

Passed by both Houses



New South Wales

# Transport Administration Amendment (Rail and Ferry Transport Authorities) Bill 2008

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2008*



New South Wales

## **Transport Administration Amendment (Rail and Ferry Transport Authorities) Bill 2008**

Act No , 2008

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*An Act to amend the *Transport Administration Act 1988*, the *Passenger Transport Act 1990* and other Acts with respect to the corporate structure of Rail Corporation New South Wales and Sydney Ferries and the provision and regulation of rail passenger services and ferry services.*

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*.

**2 Commencement**

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

**3 Amendment of Transport Administration Act 1988 No 109 and other Acts**

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## **Schedule 1      Amendments relating to constitution of RailCorp**

(Section 3)

### **1.1 Transport Administration Act 1988 No 109**

#### **[1] Section 3 Definitions**

Insert “, RailCorp” after “State Transit Authority” in the definition of *Authority* in section 3 (1).

#### **[2] Part 2, Division 1, heading**

Omit “as statutory SOC”.

#### **[3] Section 4 Constitution of RailCorp**

Omit section 4 (2) and the note. Insert instead:

(2) RailCorp is a NSW Government agency.

#### **[4] Section 5 Objectives of RailCorp**

Omit section 5 (4).

#### **[5] Section 10 Other functions of RailCorp**

Insert at the end of section 10 (2) (d):

, and

- (e) acquire and develop any land, and
- (f) acquire or build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment, and
- (g) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials, and
- (h) make and enter into contracts or arrangements with any person for the operation by that person, on such terms as may be agreed on, of any of RailCorp’s railway or other transport services or of any of RailCorp’s businesses, and
- (i) appoint agents, and act as agents for other persons.

**[6] Section 11A**

Insert after section 11:

**11A Sale, lease or other disposal of land**

- (1) RailCorp may, with the approval of the Minister, sell, lease or otherwise dispose of any of its land.
- (2) Despite subsection (1), the approval of the Minister is not required:
  - (a) for any lease for a term not exceeding 5 years, or
  - (b) for a sale, lease or other disposal of land not exceeding such value, or in such circumstances, as the Minister may determine from time to time.
- (3) The Minister may delegate the power of approval under this section to the Director-General, a member of staff of the Ministry of Transport or a person of a class prescribed by the regulations.

**[7] Section 12 Effect of Division**

Omit “the *State Owned Corporations Act 1989*,”.

**[8] Part 2, Division 4**

Omit Divisions 4 and 5. Insert instead:

**Division 4 Management of RailCorp**

**13 Constitution of RailCorp Board**

- (1) There is constituted a RailCorp Board.
- (2) The Board is to consist of:
  - (a) the Chief Executive Officer of RailCorp, and
  - (b) not fewer than 4 and not more than 7 members appointed by the Minister.
- (3) The persons appointed by the Minister must each or together have such expertise as the Minister considers necessary in order to realise the principal objectives of RailCorp.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

**14 Board to determine policies of RailCorp**

- (1) The RailCorp Board has the function of determining the policies of RailCorp.

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- (2) In exercising that function, the Board is, as far as practicable, to ensure that the activities of RailCorp are carried out properly and efficiently.

**15 Chief Executive Officer of RailCorp**

- (1) The Governor may appoint a Chief Executive Officer of RailCorp.
- (2) Schedule 2 has effect with respect to the Chief Executive Officer.

**16 Chief Executive Officer to manage RailCorp**

- (1) The affairs of RailCorp are to be managed and controlled by the Chief Executive Officer of RailCorp in accordance with the policies of the RailCorp Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, RailCorp by the Chief Executive Officer is taken to have been done by RailCorp.

**17 Ministerial control**

- (1) The Minister may give the RailCorp Board written directions in relation to the exercise of RailCorp's functions.
- (2) Subject to this section, the Board and the Chief Executive Officer of RailCorp must ensure that RailCorp complies with any such direction.
- (3) If the RailCorp Board considers that:
- (a) RailCorp would suffer a significant financial loss as a result of complying with any such direction, and
  - (b) the direction is not in the commercial interests of RailCorp, the Board may request the Minister to review the direction.
- (4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (5) If the Board requests a review, RailCorp is not required to comply with the direction until notified of the Minister's decision following the review.
- (6) Following the review the Minister may confirm or revoke the direction, but the Minister must not confirm the direction unless:
- (a) the Minister has estimated the financial loss concerned from information supplied by RailCorp or from other sources, and

Schedule 1 Amendments relating to constitution of RailCorp

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- (b) the Minister has referred the matter to the Treasurer, and
  - (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.
- (7) Subsections (3)–(6) do not apply to a direction that may cause RailCorp to suffer a significant financial loss as a result of complying with that direction if:
- (a) the Minister decides that the direction is warranted on grounds involving urgency or public safety, and
  - (b) the direction is given after consultation with the Treasurer.
- (8) The Treasurer may approve of any financial loss resulting from a direction referred to in subsection (7) being reimbursed from public revenue.
- (9) For the purposes of this section, the amount of the financial loss that RailCorp suffers as a result of complying with a direction includes the amount of expenditure that RailCorp incurs, and the amount of revenue that RailCorp forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.
- (10) The amount to be reimbursed to RailCorp is to be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by RailCorp from time to time.

