

[Act 1996 No 56]



New South Wales

# Transport Administration Amendment (Rail Corporatisation and Restructuring) Bill 1996

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Transport Administration Act 1988*:
  - to establish 2 rail corporations, Rail Access Corporation (RAC) and Freight Rail Corporation (FRC), as statutory State owned corporations, within the context of the *State Owned Corporations Act 1989* (the principal functions of RAC being to hold, manage and establish rail infrastructure facilities, and to grant access to the State's rail network and of FRC being to operate rail freight services),

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\* Amended in committee—see table at end of volume.

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- to establish the Railway Services Authority of New South Wales (the **RSA**) (the principal function of the RSA being to supply goods, such as ballast and sleepers, and provide services, for example, for repair and maintenance of rail infrastructure facilities and rolling stock, to the rail industry),
  - to restructure the State Rail Authority of New South Wales (the **SRA**) as the result of the establishment of these bodies by divesting it of the functions to be exercised by, and the staff, assets, rights and liabilities to be transferred to, them,
  - to establish the Public Transport Authority of New South Wales (the **PTA**) to advise the Minister for Transport on the development, coordination and regulation of public passenger services throughout the State,
  - to make necessary amendments consequent on the establishment of the new bodies and the restructuring of the SRA and relating to other matters,
- (b) to make consequential amendments to other Acts and instruments.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** gives effect to Schedule 1 that contains amendments to the *Transport Administration Act 1988*.

**Clause 4** gives effect to Schedule 2 that contains consequential amendments to other Acts and instruments.

## **Schedule 1      Amendment of Transport Administration Act 1988**

### **Establishment of Rail Corporations**

A new Part inserted in the *Transport Administration Act 1988* (the **Principal Act**) (Part 2A, clauses 19A–19T) makes provision for the establishment of the 2 Rail Corporations. (See item [15] of Schedule 1.) The Part (and associated Schedules to the Principal Act to which the Part refers) deal with the following:

### **Provisions dealing with interpretation**

Clause 19A provides definitions for the purposes of the Part and Schedule 6A (as to which, see below). The terms *rail infrastructure facilities* and *NSW rail network* are defined, among others.

Clause 19B provides that the term *NSW Rail Access Regime* describes an access regime established from time to time by the Minister for Transport and approved by the Premier for implementation of the Competition Principles Agreement between the Commonwealth and the States in relation to third party access by rail operators to the NSW rail network, including use of rail infrastructure facilities owned by RAC that are necessary for the safe operation of rolling stock on that network. The Minister is required to arrange for publication of a copy of the Regime in the Gazette as soon as practicable after it has been established.

### **Provisions relating to Rail Access Corporation**

Clause 19C establishes Rail Access Corporation as a statutory State owned corporation under the *State Owned Corporations Act 1989* (the *SOC Act*).

Clause 19D provides that the principal objectives of RAC are:

- (a) to hold, manage and establish efficient, safe and reliable rail infrastructure facilities, and
- (b) to promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime, and
- (c) to be a successful business and, to this end:
  - (i) to operate at least as efficiently as any comparable businesses, and
  - (ii) to maximise the net worth of the State's investment in the Corporation, and
- (d) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- (e) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
- (f) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

Each of the principal objectives of RAC is of equal importance.

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Clause 19E provides that the principal functions of RAC are:

- (a) to hold, manage and establish rail infrastructure facilities on behalf of the State, and
- (b) to provide rail operators with access to the NSW rail network.

In providing access to the NSW rail network, RAC must:

- (a) develop and maintain an access pricing policy, and
- (b) compile the master timetable for the allocation of train paths, and
- (c) establish systems to ensure that train paths are allocated in an efficient and impartial manner under the master timetable, and
- (d) prepare and apply standards for the allocation-of train priorities and the resolution of conflicts if the master timetable cannot apply for any reason.

