



Transport Administration (General) Amendment (ARTC Provisions) Regulation 2004

under the

Transport Administration Act 1988

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Transport Administration Act 1988*.

MICHAEL COSTA, M.L.C.,
Minister for Transport Services

Explanatory note

The object of this Regulation is to amend the *Transport Administration (General) Regulation 2000* for the following purposes:

- (a) to exempt certain applications for registration of motor vehicles in connection with arrangements between the Australian Rail Track Corporation Ltd (**ARTC**) and State rail authorities from duty under the *Duties Act 1997*,
- (b) to exempt land subject to an ARTC lease or licence from land tax and council rates, if rail infrastructure facilities are installed in, on or over the land, the land is vacant land or the land is used for railway purposes,
- (c) to apply the cap that currently applies to rail authority employees in respect of common law damages (contained in the *Workers Compensation Act 1987*) that may be obtained against an employer in respect of the death or injury of a worker to claims against ARTC in respect of the death or injury of a temporary member of staff of ARTC and to make consequential adjustments to the application of that Act to ARTC and rail authorities,
- (d) to treat ARTC as an employer, in addition to a rail authority, for the purposes of provisions that prevent a worker who recovers common law damages from an employer from recovering workers compensation under the *Workers Compensation Act 1987*,
- (e) to enable ARTC to be treated in the same way as a wholly owned subsidiary of a State rail authority for the purposes of endorsing ARTC on the self-insurer licence of an authority, if temporary members of staff of ARTC are employed by that authority,

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- (f) to enable former members of staff of State rail authorities who become employed by ARTC, after being declared surplus to the authorities' requirements, to elect to cash out leave entitlements (other than sick leave) on ceasing to be employed by the authorities or to have their previous service treated as service with ARTC for leave purposes,
- (g) to confer on any such persons a right to apply for vacant positions in State rail authorities that would otherwise be limited to internal applicants, but only for a period of 3 years,
- (h) to confer on any such persons who change employment from ARTC to a State rail authority within 3 years the right to have service with ARTC treated as service with the authority,
- (i) to make other consequential amendments.

This Regulation is made under the *Transport Administration Act 1988*, including sections 88ZA and 88ZC, clause 147 of Schedule 7 and section 119 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Transport Administration (General) Amendment (ARTC Provisions) Regulation 2004*.

2 Amendment of Transport Administration (General) Regulation 2000

The *Transport Administration (General) Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 10A Interpretation

Omit the definition of *State tax* from clause 10A (1). Insert instead:

local government rate means a rate levied by a council under the *Local Government Act 1993*, but does not include a charge levied by a council on land.

temporary member of staff of ARTC has the same meaning as it has in Division 5 of Part 8A of the Act.

transferring rail authority has the same meaning as it has in Division 5 of Part 8A of the Act.

work injury damages has the same meaning as it has in section 88ZA of the Act.

[2] Clause 10B Exemptions from duty

Omit “State tax”. Insert instead “Duty under the *Duties Act 1997*”.

[3] Clause 10B (2)

Insert at the end of clause 10B:

- (2) Duty under the *Duties Act 1997* is not chargeable in respect of an application for registration of a motor vehicle by ARTC if the application results from a transfer of ownership of the vehicle to ARTC in connection with an ARTC arrangement and the transfer occurs not later than 12 months after the commencement of this subclause.

[4] Clauses 10C–10H

Insert after clause 10B:

10C Exemptions from land tax and rates

- (1) This clause applies to land subject to an ARTC lease or licence (being land that is not otherwise exempt from land tax or local government rates) if:
- (a) rail infrastructure facilities are installed in, on or over the land or it is vacant land, or
 - (b) the land is used primarily for railway purposes.
- (2) To avoid doubt, this clause applies to land referred to in subclause (1) that is leased by ARTC to another person.

- (3) In this clause, *railway purposes* include:
 - (a) the operation and maintenance of the NSW rail network, and
 - (b) stations and platforms, and
 - (c) office buildings used in association with railway purposes, and
 - (d) purposes ancillary to any railway purposes, but do not include rolling stock maintenance facilities, freight centres or depots or related facilities.
- (4) Land tax is not payable by ARTC in relation to land to which this clause applies.
- (5) Local government rates are not payable in relation to land to which this clause applies.

10D Limitation on liability of ARTC for common law damages

- (1) For the purposes of section 88ZA (2) of the Act, the provisions of the *Workers Compensation Act 1987* set out in subclause (3) (the *applied common law provisions*) apply both to work injury damages recoverable from ARTC, and to work injury damages recoverable from the transferring rail authority, by or in respect of a temporary member of staff of ARTC.
- (2) The provisions so apply as if ARTC were an employer of the member of staff in addition to the transferring rail authority.
- (3) The applied common law provisions are as follows:
 - (a) Divisions 1, 2 and 3 of Part 5,
 - (b) section 151Z.
- (4) Sections 151A, 151C, 151D and 151Z of the *Workers Compensation Act 1987* apply to or in respect of ARTC as if it were an employer liable to pay compensation under that Act.
- (5) Section 151I of the *Workers Compensation Act 1987* applies to work injury damages recoverable from ARTC as if the following subsection were inserted after section 151I (3):
 - (4) In awarding damages in respect of an injured or deceased worker, the court is to reduce the amount otherwise payable under this section by ARTC by the amount of any damages recovered or recoverable from the transferring rail authority.

