



New South Wales

Transport Administration Amendment (Rail Management) Act 2000 No 89

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New South Wales

Transport Administration Amendment (Rail Management) Act 2000 No 89

Act No 89, 2000

An Act to amend the *Transport Administration Act 1988* and other Acts with respect to rail management; and for other purposes. [Assented to 6 December 2000]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Transport Administration Amendment (Rail Management) Act 2000*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 and section 3 in its application to that Schedule commence on the date of assent.

3 Amendment of Transport Administration Act 1988 No 109 and other Acts

The *Transport Administration Act 1988* and the other Acts specified in Schedules 1–4 are amended as set out in those Schedules.

Schedule 1 Amendment of Transport Administration Act 1988 relating to Co-ordinator General of Rail

(Section 3)

[1] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

*Transport Administration Amendment (Rail Management) Act
2000*

[2] Schedule 7

Insert after Part 6:

Part 7 Co-ordinator General of Rail and other provisions consequent on enactment of Transport Administration Amendment (Rail Management) Act 2000

Division 1 Definitions

83 Definitions

In this Part:

amending Act means the *Transport Administration
Amendment (Rail Management) Act 2000*.

Co-ordinator General of Rail means the Co-ordinator General
of Rail holding office as such under Part 2 of the *Public Sector
Management Act 1988* before the commencement of Schedule
4.1 to the amending Act.

Office of Co-ordinator General of Rail means the department of the Public Service by that name established under the *Public Sector Management Act 1988* before the commencement of Schedule 4.1 to the amending Act.

Rail Access Corporation (or ***RAC***) means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the amending Act.

Rail Services Australia means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by Schedule 2.1 to the amending Act.

Division 2 Transitional arrangements relating to Co-ordinator General of Rail

84 Application and interpretation

- (1) This Division ceases to apply on the establishment of the Rail Regulator by Schedule 4.1 to the amending Act.
- (2) In this Division:
relevant rail agencies means:
 - (a) the State Rail Authority, and
 - (b) Rail Access Corporation, Rail Services Australia and, after their merger, Rail Infrastructure Corporation.

85 Functions of Co-ordinator General of Rail

The Co-ordinator General of Rail has the following functions:

- (a) to manage and co-ordinate the exercise of the functions of the relevant rail agencies,
- (b) to manage and co-ordinate the merger of Rail Access Corporation and Rail Services Australia,
- (c) to manage and co-ordinate the implementation of structural reforms in connection with the management of the State Rail Authority,

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- (d) to determine priorities for the exercise of functions by the relevant rail agencies in accordance with their approved financial outcomes,
 - (e) to develop rail performance standards in connection with the exercise of functions by the relevant rail agencies,
 - (f) to conduct, with the Director General of the Department of Transport, a joint review and report on the effectiveness of the Transport Safety Bureau of that Department as a rail safety regulator.

86 Powers of Co-ordinator General of Rail: directions

- (1) The Co-ordinator General of Rail may, for the purposes of exercising his or her functions under this Division, give directions to relevant rail agencies.
- (2) Without limiting subclause (1), the Co-ordinator General of Rail may direct a relevant rail agency to provide information, resources or other assistance to the Co-ordinator General.
- (3) A direction is not to be given to a relevant rail agency under this clause without the approval of the Treasurer if the Co-ordinator General of Rail considers that compliance with the direction may cause a significant variation in the approved financial outcomes of the relevant rail agency.
- (4) The following directions of the Minister for Transport cease to apply:
 - (a) the directions of 7 June 2000 given to the boards of directors of Rail Access Corporation and Rail Services Australia under the *State Owned Corporations Act 1989* (published in the Government Gazette of 23 June 2000 at pages 5235–5237),
 - (b) the directions of 7 June 2000 given to the State Rail Authority Board under this Act.
- (5) A direction of the Co-ordinator General of Rail does not have effect to the extent to which it is inconsistent with a direction of the Minister under this Act or the *State Owned Corporations Act 1989*.

