representing the Crown”

Omit “the Commissioner for Railways,”.

[3] Section 8 Particular powers in certain cases

Omit “the Commissioner for Railways,” from section 8 (1).

2.7 Electricity Safety Act 1945 (1946 No 13)

[1] Section 4 Definitions

Omit the definition of *Electricity distributor* from section 4 (1).
Insert instead:

Electricity distributor means an electricity distributor within the meaning of the *Electricity Supply Act 1995*.

[2] Section 4 (1), definition of “electricity supply authority”

Omit paragraph (d).

2.8 Electricity Supply Act 1995 No 94

[1] Section 15 Right to connection to local distribution system for all customers

Insert after section 15 (4):

- (5) This section does not apply to an electricity distributor that does not have a distribution district.

[2] Section 94 Authorised officers

Insert after section 94 (3):

- (3A) If an electricity distributor does not have a distribution district, an authorised officer appointed by the electricity distributor may exercise those functions only on land that is occupied by the electricity distributor's distribution system and on land on which premises connected to that distribution system are situated.

[3] Section 106 Regulations

Insert after section 106 (2):

- (2A) The regulations may exempt a Rail Corporation within the meaning of the *Transport Administration Act 1988*, the Railway Services Authority or the State Rail Authority from the operation of any one or more of sections 18, 19, 34, 39,40 and 89–91 and any mandatory conditions imposed pursuant to clause 6 of Schedule 2.

[4] Dictionary

Omit “operated by the State Rail Authority” from the definition of *distribution system*.

[5] Dictionary, definition of “rail network electricity system”

Insert in alphabetical order:

rail network electricity system means the rail network electricity system operated by a Rail Corporation within the meaning of the *Transport Administration Act 1988*, the Railway Services Authority or the State Rail Authority.

2.9 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Insert at the end of Part 1:

Freight Rail Corporation
Rail Access Corporation
Railway Services Authority

2.10 Irrigation Act 1912 No 73

Section 22 Vesting of railways or tramways in the State Rail Authority

Omit the section.

2.11 Local Government Act 1993 No 30

[1] Section 555 What land is exempt from all rates?

Insert after section 555 (1) (g):

(g1) land that is vested in or owned by Rail Access Corporation and in, on or over which rail infrastructure facilities (within the meaning of the *Transport Administration Act 1988*) are installed,

[2] Section 600 Rebates in respect of certain land vested in public bodies

Insert “, Rail Access Corporation” after “State Rail Authority” in the definition of *public body* in section 600 (9).

[3] Section 611 Annual charge on rails, pipes etc

Insert at the end of section 611 (6) (b):

, or

- (c) Rail Access Corporation.

2.12 National Rail Corporation (Agreement) Act 1991 No 82

Section 9 Transfer of rail freight assets of State to Company

Insert after section 9 (5):

(5A) For the purposes of this section:

- (a) the Minister may, with the approval of the Company, give a direction to a Rail Corporation within the meaning of the *Transport Administration Act 1988*, and
- (b) a reference to rail freight assets includes a reference to assets vested in or owned by a Rail Corporation, and
- (c) a Rail Corporation stands in the same position as the State Rail Authority stands under section 13 (9) of the *Transport Administration Act 1988* in relation to financial loss as a result of complying with any direction given by the Minister under this section.

2.13 Pipelines Act 1967 No 90

[1] Section 3 Definitions

Insert “Rail Access Corporation,” after “State Rail Authority of New South Wales,” in the definition of *statutory body representing the Crown* in section 3 (1).

[2] Section 5C Constitution of pipeline committees

Omit section 5C (2) (d). Insert instead:

- (d) one person nominated by the Minister administering the *Transport Administration Act 1988*,

2.14 Public Authorities (Financial Arrangements) Act 1987 No 33

Schedule 1 Authorities

Insert in alphabetical order:

- Freight Rail Corporation,
Rail Access Corporation.
Railway Services Authority.

2.15 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

- Railway Services Authority of New South Wales.

2.16 Public Sector Executives Superannuation Act 1989 No 106

Schedule 1 Additional Employers

Insert in alphabetical order:

- Freight Rail Corporation
Rail Access Corporation
Railway Services Authority

2.17 Public Sector Management Act 1988 No 33

[1] Schedule 3 Declared Authorities

Insert in alphabetical order:

Railway Services Authority of New South Wales.

