

Passed by both Houses



New South Wales

# Transport Administration Amendment (Metro Rail) 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 (Metro Rail) Bill 2008**

Act No , 2008

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An Act to amend the *Transport Administration Act 1988* and other Acts to establish Sydney Metro and to facilitate the development, implementation and operation of metro railway systems in the State.

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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 (Metro Rail) 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**

The *Transport Administration Act 1988* is amended as set out in Schedule 1.

**4 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

**5 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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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      **Amendment of Transport Administration Act 1988**

(Section 3)

**[1] Long title**

Omit “and the Roads and Traffic Authority”.

Insert instead “, the Roads and Traffic Authority and Sydney Metro”.

**[2] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*metro railway* means a guided system designed to transport passengers on a railway track, together with its infrastructure and associated sidings, that:

- (a) provides high-frequency commuter and other passenger services, and
- (b) is operated using automated systems, that are integrated with trains, from one or more central control points, and
- (c) is operated using dedicated rail infrastructure facilities that are not operationally connected with other types of rail infrastructure facilities.

*metro railway system* means:

- (a) a metro railway and its rail infrastructure facilities, and
- (b) stations, platforms, maintenance facilities, depots and other transport interchanges, works, structures and facilities associated with or incidental to the metro railway or rail infrastructure facilities (including commercial and retail facilities).

**[3] Section 3 (1), definition of “NSW rail network”**

Insert “, but does not include any part of a metro railway system” after “controlled”.

**[4] Section 3 (1), definition of “rail infrastructure owner”**

Insert after paragraph (b):

- (b1) in the case of any rail infrastructure facilities that are managed or controlled by Sydney Metro for the purposes of exercising its functions under this Act, Sydney Metro, or

**[5] Section 3 (1)**

Insert in alphabetical order:

*Sydney Metro* means Sydney Metro constituted under this Act.

**[6] Section 3A Metropolitan rail area**

Omit “or RailCorp” from section 3A (6).

Insert instead “, RailCorp or Sydney Metro”.

**[7] Part 6A**

Insert after Part 6:

## **Part 6A Sydney Metro**

### **Division 1 Interpretation**

#### **55A Definitions**

(1) In this Part:

*Chief Executive Officer* means the Chief Executive Officer of Sydney Metro.

*develop a metro railway system* includes:

- (a) carry out development for the purposes of a metro railway system, and
- (b) facilitate, manage, finance or maintain any such development, and
- (c) carry out any function ancillary to any such development.

*development* means development within the meaning of the *Environmental Planning and Assessment Act 1979*, a project (within the meaning of Part 3A of that Act) or an activity (within the meaning of Part 5 of that Act).

(2) In this Part, a reference to a metro railway system includes a reference to part of a metro railway system.

### **Division 2 Constitution of Sydney Metro**

#### **55B Constitution of Sydney Metro**

(1) There is constituted by this Act a corporation with the corporate name of Sydney Metro.

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(2) Sydney Metro is a NSW Government agency.

(3) Sydney Metro cannot employ any staff.

**Note.** Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable Sydney Metro to exercise its functions.

### **Division 3      Functions of Sydney Metro**

#### **55C    Development of metro railway systems and associated projects**

(1) The principal functions of Sydney Metro are:

- (a) to develop metro railway systems, and
- (b) to hold, manage and maintain rail infrastructure facilities of metro railways, and
- (c) to carry out development, or facilitate, manage or finance development, on land located on, or in the vicinity of, metro railway systems, and
- (d) to enter into leases or licences, or other arrangements, with persons for the provision of safe and reliable metro railway passenger services or the operation of metro railway systems or other transport systems, and
- (e) if any such arrangements have not been made or are, for any reason, not in place, to provide safe and reliable metro railway passenger services or operate metro railway systems, and
- (f) to enter into leases or licences, or other arrangements, with persons for the development, management and control or maintenance of metro railway systems, and
- (g) without limiting paragraph (d) or (e) and subject to this and any other Act, to make arrangements with respect to fares to be charged for, and to charge fares for, metro railway passenger services,

in an efficient, effective and financially responsible manner.

(2) Sydney Metro also has the following functions:

- (a) to hold, manage, maintain and establish assets associated with metro railway systems and associated transport projects,
- (b) to conduct businesses related to its principal functions,
- (c) to provide facilities or services that are ancillary to or incidental to its principal functions,
- (d) to acquire and develop any land,

- (e) to acquire or build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment,
  - (f) to 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,
  - (g) to 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 Metro's metro railway or other transport services, or any of Sydney Metro's businesses,
  - (h) to appoint agents, and act as agents for other persons,
  - (i) to charge an agreed or reasonable amount for any service provided by it (other than metro railway passenger services).
- (3) Sydney Metro has such other functions as are conferred or imposed on it by or under this or any other Act.