- (6) Until the establishment of Rail Infrastructure Corporation and the commencement of section 19FA (as inserted by Schedule 2.1 to the amending Act), the provisions of that section with respect to Ministerial control of that Corporation apply with respect to Ministerial control of Rail Access Corporation and Rail Services Australia.

87 Powers of Co-ordinator General of Rail: statements of corporate intent

The Co-ordinator General of Rail may:

- (a) settle with the voting shareholders the first statement of corporate intent of Rail Infrastructure Corporation under section 21 of the *State Owned Corporations Act 1989* (and for that purpose may act for the board of that Corporation),
- (b) until the establishment of Rail Infrastructure Corporation—settle with the voting shareholders of Rail Access Corporation or Rail Services Australia any changes to the statement of corporate intent of that Corporation under section 21 of the *State Owned Corporations Act 1989* (and for that purpose may act for the board of that Corporation).

88 Duties of boards and chief executive officers of relevant rail agencies

- (1) The board and chief executive officer of a relevant rail agency must:
 - (a) ensure that any direction of the Co-ordinator General of Rail under this Division is carried out, and
 - (b) co-operate with the Co-ordinator General of Rail in exercising their functions, and
 - (c) notify the Co-ordinator General of Rail of all matters of which they are aware that may affect the exercise of the Co-ordinator General's functions under this Division.
- (2) If the direction relates to a subsidiary of the relevant rail agency, the board and chief executive officer of the agency must, as far as practicable, ensure that the direction is carried out.

Schedule 2 Amendment of Transport Administration Act 1988 and other Acts relating to merger of RAC and RSA

(Section 3)

2.1 Transport Administration Act 1988 No 109

[1] Long title

Omit “, Rail Access Corporation” and “, Rail Services Australia”.

[2] Long title

Insert “, Rail Infrastructure Corporation” after “State Rail Authority”.

[3] Section 3 (1), definition of “Rail Access Corporation”

Omit the definition.

[4] Section 3 (1), definition of “Rail Corporation”

Omit “, Rail Services Australia or Rail Access Corporation”.
Insert instead “or Rail Infrastructure Corporation”.

[5] Section 3 (1)

Insert in alphabetical order:

Rail Infrastructure Corporation (or *RIC*) means Rail Infrastructure Corporation constituted under this Act.

[6] Section 3 (1), definition of “Rail Services Australia”

Omit the definition.

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

Omit “Rail Access Corporation, Freight Rail Corporation and Rail Services Australia”.

Insert instead “Rail Infrastructure Corporation and Freight Rail Corporation”.

[8] Sections 19A, 19B, 19E, 19Q, 92, 93, 94 and 96

Omit “Rail Access Corporation” wherever occurring.

Insert instead “Rail Infrastructure Corporation”.

[9] Part 2A, Division 2, heading

Omit the heading. Insert instead:

Division 2 Rail Infrastructure Corporation

[10] Section 19C

Omit the section. Insert instead:

19C Establishment of RIC as statutory State owned corporation

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

[11] Section 19C, note

Omit “RAC (and FRC and RSA)”. Insert instead “RIC (and FRC)”.

[12] Section 19D

Omit the section. Insert instead:

19D Objectives of RIC

- (1) The principal objective of Rail Infrastructure Corporation is to ensure that the NSW rail network enables safe and reliable passenger and freight services to be provided in an efficient, effective and financially responsible manner.
- (2) The other objectives of Rail Infrastructure Corporation are:
 - (a) to promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime, and
 - (b) to be a successful business and, to that end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Corporation, and
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates, and
 - (f) to maintain reasonable priority and certainty of access for railway passenger services.
- (3) The other objectives of Rail Infrastructure Corporation are of equal importance, but are not as important as the principal objective of the Corporation.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to Rail Infrastructure Corporation.

