

# Transport Administration Act 1988 No 109

[1988-109]



New South Wales

## Status Information

### Currency of version

Historical version for 15 July 2001 to 16 July 2001 (accessed 22 July 2024 at 16:25)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Transport Administration Amendment \(Rail Management\) Act 2000 No 89](#), Sch 4.1 (not commenced)
  - [Freight Rail Corporation \(Sale\) Act 2001 No 35](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

### Authorisation

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File last modified 15 July 2001

# Transport Administration Act 1988 No 109



New South Wales

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# Transport Administration Act 1988 No 109



New South Wales

An Act to constitute the State Rail Authority, Rail Infrastructure Corporation, Freight Rail Corporation, the State Transit Authority and the Roads and Traffic Authority and to make provision for their management and functions; to establish the Public Transport Authority and a Roads and Traffic Advisory Council; to provide for the administration of public transport in New South Wales; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Transport Administration Act 1988*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Authority** means the State Rail Authority, the State Transit Authority or the Roads and Traffic Authority.

**bus service** includes any road transport service for the carriage of passengers (except a railway service).

**Director-General** means the Director-General of the Department of Transport.

**ferry service** means any ferry service for the carriage of passengers.

**Freight Rail Corporation** (or **FRC**) means Freight Rail Corporation constituted under this Act.

**light rail services**—see section 104M.

**light rail system**—see section 104N.

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted by section 37B of the *State Owned Corporations Act 1989*.

**officer**, in relation to an Authority, includes an employee of the Authority.

**Public Transport Authority** (or **PTA**) means the Public Transport Authority of New South Wales constituted under this Act.

**Rail Corporation** means Freight Rail Corporation or Rail Infrastructure Corporation.

**Rail Infrastructure Corporation** (or **RIC**) means Rail Infrastructure Corporation constituted under this Act.

**railway service** means a railway passenger service.

**Roads and Traffic Advisory Council** means the Roads and Traffic Advisory Council constituted under this Act.

**Roads and Traffic Authority** means the Roads and Traffic Authority of New South Wales constituted under this Act.

**State Rail Authority** (or **SRA**) means the State Rail Authority of New South Wales constituted under this Act.

**State Transit Authority** means the State Transit Authority of New South Wales constituted under this Act.

**Transport Administration Corporation** means the Transport Administration Corporation constituted under this Act.

**transport district** means a transport district for the time being established under section 108.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes in the text of this Act do not form part of this Act.

## **Part 2 State Rail Authority**

### **Division 1 Constitution of State Rail Authority**

#### **4 Constitution of SRA**

- (1) There is constituted by this Act a corporation with the corporate name of the State Rail Authority of New South Wales.
- (2) The State Rail Authority:

- (a) has the functions conferred or imposed on it by or under this or any other Act, and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

## **Division 1A Objectives of State Rail Authority**

### **4A Objectives of SRA**

- (1) The principal objective of the State Rail Authority is to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner.
- (2) The other objectives of the State Rail Authority are:
  - (a) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable businesses, and
    - (ii) to maximise the net worth of the State's investment in the Authority, and
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
  - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
  - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of the State Rail Authority are of equal importance, but are not as important as the principal objective of the Authority.

## **Division 2 General functions of State Rail Authority**

### **5 Railway services**

- (1) The State Rail Authority shall operate railway passenger services.
- (2) The State Rail Authority shall continue to operate the railway services which were provided by it immediately before the commencement of this section.
- (3) Subsection (2) does not limit the power of the State Rail Authority:
  - (a) to establish any new railway service, or
  - (b) to alter or discontinue any of its railway services.
- (4) In exercising its functions, the State Rail Authority is to act in the best interests of the NSW rail network as a whole.

## **6 Other transport services**

- (1) The State Rail Authority may in connection with its railway services operate other transport services, including bus services.
- (2) Any such transport service may be additional to or in substitution for any railway service.

## **7 (Repealed)**

### **7A Duties with respect to safe railway operations**

The operation of a railway service by the State Rail Authority is subject to the requirements of the *Rail Safety Act 1993*.

## **8 Miscellaneous functions of SRA**

- (1) Without limiting any other functions conferred or imposed on it, the State Rail Authority may:
  - (a) construct stations, passenger service facilities, rolling stock maintenance facilities and associated works,
  - (b) conduct any business, whether or not related to the operation of its railway or other transport services, and for that purpose use any property or the services of any staff of the Authority,
  - (c) acquire and develop any land,
  - (d) acquire or build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment,
  - (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,
  - (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 the Authority's railway or other transport services or of any of the Authority's businesses,
  - (g) appoint agents, and act as agent for other persons.
  - (h) (Repealed)
- (2) The State Rail Authority may exercise its functions within or outside New South Wales.

### **8A National Rail Corporation (Agreement) Act 1991**

The State Rail Authority, Rail Infrastructure Corporation and Freight Rail Corporation are, in the exercise of their functions, subject to the requirements of the *National Rail Corporation (Agreement) Act 1991* and of the Agreement approved by that Act.

## **Division 3 Management of State Rail Authority**

### **9 Constitution of SRA Board**

- (1) There shall be a State Rail Authority Board.
- (2) The Board shall consist of:
  - (a) the Chief Executive of the State Rail Authority, and
  - (b) (Repealed)
  - (c) 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 the State Rail Authority.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

### **10 Board to determine policies of SRA**

- (1) The State Rail Authority Board has the function of determining the policies of the State Rail Authority.
- (2) In exercising that function, the Board shall, as far as practicable, ensure that the activities of the State Rail Authority are carried out properly and efficiently.

### **11 Chief Executive of SRA**

- (1) The Governor may appoint a Chief Executive of the State Rail Authority.
- (2) Before a person is appointed as Chief Executive, the Minister shall give the State Rail Authority Board the opportunity to recommend any one or more persons for appointment.
- (3) Schedule 2 has effect with respect to the Chief Executive.

### **12 Chief Executive to manage SRA**

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

### **13 Ministerial control**

The State Rail Authority (and its Board and Chief Executive) are, in the exercise of their



functions, subject to the control and direction of the Minister.

#### **14 SRA to supply information to Minister**

The State Rail Authority shall:

- (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as 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.

#### **15 Corporate plans**

- (1) The State Rail Authority shall, at least 3 months before the beginning of each financial year of the Authority, prepare and deliver to the Minister a draft corporate plan for the financial year.
- (2) The State Rail Authority shall:
  - (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.
- (2A) During the preparation of a corporate plan after the commencement of this subsection, the State Rail Authority 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.
- (2B) The State Rail Authority is to make the completed corporate plan available for public inspection. However, the Authority 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](#).
- (3) The State Rail Authority shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan shall specify:
  - (a) the separate activities of the State Rail Authority 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) targets and criteria for assessing the Authority's performance.

(4A) A corporate plan must specify strategies for dealing with the integration of passenger services and passenger safety, security and conduct and any other similar issues that the Minister directs are to be addressed by the corporate plan.

(5) This section is subject to any requirement made by or under this Act (including the requirements of a direction by the Minister under section 13).

(6) As soon as practicable after the commencement of this section, the State Rail Authority shall carry out a review of its existing services and provide the Minister with a report on:

(a) any of its activities which are not in the commercial interests of the Authority, and

(b) the estimated amount of the annual financial loss resulting from those activities, and

(c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.

## **16 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 17, or

(b) a private subsidiary corporation referred to in section 18.

(2) Any function of the State Rail Authority may be exercised:

(a) by the Authority itself, or

(b) by a subsidiary corporation, or

(c) by the Authority or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

## **17 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 the State Rail Authority as are specified in the regulations or delegated to it under this Act, and

(b) is, for the purposes of any Act, a statutory body representing the Crown.

(4) The provisions of or made under this Act or any other Act relating to the State Rail Authority 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) the State Rail Authority 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 the State Rail Authority 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 the State Rail Authority.

## **18 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 the State Rail Authority has a controlling interest.

(2) The State Rail Authority 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 railway or other transport services.

- (3) The State Rail Authority 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, and does not represent, the Crown.

### **19 Delegation of functions of SRA**

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

## **Part 2A Establishment of Rail Corporations**

### **Division 1 Interpretation**

#### **19A Definitions**

- (1) In this Part and Schedule 6A:

**access purchaser** means a person who has contracted with a rail operator in respect of the operation or movement of rolling stock.

**NSW rail network** means the railway lines vested in or owned by Rail Infrastructure Corporation (including passing loops and turnouts from those lines and loops and associated rail infrastructure facilities that are so vested or owned).

**portfolio Minister** has the same meaning as in the [State Owned Corporations Act 1989](#).

**rail infrastructure facilities:**

- (a) includes railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication

systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment, and (subject to section 19B (2)),

- (b) does not include any stations, platforms, rolling stock maintenance facilities, office buildings or housing, freight centres or depots, private sidings and spur lines connected to premises not vested in or owned by Rail Infrastructure Corporation.

**rail operator** means a person who is responsible for the operation or moving, by any means, of any rolling stock on a railway track.

**rolling stock** means a vehicle that operates on or uses a railway track and that is used or proposed to be used to transport passengers or freight (or both) on a railway track for reward.

**voting shareholders** has the same meaning as in the [State Owned Corporations Act 1989](#).

- (2) Words and expressions used in this Act and also in the [State Owned Corporations Act 1989](#) have the same meanings as they have in that Act.

### **19B Meaning of “NSW Rail Access Regime”**

- (1) In this Part and Schedule 6A, **NSW Rail Access Regime** means an access regime established from time to time by the Minister and approved by the Premier for the purpose of implementing the Competition Principles Agreement in respect of third party access to the NSW rail network by the prescribed corporation or by persons as rail operators or access purchasers, including the use of such rail infrastructure facilities that are vested in or owned by Rail Infrastructure Corporation as are necessary for the safe operation of rolling stock on that network.

#### **Editorial note—**

NSW Rail Access Regime—see Gazette No 22 of 19.2.1999, p 906.

- (2) The portfolio Minister may, by order in writing, direct that facilities specified in the order that are vested in or owned by Rail Infrastructure Corporation be treated as rail infrastructure facilities for the purposes of this Act and an access regime established under this section.
- (3) An access regime established in accordance with this section may, in respect of the carriage of coal, provide for special access pricing principles during the period that a government coal-carrying service is, by section 78 of the [Competition Policy Reform Act 1995](#) of the Commonwealth, not a service for the purposes of Part IIIA of the [Trade Practices Act 1974](#) of the Commonwealth. Those special access pricing principles may continue, for the whole or any part of that period, the level of prices applicable to those services before the establishment of that access regime.

- (4) An access regime established in accordance with this section must make provision with respect to the application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* to a dispute with respect to third party access to the NSW rail network by the prescribed corporation or by persons as rail operators or access purchasers. In any arbitration of such a dispute, the arbitrator must:
- (a) give effect to the access regime, and
  - (b) take into account (in addition to the matters referred to in section 24B (3) of that Act) the desirability of ensuring priority and certainty of access for passenger services.

**Note—**

Section 19E (5) of this Act requires the Rail Infrastructure Corporation to act in accordance with the NSW Rail Access Regime when exercising its functions.

- (5) The Minister is to cause a copy of an access regime established in accordance with this section (and any amendment or replacement of that regime) to be published in the Gazette as soon as practicable after it has been established (or amended or replaced).
- (6) Before any such access regime is amended or replaced the Minister is to make a draft of the amendment or the replacement regime available for public comment for at least 30 days and is to have regard to any submissions the Minister receives about the draft within that period. The arrangements for obtaining or inspecting the draft and for making submissions are to be advertised in a daily newspaper circulating throughout the State. This subsection does not apply if the Minister is satisfied that the matter is minor or urgent.
- (7) Without limiting this section, the Minister is to take into account all the public benefits arising from an access regime (including those that do not have a direct commercial value) when establishing, amending or replacing the access regime.
- (8) An access regime established under this section may provide for persons who intend to be access purchasers, and who, in the opinion of the Rail Infrastructure Corporation, have the capacity to secure and properly manage the services of a rail operator, to enter into negotiations in respect of third party access to the NSW rail network.
- (9) Such a person may be provided with access under an access regime even if the person is not an access purchaser, on the condition that the person becomes an access purchaser prior to the operation or movement of rolling stock pursuant to such access.
- (10) Nothing in this section affects the operation of the *Rail Safety Act 1993*.
- (11) In this section:

**Competition Principles Agreement** has the same meaning as in the *Independent Pricing and Regulatory Tribunal Act 1992*.

**prescribed corporation** means the corporation prescribed by the regulations, being a corporation established in pursuance of an agreement between the Commonwealth and the States for the purpose of providing interstate access to Australian rail networks.

## Division 2 Rail Infrastructure Corporation

### 19C Establishment of RIC as statutory State owned corporation

- (1) There is constituted by this Act a corporation with the corporate name of Rail Infrastructure Corporation.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words “Rail Infrastructure Corporation”.

**Note—**

The *State Owned Corporations Act 1989* contains many provisions that apply to RIC (and FRC) as statutory State owned corporations. In particular, Part 3 contains provisions relating to their status, the application of the *Corporations Act 2001* of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions as to the performance of non-commercial activities or the carrying out of public sector policies), the memorandum and articles, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

### 19D Objectives of RIC

- (1) The principal objective of Rail Infrastructure Corporation is to ensure that the NSW rail network enables safe and reliable passenger and freight services to be provided in an efficient, effective and financially responsible manner.
- (2) The other objectives of Rail Infrastructure Corporation are:
  - (a) to promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime, and
  - (b) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable businesses, and
    - (ii) to maximise the net worth of the State’s investment in the Corporation, and
  - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
  - (d) where its activities affect the environment, to conduct its operations in

compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and

- (e) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates, and
- (f) to maintain reasonable priority and certainty of access for railway passenger services.

(3) The other objectives of Rail Infrastructure Corporation are of equal importance, but are not as important as the principal objective of the Corporation.

(4) Section 20E of the *State Owned Corporations Act 1989* does not apply to Rail Infrastructure Corporation.

### **19E Functions of RIC**

(1) Rail Infrastructure Corporation has the functions conferred or imposed on it by or under this or any other Act or law.

(2) The principal functions of Rail Infrastructure Corporation are:

- (a) to hold, manage, maintain and establish rail infrastructure facilities on behalf of the State, and
- (b) to provide persons with access to the NSW rail network under the NSW Rail Access Regime (including the development and maintenance of an access pricing policy).

