



New South Wales

Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004 No 31

Contents

| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Transport Administration Act 1988 No 109 | 2 |
| 4 Amendment of other Acts and regulation | 2 |
| Schedule 1 Amendment of Transport Administration Act 1988 No 109 | 3 |
| Schedule 2 Amendment of other Acts and regulation | 47 |



New South Wales

Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004 No 31

Act No 31, 2004

An Act to amend the *Transport Administration Act 1988* with respect to the leasing and licensing to, and management by, Australian Rail Track Corporation Ltd of country rail infrastructure and freight rail infrastructure; and for other purposes. [Assented to 24 May 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.

2 Commencement

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

3 Amendment of Transport Administration Act 1988 No 109

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

4 Amendment of other Acts and regulation

The Acts and regulation specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Transport Administration Act 1988 No 109

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

ARTC means the Australian Rail Track Corporation Ltd (ACN 081 455 754).

ARTC arrangement means a lease, licence, agreement or other arrangement under Part 8A.

ARTC lease or licence means a lease or licence under Part 8A.

[2] Section 3 (1), definition of “NSW rail network”

Insert “or managed or controlled by” after “owned by”.

[3] Section 3 (1), definition of “NSW rail network”

Insert “or managed or controlled” after “owned” where secondly occurring.

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

Insert “or managed or controlled by” after “owned by” in paragraph (b).

[5] Section 3 (1), definition of “rail infrastructure owner”

Omit the definition. Insert instead:

rail infrastructure owner means:

- (a) in the case of any rail infrastructure facilities that are managed or controlled by Transport Infrastructure Development Corporation for the purposes of exercising its functions under this Act, Transport Infrastructure Development Corporation, or
- (b) in the case of any rail infrastructure facilities that are subject to an ARTC lease or licence or are installed, established or replaced by ARTC in or on land subject to an ARTC lease or licence, ARTC, or
- (c) in any other case, the person in whom ownership of rail infrastructure facilities is vested by or under this Act.

[6] Section 3A Metropolitan rail area

Insert after section 3A (3):

- (4) A notice under this section which has the effect of moving land subject to an ARTC lease or licence to or from the metropolitan rail area has no effect unless ARTC has given prior written consent to the notice.
- (5) ARTC must not unreasonably withhold consent to any such notice.
- (6) Nothing in this section limits any rights of RIC or RailCorp to acquire land or rail infrastructure facilities under any other provision of this Act.

[7] Section 5 Objectives of RailCorp

Insert at the end of the section:

- (5) Subsection (2) (b) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

[8] Section 7 Rail infrastructure functions

Insert “, or to be vested in or owned by it,” after “it”.

[9] Section 8 Metropolitan rail area access functions

Insert at the end of the section:

- (2) This section does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

[10] Section 17E Exemption from State taxes

Omit the definition of *State tax* from section 17E (4). Insert instead:

State tax means duty under the *Duties Act 1997* or any other tax, duty, rate, fee or other charge imposed by or under any Act or law of the State, other than pay-roll tax.

[11] Section 19D Objectives of RIC

Insert at the end of the section:

- (5) Subsection (2) (a) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

[12] Section 19E Functions of RIC

Insert at the end of the section:

- (8) Subsection (2) (b) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

[13] Part 8A

Insert after Part 8:

Part 8A ARTC arrangements

Division 1 Preliminary

88A Definitions

In this Part:

freight line means a railway line that is part of the NSW rail network and that is predominantly used for freight services or freight services and passenger services on non-electrified railway lines.

lease includes sub-lease and an agreement to lease or sub-lease.

licence includes sub-licence and an agreement to license or sub-license.

linear continuity of railway lines means the continuity and availability of the railway lines for rail operations.

member of staff of a rail authority means any person employed by a rail authority (whether as a permanent or temporary employee or a casual employee).

rail authority means RailCorp, Rail Infrastructure Corporation, the State Rail Authority, Transport Infrastructure Development Corporation or any other person or body prescribed by the regulations.

rail infrastructure facilities includes disused stations, disused platforms, rolling stock maintenance facilities, freight centres or depots, works and maintenance depots and storage yards.

related body corporate has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

station facilities means stations, platforms and associated access works, but does not include disused stations or disused platforms or their associated access works.

Division 2 Arrangements between rail authorities and ARTC

88B Lease or licence of land and rail infrastructure facilities

- (1) A rail authority may, with the approval of the Minister, lease to ARTC, or grant a licence to ARTC with respect to, the whole or any part of the following:
 - (a) land (and all or any related rail infrastructure facilities) used for, or relating to, freight lines or proposed freight lines,
 - (b) land providing access to any such land or rail infrastructure facilities,
 - (c) such additional land (and all or any related rail infrastructure facilities) as ARTC may request, and that is required in connection with rail operations.
- (2) Rail infrastructure facilities may be leased or licensed to ARTC by a rail authority under this section even though the facilities are situated on land that is not otherwise subject to such a lease or licence.
- (3) A rail authority may, with the approval of the Minister, enter into a lease, licence, agreement or other arrangement with ARTC for the carrying out of development by or on behalf of ARTC for the purposes of constructing proposed freight lines and associated facilities or other rail infrastructure facilities.
- (4) A lease or licence entered into by a rail authority may make provision for or with respect to rights relating to intellectual property.
- (5) Subsections (3) and (4) do not limit the matters that may be included in a lease or licence under this section.
- (6) A rail authority may enter into an agreement or other arrangement with ARTC with respect to matters that are ancillary to or incidental to an ARTC lease or licence.

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- (7) The total maximum term for which any land or rail infrastructure facilities may be leased or licensed under one or more leases or licences under this section is 60 years.

88C Other agreements or arrangements relating to freight lines

- (1) A rail authority may, with the approval of the Minister, enter into an agreement or other arrangement with ARTC for or with respect to the management by ARTC of freight lines not subject to an ARTC lease or licence (and all or any associated rail infrastructure facilities).
- (2) The total maximum term for which any one or more agreements or other arrangements may be entered into under this section in relation to any freight line or rail infrastructure facilities is 60 years.

88D Provision of transition support services

A rail authority may, with the approval of the Minister, enter into an agreement or other arrangement with ARTC for the provision to ARTC by the rail authority of transition support services in connection with an ARTC arrangement.

88E Sale of plant, machinery, equipment, stores and consumables

Despite any other provision of this Act, a rail authority that enters into an ARTC arrangement may sell to ARTC movable plant, machinery, equipment, stores and consumables, not being rail infrastructure facilities, whether or not it is used in connection with land or rail infrastructure facilities subject to an ARTC arrangement.

88F Requirements for consent not applicable

A rail authority may enter into an ARTC arrangement, and any such arrangement has effect, despite any requirement for consent under any other lease, licence, agreement or other arrangement between a rail authority and any other person.

88G Severance of rail infrastructure facilities and from leased or licensed land

- (1) Rail infrastructure facilities owned by RailCorp, RIC or the State Rail Authority that are subject to an ARTC lease or licence or situated on land subject to an ARTC lease or

licence, or rail infrastructure facilities installed or established by ARTC for the purposes of an ARTC lease or licence, are taken to be severed from the land on which they are situated and may be dealt with as personal property separate from the land.