**17A RailCorp to supply information to Minister**

RailCorp must:

- (a) supply the Minister or a person nominated by the Minister with any information relating to its activities that the Minister or person may require, and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

**17B Corporate plans**

- (1) RailCorp must, at least 3 months before the beginning of each financial year of RailCorp, prepare and deliver to the Minister a draft corporate plan for the financial year.

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- (2) RailCorp must:
    - (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister, and
    - (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
  - (3) During the preparation of a corporate plan after the commencement of this subsection, RailCorp is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
  - (4) RailCorp is to make the completed corporate plan available for public inspection. However, RailCorp is not required to include in any draft or completed plan made available for public comment or inspection information that is of a commercially sensitive nature or that it would otherwise not be required to disclose under the *Freedom of Information Act 1989*.
  - (5) RailCorp must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
  - (6) A corporate plan is to specify:
    - (a) the separate activities of RailCorp and, in particular, the separate commercial and non-commercial activities, and
    - (b) the objectives of each such separate activity for the financial year concerned and for future financial years, and
    - (c) the strategies, policies and budgets for achieving those objectives in relation to each such separate activity, and
    - (d) the targets and criteria for assessing RailCorp's performance.
  - (7) This section is subject to any requirement made by or under this Act (including the requirements of any direction by the Minister under this Division).

**17C Exercise of functions through subsidiary corporations, joint ventures etc**

- (1) In this section:

***subsidiary corporation*** means:

  - (a) a public subsidiary corporation referred to in section 17D, or

- (b) a private subsidiary corporation referred to in section 17E.
- (2) Any function of RailCorp may be exercised:
  - (a) by RailCorp itself, or
  - (b) by a subsidiary corporation, or
  - (c) by RailCorp or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

**17D Public subsidiary corporations**

- (1) In this section:  
*public subsidiary corporation* means a corporation constituted in accordance with this section.
- (2) The regulations may constitute a corporation for the purposes of this section with the corporate name specified in the regulations.
- (3) A public subsidiary corporation:
  - (a) has such of the functions of RailCorp as are specified in the regulations or delegated to it under this Act, and
  - (b) is, for the purposes of any Act, a NSW government agency.
- (4) The provisions of or made under this Act or any other Act relating to RailCorp apply to and in respect of a public subsidiary corporation in such manner and to such extent as are prescribed by the regulations.
- (5) With the approval of the Minister:
  - (a) RailCorp may transfer any of its assets, rights or liabilities to a public subsidiary corporation, and
  - (b) a public subsidiary corporation may transfer any of its assets, rights or liabilities to RailCorp or to another public subsidiary corporation.
- (6) The regulations may make provision for or with respect to the vesting of those assets, rights and liabilities in the transferee without any transfer, conveyance or assignment.
- (7) A public subsidiary corporation is dissolved by the repeal of the regulations by which it is constituted (unless continued in existence by the regulations), and on any such dissolution the assets, rights and liabilities of the corporation become the assets, rights and liabilities of RailCorp.

**17E Private subsidiary corporations etc**

- (1) In this section:
  - private corporation* means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth formed in or outside New South Wales.
  - private subsidiary corporation* means a private corporation in which RailCorp has a controlling interest.
- (2) RailCorp may, subject to subsection (3):
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations,whether or not the activities or proposed activities of any such private corporation are related to rail services.
- (3) RailCorp must not, without the approval of the Minister:
  - (a) form, or participate in the formation of, a private subsidiary corporation, or
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
  - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (4) A private subsidiary corporation is not a NSW government agency.

**17F Delegation of functions of RailCorp**

- (1) RailCorp may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by RailCorp if the delegate is authorised in writing to do so by RailCorp.
- (3) In this section, *authorised person* means:
  - (a) an officer of RailCorp, or
  - (b) a person of a class prescribed by the regulations or approved by the RailCorp Board.

**[9] Section 29 Ministerial control**

Insert after section 29 (6):

- (6A) Subsections (3)–(6) do not apply to a direction that may cause the State Transit Authority to suffer a significant financial loss as a result of complying with that direction if:
  - (a) the Minister decides that the direction is warranted on grounds involving urgency or public safety, and
  - (b) the direction is given after consultation with the Treasurer.
- (6B) The Treasurer may approve of any financial loss resulting from a direction referred to in subsection (6A) being reimbursed from public revenue.

**[10] Section 56 Application of Division**

Insert in appropriate order:

- (2) This Division does not apply to RailCorp.

**[11] Part 7, Division 1A**

Insert after Division 1:

**Division 1A Staff of RailCorp**

**58A Employment of staff**

RailCorp may employ such staff as it requires to exercise its functions.

**58B Salary, conditions etc of staff**

RailCorp may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

**58C Regulations relating to RailCorp staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of RailCorp, including the conditions of employment and the discipline of any such staff.
- (2) Any such regulations relating to the conditions of employment or the discipline of staff:
  - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which RailCorp is a party, and

- (b) have effect despite any determination of RailCorp under section 58B, and
  - (c) may provide for appeals by members of staff in connection with their employment, including appeals to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*, and
  - (d) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.
- (3) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to the employment of staff under this Division.