**55D Metro railway station plans**

- (1) Sydney Metro may, for the purpose of developing a metro railway system, prepare station plans for land on which metro railway stations are to be situated, and land in the vicinity of such metro railway stations, with respect to the following matters:
  - (a) development on the land, including development for integrated transport facilities such as bus or other transport interchanges,
  - (b) traffic and parking management arrangements,
  - (c) pedestrian links and access facilities,
  - (d) retail and commercial development associated with metro railway stations,
  - (e) public domain amenities and improvements,
  - (f) station design and amenity,
  - (g) other matters ancillary to the operation of metro railway stations and any associated transport or other facilities.
- (2) Sydney Metro is to consult with other relevant public authorities when preparing a station plan or an amendment to a plan.
- (3) Sydney Metro may provide a station plan to the Minister for Planning and other relevant public authorities in connection with the exercise by the Minister or authorities of statutory and other functions relating to the land concerned.

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**55E Acquisition of land by Sydney Metro**

- (1) Sydney Metro may, for any purposes of Sydney Metro, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) The other purposes for which land may be acquired under subsection (1) include for the purposes of a future sale, lease or disposal, that is, to enable Sydney Metro to exercise its functions in relation to land under this Act.
- (3) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be an authorised work and Sydney Metro is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sydney Metro may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.
- (5) Any such acquisition is not void merely because it is expressed to be for the purposes of Sydney Metro or for the purposes of this Act.
- (6) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes of this section.

**Division 4 Management of Sydney Metro**

**55F Constitution of Sydney Metro Board**

- (1) There is constituted a Sydney Metro Board.
- (2) The Board is to consist of:
  - (a) the Chief Executive Officer of Sydney Metro, and
  - (b) 1 member appointed by the Minister on the nomination of the Treasurer, and
  - (c) 3 other members appointed by the Minister.
- (3) Part 1 of Schedule 2B has effect with respect to the constitution and procedure of the Board.

**55G Board to determine policies of Sydney Metro**

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

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

**55H Chief Executive Officer of Sydney Metro**

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

**55I Chief Executive Officer to manage Sydney Metro**

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

**55J Ministerial control**

- (1) The Minister may give the Sydney Metro Board written directions in relation to the exercise of Sydney Metro's functions.
- (2) Subject to this section, the Board and the Chief Executive Officer must ensure that Sydney Metro complies with any such direction.
- (3) If the Sydney Metro Board considers that:
  - (a) Sydney Metro 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 Metro,the Board may request the Minister to review the decision.
- (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 Metro 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 Metro 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 Metro 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 Metro suffers as a result of complying with a direction includes the amount of expenditure that Sydney Metro incurs, and the amount of revenue that Sydney Metro 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 Metro 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 Metro from time to time.

**55K Sydney Metro to supply information to Minister**

Sydney Metro 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.

**55L Corporate plans**

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

- (2) Sydney Metro 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 Metro 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 Metro is to make the completed corporate plan available for public inspection. However, Sydney Metro 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 Metro 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 Metro 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 the Sydney Metro'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).

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**55M 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 55N, or
  - (b) a private subsidiary corporation referred to in section 55O.
- (2) Any function of Sydney Metro may be exercised:
  - (a) by Sydney Metro itself, or
  - (b) by a subsidiary corporation, or
  - (c) by Sydney Metro or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

**55N 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 Metro 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 Metro 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 Metro 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 Metro 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 Sydney Metro.

**55O 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 Metro has a controlling interest.
- (2) Sydney Metro 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 metro railways.
- (3) Sydney Metro 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.

**55P Delegation of functions of Sydney Metro**

- (1) Sydney Metro 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 Metro if the delegate is authorised in writing to do so by Sydney Metro.

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

## **Division 5      General**

### **55Q    Misuse of information**

- (1) A person must not use, either directly or indirectly, commercial information acquired by the person in the administration or execution of this Part for the purpose of gaining either directly or indirectly any financial advantage for the person, the person's spouse or de facto partner, a relative of the person or any other associate of the person.

Maximum penalty: 50 penalty units.

- (2) In this section:
- commercial information** means information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land or to influence materially the success of any tender for a contract with Sydney Metro.

**de facto partner** means the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*.

### **55R    Authorisations for section 51 of the Trade Practices Act 1974 (Cth) and Competition Code**

- (1) The following agreements and conduct are specifically authorised by this Act for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
- (a) any agreements entered into by Sydney Metro, or by a person or body with the approval or authority of Sydney Metro, relating to or in connection with a metro railway system,
  - (b) the conduct of the parties in entering into any such agreements,
  - (c) the conduct of the parties in performing any such agreements and any matter or thing done or omitted to be done by any of the parties in performing any such agreements.

- (2) In this section, *agreement* includes a contract, arrangement or understanding.