- (2) Station facilities owned by RailCorp, RIC or the State Rail Authority that are situated on land subject to an ARTC lease or licence are taken to be severed from the land on which they are situated and may be dealt with as personal property separate from the land.
- (3) The severance of a facility from land under this section:
 - (a) does not affect the right of the facility to be situated on that land, and
 - (b) does not affect any right to drain water or sewage from the facility across and through the land or to use any means of drainage of water or sewage from the facility across and through the land.
- (4) This section does not have effect in respect of rail infrastructure facilities or station facilities on land subject to an existing lease or licence by the rail authority as lessor when an ARTC lease or licence is entered into, while any such existing lease or licence, or any renewal of that lease or licence, remains in force.
- (5) To avoid doubt, a reference in subsection (4) to a lease or licence does not include a reference to a rail access agreement.

88H Functions of ARTC relating to rail infrastructure facilities

- (1) ARTC may hold, manage, maintain and establish rail infrastructure facilities subject to an ARTC arrangement.
- (2) Any such arrangement may vest in ARTC rail infrastructure facilities installed or established by ARTC for the term of the arrangement or without limitation.
- (3) An ARTC lease or licence may provide that rail infrastructure facilities subject to the lease or licence and vested in or owned by a rail authority may be sold or disposed of by ARTC in accordance with the lease or licence.

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- (4) This section is subject to the terms of any applicable ARTC arrangement and section 88M.

Note. Section 88M prohibits ARTC from selling or otherwise dealing with rail infrastructure facilities in a way that affects, or is likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement.

88I Transfer of assets, rights or liabilities of rail authority

- (1) The Minister may, by order in writing, direct that assets, rights or liabilities of a rail authority, or any subsidiary of a rail authority, that are specified or referred to in the order, be transferred to ARTC.
- (2) The Minister may, by further order under this section, further direct the transfer to a rail authority, or a subsidiary of a rail authority, a State owned corporation, the Crown or any other person or body acting on behalf of the Crown of any assets, rights or liabilities previously transferred under this section.
- (3) An order under subsection (1) or (2) may be made only:
- (a) in relation to assets, rights or liabilities concerning, or relating to, an ARTC arrangement or a proposed ARTC arrangement, and
 - (b) with the consent of ARTC or in accordance with an ARTC arrangement.
- (4) On termination of an ARTC arrangement, the Minister may, by order in writing, direct that rail infrastructure facilities (within the meaning of section 3) established by ARTC under the arrangement, and any related assets, rights or liabilities of ARTC, that are specified or referred to in the order, be transferred to a rail authority, a State owned corporation, the Crown or any other person or body acting on behalf of the Crown.
- (5) In the case of rail infrastructure facilities (including any related assets, rights or liabilities) used by ARTC partly for the purposes of an ARTC arrangement and partly for other business purposes, an order under subsection (4) must, if the rail infrastructure facilities were predominantly used for the purposes of the ARTC arrangement, be made subject to the conferral on ARTC of a continuing right to the use and benefit of those facilities for those other purposes.

- (6) An order under subsection (4) may transfer rail infrastructure facilities (including any related assets, rights or liabilities) that are predominantly used by ARTC for business purposes other than the purposes of an ARTC arrangement only to the extent necessary to confer on a rail authority an irrevocable right to the use and benefit of those facilities for the purposes of its rail operations.
- (7) An order under this section may be subject to specified terms and conditions.
- (8) Schedule 4 applies to the transfer of assets, rights and liabilities under this section.
- (9) Words and expressions used in this section have the same meanings as they have in Schedule 4.

Division 3 Rail services, access and infrastructure obligations

88J Obligation to maintain linear continuity of rail services

- (1) It is the duty of ARTC to maintain the linear continuity of railway lines affected by, or subject to, an ARTC arrangement between ARTC and a rail authority.
- (2) This section does not extend to closures of rail lines in emergencies, for normal, routine maintenance or repairs or for the construction of works authorised or otherwise provided for by an ARTC arrangement.

88K Rail access obligations and functions

- (1) ARTC is to provide persons with access under any current NSW rail access undertaking to any part of the NSW rail network for which it is a rail infrastructure owner.
Note. ARTC's rail access obligations are also set out in section 99C and Schedule 6AA.
- (2) A rail authority may authorise ARTC to act as the agent of the rail authority or to provide other services to the rail authority for the purpose of selling access to parts of the NSW rail network.

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- (3) For the purposes of section 24A of the *Independent Pricing and Regulatory Tribunal Act 1992*, ARTC is, in respect of rail infrastructure facilities subject to an ARTC lease or licence, taken to be a government agency that provides services by means of rail infrastructure facilities.

Note. The effect of this provision is that disputes relating to rail infrastructure access involving ARTC may be referred to arbitration.

88L Network control

- (1) An ARTC arrangement may make provision for or with respect to the conferral on ARTC of responsibility for network control with respect to any part of the NSW rail network for which ARTC is a rail infrastructure owner.
- (2) ARTC is responsible for network control with respect to any such part of the NSW rail network while that responsibility is conferred on ARTC under the ARTC arrangement.
- (3) In exercising its responsibility for network control, ARTC must:
- (a) give reasonable priority to passenger services, and
 - (b) subject to giving priority to those services, promote and facilitate access to the part of the NSW rail network for which it is responsible in accordance with the current NSW rail access undertaking.
- (4) If responsibility for network control is not conferred on ARTC with respect to a part of the NSW rail network for which ARTC is a rail infrastructure owner, the rail authority in whom that part is vested or who owns it is, for the purposes of section 99D, taken to be the rail infrastructure owner for that part and that section applies accordingly.

Note. Under section 99D, the rail infrastructure owner has responsibility for network control, so that subsection (4) has the effect of conferring that responsibility on a rail authority if there is no conferral of it on ARTC under this section.

- (5) In this section:
network control with respect to any part of the NSW rail network has the same meaning as it has in section 99D.

88M Restrictions on dealings with land and rail infrastructure facilities and other rights

- (1) ARTC must not sell or otherwise deal with land or rail infrastructure facilities subject to an ARTC lease or licence, or installed or established by ARTC in or on the NSW rail network for the purposes of an ARTC arrangement, in a way that affects, or is likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement.
- (2) ARTC must not assign (other than by granting a security interest), or grant a mortgage over, all or any of its rights under an ARTC arrangement.
- (3) ARTC may grant a security interest over all or any of its rights under an ARTC arrangement, but only if the granting of that interest complies with the following:
 - (a) it does not affect, or is not likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement,
 - (b) it does not materially interfere with or restrict, or is not likely to materially interfere with or restrict, the carrying out of rail operations by ARTC in accordance with an ARTC arrangement,
 - (c) it does not permit or potentially permit the assignment or other disposition of ARTC's obligations or rights under an ARTC arrangement by the holder of the security interest,
 - (d) it does not permit or potentially permit the exercise of a power of sale or foreclosure in respect of any land or rail infrastructure facilities subject to, or assets or rights under, an ARTC arrangement.
- (4) A transaction entered into by ARTC is, to the extent that it contravenes this section, void.
- (5) In this section, a reference to ARTC includes a reference to a successor of ARTC.
- (6) This section does not apply to or in respect of any thing permitted to be sold to ARTC under section 88E.

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- (7) In this section:

security interest means any pledge, lien, charge or preferential interest or arrangement, but does not include a mortgage.