(2A) In exercising its functions, Rail Infrastructure Corporation is to act in the best interests of the NSW rail network as a whole.

(3) (Repealed)

(4) Rail Infrastructure Corporation may:

- (a) provide facilities or services that are ancillary or incidental to its principal functions, and
  - (a1) supply goods and services to the rail industry, and
- (b) conduct any business (whether or not related to its principal functions) that it considers will further its objectives.

(5) In exercising its functions, Rail Infrastructure Corporation must act in accordance with the NSW Rail Access Regime.

(5A) Rail Infrastructure Corporation is not to conduct any business outside the State that is not related to the NSW rail network without the approval of the Premier, Minister and Treasurer.



- (6) Each annual report of Rail Infrastructure Corporation prepared under the *Annual Reports (Statutory Bodies) Act 1984* must include a section that:
- (a) identifies the trends in access for passenger and freight services on the NSW rail network, and
  - (b) having regard to those trends, identifies any parts of the NSW rail network where there is or is likely to be insufficient capacity for passenger or freight services, and
  - (c) sets out what Rail Infrastructure Corporation proposes should be done to ensure sufficient capacity for those services.
- (7) This section (except subsection (5A)) does not limit the functions of Rail Infrastructure Corporation apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

**19F Powers of RAC relating to rail infrastructure facilities and land**

Schedule 6A (Powers of RAC relating to rail infrastructure facilities and land) has effect.

**19FA Ministerial control**

- (1) The Minister may give Rail Infrastructure Corporation directions in relation to the exercise of the Corporation's functions. The Minister is to advise the voting shareholders of the Corporation of the giving and the terms of any such direction.
- (2) The board of directors and chief executive officer of Rail Infrastructure Corporation must, subject to this section, ensure that the Corporation complies with any such direction.
- (3) If Rail Infrastructure Corporation considers that complying with any such direction may cause a significant variation in its approved financial outcomes, the Corporation must 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 Rail Infrastructure Corporation requests such a review:
  - (a) the Corporation may request the Minister to provide it with a written record of the direction if it was not given in writing, and
  - (b) the Corporation is not 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 is not to confirm the direction unless:
  - (a) the Minister has estimated the variation in the approved financial outcomes from

the information supplied by Rail Infrastructure Corporation, and

(b) the Minister has referred the matter to the Treasurer, and

(c) the Treasurer has approved the direction.

- (7) The Minister's power to give directions to the Corporation under this section is in addition to the power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Those sections of that Act do not apply to a direction of the Minister if the direction states that it is being given under this section.

### **19FB Network control**

- (1) For the purposes of this section, **network control** with respect to any part of the NSW rail network is:

(a) service planning (namely, the timetabling of rolling stock, including standard working and daily timetables and planning the occupation of railway track for maintenance and other service requirements), and

(b) real time control (namely, the actual control of the movement of rolling stock, including train signalling and incident management).

Network control includes any aspect of the control of the network that is declared by the regulations to be network control, but does not include anything declared by the regulations not to be network control.

- (2) The Minister may, by order published in the Gazette, designate a rail operator as the body responsible for network control (or any specified aspect of network control) with respect to any specified part of the NSW rail network.
- (3) The exercise of the functions of Rail Infrastructure Corporation is subject to any such order.
- (4) Rail Infrastructure Corporation is responsible for network control with respect to any part of the NSW rail network for which no rail operator is designated as the body responsible by such an order.
- (5) A body responsible for network control must:
- (a) give priority to rail passenger services, and
- (b) subject to giving priority to those services—promote and facilitate access to the NSW rail network in accordance with the NSW Rail Access Regime.

## **Division 3 Freight Rail Corporation**

### **19G Establishment of FRC as statutory State owned corporation**

- (1) There is constituted by this Act a corporation with the corporate name of Freight Rail Corporation.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Freight Rail Corporation".

**Note—**

See note to section 19C concerning the operation of the *State Owned Corporations Act 1989* in relation to FRC and RIC.

### **19H Objectives of FRC**

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

### **19I Functions of FRC**

- (1) Freight Rail Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal function of Freight Rail Corporation is to operate rail freight services.
- (3) Freight Rail Corporation may:
  - (a) provide facilities or services that are ancillary or incidental to its principal function, and
  - (b) conduct any business (whether or not related to its principal function) that it considers will further its objectives.

- (4) This section does not limit the functions of Freight Rail Corporation apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

## **Division 3A**

### **19IA-19IC (Repealed)**

## **Division 4 General matters relating to Rail Corporations**

### **19J Transfer of SRA assets, rights and liabilities**

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the State Rail Authority or any State Rail Authority subsidiary corporation, as are specified or referred to in the order, be transferred to a Rail Corporation.
- (2) Assets, rights or liabilities may not be transferred under this section to a Rail Corporation unless the Rail Corporation is a statutory State owned corporation.
- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this section.
- (4) For the purposes of this section, the assets, rights and liabilities of the State Rail Authority and any State Rail Authority subsidiary corporation include:
  - (a) any assets, rights or liabilities of the State Rail Authority and any State Rail Authority subsidiary corporation that have vested in the Ministerial Holding Corporation under this Act, and
  - (b) any assets, rights or liabilities used by or attaching to the State Rail Authority and any State Rail Authority subsidiary corporation and belonging to the State or an authority of the State.
- (5) An order under this section may be made on such terms and conditions as are specified in the order.
- (6) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the SRA or a SRA subsidiary corporation.

### **19K Transfer of other assets, rights and liabilities**

- (1) The Minister may, by order in writing, direct that such other assets, rights or liabilities used by or attaching to the State Rail Authority or any State Rail Authority subsidiary corporation as are specified or referred to in the order, be transferred to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) An order under this section may be made on such terms and conditions as are specified in the order.

- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this section.

**19L Restriction on sale of shares**

Shares in a Rail Corporation may not be sold or otherwise disposed of except to eligible Ministers.

**19M Transfer of certain SRA staff**

Schedule 6 (Transfer of certain SRA staff (other than certain chief executives)) has effect with respect to a transfer of members of staff of the State Rail Authority to a Rail Corporation.

**19N Foundation charter of Rail Corporations for purposes of SOC Act**

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of a Rail Corporation is this Part of this Act (but not the remainder of this Act).

**Note—**

Section 3 of the *State Owned Corporations Act 1989* defines the foundation charter of a statutory SOC as the whole of the Act by which a SOC is established for the purposes of the SOC Act and, in particular, for the purpose of the provisions relating to the legal capacity of statutory SOCs and assumptions that they have complied with that Act and their foundation charter.

**19NA Board of directors of RIC**

- (1) The board of directors of Rail Infrastructure Corporation is to be appointed by the Governor on the recommendation of the voting shareholders and is to consist of not fewer than 3 and not more than 7 directors. The voting shareholders are to consult the portfolio Minister on the persons recommended for appointment as directors.
- (2) One director of the board is to be a person recommended by a selection committee comprising:
  - (a) 2 persons nominated by the portfolio Minister, and
  - (b) 2 persons nominated by the Labor Council of New South Wales,being a person selected by the committee from a panel of 3 persons nominated by the Labor Council.
- (3) The members of the selection committee and the nominees of the Labor Council for the panel are to be representatives of industrial organisations of employees that have members employed in the public sector of the rail industry.
- (4) The procedures for constituting a selection committee for the purposes of subsection (2), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.

- (5) The other directors of the board must each or together have such expertise (including engineering and rail safety expertise) as the voting shareholders consider necessary in order to realise the objectives of Rail Infrastructure Corporation.
- (6) Subject to subsection (7), section 20J of and Schedule 8 to the *State Owned Corporations Act 1989* have effect with respect to the board of Rail Infrastructure Corporation and its constitution and procedure.
- (7) Section 20J (2), (3) and (4) of, and clause 4 of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of Rail Infrastructure Corporation.

### **190 Board of directors of FRC**

- (1) The board of directors of Freight Rail Corporation is to be appointed by the voting shareholders and is to consist of not fewer than 3 and not more than 7 directors.
- (2) One director of the board is to be appointed by the voting shareholders on the recommendation of a selection committee comprising:
  - (a) 2 persons nominated by the portfolio Minister, and
  - (b) 2 persons nominated by the Labor Council of New South Wales,being a person selected by the committee from a panel of 3 persons nominated by the Labor Council.
- (3) The members of the selection committee and the nominees of the Labor Council for the panel are to be representatives of industrial organisations of employees that have members employed in the public sector of the rail industry.
- (4) The procedures for constituting a selection committee for the purposes of subsection (2), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.
- (5) The other directors appointed by the voting shareholders must each or together have such expertise as the voting shareholders consider necessary in order to realise the principal objectives of Freight Rail Corporation.
- (6) The voting shareholders may remove a director from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (7) Subject to subsection (8), section 20J of and Schedule 8 to the *State Owned Corporations Act 1989* have effect with respect to the board of Freight Rail Corporation and its constitution and procedure.

- (8) Section 20J (2), (3) (a) and (4) of, and clauses 4 and 7 (1) (d) and (2) of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of Freight Rail Corporation.

**19P Portfolio Minister not to be shareholder of Rail Corporations**

The portfolio Minister of a Rail Corporation must not be, and is not eligible for nomination as, a shareholder of the Rail Corporation.

**19Q Shareholders of Rail Corporations**

- (1) The same Minister (other than the Treasurer) may not be nominated as, and may not be, a shareholder of both Rail Infrastructure Corporation and Freight Rail Corporation at the same time.
- (2) This section applies despite anything in section 20H (5) of the *State Owned Corporations Act 1989*.

**19R Chief executive officer**

- (1) The chief executive officer of a Rail Corporation is to be appointed by the board:
- (a) in the case of Rail Infrastructure Corporation—with the concurrence of the voting shareholders and the Minister, or
  - (b) in the case of Freight Rail Corporation—after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders and, in the case of Rail Infrastructure Corporation, consultation with the Minister.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.
- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Public Sector Management Act 1988* (Part 8 included) does not apply to the chief executive officer.
- (6) Subject to subsection (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) The provisions of section 20K (2) of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

- (8) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

### **19S Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
- (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer.
- (4A) The board is not to appoint a person to act in the office of chief executive officer of Rail Infrastructure Corporation during any vacancy in that office without the concurrence of the voting shareholders and the Minister.
- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of a Rail Corporation.
- (6) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

### **19T Dividends**

- (1) The voting shareholders of a Rail Corporation, in consultation with the board, are to determine the Rail Corporation's share dividend scheme.
- (2) The dividends to be paid by a Rail Corporation are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to a Rail Corporation.

## **Part 2B**

### **19U-19AH (Repealed)**



## **Part 3 State Transit Authority**

### **Division 1 Constitution of State Transit Authority**

#### **20 Constitution of STA**

- (1) There is constituted by this Act a corporation with the corporate name of the State Transit Authority of New South Wales.
- (2) The State Transit Authority:
  - (a) has the functions conferred or imposed on it by or under this or any other Act, and
  - (b) is, for the purposes of any Act, a statutory body representing the Crown.

### **Division 1A Objectives of State Transit Authority**

#### **20A Objectives of STA**

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

### **Division 2 General functions of State Transit Authority**

#### **21 Bus services**

- (1) The State Transit Authority shall operate bus services.
- (2) The State Transit Authority shall continue to operate the bus services which were provided by the Urban Transit Authority immediately before the commencement of this section.

- (3) Subsection (2) does not limit the power of the State Transit Authority:
  - (a) to establish any new bus service, or
  - (b) to alter or discontinue any of its bus services.

## **22 Ferry services**

- (1) The State Transit Authority shall operate ferry services.
- (2) The State Transit Authority shall continue to operate the ferry services which were provided by the Urban Transit Authority immediately before the commencement of this section.
- (3) Subsection (2) does not limit the power of the State Transit Authority:
  - (a) to establish any new ferry service, or
  - (b) to alter or discontinue any of its ferry services.

## **23 (Repealed)**

## **24 Miscellaneous functions of STA**

- (1) Without limiting any other functions conferred or imposed on it, the State Transit Authority may:
  - (a) conduct any business, whether or not related to the operation of its bus or ferry services, and for that purpose use any property or the services of any staff of the Authority,
  - (b) acquire and develop any land,
  - (c) acquire or build, and maintain or dispose of, any vehicles, vessels, wharves, plant, machinery or equipment,
  - (d) 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,
  - (e) 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 the Authority's bus or ferry services or of any of the Authority's businesses, and
  - (f) appoint agents, and act as agent for other persons.
- (2) The State Transit Authority may exercise its functions within or outside New South Wales.

## **Division 3 Management of State Transit Authority**

### **25 Constitution of STA Board**

- (1) There shall be a State Transit Authority Board.
- (2) The Board shall consist of:
  - (a) the Chief Executive of the State Transit Authority, and
  - (b) (Repealed)
  - (c) 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 the State Transit Authority.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

### **26 Board to determine policies of STA**

- (1) The State Transit Authority Board has the function of determining the policies of the State Transit Authority.
- (2) In exercising that function, the Board shall, as far as practicable, ensure that the activities of the State Transit Authority are carried out properly and efficiently.

### **27 Chief Executive of STA**

- (1) The Governor may appoint a Chief Executive of the State Transit Authority.
- (2) Before a person is appointed as Chief Executive, the Minister shall give the State Transit Authority Board the opportunity to recommend any one or more persons for appointment.
- (3) Schedule 2 has effect with respect to the Chief Executive.

### **28 Chief Executive to manage STA**

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

## **29 Ministerial control**

- (1) The Minister may give the State Transit Authority Board written directions in relation to the exercise of the State Transit Authority's functions.
- (2) Subject to this section, the State Transit Authority Board and the Chief Executive of the State Transit Authority must ensure that the State Transit Authority complies with any such direction.
- (3) If the State Transit Authority Board considers that:
  - (a) the State Transit Authority 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 the Authority,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, the State Transit Authority 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 shall not confirm the direction unless:
  - (a) the Minister has estimated the financial loss concerned from information supplied by the State Transit Authority or from other sources, and
  - (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) The amount to be reimbursed to the State Transit Authority shall 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 the State Transit Authority from time to time.
- (8) For the purposes of this section, the amount of the financial loss that the State Transit Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

### **30 STA to supply information to Minister**

The State Transit Authority shall:

- (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as 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.

