



New South Wales

Transport Administration Amendment (Rail Access) Act 2001 No 131

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Transport Administration Act 1988 No 109	2
Schedule 1 Amendments	3



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Transport Administration Amendment (Rail Access) Act 2001 No 131

Act No 131, 2001

An Act to amend the *Transport Administration Act 1988* with respect to third party access to the NSW rail network; and for other purposes. [Assented to 19 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Transport Administration Amendment (Rail Access) Act 2001*.

2 Commencement

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

3 Amendment of Transport Administration Act 1988 No 109

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

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in appropriate order in section 3 (1):

RIC access undertaking means:

- (a) if an undertaking referred to in section 19E (4) (c) is in force under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, that undertaking, or
- (b) in any other case, an access undertaking in force under Schedule 6AA.

[2] Section 19A Definitions

Omit “Schedule 6A” from section 19A (1).

Insert instead “Schedules 6A and 6AA”.

[3] Section 19A (1), definition of “rail infrastructure facilities”

Insert “, subject to subsection (3)” after “*rail infrastructure facilities*”.

[4] Section 19A (1), definition of “rail infrastructure facilities”

Omit “(subject to section 19B (2)),” from paragraph (a).

[5] Section 19A (3)

Insert after section 19A (2):

- (3) The Minister may, by order in writing, direct that specified facilities that are vested in or owned by Rail Infrastructure Corporation are to be treated as rail infrastructure facilities for the purposes of this Act.

[6] Section 19B Meaning of “NSW Rail Access Regime”

Omit the section.

[7] Section 19D Objectives of RIC

Omit “the NSW Rail Access Regime” from section 19D (2) (a).
Insert instead “the current RIC access undertaking”.

[8] Section 19E Functions of RIC

Omit “the NSW Rail Access Regime” from section 19E (2) (b).
Insert instead “the current RIC access undertaking”.

[9] Section 19E (4) (c)

Insert at the end of section 19E (4) (b):

, and

- (c) give written undertakings from time to time to the Australian Competition and Consumer Commission in connection with the provision of access to the NSW rail network under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth.

[10] Section 19E (4A) and (4B)

Insert after section 19E (4):

- (4A) Clauses 2, 3 and 4 of Schedule 6AA apply to an undertaking referred to in subsection (4) (c) in the same way as they apply to an access undertaking referred to in clause 1 of that Schedule.
- (4B) An undertaking referred to in subsection (4) (c) is not to be given, and (once given) is not to be withdrawn or varied, except with the approval of the Minister given with the concurrence of the Premier.

Note. Section 44ZZA (7) of the *Trade Practices Act 1974* of the Commonwealth further provides that an access undertaking cannot be withdrawn or varied except with the consent of the Australian Competition and Consumer Commission.

[11] Section 19E (5)

Omit “the NSW Rail Access Regime”.
Insert instead “the current RIC access undertaking”.

[12] Section 19E (7)

Omit “subsection (5A)”. Insert instead “subsections (4B) and (5A)”.

[13] Section 19FB Network control

Omit “the NSW Rail Access Regime” from section 19FB (5) (b).
Insert instead “the current RIC access undertaking”.

[14] Section 19FC

Insert after section 19FB:

19FC RIC access undertakings

Schedule 6AA (RIC access undertakings) has effect.

[15] Section 45C Functions of Council

Omit “the NSW Rail Access Regime referred to in section 19B” from section 45C (2) (c).
Insert instead “the current RIC access undertaking”.

[16] Schedule 6A Powers of RIC relating to rail infrastructure facilities and land

Omit “the NSW Rail Access Regime” from clause 2 (3).
Insert instead “the current RIC access undertaking”.

[17] Schedule 6A, clause 5 (3)

Insert “or the current RIC access undertaking” after “the NSW Rail Access Regime”.

[18] Schedule 6AA

Insert after Schedule 6A:

Schedule 6AA RIC access undertakings
(Section 19FC)

1 Preparation of access undertaking

- (1) Rail Infrastructure Corporation may from time to time prepare:
- (a) an access undertaking, or
 - (b) a variation of an existing access undertaking,

for the purpose of implementing the Competition Principles Agreement in respect of third party access to the NSW rail network by the national rail track corporation, by rail operators and by access purchasers.

- (2) Before completing its preparation of an access undertaking or variation, Rail Infrastructure Corporation:

- (a) must cause a copy of the proposed undertaking or variation to be made available for public inspection, and posted on its Internet website, for at least 30 days, and
- (b) must cause notice of the proposed undertaking or variation:
 - (i) containing details of the places (including the address of the relevant Internet website) where it can be inspected, and
 - (ii) stating that public submissions may be made in relation to it during that period,

to be published in a daily newspaper circulating throughout New South Wales, and

- (c) must take into consideration any submissions made in relation to the proposed undertaking or variation during that period.