[13] Section 19E Functions of RIC

Omit section 19E (2). Insert instead:

- (2) The principal functions of Rail Infrastructure Corporation are:
 - (a) to hold, manage, maintain and establish rail infrastructure facilities on behalf of the State, and
 - (b) to provide persons with access to the NSW rail network under the NSW Rail Access Regime (including the development and maintenance of an access pricing policy).

[14] Section 19E

Insert after section 19E (2):

- (2A) In exercising its functions, Rail Infrastructure Corporation is to act in the best interests of the NSW rail network as a whole.

[15] Section 19E (3)

Omit the subsection.

[16] Section 19E (4) (a1)

Insert after section 19E (4) (a):

- (a1) supply goods and services to the rail industry, and

[17] Section 19E (5A)

Insert after section 19E (5):

- (5A) Rail Infrastructure Corporation is not to conduct any business outside the State that is not related to the NSW rail network without the approval of the Premier, Minister and Treasurer.

[18] Section 19E (7)

Insert “(except subsection (5A))” after “This section”.

[19] Sections 19F, note and 19G, note

Omit “RAC” wherever occurring. Insert instead “RIC”.

[20] Section 19FA

Insert after section 19F:

19FA Ministerial control

- (1) The Minister may give Rail Infrastructure Corporation directions in relation to the exercise of the Corporation’s functions. The Minister is to advise the voting shareholders of the Corporation of the giving and the terms of any such direction.
- (2) The board of directors and chief executive officer of Rail Infrastructure Corporation must, subject to this section, ensure that the Corporation complies with any such direction.
- (3) If Rail Infrastructure Corporation considers that complying with any such direction may cause a significant variation in its approved financial outcomes, the Corporation must 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 Rail Infrastructure Corporation requests such a review:
 - (a) the Corporation may request the Minister to provide it with a written record of the direction if it was not given in writing, and
 - (b) the Corporation is not 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 is not to confirm the direction unless:
 - (a) the Minister has estimated the variation in the approved financial outcomes from the information supplied by Rail Infrastructure Corporation, and

- (b) the Minister has referred the matter to the Treasurer, and
 - (c) the Treasurer has approved the direction.
- (7) The Minister's power to give directions to the Corporation under this section is in addition to the power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Those sections of that Act do not apply to a direction of the Minister if the direction states that it is being given under this section.

[21] Section 19FB

Insert at the end of Division 2 of Part 2A:

19FB Network control

- (1) For the purposes of this section, ***network control*** with respect to any part of the NSW rail network is:
- (a) service planning (namely, the timetabling of rolling stock, including standard working and daily timetables and planning the occupation of railway track for maintenance and other service requirements), and
 - (b) real time control (namely, the actual control of the movement of rolling stock, including train signalling and incident management).

Network control includes any aspect of the control of the network that is declared by the regulations to be network control, but does not include anything declared by the regulations not to be network control.

- (2) The Minister may, by order published in the Gazette, designate a rail operator as the body responsible for network control (or any specified aspect of network control) with respect to any specified part of the NSW rail network.
- (3) The exercise of the functions of Rail Infrastructure Corporation is subject to any such order.
- (4) Rail Infrastructure Corporation is responsible for network control with respect to any part of the NSW rail network for which no rail operator is designated as the body responsible by such an order.

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- (5) A body responsible for network control must:
- (a) give priority to rail passenger services, and
 - (b) subject to giving priority to those services—promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime.

[22] Part 2A, Division 3A Rail Services Australia

Omit the Division.

[23] Section 19NA

Insert after section 19N:

19NA Board of directors of RIC

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

- (5) The other directors of the board must each or together have such expertise (including engineering and rail safety expertise) as the voting shareholders consider necessary in order to realise the objectives of Rail Infrastructure Corporation.
- (6) Subject to subsection (7), section 20J of and Schedule 8 to the *State Owned Corporations Act 1989* have effect with respect to the board of Rail Infrastructure Corporation and its constitution and procedure.
- (7) Section 20J (2), (3) and (4) of, and clause 4 of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of Rail Infrastructure Corporation.