**55S Roads authority consent not required to certain work by Sydney Metro**

- (1) Section 138 of the *Roads Act 1993* does not apply to anything done by Sydney Metro in relation to a classified road (within the meaning of that Act), for which a council is the roads authority, for the purposes of exercising its functions under this Act.
- (2) However, Sydney Metro must not do anything referred to in section 138 (1) of that Act in relation to any such road except with the consent of the Roads and Traffic Authority.

**[8] Part 7, Division 1, heading**

Omit “or ITSRR”. Insert instead “, Sydney Metro or ITSRR”.

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

Omit “or the ITSRR”. Insert instead “, the ITSRR or Sydney Metro”.

**[10] Part 8, Division 2A**

Insert after Division 2:

**Division 2A Financial provisions relating to Sydney Metro**

**76A Sydney Metro Fund**

There is to be established in the Special Deposits Account a Sydney Metro Fund.

**76B Payments into Sydney Metro Fund**

There is to be paid into the Sydney Metro Fund:

- (a) all money received by or on account of Sydney Metro, and
- (b) all money advanced by the Treasurer for the Fund, and
- (c) all money advanced to Sydney Metro by the Treasurer or appropriated by Parliament for the purposes of Sydney Metro, and
- (d) all other money required by or under this or any other Act to be paid into the Fund.

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**76C Payments from Sydney Metro Fund**

There is to be paid from the Sydney Metro Fund:

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

**[11] Section 89 Definitions**

Insert “, Sydney Metro” after “Transport Infrastructure Development Corporation” in the definition of *rail authority*.

**[12] Section 89, definition of “railway system”**

Omit the definition.

**[13] Section 89, definition of “State rail operator”**

Insert “, Sydney Metro” after “RailCorp”.

**[14] Section 94 Transfers of assets, rights and liabilities**

Insert “or a local council” after “the Crown” where secondly occurring in section 94 (1).

**[15] Section 99A Closure and disposal of railway lines**

Insert after section 99A (3):

- (4) This section does not apply to a metro railway system.

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

Insert at the end of section 107 (1) (d):

, or

- (e) Sydney Metro.

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

Insert “or omitted to be done” after “done” wherever occurring in section 112 (1).

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

Omit “and the Roads and Traffic Authority”.

Insert instead “, the Roads and Traffic Authority and Sydney Metro”.

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

Insert before paragraph (a):

(aa) the Sydney Metro Board, and

**[20] Section 116 Liability of vehicle owner for parking offences on Authority’s land**

Insert “, Sydney Metro” after “Sydney Ferries” in the definition of *parking offence* in section 116 (7).

**[21] Schedule 2B**

Insert after Schedule 2A:

**Schedule 2B Constitution and procedure and  
CEO of Sydney Metro**

(Sections 55F (3) and 55H (2))

**Part 1 Provisions relating to constitution and  
procedure of Sydney Metro Board**

**1 Definitions**

In this Schedule:

*appointed member* means a member of the Board other than the Chief Executive Officer of Sydney Metro.

*Board* means the Sydney Metro Board.

*Chairperson* means the Chairperson of the Board.

*member* means the Chief Executive Officer of Sydney Metro or an appointed member.

**2 Chairperson of Board**

- (1) The Minister is to appoint one of the appointed members of the Board as Chairperson of the Board.
- (2) The appointment may be in and by the member’s instrument of appointment as a member or in and by another instrument executed by the Minister.
- (3) The Minister may remove a member from the office of Chairperson at any time.

- (4) A person who is a member and Chairperson vacates office as Chairperson if the person:
- (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

**3 Terms of office of members**

Subject to this Part and the regulations, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**4 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**5 Deputies**

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.
- (6) An appointed member may appoint a deputy only with the approval of the Chairperson.

**6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or

- (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 6 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

**7 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

**8 Disclosure of pecuniary interests**

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or

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- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

**9 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if

any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **10 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

#### **11 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

#### **12 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being, including the Chairperson or the Chairperson's deputy.

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**13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**15 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

**Part 2 Provisions relating to Chief Executive Officer of Sydney Metro**

**16 Employment of Chief Executive Officer**

The employment of the Chief Executive Officer of Sydney Metro is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2 of that Act.

**17 Acting Chief Executive Officer**

- (1) The Minister may, from time to time, appoint a person to act in the office of Chief Executive Officer of Sydney Metro during the illness or absence of the Chief Executive Officer, and the person, while so acting, has all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.
- (2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.
- (3) A person while acting in the office of Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of Chief Executive Officer is to be regarded as an absence from office of the Chief Executive Officer.

**[22] Schedule 4 Transfer of assets, rights and liabilities**

Insert “and whether personal or assignable” after “contingent” in the definition of *assets* in clause 1.