- (3) Subclause (2) does not apply if the access undertaking or variation (or a substantially similar access undertaking or variation):
- (a) has been submitted to the Australian Competition and Consumer Commission under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, and
 - (b) has been withdrawn without having been accepted under that section, and
 - (c) prior to its being withdrawn, has been subject to a public consultation process under section 44ZZA (4) of that Act.
- (4) In this clause, *Competition Principles Agreement* means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.
- 2 Access undertaking to apply Part 4A of IPART Act 1992**
- (1) An access undertaking must make provision with respect to the application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* to a dispute with respect to third party access to the NSW rail network:
- (a) by the national rail track corporation, or
 - (b) by persons in their capacities as rail operators or access purchasers.
- (2) In any arbitration of such a dispute, the arbitrator:
- (a) must give effect to the access undertaking, and
 - (b) must take into account (in addition to the matters referred to in section 24B (3) of the *Independent Pricing and Regulatory Tribunal Act 1992*) the desirability of ensuring priority and certainty of access for passenger services.
- 3 Access undertaking may make provision for intending access purchasers**
- (1) An access undertaking may make provision for persons:
- (a) who intend to be access purchasers, and

- (b) who, in the opinion of Rail Infrastructure Corporation, have the capacity to secure and properly manage the services of a rail operator,

to enter into negotiations in respect of third party access to the NSW rail network.

- (2) Such a person may be provided with access under an undertaking even if the person is not an access purchaser, on the condition that the person becomes an access purchaser prior to the operation or movement of rolling stock pursuant to such access.

4 Access undertaking may confer or impose functions on IPART

An access undertaking may confer or impose functions on the Independent Pricing and Regulatory Tribunal in connection with the undertaking.

5 Access undertaking to be submitted for Minister's approval

- (1) An access undertaking or variation prepared under this Schedule must be submitted for the Minister's approval, together with:
 - (a) a summary of the submissions made in relation to the proposed undertaking or variation, whether under clause 1 of this Schedule or under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, and
 - (b) Rail Infrastructure Corporation's comments on those submissions.
- (2) When considering the access undertaking or variation, the Minister is to take into consideration all of the public benefits arising from the undertaking or variation (including those that do not have a direct commercial value).
- (3) An approval under this clause is not to be given except with the concurrence of the Premier.

6 Commencement of access undertaking or variation

- (1) An access undertaking or variation takes effect:
 - (a) on the day on which notice of the Minister's approval of the undertaking or variation is published in the Gazette, or

- (b) on such later day as may be specified in the notice.
- (2) As soon as practicable after the relevant notice is published in the Gazette, Rail Infrastructure Corporation must ensure that:
 - (a) the terms of the access undertaking or variation are published on its website on the Internet, and
 - (b) copies of the access undertaking or variation are made available for inspection and purchase at each of its offices.

7 Existing access agreements unaffected

The commencement of an access undertaking or variation under this Schedule does not affect any access agreements in relation to the NSW rail network that have been entered into between Rail Infrastructure Corporation and any other person before that commencement.

8 Rail Safety Act 1993 unaffected

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

9 Definition

In this Schedule, *national rail track corporation* means:

- (a) subject to paragraph (b), Australian Rail Track Corporation Limited (ACN 081 455 754), or
- (b) if some other corporation is prescribed by the regulations for the purposes of this definition (being a corporation established under an agreement between the Commonwealth, the Territories and the States with respect to the provision of interstate access to Australian rail networks), that other corporation.

[19] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Transport Administration Amendment (Rail Access) Act 2001

[20] Schedule 7, new Part

Insert at the end of Schedule 7, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Transport Administration Amendment (Rail
Access) Act 2001**

Definition

In this Part, *the 2001 amending Act* means the *Transport Administration Amendment (Rail Access) Act 2001*.

NSW Rail Access Regime

The NSW Rail Access Regime in force under section 19B (as in force immediately before the repeal of that section by the 2001 amending Act) continues to have effect for the purposes of this Act as if it were an access undertaking in force under Schedule 6AA, and may be varied accordingly, until a new access undertaking takes effect under:

- (a) section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, or
 - (b) Schedule 6AA to this Act,
- as the case may be.

Directions under former section 19B

Any order that, immediately before the commencement of section 19A (3), was in force under section 19B (2) is taken to have been made under section 19A (3).

[Minister's second reading speech made in—
Legislative Assembly on 28 November 2001
Legislative Council on 13 December 2001]

BY AUTHORITY