**[12] Part 8, Division 1**

Insert before Division 2:

**Division 1 Financial provisions relating to RailCorp**

**69 RailCorp Fund**

There is established in the Special Deposits Account a fund called the RailCorp Fund.

**70 Payments into RailCorp Fund**

There is to be paid into the RailCorp Fund:

- (a) all money received by or on account of RailCorp, and
- (b) all money advanced by the Treasurer for the Fund, and
- (c) all money appropriated by Parliament for the purposes of RailCorp, and
- (d) all fines and penalties recovered for offences under the regulations under section 91, or under section 95 of the *Rail Safety Act 2002* or under section 131 of the *Rail Safety Act 2008*, in connection with railway services operated by RailCorp (but only if proceedings or penalty notices for the offences were instituted or issued by RailCorp or an employee of RailCorp), and
- (e) the proceeds of the investment of money in the Fund, and
- (f) all other money required by or under this or any other Act to be paid into the Fund.

**71 Payments from RailCorp Fund**

There is to be paid from the RailCorp Fund:

- (a) all payments made on account of RailCorp or otherwise required to meet expenditure incurred in relation to the functions of RailCorp, and
- (b) all other payments required by or under this or any other Act to be paid from the Fund.

**[13] Section 86 Ministerial supervision of orders fixing charges**

Omit “section 29 of” from section 86 (3).

**[14] Section 88 Free or subsidised railway, bus or ferry travel**

Omit “section 29 of” from section 88 (5).

**[15] Section 107 Definition of “transport authority”**

Insert before section 107 (1) (a1):

- (a) RailCorp, or

**[16] Section 107 (2)**

Omit “RailCorp and”.

**[17] Section 112 Personal liability of certain persons**

Insert “RailCorp,” after “State Transit Authority,” in the definition of *member of a transport authority* in section 112 (2).

**[18] Section 112 (2), definition of “transport authority”**

Insert after paragraph (a3) of the definition:

- (a4) the RailCorp Board, and

**[19] Schedule 1, heading**

Omit “State Transit Authority Board”. Insert instead “Boards”.

**[20] Schedule 1**

Omit “Sections 9 (4)”. Insert instead “Sections 13 (4)”.

**[21] Schedule 1, clause 1**

Omit the definition of *Board*. Insert instead:

*Board* means the following Boards:

- (a) the State Transit Authority Board,
- (b) the RailCorp Board.

**[22] Schedule 1, clause 1, definition of “Chief Executive”**

Insert “or RailCorp” after “State Transit Authority”.

**[23] Schedule 1, clause 10**

Omit clause 10 (1). Insert instead:

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of an appointed member and an appointed member is not, as such a member, subject to that Act (except Chapter 5).

**[24] Schedule 2 Provisions relating to Chief Executives**

Omit “Sections 11 (3), 19Y (2)”. Insert instead “Sections 15 (2)”.

**[25] Schedule 2, clause 1**

Insert “, the Chief Executive of RailCorp” after “State Transit Authority” in the definition of *Chief Executive*.

**[26] Schedule 2, clause 1A**

Omit “Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2”.

Insert instead “Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2”.

**[27] Schedule 6 Transfer of certain staff**

Insert in alphabetical order in clause 1:

*former ITSRR staff* means the members of staff of the ITSRR who, after the commencement of clause 11E, are transferred to the Ministry of Transport by an order made under this Schedule.

*ITSRR* means the Independent Transport Safety and Reliability Regulator.

**[28] Schedule 6, clause 1, definition of “former RailCorp staff”**

Insert “or who, after the commencement of clause 11E, are transferred to the Ministry of Transport by an order under this Schedule” after “Schedule”.

Schedule 1 Amendments relating to constitution of RailCorp

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**[29] Schedule 6, Part 3, heading**

Omit “of SRA and RIC staff”. Insert instead “of other staff”.

**[30] Schedule 6, clause 11E**

Insert after clause 11D:

**11E Transfer of RailCorp and ITSRR staff to MOT**

- (1) The Minister may, by order in writing, provide that such staff of RailCorp or ITSRR as are specified or described in the order are transferred to the Ministry of Transport.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become a member of staff of the Ministry of Transport, in accordance with the terms of the order, on the day specified in the order.

**[31] Schedule 6, Part 4, heading**

Insert before clause 12:

**Part 4 General**

**[32] Schedule 6, clauses 12 (1) and 13 (1) and (3)**

Insert “, former ITSRR staff” after “former OCG staff” wherever occurring.

**[33] Schedule 6, clause 15 (2)**

Insert “ITSRR,” after “RailCorp,”.

**[34] Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*

**[35] Schedule 7**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Transport Administration Amendment  
(Rail and Ferry Transport Authorities) Act  
2008**

**Division 1 Preliminary**

**Definition**

In this Part:

*2008 amending Act* means the *Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*.

**[36] Schedule 7**

Insert with appropriate Division and clause numbering in the Part inserted by item [35]:

**Division Provisions relating to constitution of  
RailCorp**

**Continuity of RailCorp**

RailCorp, as constituted under this Act immediately after the substitution of section 4 (2) by the 2008 amending Act, is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as, RailCorp as constituted immediately before that substitution.