### **31 Corporate plans**

- (1) The State Transit Authority shall, at least 3 months before the beginning of each financial year of the Authority, prepare and deliver to the Minister a draft corporate plan for the financial year.
- (2) The State Transit Authority shall:
  - (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.
- (2A) During the preparation of a corporate plan after the commencement of this subsection, the State Transit Authority 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.
- (2B) The State Transit Authority is to make the completed corporate plan available for public inspection. However, the Authority 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*.
- (3) The State Transit Authority shall, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan shall specify:
  - (a) the separate activities of the State Transit Authority 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) targets and criteria for assessing the Authority's performance.

- (4A) A corporate plan must specify strategies for dealing with the integration of passenger services and passenger safety, security and conduct and any other similar issues that the Minister directs are to be addressed by the corporate plan.
- (5) This section is subject to any requirement made by or under this Act (including the requirements of any direction by the Minister under section 29).
- (6) As soon as practicable after the commencement of this section, the State Transit Authority shall carry out a review of its existing services and provide the Minister with a report on:
- (a) any of its activities which are not in the commercial interests of the Authority, and
  - (b) the estimated amount of the annual financial loss resulting from those activities, and
  - (c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.

### **32 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 33, or
- (b) a private subsidiary corporation referred to in section 34.

(2) Any function of the State Transit Authority may be exercised:

- (a) by the Authority itself, or
- (b) by a subsidiary corporation, or
- (c) by the Authority or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

### **33 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 the State Transit Authority as are specified in the regulations or delegated to it under this Act, and
  - (b) is, for the purposes of any Act, a statutory body representing the Crown.
- (4) The provisions of or made under this Act or any other Act relating to the State Transit Authority 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) the State Transit Authority 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 the State Transit Authority 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 the State Transit Authority.

#### **34 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 the State Transit Authority has a controlling interest.

- (2) The State Transit Authority 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 bus or ferry services.

- (3) The State Transit Authority 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, and does not represent, the Crown.

### **35 Delegation of functions of STA**

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

## **Part 4 Director-General of the Department of Transport**

### **36 References to functions of Director-General**

A reference in this Part to a function of the Director-General under this Part includes a reference to a function of the Director-General under an Act referred to in section 37 or 37A or under Division 2A of Part 9.

### **37 Functions relating to the licensing and regulation of public passenger vehicles or ferries**

The Director-General has such functions with respect to the licensing and regulation of public passenger vehicles or ferries as are conferred or imposed on the Director-General by or under this Act, the [Passenger Transport Act 1990](#) or any other Act.

### **37A Functions relating to the licensing and regulation of railways**

The Director-General has such functions with respect to railways as are conferred or imposed on the Director-General by or under this Act, the [Rail Safety Act 1993](#) or any other Act.

### **38 Functions of ensuring provision of appropriate passenger services**

- (1) The Director-General is to take all steps as are, within available financial resources, necessary to ensure the provision of safe, efficient, adequate and economic passenger



services.

(2) The Director-General may, in particular, make and enter into contracts or arrangements under section 104E with any person operating passenger services for the provision by that person of any such services.

(2A) This section extends to light rail services.

(3) Nothing in this section derogates from the responsibilities of the State Rail Authority or the State Transit Authority in connection with the provision of passenger services within the State, but each such Authority must:

(a) consult, on a regular basis, with the Director-General in connection with the provision and operation of its passenger services, and

(b) as far as practicable, consult with the Director-General before making any major changes, or initiating any major action, affecting passenger services.

(4) (Repealed)

### **39 Functions relating to administration of Government subsidised travel concessions**

(1) The Director-General shall administer, or arrange for the administration of, any scheme approved by the Minister for Government subsidised travel concessions on passenger services.

(2) Payments required to be made in accordance with any such scheme shall be made from such money as may be provided by Parliament for the purpose.

### **40 Delegation**

(1) The Director-General may delegate to an authorised person any of the Director-General's functions under this Part, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.

(3) In this section, **authorised person** means:

(a) (Repealed)

(b) a member of the staff of the Department of Transport, or

(c) a person of a class prescribed by the regulations.

### **41 Ministerial control**

The Director-General is, in the exercise of his or her functions under this Part, subject to the control and direction of the Minister.

**42, 43 (Repealed)**

**Part 5 Public Transport Authority of New South Wales**

**44 Constitution of PTA**

- (1) There is constituted by this Act a corporation with the corporate name of the Public Transport Authority of New South Wales.
- (2) The Public Transport Authority consists of:
  - (a) subject to subsection (3), 5 ex-officio members, being:
    - (i) the Director-General of the Department of Transport, and
    - (ii) the Chief Executive of the State Rail Authority, and
    - (iii) the chief executive officer of Rail Infrastructure Corporation, and
    - (iv) the Chief Executive of the State Transit Authority, and
    - (v) the Chairperson of the State Transit Authority Board, and
  - (b) not more than 6 members appointed by the Minister, including:
    - (i) a representative of bus and coach proprietors, and
    - (ii) a representative of taxi-cab and private motor vehicle hire operators, and
    - (iii) a representative of marine passenger transport operators, and
    - (iv) a representative of the Public Transport Advisory Council nominated by that Council, and
    - (v) a representative of light rail system operators, and
  - (c) another member appointed by the Minister, by the member's instrument of appointment, as Chairperson of the Authority.
- (3) If, pursuant to clause 3 of Schedule 1 (Constitution and procedure of State Rail Authority Board and State Transit Authority Board):
  - (a) (Repealed)
  - (b) the Chief Executive of the State Transit Authority is appointed as the Chairperson of the Board of the State Transit Authority,

the number of ex-officio members of the Public Transport Authority is to be reduced accordingly.
- (4) Schedule 3 (Provisions relating to Public Transport Authority and Roads and Traffic

Advisory Council) has effect with respect to the constitution and procedure of the Authority.

#### **45 Function of PTA**

- (1) The function of the Public Transport Authority is to advise the Minister on any matter relating to the development, coordination and regulation of public passenger services throughout the State.
- (2) Any such advice may be given either at the request of the Minister or without any such request.
- (3) In this section, **public passenger services** means the carriage of passengers for a fare or other consideration by motor vehicle, vessel or train.

### **Part 5A Public Transport Advisory Council**

#### **45A Meaning of “public passenger services”**

In this Part, **public passenger services** means the carriage of passengers for a fare or other consideration by motor vehicle, vessel or train.

#### **45B Constitution of Council**

- (1) The Minister is to establish a Public Transport Advisory Council.
- (2) The Council is to consist of part-time members appointed by the Minister, of whom:
  - (a) 1 is to be the person appointed as Chairperson under clause 3 of Schedule 3, and
  - (b) 2 are to be representatives of the users of public transport, selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to represent the interests of public transport users, and
  - (c) 1 is to be a representative of the users of public transport who have disabilities, selected from a panel of at least 3 persons nominated by the Accessible Transport Forum established by the Minister or other body designated by the Minister, and
  - (d) 1 is to be a representative of the users of public transport, selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to represent the interests of consumers generally, and
  - (e) 1 is to be selected from a panel of at least 6 persons nominated by non-government organisations designated by the Minister whose primary aim is to protect the environment, and
  - (f) 1 is to be a representative of local government, selected from a panel of at least 3

persons nominated by the Local Government Association of New South Wales, and

(g) 1 is to be selected by the Minister because of the person's expertise in public transport planning, and

(h) 1 is to be a person with expertise in urban planning nominated by the Minister for Urban Affairs and Planning.

(3) Schedule 3 has effect with respect to the constitution and procedure of the Council.

#### **45C Functions of Council**

(1) The principal function of the Council is to advise the Minister and the Public Transport Authority on community requirements for public passenger services.

(2) The Council may, in particular:

(a) advise on appropriate performance targets for public passenger services, and

(b) advise on arrangements for community participation in the planning and development of public passenger services, and

(c) advise on any changes to the *NSW Rail Access Regime* referred to in section 19B.

(3) The Council may undertake public consultation for the purpose of exercising its functions.

(4) Any advice by the Council may be given either at the request of the Minister or the Public Transport Authority, or without any such request.

(5) The Council is required to keep minutes of proceedings at its meetings and to furnish to the Minister a copy of the minutes of each meeting within 14 days after the meeting was held.

#### **45D Annual report by Council**

(1) The Council is to prepare an annual report on the performance of public passenger services, including an assessment of the extent to which the services are meeting their targets and are taking into account relevant environmental and social factors.

(2) The Minister is to be provided with a draft of the report and given at least 30 days to make any observations the Minister wishes to make to the Council on the draft report.

(3) The Council is to publish its annual report in such manner as it thinks fit. However, any observations of the Minister on the draft report are to be appended to the report.

## **Part 6 Roads and Traffic Authority**

### **Division 1 Interpretation**

## 45E Interpretation

(1) In this Part:

**approaches**, in relation to an intersection or railway crossing, means so much of the approaches to the intersection or crossing as consist of roads or road related areas or of parts of roads or road related areas.

**distribution district** of an electricity distribution network service provider means the provider's distribution district within the meaning of the [Electricity Supply Act 1995](#).

**electricity distribution network service provider** means a distribution network service provider within the meaning of the [Electricity Supply Act 1995](#).

**electricity structure** means any structure erected or maintained by an electricity distribution network service provider for the purpose of transmission or distribution of electricity or for the purpose of public lighting.

**intersection** means an intersection or junction of roads or road related areas.

**public authority** means a public or local authority constituted by or under an Act, and includes the following:

- (a) the Police Service,
- (b) any Government department,
- (c) a statutory body representing the Crown,
- (d) a person or body prescribed by the regulations for the purposes of this definition.

**road** has the same meaning as it has in the [Road Transport \(General\) Act 1999](#).

**road related area** has the same meaning as it has in the [Road Transport \(General\) Act 1999](#).

**traffic control facility** means:

- (a) traffic control lights on roads or road related areas, and equipment used in connection with traffic control lights, or
- (b) any sign, marking, structure or device containing or relating to a requirement or direction, contravention of which is an offence arising under:
  - (i) this Act or the regulations, or
  - (ii) any other Act, regulation or by-law prescribed for the purposes of this subparagraph, or
- (c) any other sign, marking, structure or device that is intended to promote safe or

orderly traffic movement on roads or road related areas or to warn, advise or inform the drivers of vehicles, or pedestrians, of any matter or thing in relation to vehicular or pedestrian traffic or road conditions or hazards, or

- (d) any bridge or subway or other facility for use by pedestrians over, across, under or alongside a road or road related area, or
- (e) any other thing prescribed as a traffic control facility by the regulations.

**traffic route** means:

- (a) a main road or secondary road within the meaning of the [Roads Act 1993](#), or
- (b) a public road within the meaning of that Act (other than a main road or secondary road) in respect of which the Authority has, by reason of the volume of vehicular or pedestrian traffic carried on it, determined requires lighting to a standard approved by the Authority.

- (2) A reference (however expressed) in this Part to any thing, person or traffic, on a road or road related area, includes a reference to any thing, person or traffic above, over, across, in or under a road or road related area.

## **Division 1A Constitution and management of Roads and Traffic Authority**

### **46 Constitution of RTA**

- (1) There is constituted by this Act a corporation with the corporate name of the Roads and Traffic Authority of New South Wales.
- (2) The Roads and Traffic Authority:
  - (a) has the functions conferred or imposed on it by or under this Act, the [Roads Act 1993](#), the [Road Transport \(General\) Act 1999](#), the [Motor Vehicles Taxation Act 1988](#), the [Road Transport \(Heavy Vehicles Registration Charges\) Act 1995](#), the [Road Transport \(Driver Licensing\) Act 1998](#) or any other Act, and
  - (b) is, for the purposes of any Act, a statutory body representing the Crown.

### **47 Chief Executive of RTA**

- (1) The Governor may appoint a Chief Executive of the Roads and Traffic Authority.
- (2) Schedule 2 has effect with respect to the Chief Executive.

### **48 Chief Executive to manage and control affairs of RTA**

- (1) The affairs of the Roads and Traffic Authority shall be managed and controlled by the Chief Executive of that Authority.

- (2) Any act, matter or thing done in the name of, or on behalf of, the Roads and Traffic Authority by the Chief Executive shall be taken to have been done by the Roads and Traffic Authority.

#### **49 Ministerial control**

The Chief Executive of the Roads and Traffic Authority is, in the exercise of his or her functions, subject to the control and direction of the Minister.

### **Division 1B Functions of Roads and Traffic Authority**

#### **50 Delegation**

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

#### **51 Exercise of functions through subsidiary corporations, joint ventures etc**

- (1) In this section:

**subsidiary corporation** means a private subsidiary corporation referred to in section 52.
- (2) Any function of the Roads and Traffic Authority may be exercised:
  - (a) by the Authority itself, or
  - (b) by a subsidiary corporation, or
  - (c) by the Authority or a subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

#### **52 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 the Roads and Traffic Authority has a controlling interest.

- (2) The Roads and Traffic Authority 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 the activities of the Authority under this or any other Act.
- (3) The Roads and Traffic Authority must not, without the approval of the Minister:
- (a) form, or participate in the formation of, a private subsidiary corporation, and
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, and
  - (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, and does not represent, the Crown.

#### **52A Functions relating to traffic management and safety**

- (1) The functions of the Authority include the following:
- (a) to review the traffic arrangements in the State (including arrangements in connection with the movement, regulation and control of traffic and the parking of vehicles),
  - (b) to formulate or adopt plans and proposals for the improvement of those arrangements,
  - (c) to establish general standards and principles in connection with:
    - (i) the design, construction, erection, affixing, marking, maintenance, repair, alteration, operation or removal of traffic control facilities, and
    - (ii) the design of intersections and the approaches to them or the approaches to railway level crossings,for purposes connected with traffic safety and the movement, regulation and control of traffic,
  - (d) to promote traffic safety,
  - (e) to co-ordinate the activities of public authorities so far as those activities relate to:
    - (i) the carrying out of plans and proposals formulated or adopted by the Authority for the improvement of traffic arrangements, or



- (ii) the design, construction, erection, affixing, marking, maintenance, repair, alteration, operation or removal of traffic control facilities, or
- (iii) traffic safety, or
- (iv) any other matter connected with the Authority's functions under this Part.

