

TRANSPORT ADMINISTRATION ACT 1988 No. 109

NEW SOUTH WALES



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TRANSPORT ADMINISTRATION ACT 1988 No. 109

NEW SOUTH WALES



Act No. 109, 1988

An Act to constitute the State Rail Authority, the State Transit Authority and the Roads and Traffic Authority; to make provision with respect to their respective management and functions; to confer certain functions on the Secretary of the Ministry of Transport; to establish a State Transit Co-ordination Advisory Council and a Roads and Traffic Advisory Council; to dissolve the Departments of Main Roads and Motor Transport and the Traffic Authority; and for other purposes. [Assented to 21 December 1988]

See also Motor Traffic (Transport Administration) Amendment Act 1988; Motor Vehicles Taxation Act 1988; State Roads (Transport Administration) Amendment Act 1988; State Transport (Co-ordination) (Transport Administration) Amendment Act 1988; Transport Legislation (Repeal and Amendment) Act 1988.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Transport Administration Act 1988.

Commencement

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

Definitions

3. (1) In this Act—

“Authority” means the State Rail Authority, the State Transit Authority or the Roads and Traffic Authority;

“bus service” includes any road transport service for the carriage of passengers (except a railway service);

“ferry service” means any ferry service for the carriage of passengers;

“officer”, in relation to an Authority, includes an employee of the Authority;

“railway service” means a railway passenger service or a railway freight service;

“Roads and Traffic Advisory Council” means the Roads and Traffic Advisory Council constituted under this Act;

“Roads and Traffic Authority” means the Roads and Traffic Authority of New South Wales constituted under this Act;

“State Rail Authority” means the State Rail Authority of New South Wales constituted under this Act;

“State Transit Authority” means the State Transit Authority of New South Wales constituted under this Act;

“State Transit Co-ordination Advisory Council” means the State Transit Co-ordination Advisory Council constituted under this Act;

“transport district” means a transport district for the time being established under section 108.

- (2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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PART 2—STATE RAIL AUTHORITY**Division 1—Constitution of State Rail Authority****Constitution of SRA**

4. (1) There is constituted by this Act a corporation with the corporate name of the State Rail Authority of New South Wales.

(2) The State Rail Authority—

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

Division 2—General functions of State Rail Authority**Railway services**

5. (1) The State Rail Authority shall operate railway passenger services and railway freight services.

(2) The State Rail Authority shall continue to operate the railway services which were provided by it immediately before the commencement of this section.

(3) Subsection (2) does not limit the power of the State Rail Authority—

- (a) to establish any new railway service; or
- (b) to alter or discontinue any of its railway services.

Other transport services

6. (1) The State Rail Authority may in connection with its railway services operate other transport services, including bus services and road freight services.

(2) Any such transport service may be additional to or in substitution for any railway service.

General duties with respect to services

7. (1) The State Rail Authority shall operate its railway and other transport services safely and efficiently and in accordance with sound commercial practice.

(2) Nothing in subsection (1) shall be taken to—

- (a) impose on the State Rail Authority a duty that is enforceable by proceedings in a court; or
- (b) limit any other duty imposed on the State Rail Authority by or under this Act.

Miscellaneous functions of SRA

8. (1) Without limiting any other functions conferred or imposed on it, the State Rail Authority may—

- (a) construct railways and associated works;
- (b) conduct any business, whether or not related to the operation of its railway or other transport services, and for that purpose use any property or the services of any staff of the Authority;
- (c) acquire and develop any land;
- (d) acquire or build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment;
- (e) 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;
- (f) make and enter into contracts or arrangements with any person for the operation by that person, on such terms as may be agreed on, of any of the Authority's railway or other transport services or of any of the Authority's businesses;
- (g) appoint agents, and act as agent for other persons; and
- (h) without limiting the generality of the foregoing but subject to any other Act, construct, maintain and operate facilities for the generation and supply of electricity.

(2) The State Rail Authority may exercise its functions within or outside New South Wales.

Division 3—Management of State Rail Authority**Constitution of SRA Board**

9. (1) There shall be a State Rail Authority Board.

(2) The Board shall consist of—

- (a) the Chief Executive of the State Rail Authority; and
- (b) not fewer than 4 and not more than 7 members appointed by the Minister.

(3) The persons appointed by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the State Rail Authority Board to carry out its functions.

(4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Board to determine policies of SRA

10. (1) The State Rail Authority Board has the function of determining the policies of the State Rail Authority.

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(2) In exercising that function, the Board shall, as far as practicable, ensure that the activities of the State Rail Authority are carried out properly and efficiently.

Chief Executive of SRA

11. (1) The Governor may appoint a Chief Executive of the State Rail Authority.

(2) Before a person is appointed as Chief Executive, the Minister shall give the State Rail Authority Board the opportunity to recommend any one or more persons for appointment.

(3) Schedule 2 has effect with respect to the Chief Executive.

Chief Executive to manage SRA

12. (1) The affairs of the State Rail Authority shall be managed and controlled by the Chief Executive of that Authority in accordance with the policies of the State Rail Authority Board.

(2) Any act, matter or thing done in the name of, or on behalf of, the State Rail Authority by the Chief Executive shall be taken to have been done by the State Rail Authority.

Ministerial control

13. (1) The Minister may give the State Rail Authority Board written directions in relation to the exercise of the State Rail Authority's functions.

(2) Subject to this section, the State Rail Authority Board and the Chief Executive of the State Rail Authority must ensure that the State Rail Authority complies with any such direction.

(3) If the State Rail Authority Board considers that—

(a) the State Rail Authority would suffer a significant financial loss as a result of complying with any such direction; and

(b) the direction is not in the commercial interests of the Authority, the Board may request the Minister to review the direction.

(4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.

(5) If the Board requests a review, the State Rail Authority is not required to comply with the direction until notified of the Minister's decision following the review.

(6) Following the review the Minister may confirm or revoke the direction, but the Minister shall not confirm the direction unless—

(a) the Minister has estimated the financial loss concerned from information supplied by the State Rail Authority or from other sources; and

- (b) the Minister has referred the matter to the Treasurer; and
- (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.

(7) The amount to be reimbursed to the State Rail Authority shall be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the State Rail Authority from time to time.

(8) For the purposes of this section, the amount of the financial loss that the State Rail Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

SRA to supply information to Minister

14. The State Rail Authority shall—

- (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.

Corporate plans

15. (1) The State Rail Authority shall, 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 State Rail Authority shall—

- (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 State Rail Authority shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.

(4) A corporate plan shall specify—

- (a) the separate activities of the State Rail 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; and

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(d) targets and criteria for assessing the Authority's performance.

(5) This section is subject to any requirement made by or under this Act (including the requirements of a direction by the Minister under section 13).

(6) As soon as practicable after the commencement of this section, the State Rail Authority shall carry out a review of its existing services and provide the Minister with a report on—

- (a) any of its activities which 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.

Exercise of functions through subsidiary corporations, joint ventures etc.

16. (1) In this section—

“subsidiary corporation” means—

- (a) a public subsidiary corporation referred to in section 17; or
- (b) a private subsidiary corporation referred to in section 18.

(2) Any function of the State Rail 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.

Public subsidiary corporations

17. (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 State Rail Authority as are specified in the regulations or delegated to it under this Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

(4) The provisions of or made under this Act or any other Act relating to the State Rail 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 Minister—

- (a) the State Rail 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 State Rail 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 State Rail Authority.

Private subsidiary corporations etc.

18. (1) In this section—

“private corporation” means a corporation within the meaning of the Companies (New South Wales) Code formed in or outside New South Wales;

“private subsidiary corporation” means a private corporation in which the State Rail Authority has a controlling interest.

(2) The State Rail 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.

(3) The State Rail Authority must not, without the approval of 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 subsidiary 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.

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Delegation of functions of SRA

19. (1) The State Rail 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 State Rail 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 State Rail Authority; or
- (b) a person of a class prescribed by the regulations or approved by the State Rail Authority Board.

PART 3—STATE TRANSIT AUTHORITY**Division 1—Constitution of State Transit Authority****Constitution of STA**

20. (1) There is constituted by this Act a corporation with the corporate name of the State Transit Authority of New South Wales.

(2) The State Transit Authority—

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

Division 2—General functions of State Transit Authority**Bus services**

21. (1) The State Transit Authority shall operate bus services.

(2) The State Transit Authority shall continue to operate the bus services which were provided by the Urban Transit Authority immediately before the commencement of this section.

(3) Subsection (2) does not limit the power of the State Transit Authority—

- (a) to establish any new bus service; or
- (b) to alter or discontinue any of its bus services.

Ferry services

22. (1) The State Transit Authority shall operate ferry services.

(2) The State Transit Authority shall continue to operate the ferry services which were provided by the Urban Transit Authority immediately before the commencement of this section.

(3) Subsection (2) does not limit the power of the State Transit Authority—

- (a) to establish any new ferry service; or
- (b) to alter or discontinue any of its ferry services.

General duties with respect to services

23. (1) The State Transit Authority shall operate its bus and ferry services safely and efficiently and in accordance with sound commercial practice.

(2) Nothing in subsection (1) shall be taken to—

- (a) impose on the State Transit Authority a duty that is enforceable by proceedings in a court; or
- (b) limit any other duty imposed on the State Transit Authority by or under this Act.

Miscellaneous functions of STA

24. (1) Without limiting any other functions conferred or imposed on it, the State Transit Authority may—

- (a) conduct any business, whether or not related to the operation of its bus or ferry services, and for that purpose use any property or the services of any staff of the Authority;
- (b) acquire and develop any land;
- (c) acquire or build, and maintain or dispose of, any vehicles, vessels, wharves, plant, machinery or equipment;
- (d) 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;
- (e) make and enter into contracts or arrangements with any person for the operation by that person, on such terms as may be agreed on, of any of the Authority's bus or ferry services or of any of the Authority's businesses; and
- (f) appoint agents, and act as agent for other persons.

(2) The State Transit Authority may exercise its functions within or outside New South Wales.

Division 3—Management of State Transit Authority

Constitution of STA Board

25. (1) There shall be a State Transit Authority Board.

(2) The Board shall consist of—

- (a) the Chief Executive of the State Transit Authority; and

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(b) not fewer than 4 and not more than 7 members appointed by the Minister.

(3) The persons appointed by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the State Transit Authority Board to carry out its functions.

(4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Board to determine policies of STA

26. (1) The State Transit Authority Board has the function of determining the policies of the State Transit Authority.

(2) In exercising that function, the Board shall, as far as practicable, ensure that the activities of the State Transit Authority are carried out properly and efficiently.

Chief Executive of STA

27. (1) The Governor may appoint a Chief Executive of the State Transit Authority.

(2) Before a person is appointed as Chief Executive, the Minister shall give the State Transit Authority Board the opportunity to recommend any one or more persons for appointment.

(3) Schedule 2 has effect with respect to the Chief Executive.

Chief Executive to manage STA

28. (1) The affairs of the State Transit Authority shall be managed and controlled by the Chief Executive of that Authority in accordance with the policies of the State Transit Authority Board.

(2) Any act, matter or thing done in the name of, or on behalf of, the State Transit Authority by the Chief Executive shall be taken to have been done by the State Transit Authority.

Ministerial control

29. (1) The Minister may give the State Transit Authority Board written directions in relation to the exercise of the State Transit Authority's functions.

(2) Subject to this section, the State Transit Authority Board and the Chief Executive of the State Transit Authority must ensure that the State Transit Authority complies with any such direction.

(3) If the State Transit Authority Board considers that—

- (a) the State Transit Authority would suffer a significant financial loss as a result of complying with any such direction; and

(b) the direction is not in the commercial interests of the Authority, the Board may request the Minister to review the direction.

(4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.

(5) If the Board requests a review, the State Transit Authority is not required to comply with the direction until notified of the Minister's decision following the review.

(6) Following the review the Minister may confirm or revoke the direction, but the Minister shall not confirm the direction unless—

- (a) the Minister has estimated the financial loss concerned from information supplied by the State Transit Authority or from other sources; and
- (b) the Minister has referred the matter to the Treasurer; and
- (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.

(7) The amount to be reimbursed to the State Transit Authority shall be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the State Transit Authority from time to time.

(8) For the purposes of this section, the amount of the financial loss that the State Transit Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

STA to supply information to Minister

30. The State Transit Authority shall—

- (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.

Corporate plans

31. (1) The State Transit Authority shall, 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 State Transit Authority shall—

- (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

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- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
- (3) The State Transit Authority shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan shall specify—
 - (a) the separate activities of the State Transit 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; 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 (including the requirements of any direction by the Minister under section 29).
- (6) As soon as practicable after the commencement of this section, the State Transit Authority shall carry out a review of its existing services and provide the Minister with a report on—
 - (a) any of its activities which 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.

Exercise of functions through subsidiary corporations, joint ventures etc.

32. (1) In this section—

“subsidiary corporation” means—

- (a) a public subsidiary corporation referred to in section 33; or
 - (b) a private subsidiary corporation referred to in section 34.
- (2) Any function of the State Transit 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.