**Existing Chief Executive Officer of RailCorp**

- (1) The person who, immediately before the commencement of section 15 (as inserted by the 2008 amending Act), held office as chief executive officer of RailCorp is taken to have been appointed as Chief Executive Officer of RailCorp under that section:
  - (a) for the balance of the term of office for which the person was so appointed before the commencement of that section, and
  - (b) on the same terms and conditions as the person was so determined.

- (2) The Minister may, by order, vary the terms and conditions of the appointment of the Chief Executive Officer as continued by this clause, having regard to terms and conditions of appointment of members of the Chief Executive Service under the *Public Sector Employment and Management Act 2002*.

#### **Existing Board members**

- (1) An existing Board member of RailCorp ceases to hold office on the commencement of section 13, as inserted by the 2008 amending Act, but is eligible (if otherwise qualified) to be appointed as a member of the RailCorp Board.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of the office.
- (3) In this clause:  
*existing Board member* means a person (other than the Chief Executive Officer) who held office as a member of the Board of RailCorp immediately before the commencement of section 13, as inserted by the 2008 amending Act.

#### **Corporate plan**

- (1) RailCorp is to prepare its first corporate plan, in accordance with section 17B as inserted by the 2008 amending Act, within the period approved by the Minister for the purposes of this clause.
- (2) The statement of corporate intent applicable to RailCorp under the *State Owned Corporations Act 1989* immediately before the commencement of section 17B continues to apply to RailCorp until RailCorp complies with that section, subject to any direction of the Minister.

## **1.2 State Owned Corporations Act 1989 No 134**

### **Schedule 5 Statutory SOCs**

Omit "Rail Corporation New South Wales".

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## Schedule 2 Amendments relating to rail passenger services

(Section 3)

### 2.1 Passenger Transport Act 1990 No 39

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*rail passenger service* means the carriage of passengers for a fare or other consideration by rail, but does not include any rail passenger service of a class prescribed for the purposes of this definition.

*rail services contract* means a contract entered into under section 28K.

#### [2] Section 4 Objects

Insert at the end of section 4 (c):

- (d) to provide for rail services contracts between RailCorp and the Director-General, and

#### [3] Part 3, heading

Insert “and rail passenger services” after “services”.

#### [4] Part 3, Division 4

Insert after Division 3:

### Division 4 Rail services

#### 28K Rail services contract for rail services

- (1) The terms and conditions on which rail services are to be carried out by RailCorp are to be set out in a contract entered into between RailCorp and the Director-General (on behalf of the Crown).
- (2) In this Division, *rail services* means:
  - (a) rail passenger services and any bus services (other than regular passenger services) operated by RailCorp, and
  - (b) the carrying out of functions as a rail infrastructure owner (within the meaning of the *Transport Administration Act 1988*), and
  - (c) the provision of access and network control services.

Schedule 2 Amendments relating to rail passenger services

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- (3) A rail services contract is to be for a term not exceeding 8 years.
- (4) A rail services contract may be renewed from time to time in accordance with any provision of the contract concerning renewal.
- (5) Provision for rail services in accordance with this section may be made in one or more rail services contracts.
- (6) The regulations may provide for matters that are to be included in rail services contracts.

**28L Performance standards**

- (1) A rail services contract is to provide for performance standards to be observed by RailCorp.
- (2) Without limiting subsection (1), the performance standards may include any model performance standards for rail services that the Director-General may, by order published in the Gazette, approve from time to time.

**[5] Section 48 Review of decisions concerning service contracts**

Insert “or a rail services contract” after “regular bus service” in section 48 (2).

**[6] Section 53 Exchange of information**

Insert “or a rail passenger service” after “ferry” in section 53 (2) (b).

**[7] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*

**[8] Schedule 3**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Transport Administration Amendment  
(Rail and Ferry Transport Authorities) Act  
2008**

**Division 1 Preliminary**

**Definition**

In this Part:

*2008 amending Act* means the *Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*.

**[9] Schedule 3**

Insert with appropriate Division and clause numbering in the Part inserted by item [8]:

**Division Provisions relating to rail services contracts**

**Rail services contracts**

- (1) RailCorp may continue to carry on a rail passenger service and provide other rail services (within the meaning of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act) without a rail services contract until such a contract is entered into.
- (2) This clause ceases to have effect 2 years after the commencement of Division 4 of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

**2.2 Transport Administration Act 1988 No 109**

**[1] Section 38 Functions of ensuring provision of appropriate passenger services**

Insert after section 38 (3):

- (4) Nothing in this section affects any obligation under the *Passenger Transport Act 1990* of a body referred to in subsection (3).

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**[2] Section 40 Delegation**

Insert “or the *Passenger Transport Act 1990*” after “Part” in section 40 (1).

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## **Schedule 3      Amendments relating to constitution of Sydney Ferries**

(Section 3)

### **3.1 Transport Administration Act 1988 No 109**

#### **[1] Section 3 Definitions**

Insert “or Sydney Ferries” after “Roads and Traffic Authority” in the definition of *Authority* in section 3 (1).

#### **[2] Part 3A, Division 1, heading**

Omit “as statutory SOC”.

#### **[3] Section 35A Constitution of Sydney Ferries**

Omit section 35A (2) and the note. Insert instead:

(2) Sydney Ferries is a NSW Government agency.

