



New South Wales

Transport Administration (General) Amendment (WestConnex Delivery Authority) Regulation 2013

under the

Transport Administration Act 1988

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Transport Administration Act 1988*.

DUNCAN GAY, MLC
Minister for Roads and Ports

Explanatory note

The objects of this Regulation are as follows:

- (a) to constitute WestConnex Delivery Authority as a public subsidiary corporation of Roads and Maritime Services (RMS) and to enable the corporation to exercise certain functions of RMS (primarily under the *Roads Act 1993*) in relation to the delivery of the WestConnex program of works in Sydney,
- (b) to provide for the transfer of assets, rights and liabilities to or by WestConnex Delivery Authority,
- (c) to provide for a board of the WestConnex Delivery Authority to provide advice in connection with the WestConnex program of works.

This Regulation is made under the *Transport Administration Act 1988*, including sections 55C and 119 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Transport Administration (General) Amendment (WestConnex Delivery Authority) Regulation 2013*.

2 Commencement

This Regulation commences on 1 November 2013 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Transport Administration (General) Regulation 2013

[1] Part 4A

Insert after Part 4:

Part 4A WestConnex Delivery Authority

51A Definitions

In this Part:

Chief Executive of WestConnex Delivery Authority means the Chief Executive of WestConnex Delivery Authority appointed under clause 51E.

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

traffic control work means any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a traffic control facility (within the meaning of Part 6 of the Act).

WestConnex Delivery Authority means the body corporate constituted by this Part.

WestConnex program of works means works (including road work and traffic control work) to construct, complete and open for operation a tollway, or series of tollways, proceeding generally:

- (a) along the M4 Motorway from Parramatta to Homebush Bay Drive, and
- (b) then from Homebush Bay Drive to Haberfield and Camperdown and then to St Peters (primarily by tunnel), and
- (c) then from St Peters to terminate in the vicinity of Bexley, by a surface road and then by tunnel, and
- (d) then from Bexley along the M5 Motorway to the intersection of King Georges Road at Roselands,

and includes all incidental and ancillary works.

51B Constitution of WestConnex Delivery Authority

For the purposes of section 55C of the Act, there is constituted by this Part a body corporate with the name WestConnex Delivery Authority.

51C WestConnex Delivery Authority Board

- (1) The WestConnex Delivery Authority is to have a board (the **WestConnex Delivery Authority Board**).
- (2) The functions of the WestConnex Delivery Authority Board are:
 - (a) advising, and making recommendations to, the Minister with respect to any matter relating to the WestConnex program of works, and
 - (b) advising, and making recommendations to, the WestConnex Delivery Authority with respect to any matter relating to the WestConnex program of works, and
 - (c) to provide advice on such matters as are referred to it by the Minister.
- (3) The WestConnex Delivery Authority Board is to consist of the Director-General, the Chief Executive of RMS and such other members (not exceeding 5) as may be appointed by the Chief Executive of RMS with the approval of the Minister.

51D Functions of WestConnex Delivery Authority

- (1) WestConnex Delivery Authority may exercise the functions of RMS under section 53 (other than section 53 (1) (d)) of the Act and under the following provisions of the *Roads Act 1993* for the purpose of delivering the WestConnex program of works:
 - (a) section 10,
 - (b) section 32A,
 - (c) section 64,
 - (d) section 71,
 - (e) section 72,
 - (f) section 73,
 - (g) Division 3 of Part 10,
 - (h) Division 1 of Part 12,
 - (i) section 203,
 - (j) section 207,
 - (k) section 208,
 - (l) section 212,
 - (m) section 224,
 - (n) section 251.
- (2) A function is exercised for *the purpose of delivering the WestConnex program of works* if the function is exercised to facilitate, develop, plan, procure, supervise, manage or carry out the whole or any part of the WestConnex program of works for RMS (on behalf of the State), including the following:
 - (a) developing and making recommendations with respect to the scope, staging and any other matter in connection with the WestConnex program of works,
 - (b) seeking and evaluating submissions, and conducting negotiations in connection with the development, funding, construction, delivery, maintenance and operation of the WestConnex program of works,
 - (c) arranging and conducting consultation and negotiation with bodies or persons involved in, or affected by, the development, funding, construction, delivery, maintenance or operation of the WestConnex program of works,
 - (d) making recommendations with respect to contractual arrangements and any other matter relating to the development, funding, construction, delivery, maintenance or operation of the WestConnex program of works,
 - (e) administration and management of agreements in connection with the development, funding, construction, delivery, maintenance or operation of the WestConnex program of works,
 - (f) associated and incidental works and services.
- (3) The following provisions of the *Roads Act 1993* apply to and in respect of WestConnex Delivery Authority, in the same way as they apply to and in respect of RMS, in connection with the exercise of the functions of WestConnex Delivery Authority conferred by subclause (1):
 - (a) section 65 (RMS has immunities of a roads authority),