88N Obligations and rights under Rail Safety Act 2002

- (1) This section applies to railway operations within the meaning of the *Rail Safety Act 2002* that are carried out by ARTC instead of a rail authority under a lease entered into under this Part.
- (2) To avoid doubt, ARTC is the operator responsible for any such operation for the purposes of that Act.
- (3) The rail authority is not required to be accredited under that Act:
- (a) in respect of any such railway operation, or
 - (b) merely because it is the owner of rail infrastructure facilities, being facilities subject to an ARTC lease or licence.
- (4) Nothing in this section affects the obligation of the rail authority to be accredited under that Act for a rail operation it carries out.

88O Obligations and rights under Protection of the Environment Operations Act 1997

- (1) This section applies to railway systems activities referred to in Schedule 1 to the *Protection of the Environment Operations Act 1997* that are carried out separately by ARTC and a rail authority in or on land that is subject to an ARTC lease or licence or is adjacent to any such land.
- (2) For the purposes of that Act, both the rail authority and ARTC are taken to be occupiers of the land concerned and are each required to hold a licence under that Act authorising the railway systems activity carried out by each of them on the land.

88P Obligations and rights under Heritage Act 1977

- (1) This section applies to land or rail infrastructure facilities subject to an ARTC lease or licence between ARTC and a rail authority.

- (2) For the purposes of the *Heritage Act 1977* and any instrument under that Act, ARTC is taken to be the owner of the land or rail infrastructure facilities instead of the rail authority and that Act applies accordingly.
- (3) For the purposes of sections 170 and 170A of the *Heritage Act 1977*, ARTC has, in relation to land or rail infrastructure facilities, the functions of a government instrumentality.

**88Q Obligations and rights under Threatened Species
Conservation Act 1995**

- (1) This section applies to land or rail infrastructure facilities subject to an ARTC lease or licence.
- (2) ARTC is to be treated as the public authority having responsibility for the land or rail infrastructure facilities for the purposes of the conferral of, and implementation of, responsibilities under or relating to a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995*.

**88R Obligations relating to activities under Environmental
Planning and Assessment Act 1979**

- (1) This section applies if ARTC is prescribed under the *Environmental Planning and Assessment Act 1979* as a public authority for the purposes of Part 5 of that Act in relation to activities for the purposes of rail infrastructure facilities with respect to land subject to an ARTC lease or licence or land owned by ARTC.
- (2) In addition to any requirements applicable under that Part, regulations may be made under the *Environmental Planning and Assessment Act 1979* for or with respect to the following matters:
 - (a) additional circumstances in which an environmental impact statement may be required to be prepared under that Part in respect of an activity,
 - (b) requirements for public consultation in respect of activities for which an environmental impact statement is not required to be prepared under that Part,
 - (c) matters to be considered, and documentation relating to any such consideration, for the purposes of that Part,

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- (d) availability to the public of documents relating to any consideration of an activity for the purposes of that Part.

Division 4 Prohibition on vertical integration

88S Restrictions on vertical integration of rail operations

- (1) ARTC, or any associate of ARTC, or any successor of ARTC or any associate of any successor of ARTC, must not provide rail freight services or any rail passenger services for reward on or with respect to the NSW rail network while any ARTC arrangement is in force.
- (2) If the Minister is of the opinion that a person has engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of this section, the Minister may, by order in writing, direct the person not to engage in that conduct.
- (3) Nothing in this section prevents:
 - (a) ARTC or any successor of ARTC, or a rail authority, from carrying out a function conferred on it by or under this Act or an ARTC arrangement or from providing any services under an agreement with a rail authority, or
 - (b) a rail authority from carrying out a function conferred on it by or under this Act or an ARTC arrangement or from providing any services under an agreement with ARTC or another rail authority, or
 - (c) an associate of ARTC from providing rail freight services or any passenger services for reward, if the provision of those services is approved by the Minister.
- (4) In this section, a reference to an associate of ARTC or a successor of ARTC (the *rail track operator*) is a reference to:
 - (a) a related body corporate of the rail track operator, or
 - (b) an associate of the rail track operator within the meaning of sections 11, 12 (2), 15 and 16 of the *Corporations Act 2001* of the Commonwealth.

88T Injunctions

- (1) If the Supreme Court, on the application of the Minister, is satisfied that a person has engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of section 88S, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Without prejudice to the generality of subsection (1), an injunction granted under this section may be, or include, an injunction restraining a person from carrying on a business (whether as part of, or incidental to, the carrying on of another business) for a specified period or except on specified terms and conditions.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) The Court may rescind or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and
 - (b) whether or not the person has previously engaged in conduct of that kind, and
 - (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) If the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.

Division 5 Staffing arrangements

88U Agreements for secondment of staff to ARTC

- (1) A rail authority may, with the approval of the Minister, enter into an agreement with ARTC for or with respect to the use of members of staff of the authority for the purposes of an ARTC arrangement.

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- (2) Without limiting subsection (1), an agreement may provide for the following:
 - (a) the temporary placement of members of staff with ARTC,
 - (b) the exercise by ARTC of functions of the rail authority for or with respect to members of staff (including disciplinary functions other than dismissal),
 - (c) permitting the disclosure of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) relating to members of staff by a rail authority to ARTC.
 - (3) Without limiting subsection (1), an agreement must contain provisions requiring ARTC to facilitate compliance by the rail authority with any industrial awards or agreements applicable to members of staff temporarily placed with ARTC under this Division.
 - (4) ARTC may, in accordance with an agreement, instead of or in conjunction with a rail authority, exercise functions for or with respect to members of staff (including disciplinary functions other than dismissal).
 - (5) A rail authority is not required to comply with the *Privacy and Personal Information Protection Act 1998* in respect of the disclosure of information about members of staff, placed or proposed to be placed, under this Division with ARTC, if the information is relevant to the exercise by ARTC of its functions in respect of members of staff temporarily placed with it or to workplace safety or the safety of the NSW rail network.
 - (6) This section has effect despite any other Act or law.

88V Temporary staff placement with ARTC (secondments)

- (1) A member of staff of a rail authority may apply to be placed temporarily with ARTC and may, with the approval of the chief executive of the rail authority, be temporarily placed with ARTC.
- (2) If an agreement for or with respect to the use of members of staff under this Division provides for the temporary placement of members of staff with ARTC, the chief

executive of the rail authority may, in accordance with the agreement, direct in writing that members of staff of the rail authority be placed with ARTC.

- (3) A temporary placement under subsection (2) takes effect on the day specified in the direction.
- (4) A member of staff may be placed with ARTC under this section at the person's existing level of remuneration or at a different level of remuneration. However, a temporary placement cannot be made at a lower level of remuneration, except with the consent of the member of staff.
- (5) A temporary placement of a member of staff under this section may be ended at any time by written direction of the chief executive of the rail authority.
- (6) A rail authority exercising a power of dismissal of a member of staff who is or has been temporarily placed with ARTC under this Division may take into account and act on the basis of any disciplinary or other action taken or finding made by ARTC.
- (7) A rail authority must, in taking into account and acting on the basis of any disciplinary or other action taken by ARTC as referred to in subsection (6), have regard to any matters raised by the member of staff in relation to that action at the time that action was taken.
- (8) The Public Employment Office may, from time to time, issue guidelines (not inconsistent with this section) for or with respect to the following matters:
 - (a) the matters to be taken into consideration by the chief executive of a rail authority in respect of the temporary placement of members of staff with ARTC under this section,
 - (b) requirements relating to the obtaining of consent to placement of members of staff with ARTC at a lower level of remuneration,
 - (c) the exercise by a rail authority of a power of dismissal of a member of staff as referred to in subsection (6).
- (9) A rail authority and the chief executive of a rail authority must have regard to any applicable guidelines issued by the Public Employment Office under this section.