Public subsidiary corporations

33. (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 State Transit Authority as are specified in the regulations or delegated to it under this Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

(4) The provisions of or made under this Act or any other Act relating to the State Transit 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 Minister—

- (a) the State Transit 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 State Transit 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 State Transit Authority.

Private subsidiary corporations etc.

34. (1) In this section—

“private corporation” means a corporation within the meaning of the Companies (New South Wales) Code formed in or outside New South Wales;

“private subsidiary corporation” means a private corporation in which the State Transit Authority has a controlling interest.

(2) The State Transit 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,

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whether or not the activities or proposed activities of any such private corporation are related to bus or ferry services.

(3) The State Transit Authority must not, without the approval of 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 subsidiary 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.

Delegation of functions of STA

35. (1) The State Transit 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 State Transit 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 State Transit Authority; or
- (b) a person of a class prescribed by the regulations or approved by the State Transit Authority Board.

PART 4—SECRETARY OF THE MINISTRY OF TRANSPORT**Definition of “Secretary” etc.**

36. (1) In this Part, “Secretary” means the Secretary of the Ministry of Transport.

(2) A reference in this Part to a function of the Secretary under this Part includes a reference to a function of the Secretary under an Act referred to in section 37.

Functions relating to the licensing and regulation of public passenger vehicles or ferries

37. The Secretary has such functions with respect to the licensing and regulation of public passenger vehicles or ferries as are conferred or imposed on the Secretary by or under this Act, the Transport Licensing Act 1931, the Transfer of Public Vehicles (Taxation) Act 1969 or any other Act.

Functions of ensuring efficient, adequate etc. passenger services

38. (1) The Secretary shall, in association and after consultation (where relevant) with the State Rail Authority and the State Transit Authority, take all steps as are, within available financial resources, necessary to ensure the provision of efficient, adequate and economic passenger services.

(2) The Secretary may, in particular, make and enter into contracts or arrangements under section 43 with any person operating passenger services for the provision by that person of any such services.

(3) Nothing in this section derogates from the responsibilities of the State Rail Authority or the State Transit Authority in connection with the provision of passenger services within the State, but each such Authority shall—

- (a) consult, on a regular basis, with the Secretary in connection with the provision and operation of its passenger services; and
- (b) as far as practicable, consult with the Secretary before making any major changes, or initiating any major action, affecting passenger services.

Functions relating to administration of Government subsidised travel concessions

39. (1) The Secretary shall administer, or arrange for the administration of, any scheme approved by the Minister for Government subsidised travel concessions on passenger services.

(2) Payments required to be made in accordance with any such scheme shall be made from such money as may be provided by Parliament for the purpose.

Delegation

40. (1) The Secretary may delegate to an authorised person any of the Secretary's functions under this Part, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Secretary if the delegate is authorised in writing to do so by the Secretary.

(3) In this section, "authorised person" means—

- (a) a person of whose services the Secretary makes use under section 42; or
- (b) a member of the staff of the Ministry of Transport; or
- (c) a person of a class prescribed by the regulations.

Ministerial control

41. The Secretary is, in the exercise of his or her functions under this Part, subject to the control and direction of the Minister.

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STA to provide staff etc. for Secretary

42. (1) The State Transit Authority shall make available for the use of the Secretary the services of such staff and such facilities as the Secretary requires to exercise his or her functions under this Part.

(2) Any staff of the State Transit Authority of which the Secretary makes use shall carry out duties as required by the Secretary.

(3) The arrangements for the use of any such staff or facilities (including the payments to be made) shall be as agreed between the State Transit Authority and the Secretary or as determined by the Minister.

(4) The State Transit Authority or the Secretary may refer to the Minister for determination any dispute arising under this section.

(5) This section does not prevent the Secretary from using the services of the staff or the facilities of the Ministry of Transport to exercise any of the Secretary's functions under this Part.

Power of Secretary to contract

43. The Secretary (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the Secretary's functions under this Part.

PART 5—STATE TRANSIT CO-ORDINATION ADVISORY COUNCIL**Constitution of Council**

44. (1) There shall be a State Transit Co-ordination Advisory Council.

(2) The Council shall consist of—

(a) 3 ex-officio members, being—

- (i) the Secretary of the Ministry of Transport; and
- (ii) the Chief Executive of the State Rail Authority; and
- (iii) the Chief Executive of the State Transit Authority; and

(b) not more than 9 members appointed by the Minister, including—

- (i) a representative of metropolitan bus proprietors; and
- (ii) a representative of country bus proprietors; and
- (iii) a representative of taxi-cab proprietors; and
- (iv) a representative of the Labor Council of New South Wales.

(3) Schedule 3 has effect with respect to the constitution and procedure of the Council.

Functions of Council

45. (1) The function of the State Transit Co-ordination Advisory Council is to advise the Minister and the Secretary of the Ministry of Transport on any matter relating to the development, co-ordination or regulation of passenger services throughout the State.

(2) Any such advice may be given either at the request of the Minister or Secretary or without any such request.

PART 6—ROADS AND TRAFFIC AUTHORITY**Division 1—Constitution, management and general functions of Roads and Traffic Authority****Constitution of RTA**

46. (1) There is constituted by this Act a corporation with the corporate name of the Roads and Traffic Authority of New South Wales.

(2) The Roads and Traffic Authority—

(a) has the functions conferred or imposed on it by or under this Act, the State Roads Act 1986, the Traffic Act 1909, the Motor Vehicles Taxation Act 1988 or any other Act; and

(b) is, for the purposes of any Act, a statutory body representing the Crown.

Chief Executive of RTA

47. (1) The Governor may appoint a Chief Executive of the Roads and Traffic Authority.

(2) Schedule 2 has effect with respect to the Chief Executive.

Chief Executive to manage and control affairs of RTA

48. (1) The affairs of the Roads and Traffic Authority shall 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 Roads and Traffic Authority by the Chief Executive shall be taken to have been done by the Roads and Traffic Authority.

Ministerial control

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

Delegation

50. (1) The Roads and Traffic Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.

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(2) A delegate may sub-delegate to an authorised person any function delegated by the Roads and Traffic 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 Roads and Traffic Authority; or
- (b) a person of a class prescribed by the regulations.

Exercise of functions through subsidiary corporations, joint ventures etc.

51. (1) In this section—

"subsidiary corporation" means a private subsidiary corporation referred to in section 52.

(2) Any function of the Roads and Traffic 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.

Private subsidiary corporations etc.

52. (1) In this section—

"private corporation" means a corporation within the meaning of the Companies (New South Wales) Code formed in or outside New South Wales;

"private subsidiary corporation" means a private corporation in which the Roads and Traffic Authority has a controlling interest.

(2) The Roads and Traffic 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 the activities of the Authority under this or any other Act.

(3) The Roads and Traffic Authority must not, without the approval of the Minister—

- (a) form, or participate in the formation of, a private subsidiary corporation; and
- (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation; and

- (c) sell or otherwise dispose of any interest in a private subsidiary 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.

Miscellaneous functions of RTA

53. (1) Without limiting any other functions conferred or imposed on it, the Roads and Traffic Authority may—
- (a) conduct any business, whether or not related to its activities under this or any other Act, and for that purpose use any property or the services of any staff of the Authority; and
 - (b) 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
 - (c) appoint agents, and act as agent for other persons.
- (2) The Roads and Traffic Authority may exercise its functions within or outside New South Wales.

Division 2—Roads and Traffic Advisory Council**Constitution of Council**

54. (1) There shall be a Roads and Traffic Advisory Council.
- (2) The Council shall consist of—
- (a) 4 ex-officio members, being—
 - (i) the Chief Executive of the Roads and Traffic Authority; and
 - (ii) the Director of Planning under the Environmental Planning and Assessment Act 1979; and
 - (iii) the Secretary of the Ministry of Transport; and
 - (iv) the Commissioner of Police; and
 - (b) 5 members appointed by the Minister, being—
 - (i) a representative of the National Roads and Motorists' Association; and
 - (ii) a representative of the road freight industry; and
 - (iii) a representative of the Local Government and Shires Associations; and
 - (iv) a representative of the Labor Council of New South Wales; and
 - (v) a representative of the medical profession.
- (3) Schedule 3 has effect with respect to the constitution and procedure of the Council.

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Functions of Council

55. (1) The function of the Roads and Traffic Advisory Council is to advise the Roads and Traffic Authority on any of the following matters:

- (a) promotion of traffic safety;
- (b) improvements in the movement of traffic;
- (c) improvements in the movement of freight;
- (d) requirements of vehicle drivers;
- (e) requirements for roads and vehicles;
- (f) promotion of industrial development, primary production and tourism in relation to roads and traffic;
- (g) protection of the environment in relation to roads and traffic;
- (h) roads and traffic legislation;
- (i) any other matter relating to roads and traffic that the Council considers appropriate.

(2) Any such advice may be given either at the request of the Roads and Traffic Authority or without any such request.

(3) The Council may give any such advice to the Minister if it considers that it is appropriate to do so or the Minister so requests.

PART 7—STAFF OF AUTHORITIES**Division 1—Staff of State Rail Authority****Employment of staff**

56. The State Rail Authority may employ such staff as it requires to exercise its functions.

Salary, conditions etc. of staff

57. The State Rail 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.

Regulations relating to staff

58. (1) The regulations may make provision for or with respect to the employment of the staff of the State Rail Authority, including the conditions of employment and the 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 to which the State Rail Authority is a party; and

- (b) have effect despite any determination of the State Rail Authority under section 57; 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.

Railway staff—alcohol or other drugs

59. Schedule 4 has effect.

Division 2—Staff of State Transit Authority**Employment of staff**

60. The State Transit Authority may employ such staff as it requires to exercise its functions and as the Secretary of the Ministry of Transport requires to exercise the Secretary's functions under Part 4.

Salary, conditions etc. of staff

61. The State Transit 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.

Regulations relating to staff

62. (1) The regulations may make provision for or with respect to the employment of the staff of the State Transit Authority, including the conditions of employment and the 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 to which the State Transit Authority is a party; and
- (b) have effect despite any determination of the State Transit Authority under section 61; 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.

Division 3—Staff of Roads and Traffic Authority**Employment of staff**

63. The Roads and Traffic Authority may employ such staff as it requires to exercise its functions.

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Salary, conditions etc. of staff

64. The Roads and Traffic 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.

Regulations relating to staff

65. (1) The regulations may make provision for or with respect to the employment of the staff of the Roads and Traffic Authority, including the conditions of employment and the 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 to which the Roads and Traffic Authority is a party; and
- (b) have effect despite any determination of the Roads and Traffic Authority under section 64.

Division 4—General provisions relating to staff of Authorities**Use of staff or facilities of Departments etc.**

66. An Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

Consultants

67. An Authority may engage such consultants as the Authority requires to exercise its functions.

Extended leave for staff of each Authority

68. (1) Schedule 5 has effect.

(2) The provisions of Schedule 5 are subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Authority concerned is a party.

PART 8—FINANCIAL PROVISIONS**Division 1—Financial provisions relating to State Rail Authority****State Rail Authority Fund**

69. There shall be established in the Special Deposits Account in the Treasury a State Rail Authority Fund.

Payments into State Rail Authority Fund

70. There shall be paid into the State Rail Authority Fund—

- (a) all money received by or on account of the State Rail Authority; and

- (b) all money advanced to the State Rail Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority; and
- (c) all fines and penalties recovered for offences under section 97 or the regulations under section 99; and
- (d) all other money required by or under this or any other Act to be paid into the Fund.

Payments from State Rail Authority Fund

71. There shall be paid from the State Rail Authority Fund—

- (a) all payments made on account of the State Rail 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.

Payment of dividend to Treasurer

72. (1) The State Rail Authority shall pay to the Treasurer, out of any surplus for a financial year, such dividend as the Minister determines.

(2) The Minister shall not make a determination under this section unless—

- (a) the Minister has had regard to the advice of the State Rail Authority on the financial affairs of the Authority and any recommendation with respect to the determination; and
- (b) the Treasurer approves of the determination.

Division 2—Financial provisions relating to State Transit Authority**State Transit Authority Fund**

73. There shall be established in the Special Deposits Account in the Treasury a State Transit Authority Fund.

Payments into State Transit Authority Fund

74. There shall be paid into the State Transit Authority Fund—

- (a) all money received by or on account of the State Transit Authority; and
- (b) all money advanced to the State Transit Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority; and
- (c) all fines and penalties recovered for offences under the regulations under section 104; and
- (d) all other money required by or under this or any other Act to be paid into the Fund.

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Payments from State Transit Authority Fund

75. There shall be paid from the State Transit Authority Fund—

- (a) all payments made on account of the State Transit 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.

Payment of dividend to Treasurer

76. (1) The State Transit Authority shall pay to the Treasurer, out of any surplus for a financial year, such dividend as the Minister determines.

(2) The Minister shall not make a determination under this section unless—

- (a) the Minister has had regard to the advice of the State Transit Authority on the financial affairs of the Authority and any recommendation with respect to the determination; and
- (b) the Treasurer approves of the determination.