[24] Section 19O Board of directors of FRC

Omit “a Rail Corporation” from section 19O (1), (7) and (8) wherever occurring.

Insert instead “Freight Rail Corporation”.

[25] Section 19O (5)

Omit “the relevant Rail Corporation”.

Insert instead “Freight Rail Corporation”.

[26] Section 19R Chief executive officer

Omit section 19R (1). Insert instead:

- (1) The chief executive officer of a Rail Corporation is to be appointed by the board:
 - (a) in the case of Rail Infrastructure Corporation—with the concurrence of the voting shareholders and the Minister, or
 - (b) in the case of Freight Rail Corporation—after consultation with the voting shareholders.

[27] Section 19R (2)

Insert “and, in the case of Rail Infrastructure Corporation, consultation with the Minister” after “voting shareholders”.

[28] Section 19S Acting chief executive officer

Insert after section 19S (4):

- (4A) The board is not to appoint a person to act in the office of chief executive officer of Rail Infrastructure Corporation during any vacancy in that office without the concurrence of the voting shareholders and the Minister.

[29] Section 44 Constitution of PTA

Omit section 44 (2) (a) (iii). Insert instead:

- (iii) the chief executive officer of Rail Infrastructure Corporation, and

[30] Section 44 (3) (a)

Omit the paragraph.

[31] Part 9, Division 1, heading

Omit “**Rail Access Corporation**”.

Insert instead “**Rail Infrastructure Corporation**”.

[32] Section 122 Definitions

Omit “RAC” from the definition of *rail authority*. Insert instead “RIC”.

[33] Schedule 4 Transfer of assets, rights and liabilities of SRA and its subsidiaries etc

Insert in clause 1 in alphabetical order:

Rail Access Corporation means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the *Transport Administration Amendment (Rail Management) Act 2000*.

Rail Corporation includes Rail Access Corporation and Rail Services Australia.

Schedule 2 Amendment of Transport Administration Act 1988 and other Acts relating to merger of RAC and RSA

Rail Services Australia means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

[34] Schedule 6 Transfer of certain SRA staff (other than certain Chief Executives)

Insert in clause 1 in alphabetical order:

Rail Access Corporation means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the *Transport Administration Amendment (Rail Management) Act 2000*.

Rail Services Australia means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

[35] Schedule 6, clause 1, definition of “Rail Corporation”

Insert “and, after the dissolution of Rail Access Corporation and Rail Services Australia, includes Rail Infrastructure Corporation” after “Rail Services Australia”.

[36] Schedule 6, clause 8

Omit “4 years” from clause 8 (1). Insert instead “6 years”.

[37] Schedule 6A, heading

Omit “RAC”. Insert instead “RIC”.

[38] Schedule 6A, clause 11 (2) (a)

Omit “principal”.

[39] Schedules 6A and 6B

Omit “RAC” wherever occurring. Insert instead “RIC”.

[40] Schedule 7, Part 3, clause 47

Insert in alphabetical order:

RAC means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the *Transport Administration Amendment (Rail Management) Act 2000*.

[41] Schedule 7, Part 5, clause 67

Insert in alphabetical order:

Rail Services Australia means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

[42] Schedule 7, Part 7

Insert at the end of the Part:

**Division 3 Provisions consequent on merger of RAC
and RSA**

89 RIC an amalgamation of RAC and RSA

- (1) Rail Access Corporation and Rail Services Australia are amalgamated to form Rail Infrastructure Corporation.
- (2) On that amalgamation:
 - (a) Rail Access Corporation and Rail Services Australia are dissolved as separate entities, and
 - (b) Rail Infrastructure Corporation is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, Rail Access Corporation and Rail Services Australia, and
 - (c) without limiting the operation of this clause—the assets, rights and liabilities of Rail Access Corporation and Rail Services Australia are the assets, rights and liabilities of Rail Infrastructure Corporation.