(2) The Authority may:

- (a) promote traffic safety measures or activities, including measures or activities for:
  - (i) the safety and protection of the public, including pedestrians, on roads or road related areas, and
  - (ii) the prevention of accidents on roads or road related areas, and
  - (iii) the minimising of the effect of accidents on roads or road related areas, and
  - (iv) the protection of property from damage from accidents on roads or road related areas, and
- (b) promote or engage in the dissemination and publication by suitable media of advice and information resulting from research or otherwise for the education and guidance of, and observance by, drivers of or persons travelling in vehicles, or persons on roads or road related areas, or manufacturers of, repairers of, or dealers in, vehicles or vehicle parts, and
- (c) make reports or recommendations to the Minister for Roads, or any other person or body, in relation to the following:
  - (i) traffic arrangements, and the movement, regulation and control of traffic, on roads or road related areas,
  - (ii) traffic planning,
  - (iii) traffic safety,
  - (iv) the parking of vehicles,
  - (v) the operation, maintenance or alteration of traffic control facilities,
  - (vi) any other matter connected with the Authority's functions under this Part, and
- (d) carry out or promote research or investigations into matters connected with any of the Authority's functions under this Part including research or investigations into:
  - (i) traffic control facilities, and
  - (ii) the cause of accidents, their incidence and the ways and means that may be adopted for their prevention or for controlling or mitigating their effects.

### **53 Miscellaneous functions of RTA**

- (1) Without limiting any other functions conferred or imposed on it, the Roads and Traffic Authority may:
  - (a) conduct any business, whether or not related to its activities under this or any other Act, and for that purpose use any property or the services of any staff of the Authority, and
  - (b) 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
  - (c) appoint agents, and act as agent for other persons.
- (2) The Roads and Traffic Authority may exercise its functions within or outside New South Wales.

## **Division 1C Directions and recommendations to public authorities**

### **53A Directions to public authorities**

- (1) The Authority may, from time to time, direct public authorities to implement plans or proposals formulated or adopted, general standards or general principles established, or other decisions made, by the Authority in the exercise of the Authority's functions under this Part.
- (2) The Authority may communicate directions under this section to such public authorities, and in such manner, as it thinks fit.
- (3) While a direction communicated to a public authority under this section and applicable to its functions is in force, it is the duty of the public authority, by the exercise of its functions in accordance with law, to comply with the direction, except if to do so:
  - (a) would be impracticable because of emergency, accident or other special circumstances, or
  - (b) would affect the functions of any person or body with respect to the laying or making of any information or complaint, the continuance or discontinuance of any proceedings for an alleged offence or any other manner of dealing with an alleged offence.
- (4) The failure of a public authority to comply with a direction of the Authority under this section does not invalidate any act, matter or thing to which the direction relates, and in particular does not invalidate the construction, erection, affixing or marking of any traffic control facility or any direction that is contained in or relates to the facility.
- (5) A direction may be given under this section so as to apply generally or in any

particular case or class of cases.

- (6) The power to give a direction includes the power to amend or revoke a direction.
- (7) The Authority may bring proceedings in the Supreme Court for an order to require a public authority to comply with a direction under this section.
- (8) The Supreme Court may, in any such proceedings, make such order as it thinks fit.

### **53B Recommendations as to lighting of roads and road related areas**

- (1) The Authority may, for the purpose of promoting traffic safety, make recommendations to a public authority in relation to the public authority's functions in connection with the lighting of roads or road related areas, including recommendations in relation to the following:
  - (a) general principles relating to the provision of lighting on roads or road related areas,
  - (b) the need for lighting on any particular road or road related area or part of a road or road related area,
  - (c) the need for the improvement of lighting on any particular road or road related area or part of a road or road related area.
- (2) It is the duty of a public authority to which recommendations are made under this section to give them proper consideration and, as far as may be reasonably practicable, to carry them into effect.

### **53C Inter-relationship of Division with law relating to local government**

- (1) If the provisions of this Division are inconsistent with the provisions of the [Local Government Act 1993](#) (or any statutory rule made under any Act), the provisions of this Division prevail.
- (2) Nothing in this Division applies to or in respect of any sign, mark, structure or device containing or relating to a requirement or direction, contravention of which gives rise to an offence under the [Local Government Act 1993](#) (or any regulation under that Act), but not under any other Act or regulation.
- (3) Any person who or body which would not, but for this subsection, have the power to co-operate with, or do or perform any act or thing in conjunction with, the Authority is authorised by this section so to co-operate or do or perform the act or thing.

## **Division 2 Roads and Traffic Advisory Council**

### **54 Constitution of Council**

- (1) There shall be a Roads and Traffic Advisory Council.

(2) The Council shall consist of:

(a) 4 ex-officio members, being:

- (i) the Chief Executive of the Roads and Traffic Authority, and
- (ii) the Director of Planning under the *Environmental Planning and Assessment Act 1979*, and
- (iii) the Director-General, and
- (iv) the Commissioner of Police, and

(b) 5 members appointed by the Minister, being:

- (i) a representative of NRMA Limited, and
- (ii) a representative of the road freight industry, and
- (iii) a representative of the Local Government and Shires Associations, and
- (iv) a representative of the Labor Council of New South Wales, and
- (v) a representative of the medical profession.

(3) Schedule 3 has effect with respect to the constitution and procedure of the Council.

## **55 Functions of Council**

(1) The function of the Roads and Traffic Advisory Council is to advise the Roads and Traffic Authority on any of the following matters:

- (a) promotion of traffic safety,
- (b) improvements in the movement of traffic,
- (c) improvements in the movement of freight,
- (d) requirements of vehicle drivers,
- (e) requirements for roads and vehicles,
- (f) promotion of industrial development, primary production and tourism in relation to roads and traffic,
- (g) protection of the environment in relation to roads and traffic,
- (h) roads and traffic legislation,
- (i) any other matter relating to roads and traffic that the Council considers appropriate.

- (2) Any such advice may be given either at the request of the Roads and Traffic Authority or without any such request.
- (3) The Council may give any such advice to the Minister if it considers that it is appropriate to do so or the Minister so requests.

## **Part 7 Staff of Authorities**

### **Division 1 Staff of State Rail Authority**

#### **56 Employment of staff**

The State Rail Authority may employ such staff as it requires to exercise its functions.

#### **57 Salary, conditions etc of staff**

The State Rail Authority 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.

#### **58 Regulations relating to staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of the State Rail Authority, 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 the State Rail Authority is a party, and
  - (b) have effect despite any determination of the State Rail Authority under section 57, 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 2A of the [Public Sector Management Act 1988](#).

### **Division 1A**

#### **59-59C (Repealed)**

### **Division 2 Staff of State Transit Authority**

#### **60 Employment of staff**

The State Transit Authority may employ such staff as it requires to exercise its functions.

### **61 Salary, conditions etc of staff**

The State Transit Authority 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.

### **62 Regulations relating to staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of the State Transit Authority, 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 the State Transit Authority is a party, and
  - (b) have effect despite any determination of the State Transit Authority under section 61, 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 2A of the [Public Sector Management Act 1988](#).

## **Division 3 Staff of Roads and Traffic Authority**

### **63 Employment of staff**

The Roads and Traffic Authority may employ such staff as it requires to exercise its functions.

### **64 Salary, conditions etc of staff**

The Roads and Traffic Authority 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.

### **65 Regulations relating to staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of the Roads and Traffic Authority, 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 the Roads and Traffic Authority is a

party, and

(b) have effect despite any determination of the Roads and Traffic Authority under section 64, and

(c) have effect subject to Part 2A of the *Public Sector Management Act 1988*.

## **Division 4 General provisions relating to staff of Authorities**

### **66 Use of staff or facilities of Departments etc**

An Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

### **67 Consultants**

An Authority may engage such consultants as the Authority requires to exercise its functions.

### **68 Extended leave for staff of each Authority**

(1) Schedule 5 has effect.

(2) The provisions of Schedule 5 are subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Authority concerned is a party.

## **Part 8 Financial provisions**

### **Division 1 Financial provisions relating to State Rail Authority**

#### **69 State Rail Authority Fund**

There shall be established in the Special Deposits Account in the Treasury a State Rail Authority Fund.

#### **70 Payments into State Rail Authority Fund**

There shall be paid into the State Rail Authority Fund:

(a) all money received by or on account of the State Rail Authority, and

(b) all money advanced to the State Rail Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority, and

(c) all fines and penalties recovered for offences under the regulations under section 99, or under section 79A (or the regulations under section 79B) of the *Rail Safety Act 1993* in connection with railway services operated by the State Rail Authority (but only if proceedings or penalty notices for the offences were instituted or issued by that

Authority or an employee of that Authority), and

(d) all other money required by or under this or any other Act to be paid into the Fund.

#### **71 Payments from State Rail Authority Fund**

There shall be paid from the State Rail Authority Fund:

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

#### **72 Payment of dividend to Treasurer**

- (1) The State Rail Authority shall pay to the Treasurer, out of any surplus for a financial year, such dividend as the Minister determines.
- (2) The Minister shall not make a determination under this section unless:
  - (a) the Minister has had regard to the advice of the State Rail Authority on the financial affairs of the Authority and any recommendation with respect to the determination, and
  - (b) the Treasurer approves of the determination.

### **Division 1A**

#### **72A-72D (Repealed)**

### **Division 2 Financial provisions relating to State Transit Authority**

#### **73 State Transit Authority Fund**

There shall be established in the Special Deposits Account in the Treasury a State Transit Authority Fund.

#### **74 Payments into State Transit Authority Fund**

There shall be paid into the State Transit Authority Fund:

- (a) all money received by or on account of the State Transit Authority, and
- (b) all money advanced to the State Transit Authority by the Treasurer or appropriated by Parliament for the purposes of the Authority, and
- (c) all fines and penalties recovered for offences under the regulations under section 104, or under the regulations under section 63 of the *Passenger Transport Act 1990* in connection with bus or ferry services operated by the State Transit Authority (but only



if proceedings or penalty notices for the offences were instituted or issued by that Authority or an employee of that Authority), and

(d) all other money required by or under this or any other Act to be paid into the Fund.

#### **75 Payments from State Transit Authority Fund**

There shall be paid from the State Transit Authority Fund:

(a) all payments made on account of the State Transit Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority, and

(b) all other payments required by or under this or any other Act to be paid from the Fund.

#### **76 Payment of dividend to Treasurer**

(1) The State Transit Authority shall pay to the Treasurer, out of any surplus for a financial year, such dividend as the Minister determines.

(2) The Minister shall not make a determination under this section unless:

(a) the Minister has had regard to the advice of the State Transit Authority on the financial affairs of the Authority and any recommendation with respect to the determination, and

(b) the Treasurer approves of the determination.

### **Division 3 Financial provisions relating to Roads and Traffic Authority**

#### **77 Roads and Traffic Authority Fund**

There shall be established in the Special Deposits Account in the Treasury a Roads and Traffic Authority Fund.

#### **78 Payments into Roads and Traffic Authority Fund**

(1) There shall be paid into the Roads and Traffic Authority Fund:

(a) all money advanced to the Roads and Traffic Authority by the Treasurer or appropriated by Parliament for the purposes of that Authority, other than money advanced or appropriated for such non-capital expenditure as may be prescribed by the regulations, and

(b) all money received by or on account of the Roads and Traffic Authority, except:

(i) any tax paid under the *Motor Vehicles Taxation Act 1988* or charges and administration fees paid under the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*, and

- (ii) any fees or charges prescribed under the *Traffic Act 1909*, the *Road Transport (Vehicle Registration) Act 1997*, the *Driving Instructors Act 1992* or the *Recreation Vehicles Act 1983*, and any fees paid under the *Road Transport (Driver Licensing) Act 1998*, and
  - (iii) any money excluded from paragraph (a), and
  - (iv) any money excluded from this paragraph by the regulations, and
  - (c) all money borrowed under the *Public Authorities (Financial Arrangements) Act 1987* or any other Act, and
  - (d) interest paid by the Treasurer, at the rate agreed by the Treasurer and the Roads and Traffic Authority, on the monthly balance of the Fund, and
  - (e) (Repealed)
  - (f) all other money required by or under this or any other Act to be paid into the Fund.
- (2) Regulations shall not be made under this section without the concurrence of the Treasurer.

#### **79 Payments from Roads and Traffic Authority Fund**

There shall be paid from the Roads and Traffic Authority Fund:

- (a) all payments made on account of the Roads and Traffic Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority, other than payments for such non-capital expenditure as may be prescribed by the regulations under section 78 (1) (a), and
- (b) all other payments required by or under this or any other Act to be paid from the Fund.

#### **80 Expenditure on certain State works**

- (1) Money in the Roads and Traffic Authority Fund may not be used for the construction or maintenance of a State work unless it is money provided for the purpose by Parliament.
- (2) In this section, **State work** means a State work within the meaning of the *Roads Act 1993*, but does not include a road or work deemed by section 4 (5) of the former *State Roads Act 1986* to be a State work.

#### **80A Payments of subsidies to councils for traffic route lighting**

- (1) The Authority may, with the approval of the Minister, grant annual subsidies to councils for the lighting, to a standard approved by the Authority, of traffic routes.

- (2) Before granting any such subsidy the Authority may require a council to enter into an agreement with the Authority to secure the carrying out of the purposes for which, and the terms and conditions on and subject to which, the subsidy is granted.

#### **80B Authority to make available money for subsidies**

- (1) In the period of 12 months commencing on 1 July each year, the Authority must make available the amount of subsidies that the Minister with the concurrence of the Treasurer estimates will be granted to councils under this Part in that period of 12 months.
- (2) The Minister, before the commencement of each period of 12 months referred to in subsection (1), is to serve a notice on the Authority specifying the amount of the payment required.
- (3) An amount payable under this section in any period of 12 months is to be paid in such sum or sums, at such time or times during that period and in such manner as the Minister may require in and by the notice referred to in subsection (2).
- (4) The Authority may make the whole or any part of a payment required by this section out of the Roads and Traffic Authority Fund.

#### **80C Payments of subsidies to electricity distribution network service providers for removal or relocation of electricity structures**

- (1) The Authority may, with the approval of the Minister, grant subsidies to an electricity distribution network service provider for or towards the cost of removing or relocating electricity structures erected, within the distribution district of the provider, on or adjacent to public roads, being electricity structures which the Authority has determined require removal or relocation for the purposes of traffic safety.
- (2) Before granting any such subsidy, the Authority may require an electricity distribution network service provider referred to in subsection (1) to enter into an agreement with the Authority to secure the carrying out of the purposes for which, and the terms and conditions upon and subject to which, the subsidy is granted.