RAC may also conduct any business that it considers will further its objectives (whether or not related to its principal functions). RAC must act in accordance with the NSW Rail Access Regime in performing its functions.

Clause 19F is a formal provision that gives effect to Schedule 6A (Powers of RAC relating to rail infrastructure facilities and land).

Schedule 6A (see item [58] of Schedule 1):

- defines the terms *SRA land* and *SRA building*,
- provides that RAC owns all rail infrastructure facilities that it installs in or on land or in or on water and all such facilities in or on land that are vested in or transferred to it (whether or not it owns the place in or on which the facilities are situated) and that RAC is empowered to take whatever steps are necessary to ensure that the rail infrastructure facilities on SRA land or in SRA buildings are maintained and used in an efficient, safe and reliable manner,
- provides that authorised persons may enter SRA land or a SRA building on behalf of RAC for purposes connected with maintenance and management of existing rail infrastructure facilities or the construction of new facilities,
- provides for the issue of certificates of authority,
- provides that a person who is authorised by RAC to have access to its rail infrastructure facilities under an access agreement may enter on SRA land, as permitted by the agreement, without being required to hold a certificate of authority,

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- makes provision as to the manner in which a power of entry may be exercised,
- provides that the State Rail Authority must be compensated by RAC for damage caused as the result of the exercise of RAC's functions but only if the construction or maintenance work involved damages or interferes with a SRA building or other structure, that the Minister may determine the amount of any monetary compensation if RAC and the SRA cannot agree on this and that RAC, while charged with endeavouring to prevent disruption of the SRA's railway passenger services, is not liable to compensate the SRA for any disruption that may occur,
- provides that land in or on which RAC's rail infrastructure facilities are installed is taken to be the subject of a covenant in favour of RAC under which the SRA and lessees and licensees from the SRA must ensure, among other things, that the facilities and their operation are not interfered with or obstructed and pursuant to which RAC is entitled to require the removal of structures or that work cease or be altered and to claim compensation for loss or damage that RAC suffers,
- specifies other circumstances in which persons involved in causing damage to RAC's rail infrastructure facilities are liable to compensate RAC,
- provides that the written consent of RAC and, in certain circumstances, the SRA is necessary before a person may connect a railway track to the NSW rail network and enables unauthorised work to be dismantled and removed,
- provides a procedure for settlement of disputes between RAC and the SRA by the Minister,
- provides that RAC may, with the approval of the portfolio Minister, acquire land for the purposes of establishing and maintaining rail infrastructure facilities by agreement or compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* and that any such acquisition of land is taken to be an authorised work and that RAC is, in relation to that work, taken to be a Constructing Authority for the purposes of the *Public Works Act 1912*,
- provides that RAC may establish new rail infrastructure facilities or carry out maintenance or other work on existing rail infrastructure facilities that are vested in or transferred to it under the proposed Act without the necessity to obtain approval under the *Local Government*

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*Act 1993*, but only (except in emergencies) after giving reasonable notice to the relevant local council of the work proposed and giving the local council a reasonable opportunity to make submissions concerning it,

- provides that regulations may be made concerning the making of a memorandum of understanding between the SRA and RAC for management of SRA land that is not used by the SRA or SRA lessees or licensees and on which RAC's rail infrastructure facilities are situated.

The proposed Act also contains certain other provisions dealing with the functions of RAC. These include the following:

Item [30] of Schedule 1 omits current section 92 of the Principal Act that relieves the SRA of the responsibility to maintain certain railway lines and inserts instead a new provision authorising RAC to cease maintaining railway lines on which services are not operated.

Item [31] of Schedule 1 prohibits RAC (in place of the SRA) from closing a railway line and disposing of the land, tracks and other works without the authority of an Act of Parliament.

Item [32] of Schedule 1 provides that a railway line is not to be treated as closed merely because RAC has entered into a lease or other arrangement in respect of it in accordance with an inter-governmental agreement.