Division 3—Financial provisions relating to Roads and Traffic Authority**Roads and Traffic Authority Fund**

77. There shall be established in the Special Deposits Account in the Treasury a Roads and Traffic Authority Fund.

Payments into Roads and Traffic Authority Fund

78. (1) There shall be paid into the Roads and Traffic Authority Fund—

- (a) all money advanced to the Roads and Traffic Authority by the Treasurer or appropriated by Parliament for the purposes of that Authority, other than money advanced or appropriated for such non-capital expenditure as may be prescribed by the regulations; and
- (b) all money received by or on account of the Roads and Traffic Authority, except—
 - (i) any tax paid under the Motor Vehicles Taxation Act 1988; and
 - (ii) any fees or charges paid under the Traffic Act 1909, the Motor Vehicle Driving Instructors Act 1961, the Tow-truck Act 1967 or the Recreation Vehicles Act 1983; and
 - (iii) any money excluded from paragraph (a); and
 - (iv) any money excluded from this paragraph by the regulations; and
- (c) all money borrowed under the Public Authorities (Financial Arrangements) Act 1987 or any other Act; and
- (d) interest paid by the Treasurer, at the rate agreed by the Treasurer and the Roads and Traffic Authority, on the monthly balance of the Fund; and

(e) all fines and penalties recovered for offences under the State Roads Act 1986 or the regulations under that Act; and

(f) all other money required by or under this or any other Act to be paid into the Fund.

(2) Regulations shall not be made under this section without the concurrence of the Treasurer.

Payments from Roads and Traffic Authority Fund

79. There shall be paid from the Roads and Traffic Authority Fund—

(a) all payments made on account of the Roads and Traffic Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority, other than payments for such non-capital expenditure as may be prescribed by the regulations under section 78 (1) (a); and

(b) all other payments required by or under this or any other Act to be paid from the Fund.

Expenditure on certain State works

80. (1) Money in the Roads and Traffic Authority Fund may not be used for the construction or maintenance of a State work unless it is money provided for the purpose by Parliament.

(2) In this section, “State work” means a State work within the meaning of the State Roads Act 1986, but does not include a road or work deemed by section 4 (5) of that Act to be a State work.

Division 4—Financial provisions relating to Authorities generally

Financial duties of the Authorities

81. (1) It is the duty of each Authority, in the exercise of its functions, to operate as efficiently and economically as possible and, in particular—

(a) to exercise efficiency and economy in incurring expenditure; and

(b) to manage its financial affairs in such a manner as not to incur commitments involving expenditure beyond levels that can be met from the expected financial resources of the Authority.

(2) It is the duty of each Authority to submit to the Treasurer, in such manner and at such times as the Treasurer specifies—

(a) detailed estimates of its revenue from all sources and its expenditure proposed for any period specified by the Treasurer; and

(b) such other information relating to the financial affairs of the Authority as the Treasurer requests.

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Financial year

82. (1) The financial year of each Authority is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Minister may direct payments into or from different Funds

83. Any money required by or under this or any other Act to be paid into either the State Rail Authority Fund or the State Transit Authority Fund shall, if the Minister so directs, be paid into the other Fund.

Division 5—Charges for services of State Rail Authority and State Transit Authority**Definition of “charges”**

84. In this Division—

“charges” includes fares, tolls, commissions and demurrage.

Orders fixing charges

85. (1) The charges to be demanded by the State Rail Authority in respect of its railway or other transport services or for any other purpose shall be as from time to time determined by order made by the Authority.

(2) The charges to be demanded by the State Transit Authority in respect of its bus or ferry services or for any other purpose shall be as from time to time determined by order made by the Authority.

(3) The State Rail Authority may make orders from time to time, not inconsistent with this Act or the regulations, for or with respect to determining the terms and conditions—

- (a) on which passengers shall be carried; and
- (b) on which passengers' luggage and freight shall be collected, received, kept, carried or delivered.

(4) Nothing in this section prevents an Authority from—

- (a) charging an agreed or other reasonable amount for any service or for any other purpose if the amount of the charge is not determined by an order under this Division; or
- (b) making or entering into contracts or arrangements for any service or any other purpose for which the charge is lower than that determined by the relevant order under this Division.

Ministerial supervision of orders fixing charges

86. (1) The State Rail Authority and the State Transit Authority shall, before any general adjustment to their charges for passenger or freight services, notify the Minister of the proposed adjustment and provide the Minister with details of the factors taken into account in proposing that adjustment.

(2) When making an order determining the charges for passenger or freight services, the State Rail Authority and the State Transit Authority shall have regard to any pricing policies approved by the Minister and notified to the Authority.

(3) Unless otherwise directed by the Minister under section 13 or 29, as the case requires, an Authority is not bound by any such pricing policy.

General provisions relating to orders fixing charges

87. (1) An order under this Division may—

- (a) adopt and incorporate by reference the whole or any part of a handbook, pamphlet or other document issued by an Authority; and
- (b) make provision for concessions and rebates; and
- (c) apply generally or be limited in its application by reference to specified exceptions or factors or apply differently according to different factors of a specified kind.

(2) An order under this Division shall be published in the Gazette and shall take effect on the date of publication of the order or a later date specified in the order.

(3) Orders may be made under this Division providing for the issue of tickets for use in connection with more than one service.

(4) Orders may be made by an Authority under this Division providing for the acceptance by the Authority of tickets issued by the other Authority or other persons or organisations.

(5) If an order under this section adopts and incorporates by reference the whole or part of a handbook, pamphlet or other document issued by an Authority—

- (a) the contents of the handbook, pamphlet or other document may be proved in any court by production of a document certified under the seal of the Authority to be a true copy of the handbook, pamphlet or other document; and
- (b) subsection (2) does not require the publication in the Gazette of the handbook, pamphlet or other document or part of it; and
- (c) the Authority shall, on application made to it by any person and payment of the prescribed fee, if any, furnish to the person a copy of the handbook, pamphlet or other document, or part of it, as the case may require.

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(6) Judicial notice shall be taken of every order made, or purporting to have been made, and published in the Gazette under this Division and of the date of its publication.

Free or subsidised railway, bus, ferry etc. travel

88. (1) The Minister may determine the classes of persons who are entitled to be issued with a free travel pass or a concessional travel pass by the State Rail Authority or the State Transit Authority.

(2) Any person who holds a free travel pass or a concessional travel pass is entitled to travel free or to the benefit of the concession (as the case requires) on all services to which the pass applies.

(3) Subject to any determination by the Minister, the relevant Authority may determine the conditions for the issue, cancellation and use of free travel passes and concessional travel passes.

(4) An Authority may allow a person who is entitled to a pass under this section to travel free or to receive the concession (as the case requires) without the necessity of being issued with the pass.

(5) An Authority is not required to issue passes under this section in accordance with a determination of the Minister if the revenue forgone by the Authority is not reimbursed by payments under section 39, unless required to do so by a direction of the Minister under section 13 or 29, as the case requires.

PART 9—MISCELLANEOUS**Division 1—Miscellaneous provisions relating to State Rail Authority****Sale, lease or other disposal of land**

89. (1) The State Rail Authority may, with the approval of the Minister, sell, lease or otherwise dispose of any of its land.

(2) Despite subsection (1), the approval of the Minister is not required—

- (a) for any lease for a term not exceeding 5 years; or
- (b) for a sale, lease or other disposal of land not exceeding such value, or in such circumstances, as the Minister may determine from time to time.

Resumption of land

90. (1) The State Rail Authority may—

- (a) for the purposes of the construction or extension of a railway; or
 - (b) for any other purposes of the State Rail Authority,
- acquire land by appropriation or resumption effected by the Governor under the Public Works Act 1912.

(2) An appropriation or resumption under this section shall be taken to be for an authorised work for which the State Rail Authority is the Constructing Authority.

(3) Any such appropriation or resumption is not void merely because it is expressed to be for the purposes of the State Rail Authority or for the purposes of this Act.

(4) For the purposes of this section, Schedule 6 has effect.

SRA not a common carrier

91. (1) The State Rail Authority is not a common carrier.

(2) Subsection (1) does not affect any contract or arrangement for the carriage of passengers or freight between the State Rail Authority and any other person in which the Authority accepts the risk and liability of a common carrier.

Maintenance of railway lines

92. Unless otherwise directed by the Minister under section 13, the State Rail Authority is not required to maintain a railway line on which it does not operate any services.

Closure and disposal of railway lines

93. (1) The State Rail Authority shall not, unless authorised by an Act of Parliament, close a railway line.

(2) For the purposes of this section, a railway line is closed if the land concerned is sold or otherwise disposed of or the railway tracks and other works concerned are removed.

Closure of level-crossings etc.

94. (1) The State Rail Authority may, with the approval of the Minister, close any level-crossing, bridge or other structure for crossing or passing over or under any railway of the Authority.

(2) The State Rail Authority shall, 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.

(3) On the closure of any such level-crossing, bridge or other structure, all rights, easements and privileges in relation to that crossing, bridge or other structure are extinguished.

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(4) The State Rail Authority may install such protective and safety devices at any level-crossing as appear to the Authority to be necessary or expedient.

Inquiries into railway accidents

95. (1) The Minister may require the State Rail Authority or a person nominated by the Minister to inquire into and report to the Minister on any railway accident.

(2) The State Rail Authority shall, in addition to any report required by the Minister, forward to the Minister a copy of the report of any formal inquiry into a railway accident instituted by the State Rail Authority.

(3) In this section—

“railway accident” means any accident involving the railway or other transport services operated by the State Rail Authority, whether or not resulting in the loss of life or damage to property.

Limitation of compensation in respect of damage to property by fire

96. In any action brought against the State Rail Authority for damages or compensation in respect of loss of or damage or injury to property (whether sustained before or after the commencement of this section) by reason of fire alleged to have been caused by—

- (a) any act or thing done or omitted to be done by the State Rail Authority in the operation of its railway services; or
- (b) any person for whose act or omission the State Rail Authority is liable,

the maximum sum recoverable is \$50,000.

Failure to pay train fare etc.

97. (1) A person who does any of the following is guilty of an offence:

- (a) without reasonable excuse, travels or attempts to travel on any train operated by the State Rail Authority without having previously paid the fare;
- (b) travels or attempts to travel on any such train without having previously paid the fare and fails, without reasonable excuse, to pay the fare on demand made by an officer authorised by the Authority in that regard;
- (c) knowingly and without reasonable excuse, fails to leave any such train on arriving at the point to which he or she has paid the fare;
- (d) knowingly and without reasonable excuse, travels or attempts to travel on any such train in a carriage of a class to which the person's ticket does not apply;

- (e) knowingly uses a travel pass to travel or attempt to travel on any such train, being a pass which the person is not entitled to use or which is no longer valid;
- (f) knowingly avoids or attempts to avoid any payment required to be made to the State Rail Authority by or under this Act in connection with its railway services (other than the fare for travelling on any such train).

Maximum penalty: 2 penalty units.

(2) It is not a defence to a prosecution under subsection (1) (a) for a person to prove—

- (a) that the time taken or likely to have been taken in payment of the fare before travelling or attempting to travel on the train would or may have caused the person to have been unable to so travel or attempt to travel; or
- (b) that the person intended to pay the fare while travelling or on arriving at a particular place,

but it is a defence to such a prosecution if the person proves—

- (c) that it appeared to the person, after reasonable investigation, that no facilities were available at the station at which the person got on or attempted to get on the train to enable him or her to pay the fare before getting on or attempting to get on the train; or
- (d) that the person—
 - (i) had arrived at that station within such period of time before getting on or attempting to get on the train as would, in the circumstances ordinarily existing at that time of the day and on that day of the week, have enabled the person to have paid the fare before getting on or attempting to get on the train; and
 - (ii) diligently took all steps reasonably necessary to pay the fare, but that the person was unable, due to circumstances beyond his or her control, to pay the fare.

Search of vehicles etc. on certain railway premises

98. (1) Any authorised officer may—

- (a) stop any vehicle or person on any land that is vested in or under the control of the State Rail Authority and that is used for the receipt, dispatch or delivery of any luggage or freight; and
- (b) search any such vehicle or any luggage or other article on that vehicle or in the possession of any such person; and
- (c) require any such person to produce consignment notes, delivery dockets or other documents relating to the receipt, dispatch, delivery or ownership of any such luggage or article; and
- (d) seize any such luggage or article that the authorised officer has reasonable grounds for suspecting has been stolen.

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(2) The power of an authorised officer to search includes the power to open any part of the vehicle or any luggage or other article on the vehicle or in the possession of the person.

(3) Any person who—

- (a) obstructs or hinders an authorised officer when exercising any power under this section; or
- (b) does not comply with any reasonable requirement made for the purposes of this section by an authorised officer,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(4) An authorised officer shall produce his or her authority if requested to do so by any person required to comply with a requirement made by that officer for the purposes of this section.

(5) No personal liability is incurred by an authorised officer for any act done or omitted in good faith under this section.

