



Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012

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*.

GLADYS BEREJIKLIAN, MP
Minister for Transport

Explanatory note

The object of this Regulation is to constitute Sydney Trains and NSW Trains as public subsidiary corporations of RailCorp and to enable the corporations to exercise the functions of RailCorp in relation to the operation of rail passenger services and associated functions. Sydney Trains will operate rail passenger services in the Sydney metropolitan area and NSW Trains will operate rail passenger services in regional New South Wales.

The Regulation also makes it clear that the provisions of the *Transport Administration Act 1988* that give staff of RailCorp access to extended leave apply also to staff of Transport Cleaning Services (a subsidiary of RailCorp).

This Regulation is made under the *Transport Administration Act 1988*, including sections 55C and 119 (the general regulation-making power).

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Clause 1

Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012

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(Sydney Trains and NSW Trains) Regulation 2012**

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Transport Administration Act 1988

1 Name of Regulation

This Regulation is the *Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Transport Administration (General) Regulation 2005

[1] Clause 3 Definitions

Omit the definition of *relevant Authority* from clause 3 (1).

Insert in alphabetical order:

NSW Trains land means land vested in NSW Trains.

relevant Authority means:

- (a) RailCorp, Sydney Trains or NSW Trains, in relation to RailCorp land, or
- (b) Sydney Trains, in relation to Sydney Trains land, or
- (c) NSW Trains, in relation to NSW Trains land, or
- (d) the STA, in relation to STA land, or
- (e) Sydney Ferries, in relation to Sydney Ferries land.

Sydney Trains land means land vested in Sydney Trains.

[2] Clause 3 (1), definition of “traffic control officer”

Insert after paragraph (b):

- (b1) a person or member of a class of persons appointed in writing by the chief executive of Sydney Trains, in relation to RailCorp land or Sydney Trains land, or
- (b2) a person or member of a class of persons appointed in writing by the chief executive of NSW Trains, in relation to RailCorp land or NSW Trains land, or

[3] Clauses 5–8

Insert “NSW Trains, Sydney Trains,” after “RailCorp,” wherever occurring.

[4] Parts 2A and 2B

Insert after Part 2:

Part 2A Sydney Trains

9A Definitions

In this Part:

Chief Executive means the Chief Executive of Sydney Trains appointed by the Director-General under clause 9D.

Sydney Trains means the body corporate constituted by this Part.

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9B Constitution of Sydney Trains

For the purposes of section 55C of the Act, there is constituted by this Part a body corporate with the name of Sydney Trains.

9C Functions of Sydney Trains

- (1) Sydney Trains has the functions of RailCorp under sections 6, 7, 9, 11 and 11A of the Act.
- (2) Section 10 of the Act applies to and in respect of Sydney Trains in the same way as it applies to and in respect of RailCorp, but only so as to confer functions on Sydney Trains for the purpose of enabling it to exercise its functions under subclause (1).
- (3) The Director-General may give directions to Sydney Trains as to the types of railway passenger services to be operated by Sydney Trains, or that otherwise restrict the functions of Sydney Trains. Sydney Trains is to exercise its functions in accordance with any such directions.

Note. It is proposed that Sydney Trains will operate rail passenger services predominantly in the part of the metropolitan rail area bounded by Waterfall, Macarthur, Richmond, Emu Plains and Berowra. NSW Trains will operate rail passenger services that commence and terminate in regional New South Wales. However, for operational reasons, Sydney Trains will provide rolling stock and crew for some NSW Trains services and NSW Trains will provide rolling stock and crew for some Sydney Trains services.

- (4) Section 5 of the Act applies to and in respect of Sydney Trains, in the exercise of its functions, in the same way as it applies to and in respect of RailCorp.

9D Chief Executive

- (1) The Director-General may, with the approval of the Minister, appoint a person as the Chief Executive of Sydney Trains. That person is to be employed under Part 7A of the Act.
- (2) The affairs of Sydney Trains are to be managed and controlled by the Chief Executive in accordance with any directions of the Director-General.
- (3) Any act, matter or thing done in the name of, or on behalf of, Sydney Trains by the Chief Executive is taken to have been done by Sydney Trains.
- (4) Clause 3 of Schedule 2 to the Act applies to and in respect of Sydney Trains as if a reference in that clause to a Chief Executive included a reference to the Chief Executive of Sydney Trains.