Item [33] of Schedule 1 replaces existing section 94 (dealing with closure of level-crossings, bridges and other structures by the SRA) with a provision authorising RAC, with the approval of the Minister and after notifying the portfolio Minister and certain other specified bodies, to close a railway-line, bridge or other similar structure.

Items [35]–[37] of Schedule 1 make provision for RAC to stand in the same position as the SRA in relation to loss or damage to property by fire arising from the exercise of its functions. Provision is also made for variation by regulation of the maximum sum that may be awarded (currently, \$50,000) in any action to recover the amount of such loss or damage.

### **Provisions relating to Freight Rail Corporation**

Clause 19G establishes Freight Rail Corporation as a statutory State owned corporation under the SOC Act.

Clause 19H provides that the principal objectives of FRC are:

- (a) to operate efficient, safe and reliable rail freight services, and
- (b) to be a successful business and, to this end:
  - (i) to operate at least as efficiently as any comparable businesses, and
  - (ii) to maximise the net worth of the State's investment in the Corporation, and
- (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
- (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

Each of the principal objectives of FRC is of equal importance.

Clause 19I provides that the principal function of FRC is to operate rail freight services. FRC may also conduct any business that it considers will further its objectives (whether or not related to its principal functions).

### **General matters relating to Rail Corporations**

Clause 19J enables the Minister to direct that certain assets, rights and liabilities of the SRA or any SRA subsidiary corporation be transferred to a Rail Corporation.

Clause 19K enables the Minister to direct that other assets, rights and liabilities used by or attaching to the SRA or any SRA subsidiary corporation be transferred to the Ministerial Holding Corporation (established under the SOC Act) or to any other person on behalf of the State.

Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to orders under clauses 19J and 19K.

Clause 19L provides that shares in a Rail Corporation may not be sold or disposed of except to eligible Ministers.

Clause 19M gives effect to Schedule 6 (Transfer of certain SRA staff (other than certain chief executives)) so far as the transfer of certain SRA staff to a Rail Corporation is concerned. This Schedule deals with the transfer of certain SRA staff to, among other entities, the Rail Corporations.

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Clause 19N defines the foundation charter of a Rail Corporation for the purposes of the SOC Act.

Clause 19O provides for the appointment of the board of directors by the voting shareholders. The clause also specifies a procedure for appointment of one of the directors, on the recommendation of a selection committee, from a panel of 3 nominees of the Labor Council of New South Wales. The nominees, and the members of the selection committee, are to be drawn from industrial organisations of employees having members employed in the public sector of the rail industry. These provisions displace standard provisions in the SOC Act under which directors are appointed by the Governor on the recommendation of the voting shareholders and that deal with the appointment, and manner of selection, of a staff director.

Clause 19P provides that the portfolio Minister of a Rail Corporation cannot be a shareholder of the Corporation.

Clause 19Q precludes the same Minister (other than the Treasurer) from being a shareholder of both Rail Corporations at the same time. This provision modifies the provision of the SOC Act that provides that the shareholders of a SOC are to be the Treasurer and any other Minister nominated by the Premier.

Clauses 19R and 19S modify the application of provisions of the SOC Act so far as they apply to the chief executive officer and acting chief executive officer of a Rail Corporation.

Clause 19T modifies the SOC Act by providing that the voting shareholders of a Rail Corporation are, in consultation with the board, to determine its share dividend scheme. The SOC Act provides for such a scheme to be in a form approved by the Treasurer.

### **Establishment of the Railway Services Authority**

A new Part inserted in the Principal Act (Part 2B, clauses 19U–19AH) makes provision for the establishment, functions, management and assets, rights and liabilities of the Railway Services Authority of New South Wales. (See item [15] of Schedule 1.) Part 2B (and associated Schedules to the Principal Act to which the Part refers) deal with the following:

Clause 19U establishes the RSA as a statutory body representing the Crown.