(6) In this section—

“authorised officer” means an officer of the State Rail Authority, or a person employed in the Police Department, appointed in writing to be an authorised officer by the Chief Executive of the State Rail Authority;

“authority” means the written instrument by which an authorised officer is appointed.

Regulations relating to railway and other transport services

99. (1) The regulations may make provision for or with respect to the railway and other transport services operated by the State Rail Authority.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the terms and conditions on which—
 - (i) passengers are carried; and
 - (ii) passengers’ luggage and freight are collected, received, kept, carried or delivered; and
- (b) the use of and access to facilities or property owned by or under the control of the State Rail Authority; and
- (c) the protection and preservation of facilities or property owned by or under the control of the State Rail Authority; and
- (d) security, safety and order on railways and trains; and
- (e) the sale or other disposal of unclaimed goods and luggage in the possession of the State Rail Authority and the disposal of the proceeds of any such sale; and

- (f) the standing or parking of vehicles on land vested in the State Rail Authority.

Division 2—Miscellaneous provisions relating to State Transit Authority

Sale, lease or other disposal of land

100. (1) The State Transit Authority may, with the approval of the Minister, sell, lease or otherwise dispose of any of its land.

(2) Despite subsection (1), the approval of the Minister is not required—

- (a) for any lease for a term not exceeding 5 years; or
- (b) for a sale, lease or other disposal of land not exceeding such value, or in such circumstances, as the Minister may determine from time to time.

Resumption of land

101. (1) The State Transit Authority may, for any purposes of the State Transit Authority, acquire land by appropriation or resumption effected by the Governor under the Public Works Act 1912.

(2) An appropriation or resumption under this section shall be taken to be for an authorised work for which the State Transit Authority is the Constructing Authority.

(3) Any such appropriation or resumption is not void merely because it is expressed to be for the purposes of the State Transit Authority or for the purposes of this Act.

(4) For the purposes of this section, Schedule 6 has effect.

STA not a common carrier

102. (1) The State Transit Authority is not a common carrier.

(2) Subsection (1) does not affect any contract or arrangement for the carriage of passengers between the State Transit Authority and any other person in which the Authority accepts the risk and liability of a common carrier.

Inquiries into bus or ferry accidents

103. (1) The Minister may require the State Transit Authority or a person nominated by the Minister to inquire into and report to the Minister on any bus or ferry accident.

(2) The State Transit Authority shall, in addition to any report required by the Minister, forward to the Minister a copy of the report of any formal inquiry into a bus or ferry accident instituted by the State Transit Authority.

(3) In this section—

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“bus or ferry accident” means an accident involving the bus or ferry services operated by the State Transit Authority, whether or not resulting in the loss of life or damage to property.

Regulations relating to bus and ferry services

104. (1) The regulations may make provision for or with respect to the bus and ferry services provided by the State Transit Authority.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the terms and conditions on which passengers are carried; and
- (b) the use of and access to facilities or property owned by or under the control of the State Transit Authority; and
- (c) the protection and preservation of facilities or property owned by or under the control of the State Transit Authority; and
- (d) security, safety and order on buses and ferries; and
- (e) the sale or other disposal of unclaimed goods and luggage in the possession of the State Transit Authority and the disposal of the proceeds of any such sale; and
- (f) the standing or parking of vehicles on land vested in the State Transit Authority.

Division 3—Miscellaneous provisions relating to Roads and Traffic Authority**Power to accept gifts etc.**

105. (1) The Roads and Traffic Authority may acquire by gift, bequest or devise any property for any of the purposes of the Authority and may agree to and carry out the conditions of the gift, bequest or devise.

(2) The rule of law relating to remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Roads and Traffic Authority has agreed.

(3) Nothing in the Stamp Duties Act 1920 applies to any real or personal property of any kind comprised in any gift, bequest or devise made to the Roads and Traffic Authority.

Grants to councils in connection with use of buses

106. (1) The Roads and Traffic Authority shall, in accordance with such directions as may be given by the Minister, administer any scheme approved by the Minister for the making of grants to councils of local government areas in a transport district for the purpose of defraying the costs incurred in maintaining public roads used by buses.

(2) The amount approved by the Minister for distribution in any financial year shall not exceed the amount of tax which the Minister estimates was received under the Motor Vehicles Taxation Act 1988 during the previous financial year in connection with the registration of buses.

(3) The amount distributed to each eligible council shall be calculated by reference to the estimated distance travelled by buses on public roads wholly or partly maintained by each council.

(4) Grants under this section shall be made from money appropriated by Parliament for the purpose.

Division 4—Miscellaneous provisions relating to transport authorities

Definition of “transport authority”

107. In this Division, “transport authority” means—

- (a) the State Rail Authority; or
- (b) the State Transit Authority; or
- (c) the Roads and Traffic Authority; or
- (d) in relation to the functions of the Secretary of the Ministry of Transport under Part 4—the Secretary.

Transport districts

108. (1) There shall be 3 transport districts, namely:

- (a) the Metropolitan transport district; and
- (b) the Newcastle transport district; and
- (c) the Wollongong transport district,

with boundaries as prescribed by the regulations.

(2) The regulations may from time to time—

- (a) establish other transport districts; or
- (b) vary any transport district, established under subsection (1) or this subsection, by adding any area to it or by excluding any area from it; or
- (c) amalgamate and re-name any transport districts so established.

Seal of Authority

109. The seal of an Authority shall be kept by the Chief Executive of the Authority and shall be affixed to a document only—

- (a) in the presence of that Chief Executive or a member of the staff of the Authority authorised in that behalf by that Chief Executive; and
- (b) with an attestation by the signature of that Chief Executive or that member of staff of the fact of the affixing of the seal.

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Miscellaneous provisions relating to contracts of transport authority

110. (1) A contract or arrangement made or entered into by a transport authority for the carrying out of works or the performance of services may provide for—

- (a) the whole or any part of the works to be undertaken by the authority; or
- (b) the whole or any part of the cost of the works to be paid by the authority; or
- (c) a loan to be made by the authority to meet the whole or any part of the cost of the works; or
- (d) the authority to pay the whole or any part of the cost of providing the services during a specified period.

(2) A transport authority may make and enter into contracts or agreements for the payment of money (or the carrying out of works) in settlement of a claim brought against the authority for compensation or damages in relation to the functions of the authority.

(3) A contract under this section shall be deemed for the purposes of the Constitution Act 1902 to be a contract for or on account of the Public Service of New South Wales.

Disputes involving transport authorities

111. (1) If any transport dispute arises—

- (a) between one transport authority and another transport authority; or
- (b) between a transport authority and a public authority,

either party may refer the matter to the Minister.

(2) If the Minister is not the Minister responsible for an authority that is a party to the dispute, the dispute may be referred instead (or in addition) to the Minister responsible for that authority.

(3) In this section—

“public authority” means any public or local authority constituted by or under an Act, and includes the council of a local government area, a government department and an administrative office;

“transport dispute” means a dispute with respect to the carrying out of the functions of a transport authority under this or any other Act.

(4) For the purposes of this section, the Minister administering the Local Government Act 1919 shall be taken to be the Minister responsible for the council of a local government area.

Personal liability of certain persons

112. (1) No matter or thing done by a transport authority, a member of a transport authority or a person acting under the direction of a transport authority or of a member of a transport authority shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a transport authority or a person so acting personally to any action, liability, claim or demand.

(2) In this section—

“member of a transport authority” includes the Chief Executives of the State Rail Authority, the State Transit Authority and the Roads and Traffic Authority;

“transport authority” includes—

- (a) the State Rail Authority Board and the State Transit Authority Board; and
- (b) the State Transit Co-ordination Advisory Council and the Roads and Traffic Advisory Council.

Presumption of validity

113. (1) The exercise of a function by a transport authority is not invalidated because it is exercised in contravention of a direction by the Minister.

(2) If a recommendation by a transport authority is a condition precedent to the exercise of a function by the Minister, the exercise of the function by the Minister is evidence of the making of the recommendation.

Rescission of resumptions

114. (1) The Governor may by notification in the Gazette rescind in whole or in part any notification of resumption of land made for the purposes of works for which the State Rail Authority or the State Transit Authority is the Constructing Authority.

(2) On publication of any notification of rescission, the land described in the notification shall revert in the person who was entitled to the land immediately before its resumption for the estate, interest or right which the person had immediately before the resumption.

(3) Such land (on its reversion) shall be subject to—

- (a) all interests (whether legal or equitable) in or equities binding on the land created or granted by the State Rail Authority or State Transit Authority (as the case requires) since the resumption; and
- (b) all interests (whether legal or equitable), trusts, contracts, charges, rates, rights-of-way or other easements from which it was freed and discharged by the resumption; and

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- (c) all interests in or equities binding on the compensation money created since the resumption.

(4) If a resumption application—

- (a) relates to land described or referred to in a notification of resumption for the purposes of works for which the State Rail Authority or State Transit Authority is the Constructing Authority; and
- (b) has been lodged under section 31A (2) of the Real Property Act 1900 with the Registrar-General,

a notification of rescission does not rescind so much of the notification of resumption as relates to that land.

(5) Any transfer of such land, after it has been brought under the provisions of the Real Property Act 1900, to the person who was entitled to the land immediately before the resumption shall for the purposes of subsection (7), on its registration, be taken to—

- (a) revest that land under this section in the transferee; and
- (b) rescind the notification of resumption in so far as it relates to that land.

(6) On the lodgment with the Registrar-General of a copy of a notification published in the Gazette under this section that rescinds a notification of resumption of land under the Real Property Act 1900, the Registrar-General shall—

- (a) make, in the Register kept under that Act, such recordings with respect to the rescission; and
- (b) create or cancel such folios of that Register,

as the Registrar-General considers appropriate.

(7) A person in whom any land is revested under this section is entitled to be compensated by the State Rail Authority or State Transit Authority (as the case requires) for any loss or damage actually suffered by the person as a direct consequence of the resumption and its rescission (other than compensation in respect of the value of the land).

(8) Any claim for compensation arising under this section shall be determined in the same manner and subject to the same conditions as a claim for compensation arising out of the acquisition of land under the Public Works Act 1912 by notification published in the Gazette, and the Land and Environment Court has jurisdiction accordingly.

Recovery of charges etc. by transport authority

115. Any charge, fee, toll or money due to a transport authority, or to the Crown in respect of the activities of a transport authority, may be recovered by the authority as a debt in any court of competent jurisdiction.

Liability of vehicle owner for parking offences on Authority's land

116. (1) If a parking offence occurs in relation to any vehicle, the person who at the time of the occurrence of the offence is the owner of the vehicle shall, by virtue of this section, be guilty of the parking offence as if the person were the actual offender.

(2) Nothing in this section affects the liability of the actual offender, but if a penalty has been imposed on or recovered from any person in relation to a parking offence no further penalty shall be imposed on or recovered from any other person in relation to that offence.

(3) The owner of a vehicle is not guilty of an offence by virtue of this section if the owner satisfies—

(a) in any case where the offence is dealt with under section 117—an authorised officer described in the penalty notice served under that section; or

(b) in any other case—the court,

that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.

(4) The owner of a vehicle is not, by virtue of this section, guilty of an offence if—

(a) in any case where the offence is dealt with under section 117, the owner—

(i) within 21 days after service on the owner of a penalty notice under that section alleging that the owner is guilty of the offence, supplies by statutory declaration to an authorised officer described in the notice the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or

(ii) satisfies such an authorised officer that the owner did not know and could not with reasonable diligence have ascertained that name and address; or

(b) in any other case, the owner—

(i) within 21 days after service on the owner of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or

(ii) satisfies the court that the owner did not know and could not with reasonable diligence have ascertained that name and address.

(5) Any such statutory declaration if produced in any proceedings against the person named in it and in relation to the offence in respect of which the statutory declaration was supplied is evidence that that person was in charge of the vehicle at all relevant times relating to that offence.

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(6) Any such statutory declaration which relates to more than one offence shall be deemed not to be a statutory declaration under, or for the purposes of, subsection (4).

(7) In this section—

“owner”, in relation to a vehicle, includes—

- (a) every person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement (but not the lessor under any such agreement); and
- (b) in the case of a motor vehicle—
 - (i) the person in whose name the vehicle is registered under the Traffic Act 1909, except where that person has sold or otherwise disposed of the vehicle and has complied with the provisions of or made under the Traffic Act 1909 applicable to the person in regard to that sale or disposal; and
 - (ii) in the case of a vehicle to which a trader’s plate issued under the Traffic Act 1909 is affixed, the person to whom the trader’s plate is on issue; and
 - (iii) any person who, pursuant to the Traffic Act 1909, is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle;

“parking offence” means any offence against a regulation made for or with respect to the standing or parking of vehicles on land vested in the State Rail Authority or the State Transit Authority.

Penalty notices for certain offences

117. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed or is guilty of an offence under this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice—

- (a) may be served personally or by post; or
- (b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 116, may be addressed to the owner without naming the owner or stating the address of the owner and may be served by leaving it on or attaching it to the vehicle.