90 Former boards of RAC and RSA

(1) In this clause:

former board means the board of directors of Rail Access Corporation or the board of directors of Rail Services Australia.

(2) A person who, immediately before the establishment of Rail Infrastructure Corporation by the amending Act, held office as a director of a former board:

(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as a director of the board of Rail Infrastructure Corporation.

(3) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

91 Former CEOs of RAC and RSA

(1) A person who, immediately before the establishment of Rail Infrastructure Corporation by the amending Act, held office as the chief executive officer of Rail Access Corporation or Rail Services Australia:

(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as the chief executive officer of Rail Infrastructure Corporation.

(2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by the person's contract of employment in that office.

92 Staff of RAC and RSA (other than CEOs)

(1) In this clause, *existing employee* means a person who was a member of the staff of Rail Access Corporation or Rail Services Australia immediately before the amalgamation of those Corporations (other than the chief executive officer of Rail Access Corporation or Rail Services Australia).

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- (2) All existing employees are, on the amalgamation of Rail Access Corporation and Rail Services Australia, employees of Rail Infrastructure Corporation.
 - (3) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which existing employees are employed on that amalgamation (including terms and conditions as to remuneration, allowances, and duration of employment) are those on which they were employed by Rail Access Australia or Rail Services Australia immediately before that amalgamation.
 - (4) The terms and conditions of employment referred to in subclause (3) may be varied but only by the means by which they could be varied immediately before that amalgamation.
 - (5) An existing employee is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of Rail Access Corporation or Rail Services Australia.

93 Superseded references

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) Rail Access Corporation or Rail Services Australia is to be read as a reference to Rail Infrastructure Corporation.

94 Savings and transitional provisions relating to financial matters

- (1) Any approval or exemption held by Rail Access Corporation or Rail Services Australia:
 - (a) under the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* with respect to any accounts or annual report, or
 - (b) under the *Public Authorities (Financial Arrangements) Act 1987* with respect to any financial arrangement or joint venture arrangement,

is taken to be an approval or exemption held by Rail Infrastructure Corporation.

- (2) Statements of accounts and the first annual report of Rail Infrastructure Corporation must include accounts and an annual report with respect to any period from the end of the last financial year of Rail Access Corporation and Rail Services Australia until the establishment of Rail Infrastructure Corporation by the amending Act.
- (3) Duty is not chargeable in respect of anything certified by the Minister as having been done in consequence of the amalgamation of Rail Access Corporation and Rail Services Australia.

95 Application of section 19E (5A) to existing businesses

Section 19E (5A), as inserted by the amending Act, does not apply to the conduct of any business after the commencement of that provision in accordance with a contract or other arrangement made before that commencement.

96 Operation of Schedule

- (1) The operation of this Schedule (in connection with the assets, rights and liabilities and the staff of Rail Access Corporation and Rail Services Australia) is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, on the basis of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule (in that connection) is not to be regarded as an event of default under any contract or instrument.
- (3) In this clause, *contract* includes any contract of employment with Rail Access Corporation or Rail Services Australia.

- (4) Words and expressions used in this clause have the meanings given in Schedule 4.

2.2 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit:

Rail Access Corporation

Rail Services Australia

Insert instead:

Rail Infrastructure Corporation

2.3 Local Government Act 1993 No 30

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

Omit “Rail Access Corporation” from section 555 (1) (g1).

Insert instead “Rail Infrastructure Corporation”.

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

Omit “Rail Access Corporation” from section 600 (9).

Insert instead “Rail Infrastructure Corporation”.

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

Omit “Rail Access Corporation” from section 611 (6) (c).

Insert instead “Rail Infrastructure Corporation”.

2.4 Pipelines Act 1967 No 90

Section 3 Definitions

Omit “Rail Access Corporation” from the definition of *statutory body representing the Crown*.

Insert instead “Rail Infrastructure Corporation”.

2.5 Rail Safety Act 1993 No 50

Section 9 Act binds Crown

Omit “Rail Access Corporation, Rail Services Australia” from section 9 (2).