9E Ministerial responsibility

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

9F Staff

- (1) Division 1A of Part 7 of the Act and the regulations made under section 58C of the Act apply to and in respect of Sydney Trains in the same way as they apply to and in respect of RailCorp.
- (2) Section 58C (2) (c) of the Act, and any regulations made under section 58C (2) (c), do not apply in respect of the staff of Sydney Trains.
- (3) Schedule 5 to the Act applies to and in respect of Sydney Trains staff in the same way as it applies to and in respect of RailCorp staff.
- (4) Sydney Trains may arrange for the use of the services of any staff or facilities of RailCorp. A person whose services are made use of under this clause remains a member of staff of RailCorp.

9G Supply of information to Minister

Section 17A of the Act applies to and in respect of Sydney Trains in the same way as it applies to and in respect of RailCorp.

9H Corporate plans

Section 17B of the Act applies to and in respect of Sydney Trains in the same way as it applies to and in respect of RailCorp. However Sydney Trains is not required to prepare or deliver a corporate plan for the financial year beginning on 1 July 2013.

9I Delegation of functions

Section 17F of the Act applies to and in respect of Sydney Trains as if a reference in that section to RailCorp included a reference to Sydney Trains.

9J Financial provisions

The provisions of Divisions 1, 4 and 5 of Part 8 of the Act apply to and in respect of Sydney Trains as if a reference in those provisions to RailCorp or to an Authority included a reference to Sydney Trains, but not so as to authorise or require the establishment of any fund in addition to the RailCorp Fund.

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9K Miscellaneous provisions applying to rail authorities

Division 1A of Part 9 of the Act applies to and in respect of Sydney Trains as if a reference in that Division to a rail authority or to a State rail operator included a reference to Sydney Trains.

9L Seal

Section 109 of the Act applies to and in respect of Sydney Trains as if a reference in that section to an Authority included a reference to Sydney Trains and a reference to the Chief Executive of the Authority included a reference to the Chief Executive.

9M Contracts

Section 110 of the Act applies to and in respect of Sydney Trains as if a reference in that section to a transport authority included a reference to Sydney Trains.

9N Referral of disputes

Section 111 of the Act applies to and in respect of Sydney Trains as if a reference in that section to a transport authority included a reference to Sydney Trains.

9O Personal liability

Section 112 of the Act applies to and in respect of Sydney Trains as if a reference in that section to a transport authority included a reference to Sydney Trains and a reference to a member of a transport authority included a reference to the Chief Executive.

9P Presumption of validity

Section 113 of the Act applies to and in respect of Sydney Trains as if a reference in that section to a transport authority included a reference to Sydney Trains.

9Q Recovery of charges

Section 115 of the Act applies to and in respect of Sydney Trains as if a reference in that section to a transport authority included a reference to Sydney Trains.

9R Liability of vehicle owner for parking offences

Section 116 of the Act applies to and in respect of Sydney Trains as if a reference in that section to RailCorp included a reference to Sydney Trains.

9S Parramatta Rail Link

Division 6 of Part 9 of the Act applies to and in respect of Sydney Trains as if a reference in that Division (other than in section 124 (1)) to a rail authority included a reference to Sydney Trains.

9T Powers relating to rail infrastructure facilities and land

- (1) The provisions of Schedule 6A to the Act (with the exception of the excluded clauses), and any regulations made under those provisions, apply to and in respect of Sydney Trains in the same way as they apply to and in respect of RailCorp.
- (2) The excluded clauses are clauses 2B and 2C of Schedule 6A.

9U Underground rail facilities

Schedule 6B to the Act applies to and in respect of Sydney Trains in the same way as it applies to and in respect of RailCorp.

9V Application of other Acts to Sydney Trains

- (1) The provisions of or made under any Act that apply to RailCorp apply to and in respect of Sydney Trains as if a reference in those provisions to RailCorp included a reference to Sydney Trains, except as otherwise provided by this clause.
- (2) Subclause (1) does not apply to provisions of or made under the following Acts:
 - (a) *Annual Reports (Statutory Bodies) Act 1984*,
 - (b) *Public Finance and Audit Act 1983*,
 - (c) *Transport Administration Act 1988*.
- (3) The provisions of or made under the *Public Authorities (Financial Arrangements) Act 1987* apply to and in respect of Sydney Trains as if Sydney Trains formed part of RailCorp and as though the exercise of functions by and operations of Sydney Trains were the exercise of functions by and operations of RailCorp.