(4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section shall not be regarded as an admission of liability for the purposes of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may—

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section, “authorised officer” means—

- (a) a member of the Police Force; or
- (b) a person declared by the regulations to be an authorised officer for the purposes of this section.

Proceedings for offences

118. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

119. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

120. Schedule 7 has effect.

*Transport Administration 1988***SCHEDULE 1—CONSTITUTION AND PROCEDURE OF STATE RAIL
AUTHORITY BOARD AND STATE TRANSIT AUTHORITY BOARD**

(Secs. 9 (4), 25 (4))

Definitions

1. In this Schedule—

“appointed member”, in relation to a Board, means a member of the Board other than the appropriate Chief Executive;

“appropriate Chief Executive” means—

(a) in relation to the State Rail Authority Board—the Chief Executive of the State Rail Authority; or

(b) in relation to the State Transit Authority Board—the Chief Executive of the State Transit Authority;

“Board” means the State Rail Authority Board or State Transit Authority Board;

“member”, in relation to a Board, means the appropriate Chief Executive or an appointed member of the Board.

Age of members

2. A person of or above the age of 70 years is not eligible to be appointed as an appointed member or to act as a deputy of a member.

Chairperson of Board

3. (1) Of the members (including the Chief Executive) of a Board, one shall (in and by the member's instrument of appointment as a member or in and by another instrument executed by the Minister) be appointed as Chairperson of the Board.

(2) The Minister may remove a member from the office of Chairperson at any time.

(3) A person who is a member and Chairperson vacates office as Chairperson if the person—

(a) is removed from that office by the Minister; or

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a member.

Deputies

4. (1) The Chief Executive of an Authority may, from time to time, appoint a person to be his or her deputy, and the Chief Executive or the Minister may revoke any such appointment.

(2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

(3) In the absence of a member, the member's deputy—

(a) shall, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and shall be taken to be a member.

(4) The deputy of a member who is Chairperson of a Board does not have the member's functions as Chairperson.

**SCHEDULE 1—CONSTITUTION AND PROCEDURE OF STATE RAIL
AUTHORITY BOARD AND STATE TRANSIT AUTHORITY BOARD—*continued***

(5) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of appointed members

5. Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

6. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

7. (1) The office of an appointed member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of a Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (i) reaches the age of 70 years.
- (2) The Minister may remove an appointed member from office at any time.

Disclosure of pecuniary interests

8. (1) If—
- (a) a member of a Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

*Transport Administration 1988***SCHEDULE 1—CONSTITUTION AND PROCEDURE OF STATE RAIL
AUTHORITY BOARD AND STATE TRANSIT AUTHORITY BOARD—*continued***

the member shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member of a Board at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause shall be recorded by the Board in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member of a Board has disclosed the nature of an interest in any matter, the member shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by a Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member of a Board (being the provision of goods or services to the member by an Authority) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

Filling of vacancy in office of appointed member

9. If the office of any appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

10. (1) The Public Sector Management Act 1988 does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

SCHEDULE 1—CONSTITUTION AND PROCEDURE OF STATE RAIL
AUTHORITY BOARD AND STATE TRANSIT AUTHORITY BOARD—*continued*

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

11. The procedure for the calling of meetings of a Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board.

Quorum

12. The quorum for a meeting of a Board is a majority of the members for the time being.

Presiding member

13. (1) The Chairperson of a Board or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall (subject to subclause (2)) preside at a meeting of the Board.

(2) If the appropriate Chief Executive is not the Chairperson, the Chief Executive (if present) shall preside in the absence of the Chairperson at a meeting of the Board.

(3) The person presiding at any meeting of a Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

14. A decision supported by a majority of the votes cast at a meeting of a Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone etc.

15. (1) A Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.

(2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member of a Board have the same voting rights they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the Board.

*Transport Administration 1988***SCHEDULE 1—CONSTITUTION AND PROCEDURE OF STATE RAIL
AUTHORITY BOARD AND STATE TRANSIT AUTHORITY BOARD—*continued***

(5) Papers may be circulated among members of a Board for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

First meeting

16. The Minister shall call the first meeting of a Board in such manner as the Minister thinks fit.

SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVES

(Secs. 11 (3), 27 (3), 47 (2))

Definition

1. In this Schedule—

“Chief Executive” means the Chief Executive of the State Rail Authority, the Chief Executive of the State Transit Authority or the Chief Executive of the Roads and Traffic Authority.

Age of Chief Executive

2. A person of or above the age of 65 years is not eligible to be appointed as a Chief Executive or to act in the office of a Chief Executive.

Acting Chief Executive

3. (1) The Minister may, from time to time, appoint a person to act in the office of a Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and shall be taken to be the Chief Executive.

(2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.

(3) A person while acting in the office of a Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of a Chief Executive shall be regarded as an absence from office of the Chief Executive.

Term of office

4. Subject to this Schedule, a Chief Executive shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the Chief Executive, but is eligible (if otherwise qualified) for re-appointment.

Chief Executive to be full-time

5. A Chief Executive shall devote the whole of his or her time to the duties of his or her office, except to the extent permitted by this Act or by the Minister.

Remuneration

6. A Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of the Chief Executive.

SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVES—continued**Casual vacancies**

7. (1) The office of a Chief Executive becomes vacant if the Chief Executive—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is retired or removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (h) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister; or
 - (i) reaches the age of 65 years.
- (2) A Chief Executive may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor.
- (3) The Governor may remove a Chief Executive from office for incapacity, incompetence or misbehaviour.

Filling of vacancy in office of a Chief Executive

8. If the office of a Chief Executive becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Public Sector Management Act 1988 not to apply

9. The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a Chief Executive and a Chief Executive is not, as a Chief Executive, subject to that Act (except Part 8).

Preservation of rights of Chief Executive of RTA previously public servant etc.

10. (1) This clause applies to a Chief Executive of the Roads and Traffic Authority who, immediately before being appointed as Chief Executive, was—
- (a) an officer of the Roads and Traffic Authority; or
 - (b) an officer of the Public Service; or
 - (c) a contributor to a superannuation scheme; or
 - (d) an officer employed by a proclaimed statutory body; or
 - (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

*Transport Administration 1988***SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVES—*continued***

- (2) Subject to the terms of the Chief Executive's appointment, the Chief Executive—
- (a) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person; and
 - (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Chief Executive; and
 - (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the Chief Executive had continued to be such an officer, contributor or person during his or her service as Chief Executive.

(3) Service as Chief Executive shall be regarded as service as an officer or employee for the purposes of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

(4) The Chief Executive shall be regarded as an officer or employee, and the Roads and Traffic Authority shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the Chief Executive would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled upon becoming (whether upon appointment as Chief Executive or at any later time while holding office as Chief Executive) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Roads and Traffic Authority in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to the Chief Executive (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(7) The Chief Executive is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Chief Executive of RTA entitled to re-appointment to former employment in certain cases

11. (1) A person who—

- (a) ceases to be Chief Executive of the Roads and Traffic Authority by reason of the expiration of the period for which the person was appointed or by reason of resignation;

SCHEDULE 2—PROVISIONS RELATING TO CHIEF EXECUTIVES—*continued*

- (b) was, immediately before being appointed as Chief Executive—
 - (i) an officer of the Roads and Traffic Authority; or
 - (ii) an officer of the Public Service; or
 - (iii) an officer or employee of a proclaimed statutory body; and
- (c) has not reached the age of 60 years,

is entitled to be appointed to some position in that Authority, the Public Service or the service of that statutory body, as the case may be, not lower in salary than the current salary for the position which the person held immediately before being appointed as Chief Executive (or a similar position).

- (2) If subclause (1) does not apply to a person who—
 - (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
 - (b) is after that appointment appointed as Chief Executive of the Roads and Traffic Authority,

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Chief Executive, as are specified in the instrument of appointment as Chief Executive or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause, “proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 3—PROVISIONS RELATING TO STATE TRANSIT CO-ORDINATION ADVISORY COUNCIL AND ROADS AND TRAFFIC ADVISORY COUNCIL

(Secs. 44 (3), 54 (3))

Definitions

- 1. In this Schedule—
 - “Advisory Council” means the State Transit Co-ordination Advisory Council or the Roads and Traffic Advisory Council;
 - “member” means an ex-officio or appointed member of an Advisory Council.

Age of members

- 2. A person of or above the age of 70 years is not eligible to be appointed as an appointed member or to act as a deputy of a member.

Chairperson of Council

- 3. (1) The Chairperson of the State Transit Co-ordination Advisory Council shall be the Secretary of the Ministry of Transport.
- (2) Of the appointed members of the Roads and Traffic Advisory Council, one shall (in and by the member’s instrument of appointment or in and by another instrument executed by the Minister) be appointed as Chairperson of that Advisory Council.
- (3) The Minister may remove a member from the office of Chairperson of the Roads and Traffic Advisory Council at any time.

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SCHEDULE 3—PROVISIONS RELATING TO STATE TRANSIT CO-ORDINATION ADVISORY COUNCIL AND ROADS AND TRAFFIC ADVISORY COUNCIL—*continued*

(4) A person who is a member and Chairperson of the Roads and Traffic Advisory Council vacates office as Chairperson if the person—

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Deputies of members

4. (1) A member may, from time to time, appoint a person to be his or her deputy, and the member or the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy—

- (a) shall, if available, act in the place of the member; and
- (b) while so acting, has all the functions of the member and shall be taken to be a member.

(3) The deputy of a member who is Chairperson of an Advisory Council has the member's functions as Chairperson.

(4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office

5. Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

6. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

7. (1) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of an Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

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SCHEDULE 3—PROVISIONS RELATING TO STATE TRANSIT CO-
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COUNCIL—*continued*

- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (i) reaches the age of 70 years.
- (2) The Minister may remove an appointed member from office at any time.

Filling of vacancy in office of member

8. If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

10. The procedure for the calling of meetings of an Advisory Council and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Advisory Council.

Quorum

11. The quorum for a meeting of an Advisory Council is a majority of the members for the time being.

Presiding member

12. (1) The Chairperson of an Advisory Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Advisory Council.

(2) The person presiding at any meeting of an Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 3—PROVISIONS RELATING TO STATE TRANSIT CO-
ORDINATION ADVISORY COUNCIL AND ROADS AND TRAFFIC ADVISORY
COUNCIL—*continued*

Voting

13. A decision supported by a majority of the votes cast at a meeting of an Advisory Council at which a quorum is present is the decision of the Advisory Council.

First meeting

14. The Minister shall call the first meeting of an Advisory Council in such manner as the Minister thinks fit.

SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS

(Sec. 59)

Part 1—Preliminary

Definitions

1. (1) In this Schedule—

“analyst”, “breath analysing instrument”, “breath analysis” and “breath test” have the same meanings as they have in the Traffic Act 1909;

“authorised officer” means an authorised officer under clause 2;

“drug” means—

(a) alcohol; or

(b) any substance that is a drug within the meaning of the Traffic Act 1909;

“hospital” means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 4F of the Traffic Act 1909 or that is prescribed by the regulations;

“prescribed concentration of alcohol” means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood;

“railway employee” means an officer of the State Rail Authority;

“railway safety work” means any of the following work carried out by a railway employee:

(a) work as a driver, guard, observer or engineman on a train;

(b) work at a railway station or other place as a station-master, operator of train signals or shunter of trains or work which otherwise relates to the movement of trains;

(c) work on or about railway tracks relating to the repair, maintenance or upgrading of railway tracks or of any rolling stock or associated works or equipment;

(d) any other work that is prescribed by the regulations as railway safety work, but does not include any work that involves the driving of a motor vehicle on a public street.

(2) A reference in this Schedule to a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a member of the police force so authorised under the Traffic Act 1909.

SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued*

(3) For the purposes of this Schedule, a thing shall be regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of the medical practitioner or analyst.

(4) For the purposes of this Schedule, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

Appointment of authorised officers

2. (1) The State Rail Authority may, by instrument in writing, appoint an officer of that Authority, or a person employed in the Police Department, to be an authorised officer for the purposes of this Schedule.

(2) The State Rail Authority may appoint as an authorised officer—

- (a) a person by name; or
- (b) the holder from time to time of a particular office by reference to the title of the office concerned.

(3) The authority of an authorised officer may be limited by the relevant instrument of appointment to a particular part of the State or to particular railway employees, or otherwise.

(4) Anything done by an authorised officer in accordance with this Schedule is not invalid merely because of a contravention of a limitation to which the authority of the officer is subject.

(5) The State Rail Authority shall furnish authorised officers with certificates of their appointment as authorised officers.

(6) An authorised officer must, if requested to do so, produce the certificate of appointment to any person required by the officer to submit to a breath test or to do any other thing under this Schedule.

Part 2—Offences relating to alcohol or other drugs**Offence—carrying out railway safety work with prescribed concentration of alcohol in blood**

3. A railway employee who carries out railway safety work while the prescribed concentration of alcohol is present in the employee's blood is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Offence—carrying out railway safety work while under the influence of alcohol or other drug

4. (1) A railway employee who carries out railway safety work while under the influence of alcohol or any other drug is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) If a person is charged with an offence under this clause—

- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information; and

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued***

- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of—
 - (i) a drug described in the information; or
 - (ii) a combination of drugs any one or more of which was or were described in the information.