10E ARTC to be endorsed on self-insurer licences

- (1) For the purposes of section 88ZA (1) (d) and (e), (3) and (4) of the Act, section 211A of the *Workers Compensation Act 1987* applies to ARTC as if it were a wholly owned subsidiary of any rail authority that has employees who are temporary members of staff of ARTC.
- (2) For that purpose, section 211A (1) of that Act is modified to require the WorkCover Authority to endorse the name of ARTC on a self-insurer licence granted to any such rail authority, if requested to do so by the rail authority and ARTC.
- (3) On endorsement on the self-insurer licence, ARTC has all the functions under that Act of a wholly owned subsidiary that is endorsed on the self-insurer licence of a rail authority, but only to the extent that they relate to temporary members of staff of ARTC.
- (4) Any such endorsement is taken to have effect on and from the first date on which employees of the rail authority became temporary members of staff of ARTC.
- (5) In this clause:
rail authority means Rail Infrastructure Corporation, the State Rail Authority or RailCorp.
self-insurer licence means a licence in force under Division 5 of Part 7 of the *Workers Compensation Act 1987*.

10F Entitlements of former rail authority employees to recognition of past service

- (1) This clause applies to members of staff of ARTC who:
 - (a) became employees of ARTC on or after 1 June 2004 and not later than 30 days after the commencement of the operation of the first lease between ARTC and a rail authority under Part 8A of the Act, and
 - (b) were employed by a rail authority not more than 30 days before being so employed by ARTC, and
 - (c) have been declared by the rail authority or the chief executive of the rail authority to be surplus to the rail authority's requirements and to be eligible for the benefit of this clause.

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- (2) A member of staff may elect to cash out leave entitlements (other than sick leave) as at the date of termination of employment with the rail authority. An election must be made not later than 30 days after commencement of employment with ARTC, or the commencement of this clause, whichever occurs later.
 - (3) Despite subclauses (4)–(6), a member of staff who elects to cash out his or her leave entitlements does not retain any rights to any such leave entitlements. However, previous service is to be taken into account for the purposes of an entitlement to long service leave in respect of future service.
 - (4) Continuous service of a member of staff with one or more rail authorities is taken, for all purposes, as service with ARTC.
 - (5) In particular, without limiting the operation of subclause (4), a member of staff retains any leave entitlements accrued in previous employment with one or more rail authorities.
 - (6) A person's entitlement to any such leave is to be calculated:
 - (a) for the part of any period during which that leave accrued or was accruing before employment with ARTC commenced—at the rate of accrual for the time being applicable to the person before that day, and
 - (b) for the part of the period that occurred after that commencement—at the rate of accrual for the time being applicable to the person after that day.
 - (7) In this clause:
leave entitlements means entitlements to annual leave, extended leave, long service leave, sick leave and public holidays.

10G Applications for positions with rail authorities by former rail authority staff

- (1) This clause applies to the filling of any vacant position in a rail authority if the applicants eligible to apply for the vacancy are limited to the staff of the rail authority or rail authorities.
- (2) Any former member of staff of a rail authority to whom clause 10F applies is eligible to apply for a vacancy to which this clause applies as if the person were a member of staff of the rail authority that has the vacancy.
- (3) Any former member of staff who applies for a vacant position to which this clause applies has the same rights of appeal against the filling of the position as the person would have if the person were a member of the rail authority that has the vacancy.

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Schedule 1 Amendments

- (4) This clause does not apply to a person who is no longer employed by ARTC or if, at the time the vacancy is first advertised, a period of 3 years or more has elapsed since the person was first employed by ARTC.

10H ARTC staff who become employees of rail authorities

- (1) This clause applies to a member of staff of ARTC to whom clause 10F applies who:
- (a) resigns as a member of staff of ARTC, and
 - (b) becomes a member of staff of a rail authority (the *new employer*) not more than 30 days after ceasing to be a member of staff of ARTC.
- (2) Continuous service of a member of staff with one or more rail authorities or ARTC is taken, for all purposes, as service with the new employer.
- (3) In particular, without limiting the operation of subclause (2), a member of staff retains any rights to annual leave, extended leave or long service leave and sick leave accrued in previous employment with one or more rail authorities and ARTC.
- (4) A person's entitlement to any such leave is to be calculated:
- (a) for the part of any period during which that leave accrued or was accruing before employment with the new employer commenced—at the rate of accrual for the time being applicable to the person before that day, and
 - (b) for the part of the period that occurred after that commencement—at the rate of accrual for the time being applicable to the person after that day.
- (5) This clause does not apply to a person if, at the time the relevant vacancy is first advertised or the person commences employment with the new employer (whichever occurs first), a period of 3 years or more has elapsed since the person was first employed by ARTC.

BY AUTHORITY