### **Division 4 Financial provisions relating to Authorities generally**

#### **81 Financial duties of the Authorities**

- (1) It is the duty of each Authority, in the exercise of its functions, to operate as efficiently and economically as possible and, in particular:
  - (a) to exercise efficiency and economy in incurring expenditure, and
  - (b) to manage its financial affairs in such a manner as not to incur commitments involving expenditure beyond levels that can be met from the expected financial resources of the Authority.

- (2) It is the duty of each Authority to submit to the Treasurer, in such manner and at such times as the Treasurer specifies:
  - (a) detailed estimates of its revenue from all sources and its expenditure proposed for any period specified by the Treasurer, and
  - (b) such other information relating to the financial affairs of the Authority as the Treasurer requests.

## **82 Financial year**

- (1) The financial year of each Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

## **83 Minister may direct payments into or from different Funds**

Any money required by or under this or any other Act to be paid into either the State Rail Authority Fund or the State Transit Authority Fund shall, if the Minister so directs, be paid into the other Fund.

## **Division 5 Charges for services of State Rail Authority and State Transit Authority**

### **84 Definition of “charges”**

In this Division:

**charges** includes fares, tolls, commissions and demurrage.

### **85 Orders fixing charges**

- (1) The charges to be demanded by the State Rail Authority in respect of its railway or other transport services or for any other purpose shall be as from time to time determined by order made by the Authority.
- (2) The charges to be demanded by the State Transit Authority in respect of its bus or ferry services or for any other purpose shall be as from time to time determined by order made by the Authority.
- (3) The State Rail Authority may make orders from time to time, not inconsistent with this Act or the regulations, for or with respect to determining the terms and conditions:
  - (a) on which passengers shall be carried, and
  - (b) on which passengers' luggage and freight shall be collected, received, kept, carried or delivered.
- (4) Nothing in this section prevents an Authority from:

- (a) charging an agreed or other reasonable amount for any service or for any other purpose if the amount of the charge is not determined by an order under this Division, or
  - (b) making or entering into contracts or arrangements for any service or any other purpose for which the charge is lower than that determined by the relevant order under this Division.
- (5) An order under this Division is void in respect of services for which the charges are for the time being fixed differently under the *Passenger Transport Act 1990*.

#### **86 Ministerial supervision of orders fixing charges**

- (1) The State Rail Authority and the State Transit Authority shall, before any general adjustment to their charges for passenger services, notify the Minister of the proposed adjustment and provide the Minister with details of the factors taken into account in proposing that adjustment.
- (2) When making an order determining the charges for passenger services, the State Rail Authority and the State Transit Authority shall have regard to any pricing policies approved by the Minister and notified to the Authority.
- (3) Unless otherwise directed by the Minister under section 13 or 29, as the case requires, an Authority is not bound by any such pricing policy.

#### **87 General provisions relating to orders fixing charges**

- (1) An order under this Division may:
  - (a) adopt and incorporate by reference the whole or any part of a handbook, pamphlet or other document issued by an Authority, and
  - (b) make provision for concessions and rebates, and
  - (c) apply generally or be limited in its application by reference to specified exceptions or factors or apply differently according to different factors of a specified kind.
- (2) An order under this Division shall be published in the Gazette and shall take effect on the date of publication of the order or a later date specified in the order.
- (3) Orders may be made under this Division providing for the issue of tickets for use in connection with more than one service.
- (4) Orders may be made by an Authority under this Division providing for the acceptance by the Authority of tickets issued by the other Authority or other persons or organisations.
- (5) If an order under this section adopts and incorporates by reference the whole or part of a handbook, pamphlet or other document issued by an Authority:

- (a) the contents of the handbook, pamphlet or other document may be proved in any court by production of a document certified under the seal of the Authority to be a true copy of the handbook, pamphlet or other document, and
  - (b) subsection (2) does not require the publication in the Gazette of the handbook, pamphlet or other document or part of it, and
  - (c) the Authority shall, on application made to it by any person and payment of the prescribed fee, if any, furnish to the person a copy of the handbook, pamphlet or other document, or part of it, as the case may require.
- (6) Judicial notice shall be taken of every order made, or purporting to have been made, and published in the Gazette under this Division and of the date of its publication.

### **88 Free or subsidised railway, bus, ferry etc travel**

- (1) The Minister may determine the classes of persons who are entitled to be issued with a free travel pass or a concessional travel pass by the State Rail Authority or the State Transit Authority.
- (2) Any person who holds a free travel pass or a concessional travel pass is entitled to travel free or to the benefit of the concession (as the case requires) on all services to which the pass applies.
- (3) Subject to any determination by the Minister, the relevant Authority may determine the conditions for the issue, cancellation and use of free travel passes and concessional travel passes.
- (4) An Authority may allow a person who is entitled to a pass under this section to travel free or to receive the concession (as the case requires) without the necessity of being issued with the pass.
- (5) An Authority is not required to issue passes under this section in accordance with a determination of the Minister if the amount of expenditure that the Authority incurs or the amount of the revenue forgone by the Authority is not reimbursed by payments under section 39, unless required to do so by a direction of the Minister under section 13 or 29, as the case requires.

## **Part 9 Miscellaneous**

### **Division 1 Miscellaneous provisions relating to State Rail Authority and Rail Infrastructure Corporation**

#### **89 Sale, lease or other disposal of land**

- (1) The State Rail Authority 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 Department of Transport or a person of a class prescribed by the regulations.

## **90 Acquisition of land**

- (1) The State Rail Authority may, for any purposes of the State Rail Authority, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (1A) 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 the State Rail Authority to exercise its functions in relation to land under this Act.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the State Rail Authority is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Any such acquisition is not void merely because it is expressed to be for the purposes of the State Rail Authority or for the purposes of this Act.
- (4) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes of this section.
- (5) Nothing in this section is taken to mean that the State Rail Authority cannot exercise functions in relation to land under this Act unless the State Rail Authority first compulsorily acquires the land concerned.

## **91 SRA not a common carrier**

- (1) The State Rail Authority is not a common carrier.
- (2) Subsection (1) does not affect any contract or arrangement for the carriage of passengers or freight between the State Rail Authority and any other person in which the Authority accepts the risk and liability of a common carrier.

## **92 Maintenance of railway lines**

Rail Infrastructure Corporation is not required to maintain a railway line on which no services are operated.

### **93 Closure and disposal of railway lines**

- (1) Rail Infrastructure Corporation shall not, unless authorised by an Act of Parliament, close a railway line.
- (2) For the purposes of this section, a railway line is closed if the land concerned is sold or otherwise disposed of or the railway tracks and other works concerned are removed.
- (3) For the purposes of this section, a railway line is not closed merely because Rail Infrastructure Corporation has entered into a lease or other arrangement in respect of it pursuant to an agreement entered into by the Commonwealth and the State.

### **94 Closure of level-crossings, bridges and other structures**

- (1) Rail Infrastructure Corporation may, with the approval of the Minister, close any level-crossing, bridge or other structure for crossing or passing over or under any railway track if both the level-crossing, bridge or other structure and the railway track are owned by the Corporation.
- (2) Rail Infrastructure Corporation must notify the Minister of any proposal by it to close a level-crossing, bridge or other structure for crossing or passing over or under a railway track.
- (3) Rail Infrastructure Corporation must, before closing any such level-crossing, bridge or other structure:
  - (a) cause a notice of the proposed closure to be published in the Gazette, and
  - (b) notify the Roads and Traffic Authority and the council of the area concerned of the proposed closure.
- (4) On the closure of any such level-crossing, bridge or other structure, all rights, easements and privileges in relation to that level-crossing, bridge or other structure are extinguished.

### **95 (Repealed)**

### **96 Limitation of compensation in respect of damage to property by fire**

In any action brought against the State Rail Authority or Rail Infrastructure Corporation for damages or compensation in respect of loss of or damage or injury to property (whether sustained before or after the commencement of this section) by reason of fire alleged to have been caused by:

- (a) any act or thing done or omitted to be done by the State Rail Authority in the operation of its railway services or by Rail Infrastructure Corporation in the exercise of its functions under this Act, or
- (b) any person for whose act or omission the State Rail Authority or Rail Infrastructure



Corporation is liable,

the maximum sum recoverable is \$50,000 or such other amount as may be prescribed by the regulations.

### **97 Special provisions for underground rail facilities**

Schedule 6B has effect.

### **98 Search of vehicles etc on certain railway premises**

(1) Any authorised officer may:

- (a) stop any vehicle or person on any land that is vested in or under the control of the State Rail Authority and that is used for the receipt, dispatch or delivery of any luggage or freight, and
- (b) search any such vehicle or any luggage or other article on that vehicle or in the possession of any such person, and
- (c) require any such person to produce consignment notes, delivery dockets or other documents relating to the receipt, dispatch, delivery or ownership of any such luggage or article, and
- (d) seize any such luggage or article that the authorised officer has reasonable grounds for suspecting has been stolen.

(2) The power of an authorised officer to search includes the power to open any part of the vehicle or any luggage or other article on the vehicle or in the possession of the person.

(3) Any person who:

- (a) obstructs or hinders an authorised officer when exercising any power under this section, or
- (b) does not comply with any reasonable requirement made for the purposes of this section by an authorised officer,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(4) An authorised officer shall produce his or her authority if requested to do so by any person required to comply with a requirement made by that officer for the purposes of this section.

(5) No personal liability is incurred by an authorised officer for any act done or omitted in good faith under this section.

(6) In this section:

**authorised officer** means an officer of the State Rail Authority, or a person employed in the transit police service, appointed in writing to be an authorised officer by the Chief Executive of the State Rail Authority.

**authority** means the written instrument by which an authorised officer is appointed.

## **99 Regulations relating to railway and other transport services**

- (1) The regulations may make provision for or with respect to the railway and other transport services operated by the State Rail Authority.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the terms and conditions on which:
    - (i) passengers are carried, and
    - (ii) passengers' luggage and freight are collected, received, kept, carried or delivered, and
  - (b) the use of and access to facilities or property owned by or under the control of the State Rail Authority, and
  - (c) the protection and preservation of facilities or property owned by or under the control of the State Rail Authority, and
  - (d) security, safety and order on railways and trains, and
  - (e) the sale or other disposal of unclaimed goods and luggage in the possession of the State Rail Authority and the disposal of the proceeds of any such sale, and
  - (f) the standing or parking of vehicles on land vested in the State Rail Authority.

## **Division 2 Miscellaneous provisions relating to State Transit Authority**

### **100 Sale, lease or other disposal of land**

- (1) The State Transit Authority 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 Department of Transport or a person of a class prescribed by the regulations.

### **101 Acquisition of land**

- (1) The State Transit Authority may, for any purposes of the State Transit Authority, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (1A) The 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 the State Transit Authority to exercise its functions in relation to land under this Act.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the State Transit Authority is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Any such acquisition is not void merely because it is expressed to be for the purposes of the State Transit Authority or for the purposes of this Act.
- (4) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes of this section.
- (5) Nothing in this section is taken to mean that the State Transit Authority cannot exercise functions in relation to land under this Act unless the State Transit Authority first compulsorily acquires the land concerned.

### **102 STA not a common carrier**

- (1) The State Transit Authority is not a common carrier.
- (2) Subsection (1) does not affect any contract or arrangement for the carriage of passengers between the State Transit Authority and any other person in which the Authority accepts the risk and liability of a common carrier.

### **103 Inquiries into bus or ferry accidents**

- (1) The Minister may require the State Transit Authority or a person nominated by the Minister to inquire into and report to the Minister on any bus or ferry accident.
- (2) The State Transit Authority shall, in addition to any report required by the Minister, forward to the Minister a copy of the report of any formal inquiry into a bus or ferry accident instituted by the State Transit Authority.
- (3) In this section:  
***bus or ferry accident*** means an accident involving the bus or ferry services operated by the State Transit Authority, whether or not resulting in the loss of life or damage to property.

#### **104 Regulations relating to bus and ferry services**

- (1) The regulations may make provision for or with respect to the bus and ferry services provided by the State Transit Authority.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the terms and conditions on which passengers are carried, and
  - (b) the use of and access to facilities or property owned by or under the control of the State Transit Authority, and
  - (c) the protection and preservation of facilities or property owned by or under the control of the State Transit Authority, and
  - (d) security, safety and order on buses and ferries, and
  - (e) the sale or other disposal of unclaimed goods and luggage in the possession of the State Transit Authority and the disposal of the proceeds of any such sale, and
  - (f) the standing or parking of vehicles on land vested in the State Transit Authority.

### **Division 2A Miscellaneous provisions relating to Director-General**

#### **Subdivision 1 General provisions**

##### **104A Definition of “functions” of Director-General**

In this Subdivision, **functions** of the Director-General means functions of the Director-General under Part 4, under an Act referred to in section 37 or 37A or under this Subdivision or Subdivision 2.

##### **104B Exercise of functions through Transport Administration Corporation, joint ventures or other associations**

- (1) A function of the Director-General may, if the Director-General so determines, be exercised:
  - (a) by the Transport Administration Corporation, or
  - (b) by the Director-General (or by the Transport Administration Corporation) in a partnership, joint venture or other association with other persons or bodies.
- (2) A function of the Director-General that is exercisable in relation to anything belonging to, or controlled by, the Director-General is also exercisable in relation to anything belonging to, or controlled by, the Transport Administration Corporation.

##### **104C Exercise of functions in Director-General’s own capacity and on behalf of Crown**

Nothing in this Division prevents the Director-General from exercising a function in his or

her capacity as the Director-General and entering into contracts or doing other things on behalf of the Crown.

#### **104D Transport Administration Corporation**

- (1) There is established by this Act a body corporate with the corporate name of the Transport Administration Corporation.
- (2) The Corporation is a statutory body representing the Crown.
- (3) The Corporation is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985* or any other prescribed Act, taken to be part of the Department of Transport.
- (4) The affairs of the Corporation are to be managed and controlled by the Director-General. Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Director-General is taken to have been done by the Corporation.

#### **104E Power of Director-General to contract**

- (1) The Director-General may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the Director-General's functions.
- (2) Nothing in this section limits the operation of any provision of the *Passenger Transport Act 1990* or the *Rail Safety Act 1993*.

#### **104F Sale, lease or other disposal of land**

- (1) The Director-General may sell, lease or otherwise dispose of any of the Director-General's land.
- (2) The Director-General may transfer to the Transport Administration Corporation land (including an interest in land) vested in the Director-General.