Double jeopardy

- 5. (1) A railway employee is not liable to be convicted of both—
 - (a) an offence under clause 3 of carrying out railway safety work while the prescribed concentration of alcohol is present in the employee's blood; and
 - (b) an offence under clause 4 of carrying out that railway safety work while under the influence of alcohol or any other drug.
- (2) A railway employee is not liable to be convicted of both—
 - (a) an offence under clause 4 of carrying out railway safety work while under the influence of alcohol or any other drug; and
 - (b) an offence under clause 17 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine in connection with the carrying out of that railway safety work.

Part 3—Testing for alcohol or other drugs**Breath testing of railway employees about to carry out railway safety work**

6. (1) If an authorised officer has reasonable cause to believe that a railway employee is about to carry out railway safety work, the officer may require the employee to undergo a breath test in accordance with the directions of the officer.

(2) A railway employee shall be regarded as being about to carry out railway safety work if the employee—

- (a) has left home or a temporary residence for work (being railway safety work); and
- (b) has not commenced work after having so left home or the temporary residence.

(3) The result of any such breath test (or of any subsequent breath or other analysis) may be used for the purposes of any disciplinary proceedings against the railway employee, but is not admissible in any proceedings for an offence under this Schedule.

Breath testing of railway employees carrying out railway safety work

7. If an authorised officer or a member of the police force has reasonable cause to believe that—

- (a) a railway employee is carrying out railway safety work and there is alcohol in the employee's blood; or
- (b) a railway employee has been involved in an accident or irregular incident while carrying out railway safety work,

the officer or member may require the employee to undergo a breath test in accordance with the directions of the officer or member.

SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—continued**Assessment of sobriety where breath testing device not available****8. (1) If—**

- (a) an authorised officer or a member of the police force is entitled under this Schedule to require a railway employee to undergo a breath test; and
- (b) the device required to carry out the breath test is not readily available, the officer or member may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the officer or member.

(2) A requirement that a railway employee submit to such an assessment is not open to challenge in any proceedings on the basis that the device was readily available.

Breath analysis of railway employees following breath testing etc.**9. (1) If—**

- (a) it appears to an authorised officer or a member of the police force as a result of a breath test or assessment under this Schedule that the prescribed concentration of alcohol may be present in a railway employee's blood; or
- (b) a railway employee who is required by an authorised officer or a member of the police force to undergo a breath test or to submit to an assessment under this Schedule refuses or fails to do so in accordance with the directions of the officer or member,

the officer or member may require the employee to submit to a breath analysis in accordance with the directions of the officer or member.

(2) If an authorised officer or a member of the police force is entitled to require a railway employee to submit to a breath analysis, the officer or member may—

- (a) arrest the employee without warrant; and
- (b) take the employee with such force as may be necessary to a police station or some other place as the officer or member considers desirable and there detain the employee for the purposes of the breath analysis.

(3) A breath analysis shall be carried out by—

- (a) an authorised officer; or
- (b) a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments,

at or near a police station or such other place as the officer or member considers desirable.

(4) As soon as practicable after a railway employee has submitted to a breath analysis the authorised officer or member of the police force operating the breath analysis instrument shall deliver to the employee a statement in writing signed by the officer or member specifying—

- (a) the concentration of alcohol determined by the analysis to be present in the employee's blood and expressed in grammes of alcohol in 100 millilitres of blood; and
- (b) the day on which and time of the day at which the breath analysis was completed.

(5) A railway employee who is required to submit to a breath analysis may request the authorised officer or member of the police force making the requisition to arrange for the taking (in the presence of an authorised officer or a member of the police force) of a sample of the employee's blood for analysis, at the employee's own expense, by—

- (a) a medical practitioner nominated by the employee; or

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued***

- (b) a medical practitioner nominated by the officer or member at the employee's request.

(6) The making of any such request or the taking of a sample of a railway employee's blood does not absolve the employee from the obligation imposed on the employee to submit to a breath analysis in accordance with this clause.

(7) A medical practitioner by whom a sample of a railway employee's blood is taken in accordance with an arrangement referred to in subclause (5) shall divide the sample into 2 approximately equal portions of which one shall be handed to the employee from whom it was taken and one, enclosed in a suitable sealed container, shall be handed to the authorised officer or member of the police force present at the time the sample was taken.

Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work

10. (1) If a railway employee attends or is admitted to a hospital for examination or treatment because the employee has been involved in an accident while carrying out railway safety work, an authorised officer or a member of the police force may require the employee to provide as soon as practicable a sample of the employee's blood or urine in accordance with the directions of a medical practitioner who attends the employee at the hospital.

(2) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(3) A requirement under subclause (1) need not be made directly to the railway employee concerned but may be made through a medical practitioner who attends the employee at the hospital.

Blood or urine samples taken where breath analysing instrument not available

11. (1) If—

- (a) an authorised officer or a member of the police force is entitled under this Schedule to require a railway employee to submit to a breath analysis; and
(b) a breath analysing instrument is not readily available,

the officer or member may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

(2) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(3) A requirement that a railway employee provide a sample is not open to challenge in any proceedings on the basis that a breath analysing instrument was readily available.

(4) If an authorised officer or a member of the police force is entitled to require a railway employee to provide a sample of blood or urine, the officer or member may—

- (a) arrest the employee without warrant; and
(b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued*

Blood or urine samples taken for detecting drugs

12. (1) If—

- (a) a railway employee has undergone a breath test in accordance with this Schedule; and
- (b) the result of the test does not permit the employee to be required to submit to a breath analysis,

an authorised officer or a member of the police force may require the employee to submit to an assessment of his or her sobriety in accordance with the directions of the officer or member.

(2) A railway employee shall not be required to submit to the assessment unless the authorised officer or member of the police force has a reasonable belief that, by the way in which the employee was acting, the employee might be under the influence of a drug.

(3) If—

- (a) a railway employee refuses to submit to the assessment; or
- (b) after the assessment has been made, an authorised officer or a member of the police force has a reasonable belief that the employee is under the influence of a drug,

the officer or member may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

(4) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(5) If an authorised officer or a member of the police force is entitled to require a railway employee to provide a sample of blood or urine, the officer or member may—

- (a) arrest the employee without warrant; and
- (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

Restrictions on requiring breath test, assessment, breath analysis or sample

13. An authorised officer or a member of the police force shall not require a railway employee to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine—

- (a) if the employee has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the employee at the hospital has been notified of the intention to make the requisition and the medical practitioner does not object on the ground that compliance would be prejudicial to the proper care or treatment of the employee; or
- (b) if it appears to the officer or member that it would (because of injuries sustained by the employee) be dangerous to the employee's medical condition if the employee complied with the requisition; or
- (c) at any time after the expiration of 2 hours from the time the employee carried out the railway safety work (or was due to commence the railway safety work) to which the requisition relates; or
- (d) at the employee's home.

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—continued****Action by medical practitioner with respect to samples of blood or urine**

14. (1) A medical practitioner who takes a sample of blood or urine when required under this Schedule to do so shall—

- (a) divide the sample into 2 approximately equal portions; and
- (b) place each portion into a container; and
- (c) fasten and seal each container; and
- (d) mark or label each container for future identification.

(2) Of the 2 sealed containers—

- (a) one shall be handed by the medical practitioner to the railway employee from whom the sample was taken or to some other person on behalf of the railway employee; and
- (b) the other shall be handed by the medical practitioner to the authorised officer or member of the police force present when the sample was taken.

Analysis of samples of blood or urine

15. (1) An authorised officer or a member of the police force may arrange for a portion of a sample of a railway employee's blood or urine taken in accordance with this Schedule to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

(2) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this clause may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

Medical practitioners—protection from liability

16. No civil or criminal liability is incurred by a medical practitioner in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood or urine from a person if the practitioner—

- (a) believed on reasonable grounds that the practitioner was required under this Act to take the sample of blood or urine from the person; or
- (b) was informed by an authorised officer or a member of the police force that the person was a person from whom the practitioner was required under this Act to take the sample of blood or urine,

nor by any person acting under the supervision or direction of the medical practitioner.

Part 4—Offences relating to testing for alcohol or other drugs**Refusal to be tested**

17. (1) Any railway employee who, when required under this Schedule to do so, refuses or fails—

- (a) to undergo a breath test; or
- (b) to submit to an assessment,

in accordance with this Schedule is guilty of an offence.

Maximum penalty: 10 penalty units.

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued***

(2) Any railway employee who, when required under this Schedule to do so, refuses or fails—

- (a) to submit to a breath analysis; or
- (b) to provide a sample of blood or urine,

in accordance with this Schedule is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

(3) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

Interfering with results of test

18. A railway employee who does anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Schedule is guilty of an offence if the employee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

Taking of samples by medical practitioner

19. (1) Any medical practitioner who, when required under this Schedule to take a sample of blood or urine from a railway employee—

- (a) refuses or fails to take the sample; or
- (b) does not comply with the requirements of clause 14 with respect to any sample taken,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner satisfies the court that—

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the railway employee would be prejudicial to the proper care and treatment of the railway employee; or
- (b) the practitioner was, because of the behaviour of the railway employee, unable to take the sample; or
- (c) there was other reasonable cause for the practitioner not to take the sample.

(3) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood or urine of any other person under this Schedule is guilty of an offence.

Maximum penalty: 10 penalty units.

Part 5—Certificate evidence in proceedings**Certificate evidence of concentration of alcohol in blood determined by breath analysis**

20. (1) In proceedings for an offence under clause 3, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by—

- (a) an authorised officer; or

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued***

(b) a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments.

(2) The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of the person at the time the person carried out the railway safety work to which the breath analysis relates if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under clause 3, a certificate purporting to be signed by an authorised officer or a member of the police force certifying that—

- (a) the officer is a duly appointed authorised officer or (as the case requires) the member of the police force is duly authorised by the Commissioner of Police to operate breath analysing instruments; and
- (b) the person named in the certificate submitted to a breath analysis; and
- (c) the apparatus used by the officer or member to make the breath analysis was a breath analysing instrument within the meaning of the Traffic Act 1909; and
- (d) the analysis was made on the day and completed at the time stated in the certificate; and
- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate; and
- (f) a statement in writing required by clause 9 (4) was delivered in accordance with clause 9 (4),

shall be prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under clause 3, a certificate purporting to be signed by the Commissioner of Police that the member of the police force named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments shall be prima facie evidence of the particulars certified in and by the certificate.

(5) In any proceedings for an offence under clause 3, evidence of the condition of a breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

21. (1) In proceedings for an offence under clause 3, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Schedule of a portion of a sample of the person's blood.

(2) The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of the person charged at the time the person carried out the railway safety work to which the analysed sample of blood relates, if that sample of blood was taken within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of the blood.

SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued*

(3) In proceedings for an offence under clause 3, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
 - (b) that the practitioner took a sample of the person's blood in accordance with this Schedule on the day and at the time stated in the certificate;
 - (c) that the practitioner dealt with the sample in accordance with clause 14;
 - (d) that the practitioner used equipment of a specified description in so taking and dealing with the sample;
 - (e) that the container was sealed, marked or labelled, in a specified manner,
- shall be prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under clause 3, a certificate purporting to be signed by an authorised officer or a member of the police force certifying any one or more of the following matters:

- (a) that the officer or member received a portion of a sample of a specified person's blood taken in accordance with this Schedule;
 - (b) that the officer or member arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood;
 - (c) that the container was sealed, marked or labelled, in a specified manner,
- shall be prima facie evidence of the particulars certified in and by the certificate.

(5) In proceedings for an offence under clause 3, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Schedule;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample;
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,

shall be prima facie evidence—

- (g) of the particulars certified in and by the certificate; and
- (h) that the sample was a portion of the sample of the blood of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of presence of drugs

22. (1) In proceedings for an offence under clause 4—

- (a) evidence may be given of—
 - (i) the presence of a drug; or

*Transport Administration 1988*SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued*

- (ii) the presence of a particular concentration of a drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Schedule of a portion of a sample of the person's blood or urine; and
 - (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, shall be deemed to have been present in the blood or urine of that person at the time the person carried out the railway safety work to which the analysed sample relates, where the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.
- (2) In proceedings for an offence under clause 4, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:
- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
 - (b) that the practitioner took a sample of the person's blood or urine in accordance with this Schedule on the day and at the time stated in the certificate;
 - (c) that the practitioner dealt with the sample in accordance with clause 14,
- is prima facie evidence of the particulars certified in and by the certificate.
- (3) In proceedings for an offence under clause 4, a certificate purporting to be signed by an authorised officer or a member of the police force certifying any one or more of the following matters:
- (a) that the officer or member received a portion of a sample of a specified person's blood or urine taken in accordance with this Schedule;
 - (b) that the officer or member arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;
 - (c) that the container was sealed, and marked or labelled, in a specified manner,
- is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 4, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Schedule;
 - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
 - (c) that, on receipt by the analyst of the container, the seal was unbroken;
 - (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample;
 - (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration;
 - (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,
- is prima facie evidence—
- (g) of the particulars certified in and by the certificate; and

*Transport Administration 1988***SCHEDULE 4—RAILWAY STAFF—ALCOHOL OR OTHER DRUGS—*continued***

- (h) that the portion was a portion of the sample of the blood or urine of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of appointment of authorised officer

23. In proceedings for an offence under this Schedule, a certificate purporting to be signed by the Chief Executive or Secretary of the State Rail Authority that the officer named in the certificate is an authorised officer shall be prima facie evidence of the particulars certified in and by the certificate.