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- (10) In this Division:

Public Employment Office means the Public Employment Office constituted by the *Public Sector Employment and Management Act 2002*.

temporary member of staff of ARTC means a member of staff of a rail authority who is temporarily placed with ARTC under this Division.

transferring rail authority means the rail authority from which a temporary member of staff of ARTC is temporarily placed with ARTC under this Division.

88W No time limit for period of temporary placement

A temporary placement of staff under this Division may be for a specified period or a specified minimum period.

88X Obligations and rights under Rail Safety Act 2002 relating to members of staff

- (1) A temporary member of staff of ARTC who performs railway safety work is taken to be an employee of ARTC, instead of the transferring rail authority, for the purposes of the *Rail Safety Act 2002* and any instrument under that Act.
- (2) In this section, *railway safety work* has the same meaning as it has in the *Rail Safety Act 2002*.

88Y Obligations and rights under Occupational Health and Safety Act 2000 and other legislation

- (1) For the purposes of the *Occupational Health and Safety Act 2000* and the employer liability legislation, ARTC has the functions and liabilities of an employer in respect of a temporary member of staff of ARTC.
- (2) Nothing in subsection (1) affects the functions and liabilities of a transferring rail authority, or a director or a person concerned in the management of a transferring rail authority, in respect of a temporary member of staff of ARTC under the *Occupational Health and Safety Act 2000* or any employer liability legislation.

(3) In this section:

employer liability legislation means:

- (a) instruments under the *Occupational Health and Safety Act 2000*, and
- (b) associated occupational health and safety legislation within the meaning of that Act, and
- (c) the *Road and Rail Transport (Dangerous Goods) Act 1997* and any instruments under that Act, and
- (d) any other Act or instrument under an Act that makes an employer liable for an act or omission of an employee, or for an act of omission of the employer in relation to an employee, being a law prescribed by the regulations for the purposes of this section.

88Z Liability under Law Reform (Vicarious Liability) Act 1983

- (1) A temporary member of staff of ARTC is, during any period of the temporary placement with ARTC, taken not to be in the service of the Crown for the purposes of the *Law Reform (Vicarious Liability) Act 1983*.
- (2) Nothing in this section affects any liability under that Act of a rail authority as the employer of a temporary member of staff of ARTC.

88ZA Workers compensation arrangements

- (1) For the purposes of the Workers Compensation Acts, the regulations may make provision for or with respect to the following:
 - (a) the treatment of ARTC as the employer of temporary members of staff of ARTC for the purposes of all or any of the provisions of the Workers Compensation Acts,
 - (b) the conferral of the functions of an employer under provisions of those Acts with respect to temporary members of staff of ARTC on the transferring rail authority or ARTC, or both of them,
 - (c) the liability of a transferring rail authority or ARTC, or both, or directors of, or persons concerned in the management of the transferring rail authority or ARTC, or both, for offences under those Acts,

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- (d) the modification of requirements relating to insurance policies under those Acts in relation to temporary members of staff of ARTC,
- (e) the modification, in relation to ARTC and a rail authority, of requirements of those Acts relating to the grouping of employers for insurance purposes.
- (2) The regulations may apply any of the provisions of the Workers Compensation Acts to work injury damages recoverable by or in respect of a temporary member of staff of ARTC from the transferring rail authority or ARTC, or both, in respect of an injury to or the death of the member of staff.
- (3) Without limiting subsections (1) and (2), the regulations may provide that a specified provision or provisions of the Workers Compensation Acts do or do not apply in respect of the transferring rail authority or ARTC.
- (4) For the purposes of subsections (1) and (2), the regulations may apply provisions of the Workers Compensation Acts with any necessary modifications.
- (5) Nothing in this section permits a regulation to be made that has the effect of:
- (a) removing from a transferring rail authority the obligation to have and maintain in force an insurance policy, or to be self-insurer, under the Workers Compensation Acts in respect of any of its employees who are temporary members of staff of ARTC, or
- (b) removing any liability of any such transferring rail authority in respect of injury to a temporary member of staff of ARTC under those Acts or that exists independently of those Acts.
- (6) In this section:

motor accident damages means damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

work injury damages means damages recoverable from the transferring rail authority or ARTC in respect of injury to or the death of a temporary member of staff of ARTC caused by the negligence or other tort of the rail authority or ARTC and arising out of the employment of the member of staff, whether

the damages are recoverable in an action for tort or breach of contract or in any other action, but does not include motor accident damages.

Workers Compensation Acts mean the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and any instruments made under those Acts.

88ZB Effect of staffing agreements and arrangements

Temporary members of staff of ARTC remain members of staff of the transferring rail authority and do not become employees of ARTC, despite any other provision of this Act or of any other law or any provision of any agreement under which the members of staff are temporarily placed with ARTC.

Division 6 State taxes

88ZC Exemption from State taxes

- (1) The regulations may, on the recommendation of the Minister and with the approval of the Treasurer, provide that State tax is not chargeable in respect of any matter or thing, or classes of matters or things, prescribed by the regulations and done by a rail authority or ARTC in connection with an ARTC arrangement or a proposed ARTC arrangement or for the purposes of this Part or the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.
- (2) The regulations may, on the recommendation of the Minister and with the approval of the Treasurer, provide that land tax or rates are not payable by a rail authority or ARTC in connection with land subject to an ARTC lease or licence.
- (3) In this section:
State tax means duty under the *Duties Act 1997* or any other tax, duty, rate, fee or other charge imposed by or under any Act or law of the State, other than pay-roll tax.

88ZD Rail authorities and ARTC not grouped for pay-roll tax purposes

For the purposes of the *Pay-roll Tax Act 1971*, and section 106H of the *Taxation Administration Act 1996* as it applies in relation to the *Pay-roll Tax Act 1971*, a rail authority and ARTC do not constitute a group merely because of an arrangement entered into for the purposes of Division 5.

Division 7 Effect of Part

88ZE Effect of Part

Except as provided by this Part, nothing in this Part:

- (a) limits or otherwise affects any function of a rail authority (whether conferred under this or any other Act or law), or
- (b) prevents a rail authority, in the exercise of any of its functions, from entering into any arrangement or agreement or other transaction with ARTC or any other person.

88ZF Protection of contractual and other obligations

- (1) This section applies to the following:
 - (a) the operation of this Part and the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004* (including anything done or omitted to be done for the purposes of this Part or that Act),
 - (b) a disclosure of information made for any of those purposes.
- (2) None of the matters or things to which this section applies are to be regarded:
 - (a) as a breach of confidence, or
 - (b) as a breach of contract or other instrument or as requiring any act to be done under an instrument, or
 - (c) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or as giving rise to a breach of an offence against a provision of an Act that prohibits or restricts the disclosure of information.

88ZG Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Part or the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*, or for any consequence of that enactment or operation, or
 - (b) because of any statement or conduct relating to this Part or that Act.