Insert instead “Rail Infrastructure Corporation”.

2.6 Roads Act 1993 No 33

[1] Section 94

Omit “Rail Access Corporation” from section 94 (2).

Insert instead “Rail Infrastructure Corporation”.

[2] Section 211 Contributions to RTA by RIC and STA

Omit “Rail Access Corporation” from section 211 wherever occurring.

Insert instead “Rail Infrastructure Corporation”.

2.7 Rural Fires Act 1997 No 65

[1] Section 27 Permission of SRA or RIC required

Omit “Rail Access Corporation” from section 27.

Insert instead “Rail Infrastructure Corporation”.

[2] Dictionary, definition of “managed land”

Omit “Rail Access Corporation”.

Insert instead “Rail Infrastructure Corporation”.

**2.8 State Authorities Non-Contributory Superannuation Act 1987
No 212**

Schedule 1 Employers

Omit:

Rail Access Corporation

Rail Services Australia

Insert instead:

Rail Infrastructure Corporation

2.9 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit:

Rail Access Corporation

Rail Services Authority

Insert instead:

Rail Infrastructure Corporation

Transport Administration Amendment (Rail Management) Act 2000 No 89

Schedule 2 Amendment of Transport Administration Act 1988 and other Acts relating
to merger of RAC and RSA

2.10 State Owned Corporations Act 1989 No 134

Schedule 5 Statutory SOCs

Omit:

Rail Access Corporation

Rail Services Australia

Note. Rail Infrastructure Corporation is inserted into the Schedule by section 19C (2) of the *Transport Administration Act 1988*, as amended by this Act.

2.11 Superannuation Act 1916 No 28

[1] Schedule 3 List of employers

Omit:

Rail Access Corporation

Rail Services Australia

Insert instead:

Rail Infrastructure Corporation

[2] Schedule 26

Omit:

Rail Access Corporation

Rail Services Authority

Insert instead:

Rail Infrastructure Corporation

Schedule 3 Amendment of Transport Administration Act 1988 relating to SRA

(Section 3)

[1] Section 4A

Omit the section. Insert instead:

4A Objectives of SRA

- (1) The principal objective of the State Rail Authority is to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner.
- (2) The other objectives of the State Rail Authority are:
 - (a) to be a successful business and, to that end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the Authority, and
 - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of the State Rail Authority are of equal importance, but are not as important as the principal objective of the Authority.

[2] Section 5 Railway services

Insert after section 5 (3):

- (4) In exercising its functions, the State Rail Authority is to act in the best interests of the NSW rail network as a whole.

[3] Section 13

Omit the section. Insert instead:

13 Ministerial control

The State Rail Authority (and its Board and Chief Executive) are, in the exercise of their functions, subject to the control and direction of the Minister.

Schedule 4 Amendment of Transport Administration Act 1988 and other Acts relating to Rail Regulator

(Section 3)

4.1 Transport Administration Act 1988 No 109

[1] Long title

Insert “the Rail Regulator, “ before “the State Rail Authority”.

[2] Section 3 Definitions

Insert in section 3 (1) in alphabetical order:

Rail Regulator means the Rail Regulator constituted under this Act.

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

Insert “Rail Regulator, the” before “State Rail Authority”.

[4] Part 2B

Insert after Part 2A:

Part 2B Rail Regulator

Division 1 Constitution of Rail Regulator

19U Constitution of Rail Regulator

- (1) There is constituted by this Act a corporation with the corporate name of the Rail Regulator.

- (2) The Rail Regulator:
- (a) has the functions conferred or imposed on it by or under this Act, the *Rail Safety Act 1993* or any other Act, and
 - (b) is, for the purposes of any Act, a statutory body representing the Crown.

Division 2 Management of Rail Regulator

19V Chief Executive of Rail Regulator

- (1) The Governor may appoint a Chief Executive of the Rail Regulator.
- (2) Schedule 2 has effect with respect to the Chief Executive.