#### **[4] Section 35B Objectives of Sydney Ferries**

Omit section 35B (4).

#### **[5] Section 35E Other functions of Sydney Ferries**

Insert at the end of section 35E (2) (b):

, and

- (c) acquire and develop any land, and
- (d) acquire or build, and maintain or dispose of, any engines, vessels, vehicles, plant, machinery or equipment, and
- (e) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials, and
- (f) make and enter into contracts or arrangements with any person for the operation by that person, on such terms as may be agreed on, of any of Sydney Ferries’ ferry or other transport services or of any of Sydney Ferries’ businesses, and
- (g) appoint agents, and act as agents for other persons.

**[6] Section 35EA**

Insert after section 35E:

**35EA Sale, lease or other disposal of land**

- (1) Sydney Ferries may, with the approval of the Minister, sell, lease or otherwise dispose of any of its land.
- (2) Despite subsection (1), the approval of the Minister is not required:
  - (a) for any lease for a term not exceeding 5 years, or
  - (b) for a sale, lease or other disposal of land not exceeding such value, or in such circumstances, as the Minister may determine from time to time.
- (3) The Minister may delegate the power of approval under this section to the Director-General, a member of staff of the Ministry of Transport or a person of a class prescribed by the regulations.

**[7] Section 35G Effect of Division**

Omit “the *State Owned Corporations Act 1989*,”.

**[8] Part 3A, Division 4**

Omit Divisions 4 and 5. Insert instead:

**Division 4 Management of Sydney Ferries**

**35H Constitution of Sydney Ferries Board**

- (1) There is constituted a Sydney Ferries Board.
- (2) The Board is to consist of:
  - (a) the Chief Executive Officer of Sydney Ferries, and
  - (b) not fewer than 4 and not more than 7 members appointed by the Minister.
- (3) The persons appointed by the Minister must each or together have such expertise as the Minister considers necessary in order to realise the principal objectives of Sydney Ferries.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

**35I Board to determine policies of Sydney Ferries**

- (1) The Sydney Ferries Board has the function of determining the policies of Sydney Ferries.

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- (2) In exercising that function, the Board is, as far as practicable, to ensure that the activities of Sydney Ferries are carried out properly and efficiently.

**35J Chief Executive Officer of Sydney Ferries**

- (1) The Governor may appoint a Chief Executive Officer of Sydney Ferries.
- (2) Schedule 2 has effect with respect to the Chief Executive Officer.

**35K Chief Executive Officer to manage Sydney Ferries**

- (1) The affairs of Sydney Ferries are to be managed and controlled by the Chief Executive Officer of Sydney Ferries in accordance with the policies of the Sydney Ferries Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, Sydney Ferries by the Chief Executive Officer is taken to have been done by Sydney Ferries.

**35L Ministerial control**

- (1) The Minister may give the Sydney Ferries Board written directions in relation to the exercise of Sydney Ferries' functions.
- (2) Subject to this section, the Board and the Chief Executive Officer of Sydney Ferries must ensure that Sydney Ferries complies with any such direction.
- (3) If Sydney Ferries considers that:
- (a) Sydney Ferries would suffer a significant financial loss as a result of complying with any such direction, and
  - (b) the direction is not in the commercial interests of Sydney Ferries,
- the Board may request the Minister to review the direction.
- (4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (5) If the Board requests a review, Sydney Ferries is not required to comply with the direction until notified of the Minister's decision following the review.
- (6) Following the review the Minister may confirm or revoke the direction, but the Minister must not confirm the direction unless:
- (a) the Minister has estimated the financial loss concerned from information supplied by Sydney Ferries or from other sources, and

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- (b) the Minister has referred the matter to the Treasurer, and
  - (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.
- (7) Subsections (3)–(6) do not apply to a direction that may cause Sydney Ferries to suffer a significant financial loss as a result of complying with that direction if:
- (a) the Minister decides that the direction is warranted on grounds involving urgency or public safety, and
  - (b) the direction is given after consultation with the Treasurer.
- (8) The Treasurer may approve of any financial loss resulting from a direction referred to in subsection (7) being reimbursed from public revenue.
- (9) For the purposes of this section, the amount of the financial loss that Sydney Ferries suffers as a result of complying with a direction includes the amount of expenditure that Sydney Ferries incurs, and the amount of revenue that Sydney Ferries forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.
- (10) The amount to be reimbursed to Sydney Ferries is to be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by Sydney Ferries from time to time.

**35M Sydney Ferries to supply information to Minister**

Sydney Ferries must:

- (a) supply the Minister or a person nominated by the Minister with any information relating to its activities that the Minister or person may require, and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

**35N Corporate plans**

- (1) Sydney Ferries must, at least 3 months before the beginning of each financial year of Sydney Ferries, prepare and deliver to the Minister a draft corporate plan for the financial year.