9W Effect of transfer of assets, rights and liabilities

- (1) This clause applies to the transfer to or by Sydney Trains of any asset, right or liability under section 55C (5) of the Act, unless the instrument of transfer provides that this clause is not to apply to the transfer.

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- (2) The following provisions have effect in relation to a transfer of any asset, right or liability:
- (a) the asset vests in the transferee by virtue of this clause and without the need for any transfer, conveyance or assignment,
 - (b) the right or liability becomes by virtue of this clause the right or liability of the transferee,
 - (c) all proceedings relating to the asset, right or liability commenced before the transfer by or against the transferor pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
 - (f) a reference in any instrument made under any Act (other than the *Transport Administration Act 1988*) or in any document of any kind to the transferor is (to the extent that it relates to the asset, right or liability, but subject to this clause) to be read as, or as including, a reference to the transferee.
- (3) 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, or
 - (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.

- (5) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this clause. Such a notice is considered conclusive evidence of that transfer.

Part 2B NSW Trains

9X Definitions

In this Part:

Chief Executive means the Chief Executive of NSW Trains appointed by the Director-General under clause 9ZA.

NSW Trains means the body corporate constituted by this Part.

9Y Constitution of NSW Trains

For the purposes of section 55C of the Act, there is constituted by this Part a body corporate with the name of NSW Trains.

9Z Functions of NSW Trains

- (1) NSW Trains has the functions of RailCorp under sections 6, 9, 11 and 11A of the Act.
- (2) Section 10 of the Act applies to and in respect of NSW Trains in the same way as it applies to and in respect of RailCorp, but only so as to confer functions on NSW Trains for the purpose of enabling it to exercise its functions under subclause (1).
- (3) The Director-General may give directions to NSW Trains as to the types of railway passenger services to be operated by NSW Trains, or that otherwise restrict the functions of NSW Trains. NSW Trains is to exercise its functions in accordance with any such directions.

Note. It is proposed that NSW Trains will operate rail passenger services that commence and terminate in regional New South Wales. Sydney Trains will operate rail passenger services predominantly in the part of the metropolitan rail area bounded by Waterfall, Macarthur, Richmond, Emu Plains and Berowra. However, for operational reasons, NSW Trains will provide rolling stock and crew for some Sydney Trains services and Sydney Trains will provide rolling stock and crew for some NSW Trains services.

- (4) Section 5 of the Act applies to and in respect of NSW Trains, in the exercise of its functions, in the same way as it applies to and in respect of RailCorp.

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9ZA Chief Executive

- (1) The Director-General may, with the approval of the Minister, appoint a person as the Chief Executive of NSW Trains. That person is to be employed under Part 7A of the Act.
- (2) The affairs of NSW Trains are to be managed and controlled by the Chief Executive in accordance with any directions of the Director-General.
- (3) Any act, matter or thing done in the name of, or on behalf of, NSW Trains by the Chief Executive is taken to have been done by NSW Trains.
- (4) Clause 3 of Schedule 2 to the Act applies to and in respect of NSW Trains as if a reference in that clause to a Chief Executive included a reference to the Chief Executive of NSW Trains.

9ZB Ministerial responsibility

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

9ZC Staff

- (1) Division 1A of Part 7 of the Act and the regulations made under section 58C of the Act apply to and in respect of NSW Trains in the same way as they apply to and in respect of RailCorp.
- (2) Section 58C (2) (c) of the Act, and any regulations made under section 58C (2) (c), do not apply in respect of the staff of NSW Trains.
- (3) Schedule 5 to the Act applies to and in respect of NSW Trains staff in the same way as it applies to and in respect of RailCorp staff.
- (4) NSW Trains may arrange for the use of the services of any staff or facilities of RailCorp. A person whose services are made use of under this clause remains a member of staff of RailCorp.

9ZD Supply of information to Minister

Section 17A of the Act applies to and in respect of NSW Trains in the same way as it applies to and in respect of RailCorp.

9ZE Corporate plans

Section 17B of the Act applies to and in respect of NSW Trains in the same way as it applies to and in respect of RailCorp. However NSW Trains is not required to prepare or deliver a corporate plan for the financial year beginning on 1 July 2013.

9ZF Delegation of functions

Section 17F of the Act applies to and in respect of NSW Trains as if a reference in that section to RailCorp included a reference to NSW Trains.