**[23] Schedule 4, clause 1, definitions of “liabilities” and “rights”**

Insert “and whether personal or assignable” after “contingent” wherever occurring.

**[24] Schedule 4, clause 3 (d1)**

Insert after clause 3 (d):

- (d1) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,

**[25] Schedule 5 Extended leave for certain staff**

Insert “, Sydney Metro” after “Independent Transport Safety and Reliability Regulator” in the definition of *Authority* in clause 2.

**[26] Schedule 6A Powers relating to rail infrastructure facilities and land**

Insert after paragraph (a) of the definition of *owner* of railway land, rail infrastructure facilities or a railway building in clause 1:

- (a1) in the case of any land, rail infrastructure facilities or any railway building that is managed or controlled by Sydney Metro for the purposes of exercising its functions under this Act, Sydney Metro, or

**[27] Schedule 6A, clause 1, definition of “rail authority”**

Omit “and Transport Infrastructure Development Corporation” from paragraph (a).

Insert instead “, Transport Infrastructure Development Corporation and Sydney Metro”.

**[28] Schedule 6A, clause 2CA**

Insert after clause 2C:

**2CA Sydney Metro’s rail infrastructure facilities**

Sydney Metro is the owner of all rail infrastructure facilities installed in or on land, in or on rivers and other waterways and in or on the beds of rivers and waterways by Sydney Metro and of all rail infrastructure facilities vested in or transferred to Sydney

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Metro (whether or not the place on which the facilities are situated is owned by Sydney Metro).

**[29] Schedule 6A, clause 3 (1C)**

Insert after clause 3 (1B):

- (1C) Without limiting this clause, the power of entry conferred by it for the purposes referred to in subclause (1) includes the power to enter land for the purpose of carrying out geotechnical surveys with respect to railway land.

**[30] Schedule 6B Special provisions for underground rail facilities**

Insert “, Sydney Metro” after “ARTC” in the definition of *rail authority* in clause 1 (1).

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

Insert at the end of clause 2 (1):

*Transport Administration Amendment (Metro Rail) Act 2008*

**[32] Schedule 7**

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

**Part Provisions consequent on enactment of  
Transport Administration Amendment  
(Metro Rail) Act 2008**

**Interpretation**

In this Part, *amending Act* means the *Transport Administration Amendment (Metro Rail) Act 2008*.

**First corporate plan**

Sydney Metro is to prepare its first corporate plan, in accordance with section 55L, as inserted by the amending Act, within the period approved by the Minister for the purposes of this clause.

**Transfers of assets and liabilities—validation**

- (1) Schedule 4, as amended by the amending Act, extends to any transfer of assets, rights or liabilities, consequent on an order to which that Schedule applies, that was made at any time before the commencement of those amendments.

- (2) For that purpose:
  - (a) the amendments are taken to have been in force when the relevant transfers occurred, and
  - (b) any such transfer is taken to have been validly made if it could have been made after that commencement.
- (3) This clause does not apply to any transfer to the extent that it is affected by any proceedings of a court that were finally determined before that commencement.
- (4) For the purposes of this clause, proceedings are not finally determined if:
  - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

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## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Electricity Supply Act 1995 No 94

**[1] Section 106 Regulations**

Insert “, Sydney Metro” after “Transport Infrastructure Development Corporation” in section 106 (2A).

**[2] Dictionary**

Insert “or Sydney Metro” after “Rail Infrastructure Corporation” in the definition of *rail network electricity system*.

### 2.2 Local Government Act 1993 No 30

**[1] Section 555 What land is exempt from all rates?**

Insert “, Sydney Metro” after “Rail Corporation New South Wales” in section 555 (1) (g1).

**[2] Section 600 Rebates in respect of certain land vested in public bodies**

Insert “, Sydney Metro” after “Rail Infrastructure Corporation” in the definition of *public body* in section 600 (9).

**[3] Section 742 Dispute resolution**

Insert at the end of section 742 (7):

- Sydney Metro

### 2.3 Pipelines Act 1967 No 90

**Section 3 Definitions**

Insert “, Sydney Metro” after “Transport Infrastructure Development Corporation” in paragraph (a) of the definition of *public authority* in section 3 (1).

### 2.4 Public Sector Employment and Management Act 2002 No 43

**[1] Schedule 1 Divisions of the Government Service**

Insert in appropriate order in Columns 1 and 2, respectively, in Part 2:

Sydney Metro Division

Chief Executive Officer of Sydney Metro

**[2] Schedule 2 Executive positions (other than non-statutory SES positions)**

Insert in appropriate order in Part 2:

Chief Executive Officer of Sydney Metro

**2.5 Roads Act 1993 No 33**

**Section 94 Roads authority may carry out drainage work across land adjoining public road etc**

Insert “, Sydney Metro” after “Transport Infrastructure Development Corporation” in section 94 (2).