- (2) In this section:

compensation includes damages or any other form of monetary compensation.

conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

operation of this Part includes the operation of any notice, direction or order under this Part or any ARTC arrangement or other arrangement entered into for the purposes of this Part.

statement includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false or misleading or otherwise.

the State means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes a rail authority or an officer, employee or agent of the Crown or of a rail authority.

[14] Section 99A Closure and disposal of railway lines

Insert “an ARTC arrangement or” after “entered into” where firstly occurring in section 99A (3).

[15] Section 99AA

Insert after section 99A:

99AA Connections to rail infrastructure

A rail infrastructure owner must not sever, or fail to maintain, a connection between any part of the NSW rail network for which it is the rail infrastructure owner and any other part of

the NSW rail network without the consent of the rail infrastructure owner of the other part of the NSW rail network.

[16] Section 99C NSW rail access undertakings

Insert “or managed or controlled by” after “owned by” in section 99C (1).

[17] Section 99C (4)

Insert “or ARTC” after “rail authority”.

[18] Section 99C (6)

Insert after section 99C (5):

- (6) Subsection (2) and clause 2 of Schedule 6AA do not apply to undertakings given, or taken to have been given, by ARTC.

[19] Section 99D Network control

Omit “in whom that part of the NSW rail network is vested in or who owns that part” from section 99D (3).

Insert instead “for that part of the NSW rail network”.

[20] Section 99D (7)

Insert after section 99D (6):

- (7) This section is subject to section 88L.

Note. See section 88L for network control responsibilities relating to parts of the NSW rail network subject to an ARTC lease or licence.

[21] Schedule 4 Transfer of assets, rights and liabilities

Insert after clause 2 (1) (a):

- (b) an order under section 88I transferring assets, rights or liabilities to a person or body specified or referred to in the order,

[22] Schedule 6A Powers relating to rail infrastructure facilities and land

Omit “19F”. Insert instead “98”.

[23] Schedule 6A, clause 1

Omit the clause. Insert instead:

1 Definitions

In this Schedule:

building owner means an owner of a railway building.

infrastructure owner means an owner of rail infrastructure facilities.

owner of railway land, rail infrastructure facilities or a railway building means:

- (a) in the case of any land, rail infrastructure facilities or any railway building that is managed or controlled by Transport Infrastructure Development Corporation for the purposes of exercising its functions under this Act, the Transport Infrastructure Development Corporation, or
- (b) in the case of any rail infrastructure facilities that are, or railway building that is, installed, established or replaced by ARTC, ARTC, or
- (c) in the case of any land, rail infrastructure facilities or any railway building that is subject to an ARTC lease or licence, ARTC, or
- (d) in any other case, the rail authority that owns the land, rail infrastructure facilities or railway building or in whom it is vested.

rail authority means:

- (a) RailCorp, RIC, Transport Infrastructure Development Corporation and the State Rail Authority, and
- (b) in the case of land, rail infrastructure facilities or buildings subject to an ARTC lease or licence, ARTC.

railway building means a building or structure (not being a rail infrastructure facility) situated on railway land.

railway land means land owned by, vested in or under the control of a rail authority.

railway land owner means an owner of railway land.

station facilities means stations, platforms and associated access works, but does not include disused stations or disused platforms or their associated access works.

[24] Schedule 6A

Omit “an operator building” wherever occurring.

Insert instead “a railway building or rail infrastructure facility”.

[25] Schedule 6A

Omit “operator land” wherever occurring. Insert instead “railway land”.

[26] Schedule 6A, clause 1A

Insert after clause 1:

1A Application to ARTC rail infrastructure facilities under ARTC arrangements

Clauses 2E–12 and 15 of this Schedule, and any regulations made under clause 15 of this Schedule, do not apply to or in respect of land, rail infrastructure facilities or buildings to the extent that an ARTC arrangement entered into with a rail authority provides that specified provisions or all of those provisions do not apply to or in respect of ARTC and the rail authority in relation to that land or those facilities or buildings.

[27] Schedule 6A, clause 2 RIC’s rail infrastructure facilities

Omit clause 2 (1).

[28] Schedule 6A, clause 2A RailCorp’s rail infrastructure facilities

Omit clause 2A (1).

[29] Schedule 6A, clause 2C (4)–(6)

Insert at the end of clause 2C:

- (4) For the purposes of subclause (1) (a), RailCorp is taken to be the owner of rail infrastructure facilities in the metropolitan rail area and RIC is taken to be the owner of rail infrastructure facilities in the country rail area.

- (5) This clause is subject to any interest of Transport Infrastructure Development Corporation in rail infrastructure facilities.
- (6) Without limiting subclause (3), that subclause extends to an ARTC lease or licence.

[30] Schedule 6A, clause 2D (2) and (3)

Insert at the end of clause 2D:

- (2) In this clause, *owner*, in relation to rail infrastructure facilities RIC owns that are subject to an ARTC lease or licence, includes RIC and ARTC.
- (3) The powers conferred on ARTC by this clause are subject to Part 8A of the Act.

Note. Restrictions on ARTC relating to selling or otherwise dealing with rail infrastructure facilities are contained in Part 8A of the Act.

[31] Schedule 6A, clauses 2E, 3 (1) and (4), 4 (1), 7 (1), (2) and (7) and 9 (2) and (4)

Omit “An owner” wherever occurring.

Insert instead “An infrastructure owner or a building owner”.

[32] Schedule 6A, clause 2E Powers relating to railway land and railway buildings

Insert “or railway buildings” after “facilities” wherever occurring.

[33] Schedule 6A, clause 2E

Insert at the end of the clause:

- (2) Subclause (1) does not permit ARTC to extend or expand rail infrastructure facilities.

[34] Schedule 6A, clause 3 (1) (a), (b) and (c)

Insert “or railway buildings” after “rail infrastructure facilities” wherever occurring.

[35] Schedule 6A, clause 3 (1) (b)

Insert “or facility” after “building”.

[36] Schedule 6A, clause 3 (1A) and (1B)

Insert after clause 3 (1):

(1A) ARTC may, by persons issued with certificates of authority under this Schedule, enter and occupy land adjacent to railway land for the purpose of constructing, extending or expanding new rail infrastructure facilities on the railway land in accordance with an ARTC lease or licence.

(1B) Subclause (1) (a) does not permit ARTC to enter railway land or railway buildings or rail infrastructure facilities to construct, extend or expand new rail infrastructure facilities.

[37] Schedule 6A, clause 3 (2), (3) and (5)

Omit “owner” wherever occurring.

Insert instead “infrastructure owner or building owner”.

[38] Schedule 6A, clause 3 (2)

Omit “operator’s consent”.

Insert instead “railway land owner’s consent and may be disposed of by the rail infrastructure owner or building owner with the railway land owner’s consent”.

[39] Schedule 6A, clause 3 (3)

Omit “operator buildings”.

Insert instead “railway buildings and rail infrastructure facilities”.

[40] Schedule 6A, clause 3 (4)

Omit “operator building” wherever occurring.

Insert instead “railway building or rail infrastructure facility”.

[41] Schedule 6A, clause 3 (6)

Omit “rail operator, or land in or on which rail infrastructure facilities are”.

Insert instead “rail authority, or land in or on which rail infrastructure facilities are or a railway building is”.

[42] Schedule 6A, clause 3 (6)

Omit “an owner”.

Insert instead “an infrastructure owner or a building owner”.