9ZG Financial provisions

The provisions of Divisions 1, 4 and 5 of Part 8 of the Act apply to and in respect of NSW Trains as if a reference in those provisions to RailCorp or to an Authority included a reference to NSW Trains, but not so as to authorise or require the establishment of any fund in addition to the RailCorp Fund.

9ZH Miscellaneous provisions applying to rail authorities

Division 1A of Part 9 of the Act applies to and in respect of NSW Trains as if a reference in that Division to a rail authority or to a State rail operator included a reference to NSW Trains.

9ZI Seal

Section 109 of the Act applies to and in respect of NSW Trains as if a reference in that section to an Authority included a reference to NSW Trains and a reference to the Chief Executive of the Authority included a reference to the Chief Executive.

9ZJ Contracts

Section 110 of the Act applies to and in respect of NSW Trains as if a reference in that section to a transport authority included a reference to NSW Trains.

9ZK Referral of disputes

Section 111 of the Act applies to and in respect of NSW Trains as if a reference in that section to a transport authority included a reference to NSW Trains.

9ZL Personal liability

Section 112 of the Act applies to and in respect of NSW Trains as if a reference in that section to a transport authority included a reference to NSW Trains and a reference to a member of a transport authority included a reference to the Chief Executive.

9ZM Presumption of validity

Section 113 of the Act applies to and in respect of NSW Trains as if a reference in that section to a transport authority included a reference to NSW Trains.

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9ZN Recovery of charges

Section 115 of the Act applies to and in respect of NSW Trains as if a reference in that section to a transport authority included a reference to NSW Trains.

9ZO Liability of vehicle owner for parking offences

Section 116 of the Act applies to and in respect of NSW Trains as if a reference in that section to RailCorp included a reference to NSW Trains.

9ZP Powers relating to rail infrastructure facilities and land

- (1) The provisions of Schedule 6A to the Act (with the exception of the excluded clauses), and any regulations made under those provisions, apply to and in respect of NSW Trains in the same way as they apply to and in respect of RailCorp.
- (2) The excluded clauses are clauses 2A–2E, 13A and 14 of Schedule 6A.

Note. The excluded clauses relate generally to the rail infrastructure facilities of RailCorp. These provisions are not relevant to NSW Trains as it is proposed that NSW Trains will be an operator of railway passenger services only (that is, it will not acquire any rail infrastructure facilities).

9ZQ Application of other Acts to NSW Trains

- (1) The provisions of or made under any Act that apply to RailCorp apply to and in respect of NSW Trains as if a reference in those provisions to RailCorp included a reference to NSW Trains, except as otherwise provided by this clause.
- (2) Subclause (1) does not apply to provisions of or made under the following Acts:
 - (a) *Annual Reports (Statutory Bodies) Act 1984*,
 - (b) *Public Finance and Audit Act 1983*,
 - (c) *Transport Administration Act 1988*.
- (3) The provisions of or made under the *Public Authorities (Financial Arrangements) Act 1987* apply to and in respect of NSW Trains as if NSW Trains formed part of RailCorp and as though the exercise of functions by and operations of NSW Trains were the exercise of functions by and operations of RailCorp.

9ZR Effect of transfer of assets, rights and liabilities

- (1) This clause applies to the transfer to or by NSW Trains of any asset, right or liability under section 55C (5) of the Act, unless the instrument of transfer provides that this clause is not to apply to the transfer.
- (2) The following provisions have effect in relation to a transfer of any asset, right or liability:
 - (a) the asset vests in the transferee by virtue of this clause and without the need for any transfer, conveyance or assignment,
 - (b) the right or liability becomes by virtue of this clause the right or liability of the transferee,
 - (c) all proceedings relating to the asset, right or liability commenced before the transfer by or against the transferor pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
 - (f) a reference in any instrument made under any Act (other than the *Transport Administration Act 1988*) or in any document of any kind to the transferor is (to the extent that it relates to the asset, right or liability, but subject to this clause) to be read as, or as including, a reference to the transferee.
- (3) 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, or
 - (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the

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beneficial or legal ownership of any asset, right or liability,
or

(d) as an event of default under any contract or instrument.

(4) No attornment to the transferee by a lessee from the transferor is required.

(5) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this clause. Such a notice is considered conclusive evidence of that transfer.

[5] Clause 21F Staff

Insert after clause 21F (2):

(2A) Schedule 5 to the Act applies to and in respect of Transport Cleaning Services staff in the same way as it applies to and in respect of RailCorp staff.