#### **104G Acquisition of land**

- (1) The Director-General may, for the purpose of the exercise of the Director-General's functions, acquire land (including an interest in land) by agreement or 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 future sale, lease or disposal, that is, to enable the Director-General to exercise his or her functions in relation to land.
- (3) The Director-General may not acquire land under this section by compulsory process without the approval of the owner if it is being acquired for the purpose of re-sale. However, the owner's approval is not required:

- (a) if the land is acquired for the purpose of re-sale to the owner or operator of a light rail system or other transport facility, or
  - (b) if the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this section for a purpose other than the purpose of re-sale.
- (4) The Director-General may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* in relation to an interest in land to which section 104R applies that is under, on or over a public road unless it has first given a copy of the proposed notice to the Minister for Roads.
- (5) An acquisition of land under this section is not void merely because it is expressed to be for the purpose of exercising the functions of the Director-General or for the purposes of this Act.
- (6) Nothing in this section is taken to mean that the Director-General cannot exercise functions in relation to land unless the Director-General first compulsorily acquires the land concerned.

#### **104H Application of *Public Works Act 1912***

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land under section 104G is taken to be for an authorised work and the Director-General is, in relation to the authorised work, taken to be the Constructing Authority.
- (2) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes for which the land was acquired.

#### **104I Other functions concerning land**

- (1) The Director-General may, with the consent of the owner of any land, exercise in relation to the land any function that the Director-General could so exercise if the Director-General were the owner of the land.
- (2) The Director-General may exercise in relation to any land in which the Director-General holds an interest any function that a private individual could so exercise if the private individual were the holder of the interest.

#### **104J Annual reporting requirements**

The annual report of the Department of Transport is to include:

- (a) a report of the activities of the Director-General during the reporting year with respect to passenger transport facilities (including light rail systems) and a statement of any such proposed activities for the following year, and
- (b) the short, medium and long term objectives of the Director-General with respect to passenger transport facilities (including light rail systems) and the strategies for

achieving those objectives.

#### **104K Regulations**

- (1) The regulations may make provision for or with respect to passenger transport facilities (including light rail systems) provided in the exercise of the Director-General's functions.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the terms and conditions on which passengers or other persons use those facilities, and
  - (b) the use of and access to those facilities, and
  - (c) the protection and preservation of those facilities, and
  - (d) the security, safety and order of persons using those facilities.

### **Subdivision 2 Special provisions relating to light rail**

#### **104L Definitions**

In this Subdivision:

**develop** a light rail system includes:

- (a) carry out development (within the meaning of the [Environmental Planning and Assessment Act 1979](#)) for the purposes of a light rail system, or
- (b) finance any such development, or
- (c) maintain any such development.

**operate** a light rail system means operate the system within the meaning of the [Rail Safety Act 1993](#).

#### **104M Light rail services**

For the purposes of this Act, **light rail services** are railway passenger services provided by light rail vehicles, including passenger services declared by the regulations to be light rail services (whether described by reference to the class of vehicles providing the services or the rail or other system used to guide the vehicles providing the services).

#### **104N Light rail system**

- (1) For the purposes of this Act, a **light rail system** is a system for the provision of light rail services along a route declared under subsection (2), including tracks, catenaries, supports for tracks and catenaries, stops, access to stops, signalling and other control facilities, vehicles, vehicle depots and other facilities and equipment associated with

the provision of those services.

- (2) The regulations may declare a route along a road or road related area or through other land to be the route of a light rail system. A route may be so declared:
  - (a) whether or not a light rail service is operating along the route, and
  - (b) whether or not the State or an authority of the State owns or proposes to acquire the system providing the service.
- (3) A regulation may not declare a route along a road or road related area to be the route of a light rail system unless the regulation is made on the recommendation of both the Minister administering this Act and the Minister administering the [Traffic Act 1909](#).
- (4) A regulation may not declare a route through any park or bushland to be the route of a light rail system unless the regulation is made on the recommendation of both the Minister administering this Act and the Minister for the Environment. In this subsection:

**bushland** means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation, being land that is zoned or reserved for public open space purposes under an environmental planning instrument.

**park** means an area of open space used for recreation (other than bushland), being an area that is vested in or under the control of a public or local authority.

- (5) Any dispute in connection with the making of a recommendation under subsection (3) or (4) may be determined by the Premier.
- (6) In this section:

**road** means a road within the meaning of the [Traffic Act 1909](#) (other than a road that is the subject of a declaration made under section 2A (1) (b) of that Act).

**road related area** means a road related area within the meaning of the [Traffic Act 1909](#) (other than a road related area that is the subject of a declaration made under section 2A (1) (b) of that Act).

#### **1040 Development and operation of light rail systems**

- (1) The Director-General may develop light rail systems, or facilitate their development by other persons.
- (2) The Director-General may operate light rail systems, or facilitate their operation by other persons.



**104P Part 5 of EPA Act to apply to development for light rail system**

(1) In this section:

**development** has the same meaning as in Part 4 of the EPA Act.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

(2) Development for the purposes of a light rail system:

(a) may be carried out without the necessity for development consent under Part 4 of the EPA Act, and

(b) may be so carried out even if the development would be prohibited, or would require development consent, in the absence of this section.

(3) Development for the purposes of a light rail system is an activity within the meaning of Part 5 of the EPA Act and the Director-General is the proponent and a determining authority in relation to that activity for the purposes of that Part.

**Note—**

By virtue of this subsection, the approval of the Minister administering the EPA Act is, if an EIS is prepared, required under Division 4 of Part 5 of that Act before the activity is carried out.

(4) Development for the purposes of a light rail system includes anything that is incidental to the carrying out of any such development.

**104Q Local government approvals not required for light rail system**

(1) This section applies to:

(a) the construction of a light rail system, including the erection of any buildings that are associated with the system or the demolition of any buildings for the purposes of constructing the system, and

(b) anything done that is incidental to the erection or demolition of a building for the purposes of a light rail system, and

(c) the subdivision of land for the purposes of a light rail system.

(2) The approval of the council of a local government area is not required under section 68 of the *Local Government Act 1993* or under subdivision legislation for anything to which this section applies.

(3) In this section:

**building** and **erection** have the same meanings they have in the *Local Government Act 1993*.

**subdivision legislation** means Part 4 of the *Environmental Planning and Assessment*

*Act 1979*, the *Strata Schemes (Freehold Development) Act 1973*, the *Strata Schemes (Leasehold Development) Act 1986* or the *Community Land Development Act 1989*.

**104R Easements etc for light rail system**

- (1) This section applies to:
  - (a) easements or rights of way under, on or over, land, or
  - (b) restrictions on the use of land,for the purposes of the development or operation of a light rail system.
- (2) The functions of the Director-General under Subdivision 1 in relation to land extend (without limitation) to any easements, rights of way or restrictions on use to which this section applies, including:
  - (a) easements without a dominant tenement, and
  - (b) easements for the support of a catenary from a building, structure or land.
- (3) Despite anything to the contrary in the *Land Acquisition (Just Terms Compensation) Act 1991*, compensation is not payable for the compulsory acquisition of an interest in land to which this section applies that is under, on or over a public road (within the meaning of the *Roads Act 1993*).
- (4) Despite anything to the contrary in the *Land Acquisition (Just Terms Compensation) Act 1991*, compensation is not payable for the compulsory acquisition of an interest in land to which this section applies that is an easement for support of a catenary from a building or structure or from any land (except compensation for actual damage done in the construction of the support for the catenary or caused by that support).

**104S Exemption of light rail system from payment of rates and land tax**

- (1) For the purpose of the application of the provisions of the following Acts relating to the payment of rates and taxes, land used or under construction for a light rail system is to be regarded as Crown land not leased for private purposes:
  - (a) the *Local Government Act 1993*,
  - (b) the *Water Board (Corporatisation) Act 1994*,
  - (c) the *Hunter Water Board (Corporatisation) Act 1991*,
  - (d) the *Land Tax Management Act 1956*,
  - (e) any other Act prescribed by the regulations.
- (2) This section does not apply to land used or under construction for administrative offices, workshops and other maintenance facilities, vehicle depots or other purposes

prescribed by the regulations.

- (3) The Minister may determine any dispute concerning the application of this section to any particular land.

#### **104T Exemption from liability for stamp duty**

The regulations may exempt any matter concerning the development or operation of a light rail system from liability for the payment of stamp duty under the [Stamp Duties Act 1920](#).

#### **104U Altering position of conduit for purposes of light rail system**

- (1) The Director-General or a person authorised by the Director-General may serve a written notice on a person under this section if:
  - (a) an alteration is required to be made in the position of a conduit owned by the person to facilitate the development or operation of a light rail system, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation.
- (2) The notice:
  - (a) must specify the work to be carried out, and
  - (b) must specify a reasonable time within which the work is to be carried out, and
  - (c) must include an undertaking by the owner or operator of the light rail system to pay the reasonable cost of carrying out the work (unless the Director-General has notified the owner of the conduit before it was installed that the installation would interfere with the operation of the light rail system).
- (3) If the work is not carried out as required by the notice, the Director-General, or a person authorised by the Director-General, may carry out the work in a manner that does not permanently damage the conduit or adversely affect its operation.
- (4) In this section, **conduit** means anything that is under, on or over a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

#### **104V Resolution of disputes concerning development of light rail**

- (1) This section applies to the following disputes:
  - (a) a dispute between the relevant Ministers about a recommendation under section 104N relating to the declaration of a route of a light rail system,
  - (b) a dispute between the Director-General and the Roads and Traffic Authority about any action of that Authority that may adversely affect the development of light rail

systems and that is referred to relevant Ministers under section 261 of the [Roads Act 1993](#) or section 111 of this Act.

- (2) The annual report of the Department of Transport is to include a report of any dispute to which this section applies that is determined by the Premier.
- (3) In this section, a reference to the development of light rail systems is a reference to the planning and development of new or significant extensions to light rail systems, but not including activities associated with the construction or maintenance of light rail systems.

### **Division 3 Miscellaneous provisions relating to Roads and Traffic Authority**

#### **105 Power to accept gifts etc**

- (1) The Roads and Traffic Authority may acquire by gift, bequest or devise any property for any of the purposes of the Authority and may agree to and carry out the conditions of the gift, bequest or devise.
- (2) The rule of law relating to remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Roads and Traffic Authority has agreed.
- (3) Nothing in the [Stamp Duties Act 1920](#) applies to any real or personal property of any kind comprised in any gift, bequest or devise made to the Roads and Traffic Authority.

#### **106 Grants to councils in connection with use of buses**

- (1) The Roads and Traffic Authority shall, in accordance with such directions as may be given by the Minister, administer any scheme approved by the Minister for the making of grants to councils of local government areas in a transport district for the purpose of defraying the costs incurred in maintaining public roads used by buses.
- (2) The amount approved by the Minister for distribution in any financial year must not exceed the amount of tax and charges which the Minister estimates was received under the [Motor Vehicles Taxation Act 1988](#) and the [Road Transport \(Heavy Vehicles Registration Charges\) Act 1995](#) during the previous financial year in connection with the registration of buses.
- (3) The amount distributed to each eligible council shall be calculated by reference to the estimated distance travelled by buses on public roads wholly or partly maintained by each council.
- (4) Grants under this section shall be made from money appropriated by Parliament for the purpose.

### **106A Grants to charitable organisations**

- (1) The Roads and Traffic Authority is, in accordance with such directions as may be given by the Minister, to administer any scheme approved by the Minister for the making of grants in respect of the operation of eligible motor vehicles by eligible charitable organisations.
- (2) The purpose for which such grants may be made is to assist eligible charitable organisations to meet the increased cost of operating eligible motor vehicles resulting from the *Road Improvement (Special Funding) Act 1989*.
- (3) Grants under this section are to be made from the Roads and Traffic Authority Fund.
- (4) In this section:

**eligible charitable organisation** means a charitable organisation determined by the Minister to be an eligible charitable organisation for the purposes of this section.

**eligible motor vehicle** means a motor vehicle operated by an eligible charitable organisation in accordance with the guidelines for assistance prepared by the Roads and Traffic Authority from time to time for the purposes of this section.

## **Division 4 Miscellaneous provisions relating to transport authorities**

### **107 Definition of “transport authority”**

In this Division, **transport authority** means:

- (a) the State Rail Authority, or
- (a1) (Repealed)
- (b) the State Transit Authority, or
- (c) the Roads and Traffic Authority, or
- (d) in relation to the functions of the Director-General under Part 4—the Director-General.

### **108 Transport districts**

- (1) There shall be 3 transport districts, namely:
  - (a) the Metropolitan transport district, and
  - (b) the Newcastle transport district, and
  - (c) the Wollongong transport district,with boundaries as prescribed by the regulations.
- (2) The regulations may from time to time:

- (a) establish other transport districts, or
- (b) vary any transport district, established under subsection (1) or this subsection, by adding any area to it or by excluding any area from it, or
- (c) amalgamate and re-name any transport districts so established.

### **109 Seal of Authority**

The seal of an Authority shall be kept by the Chief Executive of the Authority and shall be affixed to a document only:

- (a) in the presence of that Chief Executive or a member of the staff of the Authority authorised in that behalf by that Chief Executive, and
- (b) with an attestation by the signature of that Chief Executive or that member of staff of the fact of the affixing of the seal.

### **110 Miscellaneous provisions relating to contracts of transport authority**

- (1) A contract or arrangement made or entered into by a transport authority for the carrying out of works or the performance of services may provide for:
  - (a) the whole or any part of the works to be undertaken by the authority, or
  - (b) the whole or any part of the cost of the works to be paid by the authority, or
  - (c) a loan to be made by the authority to meet the whole or any part of the cost of the works, or
  - (d) the authority to pay the whole or any part of the cost of providing the services during a specified period.
- (2) A transport authority may make and enter into contracts or agreements for the payment of money (or the carrying out of works) in settlement of a claim brought against the authority for compensation or damages in relation to the functions of the authority.
- (3) A contract under this section shall be deemed for the purposes of the [Constitution Act 1902](#) to be a contract for or on account of the Public Service of New South Wales.

### **111 Disputes involving transport authorities**

- (1) If any transport dispute arises:
  - (a) between one transport authority and another transport authority, or
  - (b) between a transport authority and a public authority,either party may refer the matter to the Minister.

(2) If the Minister is not the Minister responsible for an authority that is a party to the dispute, the dispute may be referred instead (or in addition) to the Minister responsible for that authority.

(3) In this section:

**public authority** means any public or local authority constituted by or under an Act, and includes the council of a local government area, a government department and an administrative office.