[43] Schedule 6A, clause 3 (7)

Insert after clause 3 (6):

- (7) This clause does not apply if the owner of the rail infrastructure facilities or railway building concerned is also the owner of the railway building or railway land or rail infrastructure facility in or on which the facilities or building is situated.

[44] Schedule 6A, clause 5 Party to access agreement with owner authorised to enter railway land

Insert “, or to a railway building or rail infrastructure facility that is not vested in, owned by or managed or controlled by the person” before “, if access” in clause 5 (1).

[45] Schedule 6A, clause 5 (2)

Insert “or railway building or rail infrastructure facility” before “concerned”.

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

Omit “the NSW Rail Access Regime or”.

[47] Schedule 6A, clause 6 (1)

Omit “operator building”.

Insert instead “railway building or rail infrastructure facility”.

[48] Schedule 6A, clause 6 (1)

Omit “an owner”.

Insert instead “the relevant owner exercising the power”.

[49] Schedule 6A, clause 6 (1)

Omit “the operator” wherever occurring.

Insert instead “the building owner or infrastructure owner”.

[50] Schedule 6A, clause 6 (1)

Insert “or facility” after “enter the building”.

[51] Schedule 6A, clause 6 (1) (a)

Insert “or facility” after “entry to the building”.

[52] Schedule 6A, clause 6 (3)

Omit “an owner to give the operator notice”.

Insert instead “notice to be given”.

[53] Schedule 6A, clause 6 (4)

Omit the subclause. Insert instead:

- (4) This clause does not apply if the person entering a railway building or rail infrastructure facility is the owner of the building or facility.

[54] Schedule 6A, clause 7 (2)

Omit “an operator” where firstly occurring.

Insert instead “a railway land owner, an owner of land adjacent to railway land, infrastructure owner or a building owner (an *affected owner*)”.

[55] Schedule 6A, clause 7 (2) and (5)

Omit “the operator” wherever occurring.

Insert instead “the affected owner”.

[56] Schedule 6A, clause 7 (3), (5), (6) and (8)

Omit “an operator” wherever occurring (except wherever occurring in references to “an operator building” in clause 7 (5) and (8)).

Insert instead “an affected owner”.

[57] Schedule 6A, clause 7 (3), (5), (6) and (8)

Omit “an owner” wherever occurring.

Insert instead “an infrastructure owner or building owner”.

[58] Schedule 6A, clause 7 (5)

Insert “, facility” after “value of the building”.

[59] Schedule 6A, clause 7 (6)

Omit “is to be referred to the Minister for settlement in accordance with clause 11”.

Insert instead “is to be dealt with as a dispute in accordance with clause 12”.

[60] Schedule 6A, clause 7 (7)

Omit “an operator” wherever occurring. Insert instead “a rail operator”.

[61] Schedule 6A, clause 7 (8)

Insert “or railway buildings” after “facilities”.

[62] Schedule 6A, clause 7 (8) (as amended by this Schedule)

Insert “owned by the affected owner” after “facilities”.

[63] Schedule 6A, clause 7 (9)

Omit the subclause. Insert instead:

- (9) This clause does not apply if the owner of the rail infrastructure facilities or railway building concerned is also the owner of the railway building or railway land or rail infrastructure facility in or on which the facilities or building is situated.

[64] Schedule 6A, clause 8 Protection of rail infrastructure facilities and railway buildings

Insert “or railway buildings” after “facilities” wherever occurring.

[65] Schedule 6A, clause 8 (1)

Omit “an owner are installed is taken to be the subject of a covenant in favour of the owner pursuant to which the operator”.

Insert instead “another infrastructure owner or building owner are installed is taken to be the subject of a covenant in favour of the owner pursuant to which the railway land owner (the *affected owner*)”.

[66] Schedule 6A, clause 8 (1) (a), (3) and (4)

Omit “the operator” wherever occurring.

Insert instead “the affected owner”.

[67] Schedule 6A, clause 8 (1) (b), (d) and (e) and (4)–(7)

Omit “owner” wherever occurring.

Insert instead “infrastructure owner or building owner”.

[68] Schedule 6A, clause 8 (1) (d)

Insert “or a railway building or a rail infrastructure facility” before “that threatens”.

[69] Schedule 6A, clause 8 (1) (e)

Omit “operator buildings”.

Insert instead “railway buildings or rail infrastructure facilities”.

[70] Schedule 6A, clause 8 (3)

Omit “an owner”. Insert instead “a railway land owner”.

[71] Schedule 6A, clause 8 (3)

Insert “and facilities” after “buildings” wherever occurring.

[72] Schedule 6A, clause 8 (3)

Omit “operator’s”. Insert instead “affected owner’s”.

[73] Schedule 6A, clause 8 (4)

Omit “lessor” wherever occurring. Insert instead “lessee”.

[74] Schedule 6A, clause 8 (5) (b)

Insert “excavation,” after “removal,”.

[75] Schedule 6A, clause 8 (6) (c)

Insert at the end of clause 8 (6) (b):

or

- (c) reinstate any loss of support caused to the rail infrastructure facilities or railway buildings,

[76] Schedule 6A, clause 8 (7) (c)

Insert at the end of clause 8 (7) (b):

or

- (c) reinstate any loss of support caused to the rail infrastructure facilities or railway buildings,

[77] Schedule 6A, clause 8 (8)

Omit the subclause.

[78] Schedule 6A, clause 9 (1)

Omit “an owner”.

Insert instead “an infrastructure owner or building owner”.

[79] Schedule 6A, clause 9 (1) (a)

Insert “or railway buildings” after “facilities”.

[80] Schedule 6A, clause 10 Infrastructure owners rights under agreements relating to workers and facilities on railway land

Omit “an operator” wherever occurring (except where secondly and thirdly occurring in clause 10 (1)).

Insert instead “RailCorp or the SRA”.

[81] Schedule 6A, clause 10 (1)

Omit “of an operator”. Insert instead “of them”.

[82] Schedule 6A, clause 10

Omit “the owner” wherever occurring.

Insert instead “the infrastructure owner”.

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- [83] Schedule 6A, clause 10 (2)**
Omit “An owner”. Insert instead “An infrastructure owner”.
- [84] Schedule 6A, clause 10 (2)**
Insert “or rail infrastructure facility” after “a building”.
- [85] Schedule 6A, clause 10 (2) and (5)**
Omit “the operator” wherever occurring.
Insert instead “RailCorp or the SRA”.
- [86] Schedule 6A, clause 10 (5)**
Omit “*operator building*”. Insert instead “*railway building*”.
- [87] Schedule 6A, clause 11 (1) (a)**
Omit “owner”. Insert instead “infrastructure owner”.
- [88] Schedule 6A, clause 11 (1) (b) and (3)**
Omit “the operator” wherever occurring.
Insert instead “the railway land owner”.
- [89] Schedule 6A, clause 11 (2) and (4)**
Omit “An owner” wherever occurring.
Insert instead “An infrastructure owner”.
- [90] Schedule 6A, clause 11 (2)**
Omit “that network” where firstly occurring. Insert instead “its network”.
- [91] Schedule 6A, clause 11 (2)**
Omit “Part 2A of”.
- [92] Schedule 6A, clause 11 (3)**
Omit “An operator”. Insert instead “A railway land owner”.
- [93] Schedule 6A, clause 11 (4)**
Omit “an operator”. Insert instead “a railway land owner”.

[94] Schedule 6A, clause 12 (1)

Omit “between an owner and an operator”.