SCHEDULE 5—EXTENDED LEAVE FOR STAFF OF EACH AUTHORITY

(Sec. 68)

Application

1. This Schedule applies to all members of the staff of an Authority.

Definitions

2. In this Schedule—

“officer” includes any member of the staff of an Authority;

“relevant Authority”, in relation to an officer, means the Authority of which he or she is an officer;

“service” includes service with any Authority or its predecessor and service as a public servant, but does not include service exempted by the regulations.

Officer to be entitled to extended leave after a certain period of service

3. (1) Subject to this Schedule, an officer is entitled—
 - (a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay; and
 - (b) after service in excess of 10 years, to—
 - (i) leave as provided by paragraph (a); and
 - (ii) in addition, an amount of leave proportionate to the officer’s length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for each 10 years served after service for 10 years.
- (2) For the purpose of calculating the entitlement of a person to extended leave under this clause at any time—
 - (a) service referred to in this clause includes service before the commencement of this Schedule; and
 - (b) there must be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled—
 - (i) any extended leave, or leave in the nature of extended leave; and
 - (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave,
 taken or received by that person before that time, including any such leave taken, or benefit received, by that person in accordance with any repealed enactment; and

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SCHEDULE 5—EXTENDED LEAVE FOR STAFF OF EACH AUTHORITY—
continued

- (c) the provisions of the Transferred Officers Extended Leave Act 1961 have effect.
- (3) Nothing in subclause (2) shall be regarded as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both subclause (2) (b) and section 3 (7) of the Transferred Officers Extended Leave Act 1961.
- (4) If the services of an officer with at least 5 years' service as an adult and less than 10 years' service are terminated—
 - (a) by the relevant Authority for any reason other than the officer's serious and intentional misconduct; or
 - (b) by the officer on account of illness, incapacity or domestic or other pressing necessity,
 the officer is entitled—
 - (c) for 5 years' service to 1 month's leave on full pay; and
 - (d) for service after 5 years to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service (that service to include service as an adult and otherwise than as an adult).
- (5) For the purposes of subclause (4), "service as an adult", in the case of an officer employed to do any work for which the remuneration—
 - (a) has been fixed by an award—
 - (i) made under the Conciliation and Arbitration Act 1904 of the Commonwealth; or
 - (ii) made under the Industrial Arbitration Act 1940; or
 - (b) has been fixed by an industrial agreement made in accordance with or registered under either of those Acts or a determination made in accordance with this Act,
 means the period of service during which the remuneration applicable to the officer was at a rate not lower than the lowest rate fixed under the award, industrial agreement or determination for an adult male or adult female in the same trade, classification, calling, group or grade as the officer.
- (6) For the purposes of subclause (4), "service as an adult", in the case of an officer to whom subclause (5) does not apply, means the period of service during which the officer was not less than 21 years of age.
- (7) For the purposes of subclause (1), "service" includes—
 - (a) any period of leave without pay taken before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963; and
 - (b) in the case of an officer who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after that commencement.
- (8) In subclause (7) (b), for the purpose of determining whether or not an officer has completed at least 10 years' service, the officer's period of service shall be taken—
 - (a) to include any period of leave without pay taken before the commencement of the Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963; and
 - (b) to exclude any period of leave without pay taken after that commencement.

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SCHEDULE 5—EXTENDED LEAVE FOR STAFF OF EACH AUTHORITY—
continued

(9) For the purposes of subclause (4), “service” does not include any period of leave without pay whether taken before or after the commencement of this Schedule.

Certain officers to be entitled to be paid a gratuity instead of extended leave

4. An officer who has acquired a right to extended leave with pay under clause 3, is entitled, immediately on the termination of the officer’s services, to be paid instead of that leave the money value of the extended leave as a gratuity in addition to any gratuity to which the officer may be otherwise entitled.

Payment to be made where an officer entitled to extended leave has died

5. (1) If an officer has acquired a right under clause 3 to extended leave with pay and dies before starting it, or after starting it dies before completing it—

- (a) the widow or widower of the officer; or
- (b) if there is no such widow or widower, the children of the officer; or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the relevant Authority, was, at the time of the officer’s death, a dependent relative of the officer,

is entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary that the officer received at the time of his or her death less any amount paid to the officer in respect of the leave not taken, or not completed.

(2) If an officer with at least 5 years’ service as an adult and less than 10 years’ service as referred to in clause 1 (4) dies—

- (a) the widow or widower of the officer; or
- (b) if there is no such widow or widower, the children of the officer; or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the relevant Authority, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave which would have accrued to the officer had his or her services terminated as referred to in clause 3 (4), computed at the rate of salary that the officer received at the time of his or her death.

(3) If there is a guardian of any children entitled under subclause (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.

(4) If there is no person entitled under subclause (1) or (2) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, payment in respect of that leave must be made to the officer’s personal representatives.

(5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.

(6) If payment of the money value of leave has been made under this Act, the relevant Authority ceases to be liable for payment of any amount in respect of that leave.

*Transport Administration 1988***SCHEDULE 6—APPLICATION OF THE PUBLIC WORKS ACT 1912**

(Secs. 90 (4), 101 (4))

For the purposes of sections 92 and 101, the Public Works Act 1912 has effect as if it had been amended—

- (a) by omitting Part 3;
- (b) by omitting from section 53 the words “so seized, possessed or entitled as aforesaid”;
- (c) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of the compensation”;
- (d) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;
- (e) by omitting section 53 (5);
- (f) by omitting Division 7 of Part 6;
- (g) by omitting section 124 and by inserting instead:

Compensation generally

124. (1) For the purpose of assessing compensation, the Land and Environment Court shall have regard to—

- (a) the value, at the date of publication of the notification in the Gazette, of the land, estate or interest taken; and
- (b) any damage caused by the severing of the land taken from other land or by the exercise by the Constructing Authority of any of its statutory powers in a manner injuriously affecting that other land.

(2) In assessing the compensation, the Land and Environment Court shall disregard—

- (a) any valuation notified to the claimant; and
- (b) any alteration of value arising from the construction of any works on the land taken.

(3) In assessing the compensation, the Land and Environment Court shall set off any enhancement in value of adjoining land of the person who owned the land taken or severed by the construction of works on the land taken.

(4) An owner of land is not required to make a payment to the Constructing Authority in consideration of any enhancement in value referred to in subsection (3).

(5) Compensation is not payable for land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel unless—

- (a) the surface of the overlying soil is disturbed;
- (b) the support of such surface is destroyed or injuriously affected by the construction of such a tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.

- (h) by omitting section 126 (3);
- (i) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;

*Transport Administration 1988***SCHEDULE 6—APPLICATION OF THE PUBLIC WORKS ACT 1912—continued**

- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendors as of the purchaser,”.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 120)

Part 1—Preliminary**Definition**

1. In this Schedule—

“cognate Acts” means the Motor Traffic (Transport Administration) Amendment Act 1988, the Motor Vehicles Taxation Act 1988, the State Roads (Transport Administration) Amendment Act 1988, the State Transport (Co-ordination) (Transport Administration) Amendment Act 1988 and the Transport Legislation (Repeal and Amendment) Act 1988.

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;
the cognate Acts.

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2—Provisions relating to State Rail Authority**Continuity of SRA**

3. The State Rail Authority of New South Wales constituted under this Act is a continuation of, and the same legal entity as, the State Rail Authority of New South Wales constituted under the Transport Authorities Act 1980.

Existing Chief Executive of SRA

4. (1) The person who, immediately before the repeal of the Transport Authorities Act 1980, held office as Chief Executive of the State Rail Authority shall be taken to have been duly appointed under this Act as the Chief Executive of that Authority—

- (a) for the rest of the term of office for which the person was appointed as Chief Executive under that Act; and

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Chief Executive of the State Rail Authority under that Act.

(2) Any such agreement has effect for the purposes of this clause whether or not it was valid when made.

Existing Deputy Chief Executives of SRA

5. A person who, immediately before the repeal of the Transport Authorities Act 1980, held office as a Deputy Chief Executive of the State Rail Authority—

- (a) ceases to hold that office; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, but is entitled to be appointed on the repeal of that Act to a position in the service of the State Rail Authority not lower in salary than the salary payable to the person as a Deputy Chief Executive immediately before the repeal of that Act.

Existing ex-officio or part-time members of SRA

6. (1) A person who, immediately before the repeal of the Transport Authorities Act 1980, held office as a member of the State Rail Authority—

- (a) ceases to hold that office; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the State Rail Authority Board.

(2) A person who so ceases to hold office as a member of the State Rail Authority is not entitled to any remuneration or compensation because of the loss of that office.

Existing staff of SRA

7. Any members of the staff of the State Rail Authority employed under the Transport Authorities Act 1980 immediately before the repeal of that Act shall be taken to be members of the staff of the State Rail Authority employed under this Act.

SRA Fund

8. The State Rail Authority Fund established under the Transport Authorities Act 1980 shall be taken to be the State Rail Authority Fund established under this Act.

Abolition of Railway Workshops Board

9. (1) The Railway Workshops Board is abolished.

(2) A person who, immediately before the commencement of this clause, held office as a member of the Railway Workshops Board—

- (a) ceases to hold that office; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

(3) Any assets, rights, liabilities or obligations of the Railway Workshops Board shall be assets, rights, liabilities or obligations of the State Rail Authority.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Authorised officers under s. 134B Government Railways Act 1912

10. A person who was, immediately before the repeal of section 134B of the Government Railways Act 1912, an authorised officer under that section shall on that repeal be taken to have been appointed as an authorised officer under section 98 of this Act.

Railway staff (alcohol or other drugs)—transitional provision

11. Any appointment, requirement, certificate or other act, matter or thing made, given or done under a provision of Part 4A of the Transport Authorities Act 1980 and in force or having effect immediately before the repeal of that Part shall be taken to have been made, given or done under the corresponding provision of Schedule 4 to this Act.

Saving of certain easements for city underground railway

12. Despite the repeal of the City and Suburban Electric Railways Act 1915, the powers, functions and rights conferred by the easement for railway transit referred to in section 19 of that Act are not affected.

Part 3—Provisions relating to State Transit Authority**Continuity of UTA**

13. The State Transit Authority of New South Wales constituted under this Act is a continuation of, and the same legal entity as, the Urban Transit Authority of New South Wales constituted under the Transport Authorities Act 1980.

Existing Managing Director of UTA

14. (1) The person who, immediately before the repeal of the Transport Authorities Act 1980, held office as Managing Director of the Urban Transit Authority shall be taken to have been duly appointed under this Act as the Chief Executive of the State Transit Authority—

- (a) for the rest of the term of office for which the person was appointed as Managing Director of the Urban Transit Authority under that Act; and
- (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Managing Director of the Urban Transit Authority under that Act.

(2) Any such agreement has effect for the purposes of this clause whether or not it was valid when made.

Existing ex-officio or part-time members of UTA

15. (1) A person who, immediately before the repeal of the Transport Authorities Act 1980, held office as a member of the Urban Transit Authority—

- (a) ceases to hold that office; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the State Transit Authority Board.

(2) A person who so ceases to hold office as a member of the Urban Transit Authority is not entitled to any remuneration or compensation because of the loss of that office.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Existing staff of UTA**

16. Any members of the staff of the Urban Transit Authority employed under the Transport Authorities Act 1980 immediately before the repeal of that Act shall be taken to be members of the staff of the State Transit Authority employed under this Act.

UTA Fund

17. The Urban Transit Authority Fund established under the Transport Authorities Act 1980 shall be taken to be the State Transit Authority Fund established under this Act.

Part 4—Provisions relating to both the State Rail Authority and the State Transit Authority**Saving of penalty notices**

18. Section 75 of the Transport Authorities Act 1980 shall, after the repeal of that section, continue to apply to a penalty notice served under that section before its repeal.

Saving of SRA and UTA orders fixing fares etc.

19. An order made under section 71 of the Transport Authorities Act 1980 and in force immediately before the repeal of that section shall be taken to be an order under section 85.

Saving of existing free or concessional travel arrangements

20. Any free or concessional travel pass issued by the State Rail Authority or the Urban Transit Authority and in force before the commencement of section 88 shall be taken to be a pass issued in accordance with that section and subject to the same conditions as those to which it was subject immediately before that commencement.