Clause 19V provides that the RSA is to supply goods (such as ballast, sleepers or equipment) and provide services (for example, relating to the repair and maintenance of rail infrastructure facilities and rolling stock) to the

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rail industry in New South Wales and may provide goods and services to other industries or to the rail industry outside the State. The provision sets out other functions of the RSA and provides that it may exercise its functions within and outside the State.

Clause 19W requires the RSA to exercise its functions safely and efficiently and in accordance with sound commercial practice.

Clause 19X requires the RSA to conduct its operations in accordance with the requirements of the *Rail Safety Act 1993*.

Clause 19Y provides for the appointment of the Chief Executive of the RSA by the Governor and for the application of Schedule 2 (Provisions relating to Chief Executives) to the Principal Act to the appointee.

Clause 19Z provides for the affairs of the RSA to be managed and controlled by the Chief Executive of the RSA.

Clause 19AA provides that the RSA is, in exercising its functions, subject to Ministerial control and direction.

Clause 19AB requires the RSA to supply the Minister with relevant information of its activities.

Clause 19AC makes provision for the preparation and annual review of a corporate plan for the RSA.

Clause 19AD enables the RSA to exercise its functions through public or private subsidiary corporations, partnerships, joint ventures or other associations with other persons or bodies.

Clause 19AE makes provision for public subsidiary corporations (being statutory bodies representing the Crown). The clause enables such a corporation to be established by regulation to exercise specified or delegated functions of the RSA and enables appropriate assets and liabilities of the RSA to be transferred to it.

Clause 19AF authorises the RSA to form private corporations, to acquire interests in private corporations or to dispose of any such interest. The approval of the Treasurer and the Minister is required if such a private corporation becomes or ceases to be a private subsidiary corporation (that is, a private corporation in which the RSA has a controlling interest). A private subsidiary corporation is not to be a statutory body representing the Crown.

Clause 19AG authorises the delegation of the functions of the RSA to authorised persons.

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Clause 19AH enables the Minister to direct that certain assets, rights and liabilities of the SRA or any SRA subsidiary corporation be transferred to the RSA. Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to orders under this clause.

A new Division of Part 7 of the Principal Act (Division 1A, clauses 59–59C) makes provision with respect to the staff of the RSA. (See item [23] of Schedule 1.) This Division makes provision as to the following:

Clause 59 authorises the RSA to employ necessary staff. The staff is not employed under the *Public Sector Management Act 1988*.

Clause 59A authorises the RSA to fix the salary, wages and conditions of employment of its staff (subject to any other Act or law).

Clause 59B authorises regulations to be made with respect to the employment of the staff of the RSA. The regulations are to be subject to any relevant award and to any industrial agreement or enterprise agreement in connection with that employment.

Clause 59C gives effect to Schedule 6 (Transfer of certain SRA staff (other than certain chief executives)) so far as the transfer of certain SRA staff to the RSA is concerned. This Schedule deals with the transfer of certain SRA staff to, among other entities, the RSA.

A new Division of Part 8 to the Principal Act (Division 1A, clauses 72A–72D) makes provision with respect to financial provisions relating to the RSA. (See item [25] of Schedule 1.) The Division provides for the following:

Clause 72A provides for the establishment of the Railway Services Authority Fund.

Clause 72B provides for the payment into the RSA Fund of revenue, Government grants and other money of the RSA.

Clause 72C provides for the payment from the RSA Fund of all payments required to be made by the RSA.

Clause 72D requires the RSA to pay to the Treasurer out of any surplus for a financial year a dividend determined by the Minister and approved by the Treasurer.

Item [28] of Schedule 1 extends a provision dealing with the sale, lease or disposal of land by the SRA to the RSA.

## **Restructuring of the SRA**

Items [4], [6] and [7] of Schedule 1 omit references to railway freight services and road freight services in relation to services provided by the SRA. In future, the SRA is to provide railway passenger services only.