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- (2) Sydney Ferries must:
    - (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister, and
    - (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
  - (3) During the preparation of a corporate plan after the commencement of this subsection, Sydney Ferries is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
  - (4) Sydney Ferries is to make the completed corporate plan available for public inspection. However, Sydney Ferries is not required to include in any draft or completed plan made available for public comment or inspection information that is of a commercially sensitive nature or that it would otherwise not be required to disclose under the *Freedom of Information Act 1989*.
  - (5) Sydney Ferries must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
  - (6) A corporate plan is to specify:
    - (a) the separate activities of Sydney Ferries and, in particular, the separate commercial and non-commercial activities, and
    - (b) the objectives of each such separate activity for the financial year concerned and for future financial years, and
    - (c) the strategies, policies and budgets for achieving those objectives in relation to each such separate activity, and
    - (d) the targets and criteria for assessing Sydney Ferries' performance.
  - (7) This section is subject to any requirement made by or under this Act (including the requirements of any direction by the Minister under this Division).

**35O Exercise of functions through subsidiary corporations, joint ventures etc**

- (1) In this section:  
*subsidiary corporation* means:
  - (a) a public subsidiary corporation referred to in section 35P, or
  - (b) a private subsidiary corporation referred to in section 35Q.
- (2) Any function of Sydney Ferries may be exercised:
  - (a) by Sydney Ferries itself, or
  - (b) by a subsidiary corporation, or
  - (c) by Sydney Ferries or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

**35P Public subsidiary corporations**

- (1) In this section:  
*public subsidiary corporation* means a corporation constituted in accordance with this section.
- (2) The regulations may constitute a corporation for the purposes of this section with the corporate name specified in the regulations.
- (3) A public subsidiary corporation:
  - (a) has such of the functions of Sydney Ferries as are specified in the regulations or delegated to it under this Act, and
  - (b) is, for the purposes of any Act, a NSW government agency.
- (4) The provisions of or made under this Act or any other Act relating to Sydney Ferries apply to and in respect of a public subsidiary corporation in such manner and to such extent as are prescribed by the regulations.
- (5) With the approval of the Minister:
  - (a) Sydney Ferries may transfer any of its assets, rights or liabilities to a public subsidiary corporation, and
  - (b) a public subsidiary corporation may transfer any of its assets, rights or liabilities to Sydney Ferries or to another public subsidiary corporation.
- (6) The regulations may make provision for or with respect to the vesting of those assets, rights and liabilities in the transferee without any transfer, conveyance or assignment.

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- (7) A public subsidiary corporation is dissolved by the repeal of the regulations by which it is constituted (unless continued in existence by the regulations), and on any such dissolution the assets, rights and liabilities of the corporation become the assets, rights and liabilities of Sydney Ferries.

**35Q Private subsidiary corporations etc**

- (1) In this section:
- private corporation* means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth formed in or outside New South Wales.
- private subsidiary corporation* means a private corporation in which Sydney Ferries has a controlling interest.
- (2) Sydney Ferries may, subject to subsection (3):
- (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations,
- whether or not the activities or proposed activities of any such private corporation are related to ferry services.
- (3) Sydney Ferries must not, without the approval of the Minister:
- (a) form, or participate in the formation of, a private subsidiary corporation, or
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
  - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (4) A private subsidiary corporation is not a NSW government agency.

**35QA Delegation of functions of Sydney Ferries**

- (1) Sydney Ferries may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by Sydney Ferries if the delegate is authorised in writing to do so by Sydney Ferries.

- (3) In this section, *authorised person* means:
- (a) an officer of Sydney Ferries, or
  - (b) a person of a class prescribed by the regulations or approved by the Sydney Ferries Board.

**[9] Section 56 Application of Division**

Insert in appropriate order:

- (3) This Division does not apply to Sydney Ferries.

**[10] Part 7, Division 3**

Insert after Division 2:

**Division 3 Staff of Sydney Ferries**

**62 Employment of staff**

Sydney Ferries may employ such staff as it requires to exercise its functions.

**63 Salary, conditions etc of staff**

Sydney Ferries may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

**64 Regulations relating to Sydney Ferries staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of Sydney Ferries, including the conditions of employment and the discipline of any such staff.
- (2) Any such regulations relating to the conditions of employment or the discipline of staff:
  - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which Sydney Ferries is a party, and
  - (b) have effect despite any determination of Sydney Ferries under section 63, and
  - (c) may provide for appeals by members of staff in connection with their employment, including appeals to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*, and
  - (d) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

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- (3) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to the employment of staff under this Division.

**[11] Part 8, Division 3A**

Insert after Division 3:

**Division 3A Financial provisions relating to Sydney Ferries**

**80D Sydney Ferries Fund**

There is established in the Special Deposits Account a fund called the Sydney Ferries Fund.

**80E Payments into Sydney Ferries Fund**

There is to be paid into the Sydney Ferries Fund:

- (a) all money received by or on account of Sydney Ferries, and
- (b) all money advanced by the Treasurer for the Fund, and
- (c) all money appropriated by Parliament for the purposes of Sydney Ferries, and
- (d) all fines and penalties recovered for offences under the regulations under section 104, or under section 63 of the *Passenger Transport Act 1990*, in connection with ferry services operated by Sydney Ferries (but only if proceedings or penalty notices for the offences were instituted or issued by Sydney Ferries or an employee of Sydney Ferries), and
- (e) the proceeds of the investment of money in the Fund, and
- (f) all other money required by or under this or any other Act to be paid into the Fund.