Insert instead “between an infrastructure owner, building owner or railway land owner and another owner”.

[95] Schedule 6A, clause 12 (1)

Omit “owner and the operator”. Insert instead “parties to the dispute”.

[96] Schedule 6A, clause 12 (1A)

Insert after clause 12 (1):

- (1A) If ARTC is a party to a dispute and the dispute has not been resolved as referred to in subclause (1), the dispute is to be referred to arbitration, unless the parties agree to submit the dispute to the Minister under this clause. The *Commercial Arbitration Act 1984* applies to any dispute referred to arbitration.

[97] Schedule 6A, clause 12 (2) (a)

Omit “owner and operator”. Insert instead “parties to the dispute”.

[98] Schedule 6A, clause 12 (4) (a)

Omit “with respect to entry into operator buildings”.

[99] Schedule 6A, clause 12 (4) (b) and (c)

Omit the paragraphs. Insert instead:

- (b) subject to clause 7, determining that a party is to compensate another party for damage suffered as a result of the exercise of functions under this Schedule, or
- (c) directing a party to permit a person to construct railway track on railway land for the purpose of connecting it to the NSW rail network.

[100] Schedule 6A, clause 12 (6)

Omit “An owner and operator must comply with any order given to them under this clause and the owner and operator are”.

Insert instead “An owner must comply with any order given to the owner under this clause, and the owner is”.

[101] Schedule 6A, clause 12 (7)

Omit “The provisions”.

Insert instead “Except as provided by subclause (1A), the provisions”.

[102] Schedule 6A, clauses 13A, 13B and 13C

Insert after clause 13:

13A Acquisition of rail infrastructure facilities

- (1) RailCorp or RIC may acquire rail infrastructure facilities for purposes that are consistent with their objectives.
- (2) Rail infrastructure facilities that RailCorp or RIC are authorised to acquire under this clause may be acquired by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (as applied by this clause) for the purposes referred to in subclause (1).
- (3) The *Land Acquisition (Just Terms Compensation) Act 1991* applies with the following modifications:
 - (a) a reference in that Act to land includes a reference to rail infrastructure facilities and any interest in such facilities,
 - (b) a reference in that Act to the owner of land includes a reference to the owner of rail infrastructure facilities or any person who has an interest in rail infrastructure facilities,
 - (c) sections 6, 7A, 7B, 12 (1) (a), (4) and (5), 17 and 18, Division 3 of Part 2, sections 29, 31 (5), 37A, 55 (e) and (f), 60 and 62 of that Act do not apply.
- (4) RailCorp or RIC may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the portfolio Minister.

- (5) For the purposes of the *Public Works Act 1912*, any such acquisition is taken to be for an authorised work and RailCorp or RIC is, in relation to that authorised work, taken to be the Constructing Authority.
- (6) Part 3 and section 91 (b) of the *Public Works Act 1912* do not apply in respect of an acquisition under this clause.
- (7) Despite the exclusion by subclause (6) of the provisions of section 91 (b) of the *Public Works Act 1912* in respect of works constructed for the purpose referred to in this clause, RailCorp or RIC may at their discretion maintain such fences in connection with the works as they think fit.
- (8) This clause applies in respect of rail infrastructure facilities severed from the land by operation of this Act or any other law.

13B Access to station facilities

- (1) An owner of station facilities is entitled to have access across railway land or other land adjacent to the station facilities to those facilities for the purposes of carrying out its railway operations, including the movement of passengers and freight.
- (2) An owner of station facilities may grant access across any such land to passengers and other persons for the purposes of passenger access and access to its railway operations.
- (3) A person who has a right of access under this clause is not required to comply with any other requirement of this Schedule relating to access to the land concerned.

13C Access to railway land by roads authorities and to roads by rail authorities

- (1) This clause applies:
 - (a) to the exercise by a roads authority, the Roads and Traffic Authority or an authorised officer of a roads authority or the Roads and Traffic Authority of a power under any Act or law to enter, use or occupy railway land, a railway building or rail infrastructure facilities for the purposes of carrying out road works, and
 - (b) to the exercise by a rail authority of a power under any Act or law to enter, use or occupy a public road.

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- (2) The following provisions apply to the exercise of a power to which this clause applies:
- (a) the authority exercising the power is required to pay compensation to the affected authority in respect of the following matters arising from the exercise of the power but is not required to pay any other compensation to the affected authority:
 - (i) damage caused to a building or structure of the affected authority (being compensation for an amount not exceeding the value of the building or structure),
 - (ii) expenses necessarily incurred by the affected authority to ensure that the power is exercised safely,
 - (b) the affected authority must facilitate the exercise of the power by the authority exercising the power,
 - (c) the authority exercising the power must do all things that are reasonably practicable to minimise disruption to or closure of rail services, railway lines or roads.
- (3) This clause has effect despite this Act, the *Roads Act 1993* or any other Act or law.
- (4) In this clause:
affected authority means the roads authority (including the Roads and Traffic Authority) or rail authority that owns or manages or controls the public road, land, railway building or rail infrastructure facilities subject to the exercise of the power to which this clause applies.
- (5) Words and expressions used in this clause have the same meanings as they have in the *Roads Act 1993*.

[103] Schedule 6A, clause 14 (1) (b)

Insert “or managed or controlled by” after “transferred to”.

[104] Schedule 6A, clause 15 (a)

Omit the paragraph. Insert instead:

- (a) the obligations of infrastructure owners, building owners and railway land owners to enter into a memorandum of understanding with other owners concerning the management of railway land or railway

buildings or rail infrastructure facilities on or in which
rail infrastructure facilities or railway buildings owned
by other owners are situated,

- (a1) requirements to be observed between infrastructure
owners, building owners and railway land owners with
respect to access by infrastructure owners and building
owners to railway land and management of that access,

[105] Schedule 6A, clause 15 (b) and (c)

Insert “or railway buildings” after “facilities” wherever occurring.

**[106] Schedule 6A, clause 16 Powers of entry under other Acts onto
railway land, rail infrastructure facilities or railway buildings**

Omit “operator or owner land or an operator or owner building” from
clause 16 (1).

Insert instead “railway land, rail infrastructure facilities or a railway
building”.

[107] Schedule 6A, clause 16 (2)

Omit “operator or”.

[108] Schedule 6A, clause 16 (2)

Insert “, facilities” after “land”.

[109] Schedule 6A, clause 16 (3)

Omit “or operator”.

[110] Schedule 6AA Access undertakings

Omit “that is vested in or owned by the rail infrastructure owner”
wherever occurring in clauses 1 (1), 3 (1) and 7.

Insert instead “for which it is the rail infrastructure owner”.

[111] Schedule 6B Special provisions for underground rail facilities

Insert “, ARTC” after “RIC” in the definition of *rail authority* in
clause 1 (1).

[112] Schedule 6B, clause 6 (3) and (4)

Insert after clause 6 (2):

- (3) A rail authority in whom an underground rail facility is vested, or who manages or controls an underground rail facility, has the same functions under this clause as any other rail authority that is the owner of the facility for the purposes of this Schedule.
- (4) This clause does not apply to or in respect of underground rail facilities to the extent that an ARTC arrangement provides that any specified provisions of this clause do not apply to or in respect of ARTC and a rail authority in relation to those facilities.