**transport dispute** means a dispute with respect to the carrying out of the functions of a transport authority under this or any other Act.

(4) For the purposes of this section, the Minister administering the [Local Government Act 1993](#) shall be taken to be the Minister responsible for the council of a local government area.

### **112 Personal liability of certain persons**

(1) No matter or thing done by a transport authority, a member of a transport authority or a person acting under the direction of a transport authority or of a member of a transport authority shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a transport authority or a person so acting personally to any action, liability, claim or demand.

(2) In this section:

**member of a transport authority** includes the Chief Executives of the State Rail Authority, the State Transit Authority and the Roads and Traffic Authority.

**transport authority** includes:

(a) the State Rail Authority Board and the State Transit Authority Board, and

(a1) the Public Transport Authority, and

(b) the Roads and Traffic Advisory Council.

### **113 Presumption of validity**

(1) The exercise of a function by a transport authority is not invalidated because it is exercised in contravention of a direction by the Minister.

(2) If a recommendation by a transport authority is a condition precedent to the exercise of a function by the Minister, the exercise of the function by the Minister is evidence of the making of the recommendation.

### **114 (Repealed)**

### **115 Recovery of charges etc by transport authority**

Any charge, fee, toll or money due to a transport authority, or to the Crown in respect of the activities of a transport authority, may be recovered by the authority as a debt in any court of competent jurisdiction.

### **116 Liability of vehicle owner for parking offences on Authority's land**

- (1) If a parking offence occurs in relation to any vehicle, the person who at the time of the occurrence of the offence is the owner of the vehicle shall, by virtue of this section, be guilty of the parking offence as if the person were the actual offender.
- (2) Nothing in this section affects the liability of the actual offender, but if a penalty has been imposed on or recovered from any person in relation to a parking offence no further penalty shall be imposed on or recovered from any other person in relation to that offence.
- (3) The owner of a vehicle is not guilty of an offence by virtue of this section if the owner satisfies:
  - (a) in any case where the offence is dealt with under section 117—an authorised officer described in the penalty notice served under that section, or
  - (b) in any other case—the court,that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.
- (4) The owner of a vehicle is not, by virtue of this section, guilty of an offence if:
  - (a) in any case where the offence is dealt with under section 117, the owner:
    - (i) within 21 days after service on the owner of a penalty notice under that section alleging that the owner is guilty of the offence, supplies by statutory declaration to an authorised officer described in the notice the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
    - (ii) satisfies such an authorised officer that the owner did not know and could not with reasonable diligence have ascertained that name and address, or
  - (b) in any other case, the owner:
    - (i) within 21 days after service on the owner of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
    - (ii) satisfies the court that the owner did not know and could not with reasonable



diligence have ascertained that name and address.

- (5) Any such statutory declaration if produced in any proceedings against the person named in it and in relation to the offence in respect of which the statutory declaration was supplied is evidence that that person was in charge of the vehicle at all relevant times relating to that offence.
- (6) Any such statutory declaration which relates to more than one offence shall be deemed not to be a statutory declaration under, or for the purposes of, subsection (4).
- (7) In this section:

**owner**, in relation to a vehicle, includes:

- (a) every person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement (but not the lessor under any such agreement), and
- (b) in the case of a motor vehicle:
  - (i) a registered operator of the vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, except where the person has sold or otherwise disposed of the vehicle and has complied with any applicable provisions of the *Traffic Act 1909* or *Road Transport (Vehicle Registration) Act 1997* (or regulations made under either Act) in respect of the sale or disposal, and
  - (ii) in the case of a vehicle to which a trader's plate within the meaning of the *Road Transport (Vehicle Registration) Act 1997* is affixed—the person to whom the trader's plate has been issued, and
  - (iii) a person who, by a regulation referred to in section 15 (2) (j) of the *Road Transport (Vehicle Registration) Act 1997*, is to be treated as being, for the purposes of section 18A of the *Traffic Act 1909*, the owner of the vehicle.

**parking offence** means any offence against a regulation made for or with respect to the standing or parking of vehicles on land vested in the State Rail Authority or the State Transit Authority.

### 117 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed or is guilty of an offence under this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations

for the offence if dealt with under this section.

- (3) A penalty notice:
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 116, may be addressed to the owner without naming the owner or stating the address of the owner and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section shall not be regarded as an admission of liability for the purposes of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised officer** means:
  - (a) a member of the Police Force, or
  - (b) a person declared by the regulations to be an authorised officer for the purposes of this section.

### **118 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **119 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect

to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **120 Savings, transitional and other provisions**

Schedule 7 has effect.

## **Division 5 Miscellaneous provisions relating to common law damages for public transport accidents**

### **121 Application of common law damages for motor accidents to railway and other public transport accidents** (cf ss 68, 69 (2) MAA)

- (1) Chapter 5 (Award of damages) of the *Motor Accidents Compensation Act 1999* applies to and in respect of an award of damages which relates to the death of or bodily injury to a person caused by or arising out of a public transport accident, not being an award of damages to which that Chapter applies.
- (2) Accordingly, in that Chapter:
  - (a) a reference to a motor accident includes a reference to a public transport accident, and
  - (b) a reference to a motor vehicle includes a reference to any vehicle or vessel used for public transport.
- (3) For the purposes of this section, a **public transport accident** is an accident caused by or arising out of the use of any form of public transport in New South Wales, including public transport in the form of a passenger railway or a water ferry or taxi, but not including:
  - (a) public transport in the form of air transport, or
  - (b) public transport that is operated primarily for tourists, the purposes of recreation or historical interest or that is an amusement device, or
  - (c) an accident for which, or to the extent to which, a person is liable otherwise than in the capacity of the owner or driver of, or other person in charge of, the vehicle or vessel used for public transport.

A public transport accident, however, includes an accident of a class declared by the regulations to be a public transport accident, but does not include an accident of a class declared by the regulations not to be a public transport accident.

- (4) This section does not apply to or in respect of public transport accidents occurring

before the commencement of the *Motor Accidents Compensation Act 1999*.

**Note—**

For damages that may be awarded for accidents occurring before that commencement, see Part 6 of the *Motor Accidents Act 1988*.

## **Division 6 Special provisions for Parramatta Rail Link**

### **122 Definitions**

In this Division:

**land** includes an interest in land.

**Parramatta Rail Link** means a railway from Parramatta to Chatswood commencing generally in the vicinity of the Main Western Railway line west of Parramatta Station and proceeding via Parramatta, Camellia, Carlingford, Epping, the vicinity of Macquarie University, the vicinity of Delhi Road, North Ryde, and the vicinity of the University of Technology Ku-ring-gai Campus to Chatswood, including works, structures and facilities associated with or incidental to the railway.

**rail authority** means the SRA, RIC or the Director-General.

### **123 EPA Act not affected**

Nothing in this Division limits or otherwise affects the operation of the *Environmental Planning and Assessment Act 1979* (except as provided by section 126).

### **124 Acquisition of national park and other park land**

(1) In this section:

**Project park land** means land shown as Project park land on sheets 1–6 of the plan marked “Parramatta Rail Link Project Park Land” and presented to the Speaker of the Legislative Assembly (by or on behalf of the Member of the Assembly who introduced the Bill for the *Transport Administration Amendment (Parramatta Rail Link) Act 2000*) when the Bill was introduced into the Legislative Assembly, a copy of which is also lodged in the office of each rail authority.

(2) Any power that a rail authority has under this Act to acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* extends to authorise the acquisition of the whole or any part of the Project park land for the purposes of or in connection with the Parramatta Rail Link.

(3) Nothing in the *National Parks and Wildlife Act 1974* (in particular sections 37, 40, 47Z and 47ZB), *Parramatta Park Trust Act 2001* or the regulations under those Acts prevents a rail authority from acquiring by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* the whole

or any part of the Project park land for the purposes of or in connection with the Parramatta Rail Link.

- (4) Section 29 (2) of the *Land Acquisition (Just Terms Compensation) Act 1991* and section 9 (2) of the *Parramatta Park Trust Act 2001* do not apply to any such acquisition of Project park land.
- (5) When any land that is Project park land vests in a rail authority pursuant to its acquisition as provided by this section, any reservation of the land as a national park or regional park under the *National Parks and Wildlife Act 1974* is revoked. This subsection does not limit the operation of section 20 (1) of the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of such an acquisition of land.
- (6) A rail authority may not acquire as provided by this section any part of the Project park land that forms part of Lane Cove National Park unless and until the land described below is reserved as part of Lane Cove National Park in accordance with Part 4 of the *National Parks and Wildlife Act 1974*:

Land situated at Marsfield, in the Local Government Area of Ryde, Parish of Hunters Hill and Field of Mars, County of Cumberland and State of New South Wales being Lot 2 in Deposited Plan 841477 (being land in part of Crown Reserve in R89885 for Public Recreation, Gazette No. 99 dated 6 August 1976 Folio 3380) and Lot 4 in Deposited Plan 881923 (being land in Certificate of Title Folio Identifier 4/881923).
- (7) A rail authority may acquire the land described in subsection (6) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purpose of facilitating that land's reservation as part of Lane Cove National Park.
- (8) A rail authority may not acquire as provided by this section any part of the Project park land unless and until approval for the construction of the Parramatta Rail Link has been obtained under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (9) If land that forms part of the trust lands of the Parramatta Park Trust under the *Parramatta Park Trust Act 2001* is acquired under this section, the Minister administering that Act is to use the Minister's best endeavours to ensure that Schedule 1 to that Act is amended to reflect the acquisition of that land.

## **125 Application of Public Works Act to the Parramatta Rail Link**

- (1) The Parramatta Rail Link is an authorised work for the purposes of the *Public Works Act 1912*, and the rail authorities are for the purposes of that Act Constructing Authorities in relation to the Parramatta Rail Link.
- (2) Part 3 and sections 86, 87 and 91 (b) of the *Public Works Act 1912* do not apply in

respect of works constructed for the purposes of the Parramatta Rail Link.

- (3) Any power of a rail authority to enter land and exercise functions as a Constructing Authority under the *Public Works Act 1912* in respect of the Parramatta Rail Link, extends to Project park land (as defined in section 124) but must be exercised subject to Parts 6 (Relics and Aboriginal places) and 7 (Fauna) of the *National Parks and Wildlife Act 1974*.

#### **126 Sections 109ZJ & 109ZK EPA Act not to apply**

- (1) Sections 109ZJ and 109ZK of the *Environmental Planning and Assessment Act 1979* do not apply to a building action or subdivision action that concerns building work or subdivision work carried out for or in connection with the Parramatta Rail Link.
- (2) Expressions used in this section have the meanings given by section 109ZI of the *Environmental Planning and Assessment Act 1979*.

#### **127 Order of approval under Heritage Act**

Sections 67 and 68 of the *Heritage Act 1977* do not apply in respect of an approval under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link.

### **Schedule 1 Constitution and procedure of State Rail Authority Board and State Transit Authority Board**

(Sections 9 (4), 25 (4))

#### **1 Definitions**

In this Schedule:

**appointed member**, in relation to a Board, means a member of the Board other than the appropriate Chief Executive.

**appropriate Chief Executive** means:

- (a) in relation to the State Rail Authority Board—the Chief Executive of the State Rail Authority, or
- (b) in relation to the State Transit Authority Board—the Chief Executive of the State Transit Authority.

**Board** means the State Rail Authority Board or State Transit Authority Board.

**member**, in relation to a Board, means the appropriate Chief Executive or an appointed member of the Board.

## **2 (Repealed)**

### **3 Chairperson of Board**

- (1) Of the members (including the Chief Executive) of a Board, one shall (in and by the member's instrument of appointment as a member or in and by another instrument executed by the Minister) be appointed as Chairperson of the Board.
- (2) The Minister may remove a member from the office of Chairperson at any time.
- (3) 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.

### **4 Deputies**

- (1) The Chief Executive of an Authority may, from time to time, appoint a person to be his or her deputy, and the Chief Executive or the Minister may revoke any such appointment.
- (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
  - (a) shall, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and shall be taken to be a member.
- (4) The deputy of a member who is Chairperson of a Board does not have the member's functions as Chairperson.
- (5) A person while acting in the place of a 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 person.

### **5 Terms of office of appointed members**

Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **6 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.

## **7 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 by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of a Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board 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 12 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.
  - (i) (Repealed)
- (2) The Minister may remove an appointed member from office at any time.

## **8 Disclosure of pecuniary interests**

- (1) If:
- (a) a member of a Board 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 shall, 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 of a Board 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,
  - (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 shall be recorded by the Board in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member of a Board has disclosed the nature of an interest in any matter, the member shall 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 a Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall 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 does not apply to or in respect of an interest of a member of a Board (being the provision of goods or services to the member by an Authority) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

## **9 Filling of vacancy in office of appointed member**

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

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

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of an

appointed member and an appointed member is not, as a member, subject to that Act (except Part 8).

(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 such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **11 General procedure**

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

## **12 Quorum**

The quorum for a meeting of a Board is a majority of the members for the time being.

## **13 Presiding member**

- (1) The Chairperson of a Board or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall (subject to subclause (2)) preside at a meeting of the Board.
- (2) If the appropriate Chief Executive is not the Chairperson, the Chief Executive (if present) shall preside in the absence of the Chairperson at a meeting of the Board.
- (3) The person presiding at any meeting of a Board 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 a Board at which a quorum is present is the decision of the Board.

## **15 Transaction of business outside meetings or by telephone etc**

- (1) A 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 shall be taken to be a decision of the Board.

- (2) A 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 of a Board have the same voting rights they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the Board.
- (5) Papers may be circulated among members of a Board for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 16 First meeting

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

## Schedule 2 Provisions relating to Chief Executives

(Sections 11 (3), 19Y (2), 27 (3), 47 (2))

### 1 Definition

In this Schedule:

**Chief Executive** means the Chief Executive of the State Rail Authority, the Chief Executive of the State Transit Authority or the Chief Executive of the Roads and Traffic Authority.

### 1A Employment of Chief Executives

The employment of a Chief Executive is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

### 2 (Repealed)

### 3 Acting Chief Executive

- (1) The Minister may, from time to time, appoint a person to act in the office of a Chief

Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and shall be taken to be the Chief Executive.

- (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 a Chief Executive 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 a Chief Executive shall be regarded as an absence from office of the Chief Executive.