- (b) section 78 (Roads authorities may construct bridges and tunnels),
 - (c) section 88 (Tree felling),
 - (d) section 89 (Roads authorities not liable for damage by tar),
 - (e) section 90 (Application of *Public Works Act 1912* to certain work),
 - (f) section 91 (Adjoining landowner to provide support for public road),
 - (g) section 101 (Restoration of public road following excavation etc),
 - (h) section 102 (Liability for damage to public road),
 - (i) section 144F (Effect of road work on private railway),
 - (j) section 153 (Short-term leases of unused public roads),
 - (k) Division 4 of Part 13 (Payment by roads authorities to RMS for work carried out by RMS),
 - (l) section 241 (Interference with survey marks),
 - (m) section 247 (Recovery of debts),
 - (n) section 253 (Roads authority may act through employees, agents and contractors),
 - (o) section 256 (Exemption of certain persons from personal liability),
 - (p) such other provisions of the Act or the regulations under that Act as are ancillary to the operation of subclause (1) (a)–(n) or the provisions applied to and in respect of WestConnex Delivery Authority by this subclause.
- (4) For the purposes of the application of a provision of the *Roads Act 1993*, or the regulations under that Act, to WestConnex Delivery Authority:
- (a) a reference to RMS includes a reference to WestConnex Delivery Authority, and
 - (b) a reference to roads authority includes a reference to WestConnex Delivery Authority, and
 - (c) the reference in clause 82 (1) (d) of the *Roads Regulation 2008* to the land proposed to be used for a public road includes land proposed to be used for a tollway or series of tollways comprised in the WestConnex program of works.
- (5) Nothing in subclause (3) or (4) operates to confer on WestConnex Delivery Authority any approval, consent or concurrence functions of RMS under the *Roads Act 1993* (however described).
- (6) WestConnex Delivery Authority has such other functions of RMS (including approval, consent or concurrence functions) as are delegated to it under section 50 of the Act.

51E Chief Executive

- (1) The Chief Executive of RMS may, with the approval of the Minister, appoint a person as the Chief Executive of WestConnex Delivery Authority. That person is to be employed in the Transport Service under Part 7A of the Act.
- (2) The affairs of WestConnex Delivery Authority are to be managed and controlled by the Chief Executive of WestConnex Delivery Authority (in accordance with any directions of TfNSW under section 3G of the Act or of the Minister).

- (3) Any act, matter or thing done in the name of, or on behalf of, WestConnex Delivery Authority by the Chief Executive of WestConnex Delivery Authority is taken to have been done by WestConnex Delivery Authority.
- (4) Clause 3 of Schedule 2 to the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that clause:
 - (a) to the Director-General was a reference to the Chief Executive of RMS, and
 - (b) to a Chief Executive included a reference to the Chief Executive of WestConnex Delivery Authority.

51F Ministerial responsibility

The Chief Executive of WestConnex Delivery Authority is, in the exercise of his or her functions, subject to the control and direction of the Minister.