Items [8] and [10] of Schedule 1 omit references to the construction of railways and the generation and supply of electricity from a provision listing the miscellaneous functions of the SRA.

Item [12] of Schedule 1 omits a provision specifying that the Director-General of the Department of Transport is to be a member of the SRA Board. Items [41] and [42] make consequential amendments to Schedule 1 (Constitution and procedure of the State Rail Authority Board and State Transit Authority Board). (A similar amendment, referred to below, is made in relation to the State Transit Authority Board.)

Items [13] and [14] make amendments in relation to the content of corporate plans to be prepared by the SRA. (A similar amendment is made by items [17] and [18] in relation to corporate plans prepared by the State Transit Authority. The provision dealing with the corporate plans to be prepared by the RSA (clause 19AC referred to above) also contains the same requirements.)

As mentioned elsewhere in this explanatory note, items [15] and [23] of Schedule 1 make provision as to the transfer of certain SRA staff to the Rail Corporations and the RSA.

Item [26] of Schedule 1 omits a reference to freight services from a provision dealing with Ministerial supervision of orders fixing charges for services operated by the SRA and the State Transit Authority.

Item [29] of Schedule 1 omits reference to the SRA being able to acquire land for the construction or extension of a railway.

Item [34] of Schedule 1 omits a provision enabling the Minister to require the SRA to inquire into and report on any railway accident.

## **Establishment of the Public Transport Authority**

A new Part inserted in the Principal Act (Part 5, clauses 44 and 45) makes provision for the establishment of the Public Transport Authority of New South Wales. (See item [22] of Schedule 1.)

Clause 44 establishes the PTA comprising the Director-General of the Department of Transport, the Chief Executives of the SRA and the State

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Transit Authority, the Chairpersons of the Boards of those Authorities, not more than 5 persons appointed by the Minister, including representatives of bus and coach proprietors, taxi-cab and private motor vehicle hire operators and marine passenger transport operators and another person appointed by the Minister as the Chairperson of the PTA. Schedule 3 (Provisions relating to Public Transport Authority and Roads and Traffic Advisory Council) applies with respect to the constitution and procedure of the PTA.

Clause 45 sets out the functions of the PTA. The PTA is to advise the Minister on matters relating to the development, coordination and regulation of public passenger services throughout the State.

**Amendments of Principal Act consequent on establishment of new bodies and restructuring of the SRA and relating to other matters**

Item [1] of Schedule 1 amends the long title of the Principal Act.

Items [2], [3] and [5] of Schedule 1 amend, and insert, definitions and make provision for the interpretation of the Principal Act, as amended by the proposed Act.

Item [9] of Schedule 1 contains a direction for incorporation purposes.

Item [11] of Schedule 1 requires that RAC, FRC and the RSA, as well as the SRA as at present, must exercise their functions under the Principal Act subject to the requirements of the *National Rail Corporation (Agreement) Act 1991* and the Agreement approved by that Act.

Item [16] of Schedule 1 omits a provision specifying that the Director-General of the Department of Transport is to be a member of the State Transit Authority Board. A similar amendment, and consequential amendments in items [41] and [42], in relation to the SRA Board are referred to above.

As mentioned above, items [17] and [18] of Schedule 1 amend a provision dealing with corporate plans to be prepared by the State Transit Authority to mirror provisions relating to corporate plans to be prepared by the SRA and the RSA.

Items [19] and [20] of Schedule 1 replace a requirement for the Director-General of the Department of Transport to ensure the provision of transport services with a requirement that the Director-General ensure the provision of passenger services.

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Item [21] of Schedule 1 omits a section that requires the State Transit Authority to make staff and facilities available to the Director-General of the Department of Transport. Item [24] of Schedule 1 contains a consequential amendment.

Items [27], [44], [46], [59], [61] and [62] of Schedule 1 make consequential amendments to headings of a Division and Schedules, to enabling clause references and to the arrangement of a Schedule.