19W Chief Executive to manage and control affairs of Rail Regulator

- (1) The affairs of the Rail Regulator are to be managed and controlled by the Chief Executive of the Rail Regulator.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Rail Regulator by the Chief Executive is taken to have been done by the Rail Regulator.

19X Rail Regulator not subject to Ministerial control in making reports or recommendations

The Rail Regulator is not subject to the control or direction of the Minister in respect of the contents of any report or recommendation of the Rail Regulator, but in other respects is subject to the control or direction of the Minister.

19Y Staff of Rail Regulator

- (1) The Rail Regulator may employ such staff as it requires to exercise its functions.
- (2) The regulations may make provision for or with respect to the employment of the staff of the Rail Regulator, including conditions of employment and the discipline of any such staff.
- (3) The Rail Regulator may arrange for the use of the services of any staff or facilities of a government department, a state owned corporation or a public or local authority.

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- (4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the Rail Regulator.
 - (5) The Rail Regulator may engage consultants to obtain expert advice.

19Z Delegation of functions of Rail Regulator

- (1) The Rail Regulator may delegate to an authorised person any of the functions of the Rail Regulator, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Rail Regulator, if the delegate is authorised in writing to do so by the Rail Regulator.
- (3) In this section, *authorised person* means:
 - (a) a member of the staff of the Rail Regulator, or
 - (b) a member of a class of persons prescribed by the regulations.

Division 3 Rail performance standards

19AA Rail performance standards

- (1) For the purposes of this Division, *rail performance standards* are standards with respect to the following matters:
 - (a) rail passenger service reliability (including train cancellations and skipping of stops at train stations),
 - (b) on-time running of passenger trains,
 - (c) rail passenger comfort (including the cleanliness of trains and overcrowding),
 - (d) any other matter prescribed by the regulations with respect to the performance of railway passenger services,

- (e) any matter relating to railway freight service reliability or on-time running of freight trains (or any other matter prescribed by the regulations with respect to the performance of railway freight services) that may affect the safety or reliability of the NSW rail network or that may affect the ability of others to comply with rail performance standards.
- (2) Rail performance standards may be set under this Division in connection with rail infrastructure facilities, rolling stock, management of service delivery or any other thing.

19AB Minister to set rail performance standards

- (1) The Minister may, from time to time, set rail performance standards for either or both of the following:
 - (a) owners of railways (within the meaning of the *Rail Safety Act 1993*), including Rail Infrastructure Corporation,
 - (b) operators of railways (within the meaning of that Act), including the State Rail Authority and Freight Rail Corporation.
- (2) Any such owner or operator of a railway must comply with those standards.
- (3) The Minister is to make those standards public.

19AC Rail Regulator to recommend rail performance standards

- (1) The Rail Regulator has the function of recommending to the Minister appropriate rail performance standards.
- (2) When setting rail performance standards, the Minister is to have regard to the standards recommended by the Rail Regulator.
- (3) The Rail Regulator is to keep rail performance standards set by the Minister under review and recommend changes it considers appropriate.

19AD Rail Regulator to investigate performance and audit compliance with standards

- (1) The Rail Regulator has the following functions:
 - (a) investigating the performance of owners or operators of railways in connection with the provision of rail passenger or freight services,
 - (b) conducting audits of the compliance of owners or operators of railways with the rail performance standards set by the Minister.
- (2) For the purposes of this section, any such audit of compliance is:
 - (a) a periodic or other audit determined by the Rail Regulator, or
 - (b) a special audit requested by the Minister.
- (3) Owners and operators of railways must supply the Rail Regulator with such information relating to their activities as the Rail Regulator may require for the purposes of any investigation or audit under this section.

19AE Rail Regulator to report on compliance with standards

- (1) The Rail Regulator is to report to the Minister on the result of any audit of compliance under section 19AD with rail performance standards set by the Minister.
- (2) The Rail Regulator is to include in any such report any enforcement action taken or recommended by the Rail Regulator under section 19AF in connection with the result of the audit.
- (3) The Minister is to cause a copy of each report under this section to be tabled in each House of Parliament.

