

[Act 2000 No 38]



New South Wales

Transport Administration Amendment (Parramatta Rail Link) Bill 2000

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*:

- (a) to facilitate the construction of a railway from Parramatta to Chatswood (the *Parramatta Rail Link*) by:
 - (i) providing for the acquisition of certain land that is currently reserved as regional or national park, and
 - (ii) applying the *Public Works Act 1912* to the project as an authorised work under that Act, and
 - (iii) providing that building and subdivision work that is part of the project is not subject to certain provisions of the *Environmental Planning and Assessment Act 1979* that provide for the apportionment of liability and time limitations on commencement of actions for defective work, and

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

- (iv) providing that approvals under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link may be granted prior to determination by the Heritage Council under the *Heritage Act 1977* of applications concerning heritage items, and
- (b) to extend to all underground rail facilities the principle under the *Land Acquisition (Just Terms Compensation) Act 1991* that no compensation is payable under that Act for the acquisition of land to be used for a tunnel, and to make it clear that no compensation is payable for the use of those facilities, and
- (c) to protect underground rail facilities (including but not limited to the proposed Parramatta Rail Link tunnels and facilities) by enacting provisions for an entitlement to compensation for damage, a right of support, an implied protective covenant and removal of interference.

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

Schedule 1 [3] inserts a new Division 6 into Part 9 of the Principal Act. The new Division contains the following special provisions for the Parramatta Rail Link:

- (a) Proposed section 122 contains definitions.
- (b) Proposed section 123 makes it clear that the new Division does not affect the operation of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link.
- (c) Proposed section 124 authorises the acquisition of certain regional park and national park land for the purposes of the Parramatta Rail Link and provides for the revocation of the land's reservation as a regional park or national park when it is acquired. The land affected is shown on a plan tabled in the Legislative Assembly when this Bill is introduced.

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- (d) Proposed section 125 provides that the Parramatta Rail Link is an authorised work for the purposes of the *Public Works Act 1912* and the SRA, RAC and the Director-General of the Department of Transport (the *rail authorities*) are the Constructing Authorities for the project. The proposed section makes it clear that the *Public Works Act 1912* applies to the project before the land to be used for the construction of the project is acquired. The proposed section also makes it clear that the power of the rail authorities to enter land and exercise functions as a Constructing Authority extends to the regional park and national park land to which proposed section 124 applies, subject to compliance with provisions of the *National Parks and Wildlife Act 1974* concerning protection of relics, Aboriginal places and fauna.
- (e) Proposed section 126 exempts building work and subdivision work that is part of the Parramatta Rail Link from sections 109ZJ and 109ZK of the *Environmental Planning and Assessment Act 1979*. Section 109ZJ requires the apportionment of responsibility among the defendants in an action for defective building work or subdivision work and section 109ZK imposes an absolute 10 year time limit on when such an action can be commenced. The proposed section allows the parties to the Parramatta Rail Link project to deal with the issue of liability for defective work by agreement (including guarantees) unaffected by sections 109ZJ and 109ZK.
- (f) Proposed section 127 exempts approval under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link from provisions of the *Heritage Act 1977* that would operate to delay the giving of approval pending determination by the Heritage Council of applications concerning heritage items. The proposed section allows the approvals process under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* to proceed independently of the required heritage item approvals but does not remove the need for those approvals.

Schedule 1 [2] and [4] insert a new Schedule 6B into the Principal Act containing the following provisions with respect to underground rail facilities (including, but not limited to, the proposed Parramatta Rail Link tunnels and facilities):

- (a) Proposed clause 1 contains definitions.
- (b) Proposed clause 2 provides that no compensation is payable under the *Land Acquisition (Just Terms Compensation) Act 1991* for the compulsory acquisition of land for the purpose of underground rail facilities in certain circumstances. This extends an existing provision of that Act that is currently limited to tunnels. The proposed clause also makes it clear that when no compensation is payable for the construction of underground rail facilities, no compensation is payable for the use of those facilities either. The proposed clause extends to existing underground rail facilities, not just new facilities.

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- (c) Proposed clause 3 makes a person who causes destruction, damage or interference to an underground rail facility liable to pay compensation to the rail authority that owns it.
- (d) Proposed clause 4 creates a right of support for underground rail facilities owned by a rail authority. A person has a duty of care in negligence not to do anything or omit to do anything that removes the support provided to underground rail facilities by supporting land.
- (e) Proposed clause 5 subjects land above, under or adjacent to an underground rail facility owned by a rail authority to an implied covenant, in favour of the rail authority, for the protection of the underground rail facility.
- (f) Proposed clause 6 authorises a rail authority to require removal of any structure or object placed in contact with or near an underground rail facility that interferes with the operation of the underground rail facility and to compensate the rail authority for loss or damage suffered by the rail authority as a result.
- (g) Proposed clause 7 makes it clear that the proposed Schedule does not limit or otherwise affect any other provision of the Act in its application to underground rail facilities.

Schedule 1 [1] makes a consequential amendment.