

[Act 2001 No 131]



New South Wales

Transport Administration Amendment (Rail Access) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Transport Administration Act 1988* (***the 1988 Act***) so as:

- (a) to enable Rail Infrastructure Corporation to submit an access undertaking to the Australian Competition and Consumer Commission (the ***ACCC***) in connection with the provision of access to the NSW rail network under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth (***the 1974 Act***), and
- (b) to enable the Minister, with the concurrence of the Premier, to approve an access undertaking in connection with the provision of access to the NSW rail network under the 1988 Act, and

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

- (c) to require Rail Infrastructure Corporation to comply with the obligations imposed on it by an access undertaking referred to in paragraph (a) or (b) rather than with the obligations imposed on it by the NSW Rail Access Regime currently in force under the 1988 Act.

It is intended that an access undertaking is not to be prepared under the 1988 Act unless Rail Infrastructure Corporation is unable to obtain acceptance by the ACCC of an access undertaking under the 1974 Act.

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 is a formal provision giving effect to the amendments to the *Transport Administration Act 1988* set out in Schedule 1.

Schedule 1 Amendments

Third party access to the NSW rail network is currently governed by a NSW Rail Access Regime established under section 19B. It is proposed that this regime be replaced by an access undertaking accepted by the ACCC under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth or, if such an undertaking is not in force, by an access undertaking approved by the Minister with the concurrence of the Premier under proposed Schedule 6AA.

Submission of access undertaking to ACCC

Schedule 1 [9] amends section 19E so as to enable Rail Infrastructure Corporation to submit an undertaking to the ACCC in connection with the provision of access to the NSW rail network.

Schedule 1 [10] further amends section 19E so as to apply clauses 2, 3 and 4 of proposed Schedule 6AA to such an undertaking (see proposed section 19E (4A)) and to provide that such an undertaking is not to be given, and (once given) is not to be amended or withdrawn, except with the approval of the Minister given with the concurrence of the Premier (see proposed section 19E (4B)). **Schedule 1 [12]** makes a consequential amendment.

Approval of access undertaking by Minister

Schedule 1 [18] inserts a new Schedule 6AA into the Act. The new Schedule sets out a procedure for the preparation by Rail Infrastructure Corporation, and approval by the Minister with the concurrence of the Premier, of an access undertaking to implement the Competition Principles Agreement in respect of third party access to the NSW rail network by specified persons.

Proposed clause 1 enables Rail Infrastructure Corporation to prepare an access undertaking or a variation to an existing access undertaking. The process of preparing an undertaking will be required to involve public consultation, unless the proposed undertaking has already been the subject of public consultation as a result of its having been considered by the ACCC.

Proposed clause 2 requires an access undertaking to make provision with respect to the application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* to disputes concerning third party access to the NSW rail network.

Proposed clause 3 enables an access undertaking to permit intending access purchasers to enter into negotiations for third party access to the NSW rail network.

Proposed clause 4 enables an access undertaking to confer or impose functions on the Independent Pricing and Regulatory Tribunal in connection with the undertaking.

Proposed clause 5 requires an access undertaking or amendment to be submitted to the Minister for approval, and provides that approval is not to be given except with the concurrence of the Premier.

Proposed clause 6 provides for the commencement of an access undertaking or amendment on Gazettal of the Minister's approval, or on a later date specified in the Gazettal notice, and requires Rail Infrastructure Corporation to publish the undertaking or amendment on its Internet site and to keep copies available at its offices for inspection and purchase.

Proposed clause 7 provides that the commencement of an access undertaking or amendment does not affect existing access agreements.

Proposed clause 8 preserves the operation of the *Rail Safety Act 1993*.

The proposed Schedule is brought into effect by **proposed section 19FC**, to be inserted by **Schedule 1 [14]**. **Schedule 1 [2]** makes a consequential amendment.

Compliance with RIC access undertaking

Schedule 1 [1] amends section 3 (1) so as to insert a definition of *RIC access undertaking*. The definition will refer to an access undertaking accepted by the ACCC, or to an access undertaking approved by the Minister with the concurrence of the Premier under proposed Schedule 6AA, whichever is appropriate.

Schedule 1 [7], [8] and [11] amend sections 19D and 19E so as to require Rail Infrastructure Corporation to comply with the current RIC access undertaking rather than the NSW Rail Access Regime. Until such time as such an access undertaking comes into force, whether as a result of its being accepted by the ACCC or approved by the Minister with the concurrence of the Premier, the NSW Rail Access Regime is to be taken to be a RIC access undertaking (see proposed Schedule 7, to be amended by **Schedule 1 [20]**).

Schedule 1 [13], [15], [16] and [17] make consequential amendments.

Other amendments

Schedule 1 [6] omits section 19B.

Schedule 1 [5] transfers to section 19A a provision of section 19B that allows the Minister to make orders directing that specified facilities be treated as rail infrastructure facilities. **Schedule 1 [3] and [4]** make consequential amendments. Existing orders under section 19B are to be taken to have been made under section 19A (see Schedule 7, to be amended by **Schedule 1 [20]**).

Schedule 1 [19] amends clause 2 of Schedule 7 so as to provide for the making of savings and transitional regulations.

Schedule 1 [20] inserts a new Part into Schedule 7. The new Part contains savings and transitional provisions consequent on the enactment of the proposed Act.