51G Staff

- (1) Division 1 of Part 7 of the Act and the regulations made under section 57 apply to and in respect of WestConnex Delivery Authority in the same way as they apply to and in respect of RMS.
- (2) Schedule 5 to the Act applies to and in respect of WestConnex Delivery Authority staff in the same way as it applies to and in respect of RMS staff.
- (3) WestConnex Delivery Authority may arrange for the use of the services of any staff or facilities of RMS or TfNSW. A person whose services are made use of under this clause remains a member of staff of RMS or TfNSW.

51H Delegation of functions

Section 50 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to RMS included a reference to WestConnex Delivery Authority.

51I Financial provisions

The provisions of Divisions 3 and 4 of Part 8 of the Act (other than sections 80A and 80B) apply to and in respect of WestConnex Delivery Authority as if a reference in those provisions to RMS or an Authority included a reference to WestConnex Delivery Authority.

51J Gifts, bequests or devises of property

Section 105 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to RMS included a reference to WestConnex Delivery Authority.

51K Seal

Section 109 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to an Authority included a reference to WestConnex Delivery Authority and a reference to the Chief Executive of the Authority included a reference to the Chief Executive of WestConnex Delivery Authority.

51L Contracts

Section 110 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to a transport authority included a reference to WestConnex Delivery Authority.

51M Referral of disputes

Section 111 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to a transport authority included a reference to WestConnex Delivery Authority.

51N Personal liability

Section 112 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to a transport authority included a reference to WestConnex Delivery Authority and a reference to a member of a transport authority included a reference to the Chief Executive of WestConnex Delivery Authority or a member of the WestConnex Delivery Authority Board.

51O Presumption of validity

Section 113 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to a transport authority included a reference to WestConnex Delivery Authority.

51P Recovery of charges

Section 115 of the Act applies to and in respect of WestConnex Delivery Authority as if a reference in that section to a transport authority included a reference to WestConnex Delivery Authority.

51Q Application of other legislation to WestConnex Delivery Authority

- (1) A provision of or made under any of the following legislation that applies to RMS (however described) applies to WestConnex Delivery Authority as if the reference in those provisions to RMS included a reference to WestConnex Delivery Authority:
 - (a) *First State Superannuation Act 1992*,
 - (b) *Public Authorities Superannuation Act 1985*,
 - (c) *State Authorities Non-contributory Superannuation Act 1987*,
 - (d) *State Authorities Superannuation Act 1987*,
 - (e) *State Public Service Superannuation Act 1985*,
 - (f) *Superannuation Act 1916*,
 - (g) *Transport Administration (Staff) Regulation 2012*.
- (2) The provisions of or made under the *Public Authorities (Financial Arrangements) Act 1987* apply to and in respect of WestConnex Delivery Authority as if WestConnex Delivery Authority formed part of RMS and as though the exercise of functions by WestConnex Delivery Authority were the exercise of functions by RMS.
- (3) Section 45 of the *Civil Liability Act 2002* applies to WestConnex Delivery Authority as if a reference in that section to a roads authority included a reference to WestConnex Delivery Authority.

51R Effect of transfer of assets, rights and liabilities

- (1) This clause applies to the transfer to or by WestConnex Delivery Authority of any asset, right or liability under section 55C (5) of the Act, unless the instrument of transfer provides that this clause is not to apply to the transfer.

- (2) The following provisions have effect in relation to a transfer of any asset, right or liability:
- (a) the asset vests in the transferee by virtue of this clause and without the need for any transfer, conveyance or assignment,
 - (b) the right or liability becomes by virtue of this clause the right or liability of the transferee,
 - (c) all proceedings relating to the asset, right or liability commenced before the transfer by or against the transferor 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 the asset, right or liability before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
 - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
 - (f) a reference in any instrument made under any Act (other than the *Transport Administration Act 1988*) or in any document of any kind to the transferor is (to the extent that it relates to the asset, right or liability, but subject to this clause) to be read as, or as including, a reference to the transferee.
- (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 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 a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this clause. Such a notice is considered conclusive evidence of that transfer.

**[2] Clause 87 Additional classes of persons to whom RMS may delegate functions:
Section 50**

Insert after clause 87 (1) (e):

- (f) WestConnex Delivery Authority or a member of staff of WestConnex Delivery Authority.