**80F Payments from Sydney Ferries Fund**

There is to be paid from the Sydney Ferries Fund:

- (a) all payments made on account of Sydney Ferries or otherwise required to meet expenditure incurred in relation to the functions of Sydney Ferries, and
- (b) all other payments required by or under this or any other Act to be paid from the Fund.

- [12] Section 86 Ministerial supervision of orders fixing charges**  
Omit “or section 20P of the *State Owned Corporations Act 1989*, as the case requires” from section 86 (3).
- [13] Section 88 Free, or subsidised railway, bus or ferry travel**  
Omit “or section 20P of the *State Owned Corporations Act 1989*, as the case requires” from section 88 (5).
- [14] Section 107 Definition of “transport authority”**  
Insert after section 107 (1) (c):  
(c1) Sydney Ferries, or
- [15] Section 107 (3)**  
Omit the subsection.
- [16] Section 112 Personal liability of certain persons**  
Insert “, Sydney Ferries” after “Independent Transport Safety and Reliability Regulator” in the definition of *member of a transport authority* in section 112 (2).
- [17] Section 112 (2)**  
Insert at the end of paragraph (b) of the definition of *transport authority*:  
, and  
(c) the Sydney Ferries Board.
- [18] Schedule 1**  
Insert “, 35H (4)” after “25 (4)”.
- [19] Schedule 1, clause 1 (as amended by Schedule 2.1 [21])**  
Insert at the end of the definition of *Board*:  
(c) the Sydney Ferries Board.
- [20] Schedule 1, clause 1, definition of “Chief Executive”**  
Insert “the Chief Executive of Sydney Ferries,” before “State Transit Authority”.
- [21] Schedule 2 Provisions relating to Chief Executives**  
Insert “35J (2),” before “47 (2)”.

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**[22] Schedule 2, clause 1, definition of “Chief Executive”**

Insert “or the Chief Executive of Sydney Ferries” after “Roads and Traffic Authority”.

**[23] Schedule 7 Savings, transitional and other provisions**

Insert with appropriate Division and clause numbering in the Part inserted by Schedule 1.1 [35]:

**Division Provisions relating to constitution of Sydney Ferries**

**Continuity of Sydney Ferries**

Sydney Ferries, as constituted under this Act immediately after the substitution of section 35A (2) by the 2008 amending Act, is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as, Sydney Ferries as constituted immediately before that substitution.

**Existing Chief Executive Officer of Sydney Ferries**

- (1) The person who, immediately before the commencement of section 35J (as inserted by the 2008 amending Act), held office as chief executive officer of Sydney Ferries is taken to have been appointed as Chief Executive Officer of Sydney Ferries under that section:
  - (a) for the balance of the term of office for which the person was so appointed before the commencement of that section, and
  - (b) on the same terms and conditions as the person was so appointed.
- (2) The Minister may, by order, vary the terms and conditions of the appointment of the Chief Executive Officer as continued by this clause, having regard to terms and conditions of appointment of members of the Chief Executive Service under the *Public Sector Employment and Management Act 2002*.

**Existing Board members**

- (1) An existing Board member of Sydney Ferries ceases to hold office on the commencement of section 35H, as inserted by the 2008 amending Act, but is eligible (if otherwise qualified) to be appointed as a member of the Sydney Ferries Board.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of the office.

- (3) In this clause:  
*existing Board member* means a person (other than the Chief Executive Officer) who held office as a member of the Board of Sydney Ferries immediately before the commencement of section 35H, as inserted by the 2008 amending Act.

**Corporate plan**

- (1) Sydney Ferries is to prepare its first corporate plan, in accordance with section 35N as inserted by the 2008 amending Act, within the period approved by the Minister for the purposes of this clause.
- (2) The statement of corporate intent applicable to Sydney Ferries under the *State Owned Corporations Act 1989* immediately before the commencement of section 35N continues to apply to Sydney Ferries until Sydney Ferries complies with that section, subject to any direction of the Minister.

**3.2 State Owned Corporations Act 1989 No 134**

**Schedule 5 Statutory SOCs**

Omit “Sydney Ferries”.

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## **Schedule 4     Amendments relating to ferry passenger services**

(Section 3)

### **4.1 Passenger Transport Act 1990 No 39**

#### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*ferry service contract*—see section 16AA.

*regular ferry service* means any regular passenger service conducted by ferry, but does not include any service of a class prescribed for the purposes of this definition.

#### **[2] Part 3, Division 1A**

Insert after Division 1:

### **Division 1A     Service contracts for regular ferry services**

#### **16AA Application of Division**

This Division applies to service contracts for regular ferry services (*ferry service contracts*).

#### **16AB Service contracts for regular ferry services**

- (1) A ferry service contract is to be for a term not exceeding 8 years.
- (2) A ferry service contract may be renewed from time to time in accordance with any provision of the contract concerning renewal.
- (3) Provision for regular ferry services in accordance with this section and section 16 may be made in one or more contracts.
- (4) It is the duty of the Director-General to ensure that any ferry service contract is not inconsistent with:
  - (a) the government's standards of safety for passengers and the public and maintenance, and
  - (b) standards for, or any other requirements relating to, ferries, the operator of the service or employees of the operator under this or any other Act or any regulation, and
  - (c) the terms and conditions of any certificate or other authority issued to an employee of the operator of the service under any other Act or regulation.