Items [38]–[40] of Schedule 1 insert a reference to the RSA in a provision dealing with transport authorities and references to the RSA and PTA in a provision dealing with the personal liability of certain persons.

Items [43], [52] and [54]–[56] of Schedule 1 make amendments by way of statute law revision.

Item [45] of Schedule 1 inserts a reference to the Chief Executive of the RSA in Schedule 2 (Provisions relating to Chief Executives) to the Principal Act.

Items [47]–[51] of Schedule 1 make miscellaneous amendments to Schedule 3 (Provisions relating to Public Transport Authority and Roads and Traffic Advisory Council) to ensure that the provisions of that Schedule extend to the PTA.

Item [53] of Schedule 1 inserts Schedule 4 into the Principal Act containing provisions relating to the transfer of assets, rights and liabilities of the SRA and its subsidiaries under the proposed Act.

Item [57] of Schedule 1 inserts Schedule 6 into the Principal Act containing provisions relating to the transfer of former SRA staff (other than certain chief executives). The former staff may be transferred to a Rail Corporation or the RSA. The Schedule maintains existing employment entitlements on transfer and, in particular, provides for the continuation of the existing enterprise agreements applying to the SRA, the recognition of previous service with the SRA for all purposes, the maintenance of existing rates of pay on transfer, and provisions for staff mobility of former SRA staff among the new employers. Provision is made that existing terms and conditions of employment, for transferred staff and new employees of the Rail Corporations and the RSA, may be varied but only by the means by which they are able to be varied currently. The Schedule also makes specific provision as to the long service leave and sick leave entitlements of transferred staff and new employees of the Rail Corporations and provides that the *Transport Appeal Boards Act 1980* does not apply to the Rail Corporations.

Item [60] of Schedule 1 inserts reference to the proposed Act in a provision enabling regulations of a savings or transitional nature to be made as a consequence of its enactment.

Item [63] of Schedule 1 inserts provisions of a savings or transitional nature in Schedule 7 (Savings, transitional and other provisions) to the Principal Act. Provision is made, among other things:

- that the holders of certain specified positions in the SRA at the date of commencement of the proposed Act are, on that date, appointed as the chief executives respectively of the Rail Corporations and the RSA, and
- concerning references to the SRA in electricity and other legislation, and
- pending applications for review of promotion appointments, disciplinary proceedings and appeals to Transport Appeal Boards by or concerning SRA staff to be transferred to a Rail Corporation or the RSA by the operation of orders under the proposed Act.

## **Schedule 2    Amendment of other Acts and instruments**

This Schedule contains consequential amendments to the following Acts and instruments:

*Attachment of Wages Limitation Act 1957 No 28*

*Clean Air Act 1961 No 69*

*Clean Waters Act 1970 No 78*

*Conveyancing Act 1919 No 6*

*Electricity (Pacific Power) Act 1950 No 22*

*Electricity Safety Act 1945 (1946 No 13)*

*Electricity Supply Act 1995 No 94*

*First State Superannuation Act 1992 No 100*

*Irrigation Act 1912 No 73*

*Local Government Act 1993 No 30*

*National Rail Corporation (Agreement) Act 1991 No 82*

*Pipelines Act 1967 No 90*

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*Public Authorities (Financial Arrangements) Act 1987 No 33*

*Public Finance and Audit Act 1983 No 152*

*Public Sector Executives Superannuation Act 1989 No 106*

*Public Sector Management Act 1988 No 33*

*Rail Safety Act 1993 No 50*

*Roads Act 1993 No 33*

*Roads (General) Regulation 1994*

*State Authorities Non-contributory Superannuation Act 1987 No 212*

*State Authorities Superannuation Act 1987 No 211*

*Superannuation Act 1916 No 28*

*Transport Appeal Boards Act 1980 No 104*

*Water (Part 8—General) Regulation 1995*