[2] Schedule 3A Chief executive positions

Insert in Part 3 in alphabetical order of offices:

Chief Executive of the Railway Services Authority

2.18 Rail Safety Act 1993 No 50

[1] Section 7 Owners and operators of railways

Omit section 7 (3). Insert instead:

- (3) In this Act, *operate*, in relation to a railway, means:
- (a) operate or move, or cause the operation or moving, by any means, of any rolling stock on a railway, and includes operate a railway service if the operator of the service operates or moves, or causes the operation or moving of, rolling stock, or
 - (b) construct and maintain, or construct or maintain, rolling stock.

[2] Section 9 Act binds Crown

Omit “or the State Rail Authority” from section 9 (2).

Insert instead “, the State Rail Authority, Freight Rail Corporation, Rail Access Corporation, the Railway Services Authority”.

[3] Section 92A

Insert after section 92:

92A Consultants

The Director-General may engage such consultants as the Director-General requires for the exercise of functions under this Act.

2.19 Roads Act 1993 No 33

[1] Section 94 Roads authority may carry out drainage work across land adjoining public road etc

Omit section 94 (2). Insert instead:

(2) The powers conferred by this section may not be exercised in or on land on which rail infrastructure facilities owned by Rail Access Corporation are situated.

(2A) In this section, *rail infrastructure facilities* has the same meaning as it has in Part 2A of the *Transport Administration Act 1988*.

[2] Section 211

Omit the section. Insert instead:

211 Contributions to RTA by Rail Access Corporation and State Transit Authority

Rail Access Corporation and the State Transit Authority must each pay to the RTA such amounts as the RTA determines from time to time as contributions in relation to:

(a) in the case of Rail Access Corporation—the movement of rolling stock over railway lines vested in or owned by the Corporation on the Sydney Harbour Bridge, or

- (b) in the case of the State Transit Authority—the carriage of passengers across the Sydney Harbour Bridge.

2.20 Roads (General) Regulation 1994

Clause 79 Public authorities

Insert after clause 79 (3):

- (4) For the purposes of the definition of *public authority* in the Dictionary to the Act, Rail Access Corporation is prescribed as a public authority for the purposes of the Act.

2.21 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Insert at the end of Part 1:

Freight Rail Corporation
Rail Access Corporation
Railway Services Authority

2.22 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Insert at the end of Part 1:

Freight Rail Corporation
Rail Access Corporation
Railway Services Authority

2.23 Superannuation Act 1916 No 28

Schedule 3 List of employers

Insert at the end of Part 1:

Freight Rail Corporation
Rail Access Corporation
Railway Services Authority

2.24 Transport Appeal Boards Act 1980 No 104

[1] Long title

Omit the long title. Insert instead:

An Act to provide for the constitution of Transport Appeal Boards and to make provision with respect to appeals by officers and employees of the Railway Services Authority, the State Rail Authority and the State Transit Authority.

[2] Section 4 Definitions

Insert “the Railway Services Authority,” after “means” in the definition of *Authority* in section 4 (1).

[3] Section 24 Appeal against a Board’s decision in certain cases

Insert after section 24 (1) (e):

(f) where the appellant was an officer of the Railway Services Authority at the time that the matter, the subject of the appellant’s appeal to the Board, arose—to that Authority.

[4] Section 30 Supply of copies of statements etc to appellant and section 31 Reference of certain matters to Chairman or Vice-Chairman for investigation

Insert “the Railway Services Authority,” before “the State Rail Authority” wherever occurring in sections 30 (1) and (3) and 31 (1).

[5] Section 31 (2)

Insert “Railway Services Authority, the” after “The”.

[6] Schedule 1 Members of a Board

Insert “the Railway Services Authority,” before “the State Rail Authority” wherever occurring in clause 4 (1).

[7] Schedule 1, clauses 4 (a) and 5 (1)

Omit “either” wherever occurring. Insert instead “any”.

2.25 Water (Part 8—General) Regulation 1995

Clause 4 Controlled works

Omit “the State Rail Authority”. Insert instead “Rail Access Corporation”.

[Minister’s second reading speech made in—
Legislative Assembly on 17 April 1996
Legislative Council on 17 June 1996]