- (5) Nothing in this Division is to be construed as affording a right or expectation of renewal of a ferry service contract.
- (6) The Director-General is precluded from entering into a proposed ferry service contract if the Director-General would be precluded from entering into that contract by section 21 (4) if it were a contract to which Division 2 applies.

**16AC Matters to be included in ferry service contracts**

- (1) A ferry service contract (other than for a service operated by Sydney Ferries) must make provision with respect to the following:
  - (a) requirements relating to the financial viability of the operator,
  - (b) requirements relating to the fitness of the operator to be an operator and the character of the operator or of any directors and managers of the operator.
- (2) A ferry service contract may specify a region or route of operation.
- (3) A route may proceed across water and a region may consist of a navigational area.
- (4) The regulations may provide for other matters that are to be included in ferry service contracts.

**16AD Performance standards**

- (1) A ferry service contract is to provide for performance standards to be observed by the contract holder.
- (2) Without limiting subsection (1), the performance standards may include any model performance standards for ferry services that the Director-General may, by order published in the Gazette, approve from time to time.
- (3) Performance standards are to be enforced by civil penalty provision or in such other manner as the contract may provide.
- (4) In subsection (5), *civil penalty provision* means a provision of a ferry service contract that is expressed to be a civil penalty provision for the purposes of this section.
- (5) Despite anything to the contrary in any Act or other law, a person who breaches a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the ferry service contract as the penalty for the breach of that provision.

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- (6) Subsections (3)–(5) do not apply to a contract between the Director-General and Sydney Ferries.

**16AE Determination of maximum fare pricing policy for ferry services**

- (1) This section applies to any ferry service contract that authorises or otherwise provides for the fares charged by the contract holder to be determined in accordance with this section.

**Note.** If its ferry service contract does not provide for this matter, Sydney Ferries may make an order under section 85 of the *Transport Administration Act 1988* determining fares.

- (2) The Independent Pricing and Regulatory Tribunal (the *Tribunal*) is to conduct investigations and make reports to the Minister on the following matters:
- (a) the determination of appropriate maximum fares for regular ferry services supplied under contracts to which this section applies,
  - (b) a periodic review of fare pricing policies in respect of such services.
- (3) In respect of an investigation or report under this section, the Minister may require the Tribunal to consider specified matters when making its investigations.
- (4) Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* is taken to apply to an investigation under this section in the same way as it applies to an investigation under Part 3 of that Act.
- (5) In making a determination under this section, the Tribunal is to consider the following matters:
- (a) the cost of providing the services concerned,
  - (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standards of service,
  - (c) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (d) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all of the feasible options to protect the environment,
  - (e) the social impact of the determination,

Schedule 4 Amendments relating to ferry passenger services

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- (f) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise) and any suggested or actual changes to those standards,
  - (g) contractual arrangements prevailing in the industry,
  - (h) such other matters as the Tribunal considers relevant.
- (6) A ferry service contract to which this section applies is taken to include a term to the effect that the contract holder must not charge a passenger of the service a fare that exceeds the maximum fare determined under this section from time to time for the provision of such a service to a passenger of that kind.
- (7) Any contravention of the term implied in a ferry service contract by subsection (6) may be remedied at law or in equity as though the term were an essential term to which the parties had by contract agreed.
- (8) A ferry service contract to which this section applies may make provision for maximum fares for the provision of regular ferry services concerned to passengers pending the first determination of maximum fares under this section.
- (9) Any provision of the kind referred to in subsection (8) ceases to have effect as part of the ferry service contract on and from the first determination of maximum fares under this section that applies to the provision of the regular ferry services to which the contract relates.

**[3] Part 3, Division 2, heading**

Insert “**subject to existing contracts**” after “**ferry services**”.

**[4] Section 16A**

Omit the section. Insert instead:

**16A Application of Division**

- (1) This Division applies to service contracts for ferry services in force immediately before the commencement of Division 1A, or that are renewed as referred to in subsection (3).
- (2) A service contract must not be entered into under this Division after the commencement of Division 1A.
- (3) Subsection (2) does not prevent the renewal, under this Division, of a contract in force immediately before the commencement of Division 1A or any succeeding renewed contract.

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**[5] Section 48 Review of decisions concerning service contracts**

Insert “a ferry service contract,” after “with respect to” in section 48 (2).

**[6] Schedule 3 Savings and transitional provisions**

Insert with appropriate Division and clause numbering in the Part inserted by Schedule 2.1 [8]:

**Division Provisions relating to ferry service contracts**

**Ferry service contracts**

- (1) Sydney Ferries may continue to carry on a regular ferry service without a ferry service contract until such a contract is entered into.
- (2) This clause ceases to have effect 2 years after the commencement of Division 1A of Part 3 of the Act, as inserted by the 2008 amending Act, or on such later day as may be prescribed by the regulations.

**4.2 Independent Pricing and Regulatory Tribunal Act 1992 No 39**

**Schedule 1 Government agencies for which Tribunal has standing reference**

Insert “(but excluding any services provided by Sydney Ferries under a ferry service contract to which section 16AE of the *Passenger Transport Act 1990* applies)” after “Sydney Ferries”.