[113] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

*Transport Administration Amendment (New South Wales and
Commonwealth Rail Agreement) Act 2004*

[114] Schedule 7

Insert in appropriate order with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Transport Administration Amendment
(New South Wales and Commonwealth
Rail Agreement) Act 2004**

Definitions

In this Part:

rail access agreement means an agreement entered into by a rail authority pursuant to the NSW Rail Access Regime or RIC access undertaking that permits a person to operate rolling stock on the NSW rail network.

rail authority has the same meaning as it has in Part 8A of the Act.

the amending Act means the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.

Existing rail access undertakings

An access undertaking entered into by a rail authority under Schedule 6AA and in force immediately before the commencement of this clause is, to the extent to which it relates to land or rail infrastructure facilities subject to an ARTC lease or licence, taken to have been entered into by ARTC instead of the rail authority.

Existing rail access agreements

- (1) A rail access agreement entered into by a rail authority and in force immediately before the commencement of this clause continues in force, subject to this clause.
- (2) If a rail access agreement applies or is to apply to a part of the NSW rail network for which there are or are to be 2 or more rail infrastructure owners, the Minister may determine that the rail access agreement is terminated and determine that it is replaced by one or more separate rail access agreements entered into with each rail infrastructure owner.

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- (3) The Minister may for the purposes of this clause:
 - (a) determine the parties to each separate agreement, and
 - (b) determine the terms of each separate agreement, and
 - (c) determine the date on which each separate agreement takes effect.
 - (4) The Minister must give written notice to the parties to a separate agreement of the agreement and its terms not less than 14 days before the separate agreement takes effect.
 - (5) A separate agreement under this clause must not substantially change rights or obligations under the previous agreement. This subclause does not prevent a change in parties to agreements.
 - (6) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities (within the meaning of Schedule 4), or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

Disputes relating to terms of rail access agreements

- (1) A party to a rail access agreement may, not more than 14 days after being notified of a new separate rail access agreement under this Part, give notice in writing to the Independent Pricing and Regulatory Tribunal that the terms of the agreement are not acceptable to it and refer the dispute to the Tribunal under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (2) Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* (other than section 24C) applies to any such dispute in the same way that it applies to a dispute with respect to a public infrastructure access regime.

- (3) A dispute may not be referred or dealt with under this clause unless it is a dispute relating to terms of the new separate rail access agreement that are substantially different from those of the agreement it replaces or relating to whether terms of the previous agreement should be adjusted because of the separation.
- (4) To avoid doubt, the terms of an agreement are not substantially different merely because it is replaced by more than one agreement with different parties.
- (5) The arbitrator of the dispute is to determine the dispute by making a written determination.
- (6) The determination may vary the terms of a separate rail access agreement and any such rail access agreement has effect accordingly. The determination may not vary any terms of a separate rail access agreement that are not substantially different from terms contained in the agreement it replaces.
- (7) Nothing in this clause prevents the further amendment of the rail access agreement in accordance with its terms or any other law.

Compliance with development legislation

- (1) This clause applies:
 - (a) to development or an activity carried out before, or being carried out immediately before, the commencement of this clause by a rail authority (with or without development consent or approval under the *Environmental Planning and Assessment Act 1979*), or
 - (b) to any such development or activity that is continued after that commencement and is carried out in substantially the same manner as it was carried out before that commencement,
being development or an activity that is carried out on land subject to an ARTC lease or licence.
- (2) The development or activity is taken to comply with any requirements for consents or approvals or any other requirements of the *Environmental Planning and Assessment Act 1979* and any other law relating to the carrying out of the development or activity.

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- (3) This clause does not apply to the requirements of this Act, the *Occupational Health and Safety Act 2000*, the *Dangerous Goods Act 1975*, the *Rail Safety Act 2002*, the *Protection of the Environment Operations Act 1997* or any regulation under those Acts or any other Act or law prescribed by the regulations.
 - (4) To avoid doubt, nothing in this clause prevents any person from relying on or acting in accordance with a development consent or other approval, or any rights relating to the continuation of an existing use, under the *Environmental Planning and Assessment Act 1979*.
 - (5) Words and expressions used in this clause have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

Existing applications and approvals under the Environmental Planning and Assessment Act 1979

- (1) This clause applies to rail infrastructure facilities or other assets subject to an ARTC lease or licence.
- (2) An assessment of a development or an activity, a development application or any other application, under the *Environmental Planning and Assessment Act 1979* relating to rail infrastructure facilities made by or on behalf of a rail authority before the commencement of the ARTC lease or licence (including any related environmental impact statement or other material prepared and lodged by or on behalf of the rail authority), and not finally determined before that commencement, is taken to have been made by or on behalf of ARTC.
- (3) A development consent or an approval granted under the *Environmental Planning and Assessment Act 1979* in relation to a rail infrastructure facility before the commencement of the ARTC lease or licence is taken to have been granted to ARTC.
- (4) This clause is subject to the regulations.

Entitlements of former rail authority employees

- (1) This section applies to a member of staff of a rail authority (the *new rail employer*) who was, within 30 days before becoming a member of staff of the rail authority, a member of staff of another rail authority (the *former rail employer*).
- (2) Regulations may be made for or with respect to the following matters:
 - (a) providing for service with one or more rail authorities to be taken, for the purpose of accrual of leave and any entitlements, as service with a new rail employer,
 - (b) the payment of leave entitlements on termination of employment with a former rail employer,
 - (c) the preservation and transfer of leave entitlements on employment with a new rail employer,
 - (d) eligibility to apply for vacant positions in rail authorities (other than ARTC), including rights of appeal.
- (3) This clause does not apply to a temporary member of staff of ARTC within the meaning of Division 5 of Part 8A.
- (4) In this clause, *rail authority* includes ARTC.

[115] Schedule 8 State Rail Authority

Insert after clause 4 (3):

- (4) The approval of the Minister is not required under this clause to any ARTC arrangement that the State Rail Authority is authorised to enter into under Part 8A of the Act.

[116] Schedule 8, clause 18A

Insert after clause 18:

18A RIC may act as agent of SRA

Rail Infrastructure Corporation may, with the consent of the Minister, act as an agent for the State Rail Authority without obtaining the consent of the State Rail Authority.

Schedule 2 Amendment of other Acts and regulation

(Section 4)

2.1 Conveyancing Act 1919 No 6

[1] Section 23G Exceptions to s23F

Insert at the end of the section:

- (m) a transaction that comprises:
 - (i) the lease or licence of part of an existing lot under an ARTC arrangement under Part 8A of the *Transport Administration Act 1988*, or
 - (ii) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created.

[2] Section 88A Easements in gross

Insert after section 88A (1B):

- (1C) Nothing in subsection (1B) prevents the creation by a corporation prescribed by the regulations for the purposes of this section of an easement for the purpose of, or incidental to, the provision of rail infrastructure facilities.

2.2 Conveyancing (General) Regulation 2003

Clause 51 Easements in gross

Insert after clause 51 (1) (e):

- (e1) Australian Rail Track Corporation Ltd
(ACN 081 455 754),

2.3 Essential Services Act 1988 No 41

Section 4 Essential services

Omit “freight” from section 4 (1) (b).

Insert instead “the transportation of freight (including the provision of rail infrastructure for those purposes)”.

[Second reading speech made in—

Legislative Assembly on 31 March 2004

Legislative Council on 5 May 2004]

BY AUTHORITY