19AF Enforcement of rail performance standards by Rail Regulator

- (1) The regulations may make provision for or with respect to the imposition by the Rail Regulator of monetary penalties on the owner or operator of a railway for non-compliance with the rail performance standards set by the Minister.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to:
- (a) the circumstances in which a monetary penalty may be imposed, and
 - (b) incentive compliance schemes in which demerit points for non-compliance may be set off against bonus points for performance that exceeds the standards set, and
 - (c) the maximum monetary penalty that may be imposed, and
 - (d) the review of any decision to impose a monetary penalty (including review by the Administrative Decisions Tribunal), and
 - (e) the recovery of any monetary penalty that is imposed.
- (3) The imposition of a monetary penalty under this section does not affect any other action that may be taken under this or any other Act against the owner or operator of the railway for the failure to comply with the rail performance standard concerned.

[5] Section 107 Definition of “transport authority”

Insert after section 107 (a):

- (a1) the Rail Regulator, or

[6] Section 109 Seal of Authority

Insert at the end of the section:

- (2) In this section, *Authority* includes the Rail Regulator.

[7] Section 111 Disputes involving transport authorities

Insert after section 111 (4):

- (5) This section does not apply to a dispute involving the Rail Regulator.

[8] Schedule 2 Provisions relating to Chief Executives

Insert “the Chief Executive of the Rail Regulator,” after “the State Rail Authority,” in the definition of *Chief Executive* in clause 1.

[9] Schedule 7, Part 7

Insert at the end of the Part:

**Division 4 Provisions consequent on the establishment
of Rail Regulator**

**97 Co-ordinator General of Rail and other executive officers cease
to hold office**

- (1) The person who, immediately before the establishment of the Rail Regulator by the amending Act, held office as the Co-ordinator General of Rail:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as the Chief Executive or member of staff of the Rail Regulator.
- (2) A person who, immediately before the establishment of the Rail Regulator by the amending Act, held a senior executive office (within the meaning of Part 2B of the *Public Sector Management Act 1988*) within the Office of Co-ordinator General of Rail:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the staff of the Rail Regulator.
- (3) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (4).

Schedule 4 Amendment of Transport Administration Act 1988 and other Acts relating to Rail Regulator

- (4) Part 2A of the *Public Sector Management Act 1988* applies to a person who ceases under this clause to hold office as if the person had ceased to be an executive officer as referred to in section 42Q (4) of that Act.

Note. Subclause (4) ensures that the person retains any rights to compensation or right of return that the person would have had if removed from office by the Governor instead of by the operation of this clause.

98 Abolition of Office of Co-ordinator General of Rail

- (1) The Office of Co-ordinator General of Rail is abolished.
- (2) On the abolition of that Office, any remaining members of staff of that Office (except the Co-ordinator General of Rail or senior executive officers referred to in clause 97) become employees of the Rail Regulator.

4.2 Public Finance and Audit Act 1983 No 152

[1] Schedule 3 Departments

Omit the matter relating to the Office of Co-ordinator General of Rail.

[2] Schedule 3

Insert in alphabetical order:

Rail Regulator

Chief Executive of Rail Regulator

Transport Administration Amendment (Rail Management) Act 2000 No 89

Amendment of Transport Administration Act 1988 and other Acts relating
to Rail Regulator

Schedule 4

4.3 Public Sector Management Act 1988 No 33

[1] Schedule 1 Departments

Omit the matter relating to the Office of Co-ordinator General of Rail.

[2] Schedule 3B Senior Executive Positions

Omit the positions and other matter relating to the Office of Co-ordinator
General of Rail.

[Minister's second reading speech made in—
Legislative Assembly on 15 November 2000
Legislative Council on 1 December 2000]

BY AUTHORITY