Saving of certain annual and public holiday leave rights of SRA and STA staff until other provision made

21. The provisions of clauses 1–3 of Schedule 4 to the Transport Authorities Act 1980 continue to apply to members of the staff of the State Rail Authority or the State Transit Authority, but those provisions are subject to—

- (a) any determination made by the relevant Authority under this Act; and
- (b) any regulation under Part 7 of this Act; and
- (c) any relevant award made by a competent industrial tribunal; and
- (d) any industrial agreement to which the relevant Authority is a party.

Part 5—Provisions relating to Roads and Traffic Authority**Definition**

22. In this Part—

“former Authority” means—

- (a) The Commissioner for Main Roads (being the corporation constituted under section 6 of the State Roads Act 1986); or

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(b) The Commissioner for Motor Transport (being the corporation constituted under section 6 of the Transport (Division of Functions) Further Amendment Act 1952; or

(c) the Traffic Authority of New South Wales.

Abolition of former Authorities and associated Departments

23. (1) Each former Authority is abolished.

(2) The Department of Main Roads and the Department of Motor Transport are abolished.

Transfer of assets of former Authorities

24. On the abolition of a former Authority, the following provisions have effect:

- (a) all real and personal property (including any estate or interest in, or right to control or manage, real or personal property) that, immediately before that abolition, was vested in the former Authority vests in the Roads and Traffic Authority;
- (b) all money that, immediately before that abolition, was payable to the former Authority becomes payable to the Roads and Traffic Authority;
- (c) any liquidated or unliquidated claim that, immediately before that abolition, was enforceable by or against the former Authority becomes enforceable by or against the Roads and Traffic Authority;
- (d) any proceeding pending immediately before that abolition at the suit of or against the former Authority becomes a proceeding pending at the suit of or against the Roads and Traffic Authority;
- (e) any contract or arrangement entered into with the former Authority and in force immediately before that abolition becomes a contract or arrangement entered into with the Roads and Traffic Authority;
- (f) any security or charge given to or by the former Authority and in force immediately before that abolition becomes a security or charge given to or by the Roads and Traffic Authority;
- (g) any act, matter or thing done or omitted to be done before that abolition by, to or in respect of the former Authority shall (to the extent that that act, matter or thing has any force or effect) be taken to have been done or omitted by, to or in respect of the Roads and Traffic Authority.

Commissioner for Main Roads

25. (1) The person who, immediately before the repeal of Part 2 of the State Roads Act 1986, held office as the Commissioner for Main Roads shall be taken to have been duly appointed under this Act as the Chief Executive of the Roads and Traffic Authority—

- (a) for the rest of the term of office for which the person was appointed as Commissioner for Main Roads under that Act; and
- (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Commissioner for Main Roads under that Act.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) Any such agreement has effect for the purposes of this clause, whether or not it was valid when made.

(3) Any determination under the Statutory and Other Offices Remuneration Act 1975 of the remuneration of the Commissioner for Main Roads shall, on the commencement of this clause, be taken to be a determination by the Governor of the remuneration of the Chief Executive of the Roads and Traffic Authority, until altered by a further determination of the Governor.

Commissioner and Assistant Commissioner for Motor Transport

26. A person who, immediately before the repeal of the Transport (Division of Functions) Further Amendment Act 1952, held office as the Commissioner or Assistant Commissioner for Motor Transport—

- (a) ceases to hold that office; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, but is entitled to be appointed on the repeal of that Act to a position in the service of the Government not lower in salary than the salary payable to the person as Commissioner or Assistant Commissioner immediately before the repeal of that Act.

Existing staff of DMR, DMT and Traffic Authority

27. (1) Any members of the staff of the Department of Main Roads or the Department of Motor Transport or of the staff attached to the Traffic Authority immediately before the commencement of this clause shall be taken to be members of the staff of the Roads and Traffic Authority employed under this Act.

(2) Any such members of staff shall (until other provision is duly made) be employed in accordance with the awards, industrial agreements and determinations applying immediately before the commencement of this clause to members of the staff of the Department of Main Roads.

(3) For the purpose of the application of any such awards, industrial agreements or determinations to persons who were previously members of the staff of the Department of Motor Transport (including members of staff to whom Schedule 9 to the Traffic Authority Act 1976 applied), the classification and grade of any such member of staff shall be the classification and grade determined by the Roads and Traffic Authority, by order published in the Gazette, for the group of staff to which that member belongs.

(4) If a classification or grade is not determined under subclause (3) for any particular member of staff to which that subclause applies, the rate of pay and other conditions of employment of that member shall be specially determined by the Roads and Traffic Authority.

(5) The rate of pay for a member of staff to whom a determination under this clause relates shall not be less than the rate of pay for that member immediately before the commencement of this clause.

(6) Members of staff to whom this clause applies are entitled to any accrued sick, recreational or extended leave (or any other leave or entitlement prescribed by the regulations) not taken before the commencement of this clause.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(7) Despite anything to the contrary in Schedule 9 to the Traffic Authority Act 1976 or in any award or industrial agreement, a member of staff of the Department of Motor Transport who was transferred to the Department of Main Roads by virtue of that Schedule and who becomes a member of the staff of the Roads and Traffic Authority by virtue of this clause shall not be entitled to any special condition of employment preserved by that Schedule that does not apply to other members of the staff of the Department of Main Roads or of the Department of Motor Transport after they become members of the staff of the Roads and Traffic Authority under this clause.

Pending appeals by DMT staff to Transport Appeal Board

28. If an appeal is pending to a Transport Appeal Board by a member of the staff of the Department of Motor Transport when the member becomes a member of the staff of the Roads and Traffic Authority under this Act, the appeal may continue to be heard and disposed of and the decision on the appeal shall be given effect to by the Roads and Traffic Authority.

Existing delegation

29. A delegation by the Commissioner for Main Roads of any of the Commissioner's functions made under section 8 of the State Roads Act 1986 and in force immediately before the repeal of that section shall, to the extent that the function is exercisable by the Roads and Traffic Authority and the delegation could be made under section 50, be taken to be a delegation made under section 50.

Traffic Facilities Fund

30. On the repeal of the Traffic Authority Act 1976—

- (a) the Traffic Facilities Fund is abolished; and
- (b) any balance standing to the credit of that Fund shall be transferred to the Roads and Traffic Authority Fund.

DMR Funds

31. On the repeal of Divisions 1–3 of Part 4 of the State Roads Act 1986—

- (a) the Metropolitan Roads Fund, the Country Roads Fund and the Commonwealth Fund in the Special Deposits Account in the Treasury are abolished; and
- (b) any balance standing to the credit of any such fund shall be transferred to the Roads and Traffic Authority Fund.

Saving of directions etc. of Traffic Authority

32. Any direction, recommendation or other act, matter or thing given, made or done by the Traffic Authority under a provision of the Traffic Authority Act 1976 and in force or having effect immediately before the repeal of that Act shall be taken to have been given, made or done under the corresponding provision of Part 1A of the Traffic Act 1909.

Saving of shared traffic zone under General Traffic Act 1900

33. A shared traffic zone designated under the General Traffic Act 1900 by a notice in force immediately before the repeal of that Act shall be taken to have been designated under section 3B of the Traffic Act 1909.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Saving of public passenger vehicles registered under Transport Act 1930**

34. A public passenger vehicle registered under the Transport Act 1930 immediately before the repeal of that Act shall be taken to have been registered under the Traffic Act 1909.

Saving of certain orders under Motor Traffic Act 1909

35. An order under the Motor Traffic Act 1909 for the approval of a camera detection device or a radar speed measuring device and in force immediately before the amendment of the definitions of “approved camera detection device” and “approved radar speed measuring device” in section 2 of that Act shall be taken to be an approval of such devices in connection with all vehicles.

Part 6—Provisions relating to licensing of public passenger vehicles and ferries**Bus service licences etc. under Transport Act 1930—conditions to continue**

36. (1) In this clause, “service licence” means a service licence (including a provisional service licence) issued for a bus service under the Transport Act 1930 and in force immediately before the repeal of section 135 of that Act.

(2) The conditions of a licence under the Transport Licensing Act 1931 (formerly the State Transport (Co-ordination) Act 1931) for a bus to which a service licence applies immediately before the repeal of section 135 of the Transport Act 1930 shall be taken to include the conditions to which the service licence was subject immediately before that repeal.

Special bus permits under Transport Act 1930

37. A permit issued under section 143 of the Transport Act 1930 and in force immediately before the repeal of that section shall be taken to be a permit issued under section 22 of the Transport Licensing Act 1931.

Bus services operated in transport districts by means of taxi-cabs

38. A contract or agreement in force under section 134A of the Transport Act 1930, immediately before the repeal of that section, shall be taken to be a contract or agreement in force under section 17B of the Transport Licensing Act 1931.

Public Vehicles Fund

39. On the repeal of section 204 of the Transport Act 1930—

- (a) the Public Vehicles Fund is abolished; and
- (b) any balance standing to the credit of that Fund shall be transferred to the Consolidated Fund.

Transport Appeal Court

40. An appeal pending before the Transport Appeal Court immediately before the repeal of section 167 of the Transport Act 1930 shall be taken to be an appeal pending before the District Court and may be heard and disposed of accordingly.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Part 7—General provisions**Superseded references**

41. (1) In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference to (or required immediately before the commencement of this clause to be read as a reference to)—

- (a) the Urban Transit Authority shall be read as a reference to the State Transit Authority; and
- (b) The Commissioner for Main Roads shall be read as a reference to the Roads and Traffic Authority; and
- (c) The Commissioner for Motor Transport shall be read as a reference to the Roads and Traffic Authority; and
- (d) the Traffic Authority shall be read as a reference to the Roads and Traffic Authority; and
- (e) the Railway Workshops Board shall be read as a reference to the State Rail Authority.

(2) In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference required immediately before the commencement of this Act to be read as a reference to the State Rail Authority or the Chief Executive of that Authority shall continue to be read as a reference to that Authority or that Chief Executive, as the case may be.

Enforcement of judgments against staff of Authorities

42. Anything done or omitted under section 77 of the Transport Authorities Act 1980 or section 11 of the State Roads Act 1986 shall be taken to have been done or omitted under the Attachment of Wages Limitation Act 1957.

Gratuities payable to certain staff not contributors to superannuation schemes

43. (1) Sections 132A–132C of the Transport Act 1930 shall continue to apply to and in respect of officers of an Authority to whom those sections applied immediately before their repeal.

(2) A reference in subclause (1) to officers of an Authority includes a reference to a person appointed to a position in the service of the Government in pursuance of this Schedule.

Determined fees under transport legislation

44. A fee for the purposes of a provision of an Act or regulation determined by an order in force under section 265B of the Transport Act 1930 immediately before the repeal of that Act shall be the fee for the purposes of that provision until another fee is prescribed under that provision.

Government Railways Superannuation Account

45. (1) Part 9 of the Government Railways (Superannuation) Act 1912 continues to apply to any person to whom that Part applied before the commencement of this clause and who becomes a member of the staff of an Authority by virtue of this Schedule.

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(2) For the purposes of the application of that Part to any such person, a reference in that Part to the Commissioners shall be taken to include a reference to the relevant Authority.

Saving of certain workers compensation entitlements

46. (1) In this clause, “former provisions” means—

- (a) Schedule 5 to the Transport Authorities Act 1980; and
- (b) sections 124–124C of the Transport Act 1930.

(2) The former provisions continue to apply to and in respect of a member of the staff of an Authority, but only if—

- (a) the member is incapacitated for work (whether totally or partially); and
- (b) that incapacity results solely from an injury received before the repeal of those provisions.

(3) If—

- (a) the Authority which employs any such partially incapacitated member of staff offers that member employment for which that member is fit (whether or not of the same classification or kind as that in which that member was engaged before becoming incapacitated); and

- (b) that member refuses or fails to accept that offer of employment,

the former provisions cease to apply to and in respect of that member on such date as the Authority notifies that member.

(4) A member of staff of an Authority in respect of whom the former provisions have ceased to apply—

- (a) is entitled to compensation (if any) under the Workers Compensation Act 1987; and
- (b) is not precluded from any entitlement to compensation or damages against the Authority merely because that member did not elect to make a claim against the Authority for compensation or damages within the time prescribed by the former provisions.

(5) In the application of the Workers Compensation Act 1987 to a member of staff referred to in subclause (4) a period of incapacity before the repeal of the former provisions shall be regarded as a period of incapacity under that Act.

(6) The provisions of clause 5 of Schedule 5 to the Transport Authorities Act 1980 and section 124B of the Transport Act 1930 shall, in their application to a person to whom those provisions continue to apply, be read as if the period during which the person may elect to make a claim for compensation or damages were extended until the date that is 12 months after the repeal of the former provisions.

(7) The workers compensation commissioners have the same jurisdiction to hear and determine matters arising under this clause as they have for matters arising under the Workers Compensation Act 1987.

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SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(8) The provisions of Divisions 4 and 5 of Part 4 of the Workers Compensation Act 1987 and the provisions of the Compensation Court Act 1984 apply to proceedings under this clause.

[*Minister's second reading speech made in—
Legislative Assembly on 17 November 1988
Legislative Council on 1 December 1988*]