#### **4-11 (Repealed)**

### **Schedule 3 Provisions relating to Public Transport Authority, Public Transport Advisory Council and Roads and Traffic Advisory Council**

(Sections 44 (3), 54 (3))

#### **1 Definitions**

In this Schedule:

**Advisory Council** means the Public Transport Authority, the Public Transport Advisory Council or the Roads and Traffic Advisory Council.

**member** means an ex-officio or appointed member of an Advisory Council.

#### **2 (Repealed)**

#### **3 Chairperson of Council**

- (1) (Repealed)
- (2) Of the appointed members of the Roads and Traffic Advisory Council, one shall (in and by the member's instrument of appointment or in and by another instrument executed by the Minister) be appointed as Chairperson of that Advisory Council.
- (3) The Minister may remove a member from the office of Chairperson of an Advisory Council at any time.
- (4) A person who is a member and Chairperson of an Advisory Council 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.

#### **4 Deputies of members**

- (1) A member may, from time to time, appoint a person to be his or her deputy, and the member or the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) shall, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and shall be taken to be a member.
- (3) The deputy of a member who is Chairperson of an Advisory Council has the member's functions as Chairperson.
- (4) A person while acting in the place of a 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 person.

#### **5 Terms of office**

Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **6 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.

#### **7 Vacancy in office of 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 by the Governor under Part 8 of the [Public Sector Management Act 1988](#), or
  - (e) is absent from 4 consecutive meetings of an Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory

Council 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 12 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.
- (i) (Repealed)

(2) The Minister may remove an appointed member from office at any time.

### **8 Filling of vacancy in office of member**

If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

### **9 Effect of certain other Acts**

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act (except Part 8).
- (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 such a member.

- (3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

### **10 General procedure**

The procedure for the calling of meetings of an Advisory Council and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Advisory Council.

## 11 Quorum

The quorum for a meeting of an Advisory Council is a majority of the members for the time being.

## 12 Presiding member

- (1) The Chairperson of an Advisory Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Advisory Council.
- (2) The person presiding at any meeting of an Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## 13 Voting

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

## 14 First meeting

The Minister shall call the first meeting of an Advisory Council in such manner as the Minister thinks fit.

# Schedule 4 Transfer of assets, rights and liabilities of SRA and its subsidiaries

(Sections 19J, 19K and 19AH)

## 1 Definitions

In this Schedule:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**Rail Access Corporation** means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the [Transport Administration Amendment \(Rail Management\) Act 2000](#).

**Rail Corporation** includes Rail Access Corporation and Rail Services Australia.

**Rail Services Australia** means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**RSA** means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

## 2 Application and interpretation

(1) This Schedule applies to the following orders under this Act:

- (a) an order under section 19J transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to a Rail Corporation,
- (b) an order under section 19K transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to the Ministerial Holding Corporation or to any person on behalf of the State,
- (c) an order under section 19AH transferring assets, rights or liabilities of the SRA or any SRA subsidiary corporation to the RSA,
- (d) an order under clause 70 of Schedule 7 transferring assets, rights or liabilities of the RSA or any RSA subsidiary corporation to Rail Services Australia,
- (e) an order under clause 71 of Schedule 7 transferring assets, rights or liabilities of RSA or any RSA subsidiary corporation to the Ministerial Holding Corporation or to any person on behalf of the State.

(2) In this Schedule, the body or person from whom any assets, rights or liabilities are so transferred is called the **transferor** and the body or person to whom they are being so transferred is called the **transferee**.

## 3 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Schedule applies, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights and liabilities of the transferor become by virtue of this Schedule the rights and liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending



immediately before the transfer are taken to be proceedings pending by or against the transferee,

- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to regulations or other provisions under Schedule 7), to be read as, or as including, a reference to the transferee.

#### **4 Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the making of an order to which this Schedule applies.

#### **5 Date of vesting**

An order to which this Schedule applies takes effect on the date specified in the order.

#### **6 Consideration for vesting**

- (1) An order to which this Schedule applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) The consideration and value or values cannot exceed the optimised deprivation of those assets, rights or liabilities.
- (3) In this clause, optimised deprivation value means a value determined by the application

of the Guidelines on Accounting Policy for Valuation of Government Trading Enterprises prepared by the Steering Committee on National Performance Monitoring of Government Trading Enterprises, agreed on by the Commonwealth and States and published in October 1994.

## **7 Stamp duty**

Stamp duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a Rail Corporation, the Ministerial Holding Corporation or other person on behalf of the State or the RSA by an order to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

## **8 Transfer of interest in land**

- (1) An order to which this Schedule applies may transfer an interest in respect of land vested in the SRA or any SRA subsidiary corporation without transferring the whole of the interests of the SRA or subsidiary corporation in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

## **9 Determinations of Minister for purposes of orders**

For the purposes of any order to which this Schedule applies, a determination by the Minister as to which entity to which any assets, rights or liabilities relate is conclusive.

## **10 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

# **Schedule 5 Extended leave for staff of each Authority**

(Section 68)

## **1 Application**

This Schedule applies to all members of the staff of an Authority.

## **2 Definitions**

In this Schedule:

**officer** includes any member of the staff of an Authority.

**relevant Authority**, in relation to an officer, means the Authority of which he or she is an officer.

**service** includes service with any Authority or its predecessor and service as a public servant, but does not include service exempted by the regulations.

### 3 Officer to be entitled to extended leave after a certain period of service

(1) Subject to this Schedule, an officer is entitled:

- (a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay, and
- (b) after service in excess of 10 years, to:
  - (i) leave as provided by paragraph (a), and
  - (ii) in addition, an amount of leave proportionate to the officer's length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for each 10 years served after service for 10 years.

(2) For the purpose of calculating the entitlement of a person to extended leave under this clause at any time:

- (a) service referred to in this clause includes service before the commencement of this Schedule, and
- (b) there must be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled:
  - (i) any extended leave, or leave in the nature of extended leave, and
  - (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave,

taken or received by that person before that time, including any such leave taken, or benefit received, by that person in accordance with any repealed enactment, and

(c) the provisions of the *Transferred Officers Extended Leave Act 1961* have effect.

(3) Nothing in subclause (2) shall be regarded as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both subclause (2) (b) and section 3 (7) of the *Transferred Officers Extended Leave Act 1961*.

(4) If the services of an officer with at least 5 years' service as an adult and less than 10 years' service are terminated:

(a) by the relevant Authority for any reason other than the officer's serious and intentional misconduct, or

(b) by the officer on account of illness, incapacity or domestic or other pressing necessity,

the officer is entitled:

(c) for 5 years' service to 1 month's leave on full pay, and

(d) for service after 5 years to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service (that service to include service as an adult and otherwise than as an adult).

(5) For the purposes of subclause (4), **service as an adult**, in the case of an officer employed to do any work for which the remuneration:

(a) has been fixed by an award:

(i) made under the *Industrial Relations Act 1988* of the Commonwealth, or

(ii) made under the *Industrial Relations Act 1996*, or

(b) has been fixed by an industrial agreement or enterprise agreement made in accordance with or registered under either of those Acts or a determination made in accordance with this Act,

means the period of service during which the remuneration applicable to the officer was at a rate not lower than the lowest rate fixed under the award, industrial agreement, enterprise agreement or determination for an adult male or adult female in the same trade, classification, calling, group or grade as the officer.

(6) For the purposes of subclause (4), **service as an adult**, in the case of an officer to whom subclause (5) does not apply, means the period of service during which the officer was not less than 21 years of age.

(7) For the purposes of subclause (1), **service** includes:

(a) any period of leave without pay taken before 13 December 1963, and

(b) in the case of an officer who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after that commencement.

(8) In subclause (7) (b), for the purpose of determining whether or not an officer has completed at least 10 years' service, the officer's period of service shall be taken:

(a) to include any period of leave without pay taken before 13 December 1963, and

(b) to exclude any period of leave without pay taken after that commencement.

- (9) For the purposes of subclause (4), **service** does not include any period of leave without pay whether taken before or after the commencement of this Schedule.

#### **4 Certain officers to be entitled to be paid a gratuity instead of extended leave**

An officer who has acquired a right to extended leave with pay under clause 3, is entitled, immediately on the termination of the officer's services, to be paid instead of that leave the money value of the extended leave as a gratuity in addition to any gratuity to which the officer may be otherwise entitled.

#### **5 Payment to be made where an officer entitled to extended leave has died**

- (1) If an officer has acquired a right under clause 3 to extended leave with pay and dies before starting it, or after starting it dies before completing it:
- (a) the widow or widower of the officer, or
  - (b) if there is no such widow or widower, the children of the officer, or
  - (c) if there is no such widow, widower or children, the person who, in the opinion of the relevant Authority, was, at the time of the officer's death, a dependent relative of the officer,

is entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary that the officer received at the time of his or her death less any amount paid to the officer in respect of the leave not taken, or not completed.

- (2) If an officer with at least 5 years' service as an adult and less than 10 years' service as referred to in clause 1 (4) dies:
- (a) the widow or widower of the officer, or
  - (b) if there is no such widow or widower, the children of the officer, or
  - (c) if there is no such widow, widower or children, the person who, in the opinion of the relevant Authority, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave which would have accrued to the officer had his or her services terminated as referred to in clause 3 (4), computed at the rate of salary that the officer received at the time of his or her death.

- (3) If there is a guardian of any children entitled under subclause (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (4) If there is no person entitled under subclause (1) or (2) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, payment in respect of that leave must be made to the officer's personal

representatives.

- (5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.
- (6) If payment of the money value of leave has been made under this Act, the relevant Authority ceases to be liable for payment of any amount in respect of that leave.

## **Schedule 6 Transfer of certain SRA staff (other than certain Chief Executives)**

(Sections 19M and 59C)

### **1 Definitions**

In this Schedule:

**former SRA staff** means the members of staff of the SRA immediately before the commencement of this Schedule (other than the holder of a position specified in clause 48 or 49 of Part 3 of Schedule 7) who, after that commencement, are transferred to a Rail Corporation or the RSA by an order made under this Schedule.

**Rail Access Corporation** means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the *Transport Administration Amendment (Rail Management) Act 2000*.

**Rail Corporation** includes, after the dissolution of the RSA, Rail Services Australia and, after the dissolution of Rail Access Corporation and Rail Services Australia, includes Rail Infrastructure Corporation.

**Rail Services Australia** means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

**RSA** means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

**the SRA enterprise agreements** means:

- (a) the State Rail Authority of New South Wales—State—Enterprise Agreement 1995, and
- (b) the State Rail Authority of New South Wales Enterprise Agreement 1996,

or, if any such agreement expires or is replaced before the commencement of this Schedule, any new enterprise agreement entered into by the SRA or a SRA subsidiary corporation to replace that agreement (as so in force).

## **2 Transfer of former SRA staff to Rail Corporations**

- (1) The Minister may, by order in writing, provide that such former SRA staff as are specified or described in the order are transferred to a Rail Corporation specified in the order.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the Rail Corporation, in accordance with the terms of the order, on the day on which this Schedule commences.

## **3 Transfer of former SRA staff to RSA**

- (1) The Minister may, by order in writing, provide that such former SRA staff as are specified or described in the order are transferred to the RSA.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the RSA, in accordance with the terms of the order, on the day on which this Schedule commences.

## **4 Preservation of SRA enterprise agreements**

- (1) Despite anything contained in the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*, the SRA enterprise agreements continue in force for the terms of the agreements, but subject to this clause.
- (2) The Rail Corporations and the RSA (and their successors) are, for the purposes of this clause, taken to be parties to the SRA enterprise agreements.

## **5 Preservation of remuneration and other conditions of employment on transfer from SRA**

- (1) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which former SRA staff become employed on being transferred under this Schedule (including terms and conditions as to remuneration, allowances and duration of employment) are those on which they were employed by the SRA immediately before the commencement of this Schedule.
- (2) The terms and conditions of employment referred to in subclause (1) apply to new employees of a Rail Corporation or the RSA in the same way as they apply to former SRA staff of the same class or classification who are transferred to the Rail Corporation or the RSA.
- (3) The terms and conditions of employment referred to in subclause (1) may be varied but only by the means by which they could be varied immediately before the commencement of this Schedule.
- (4) Despite subclauses (1)-(3), a person who is the subject of an order under clause 2 and who, immediately before the making of the order, held an executive position under Part 2A of the *Public Sector Management Act 1988* (other than a position referred to in

clause 48 of Part 3 of Schedule 7) in the SRA is not entitled to exercise a right to return to the public sector or to seek the benefit of section 42R or 42S of the *Public Sector Management Act 1988*:

- (a) on ceasing, on the making of the order, to hold that position, or
- (b) on ceasing to be employed with a Rail Corporation.

**6 Preservation of leave and other entitlements for previous service of SRA staff and mobility entitlements of former SRA staff for future service with one or more new employers**

- (1) Continuous service of former SRA staff with the SRA and with one or more new employers is taken, for all purposes, as service with their current new employer.
- (2) This clause applies, without limiting its operation, for the purpose of the accrual of leave with the new employer and for the purpose of any entitlements to redundancy payments from the current new employer.
- (3) In particular, former SRA staff retain, on transfer under this Schedule (or on subsequent transfer) to a new employer, any rights to annual leave, long service leave and sick leave accrued or accruing in their previous employment with the SRA or a new employer.
- (4) A person's entitlement to any such leave is to be calculated:
  - (a) for such part of any period during which that leave accrued or was accruing as occurred before the day of transfer to the new employer—at the rate for the time being applicable to the person before that day (as an employee of the SRA or of the former new employer), and
  - (b) for such part of the period as occurred after the day of transfer to the current employer—at the rate for the time being applicable to the person after that day (as an employee of the current new employer).
- (5) For the purposes of this clause, a **new employer** is any Rail Corporation, the RSA or the SRA.

**7 Special provision relating to long service leave and sick leave for staff of Rail Corporations**

- (1) For the purposes of this Schedule, terms and conditions, in relation to former SRA staff who are transferred to a Rail Corporation pursuant to an order to which this Schedule applies and to other employees of the Rail Corporation, include the provisions of:
  - (a) Schedule 5 (Extended leave for staff of each Authority) as if the references in that Schedule to:
    - (i) an officer included references to an employee of the Rail Corporation, and



- (ii) a relevant Authority included references to the Rail Corporation, and
- (b) clause 10 (relating to sick leave) of the *Transport Administration (Staff) Regulation 1995* as if the references in that clause to:
  - (i) SRA officers and other employees of the SRA included references to employees of the Rail Corporation, and
  - (ii) the SRA included references to the Rail Corporation.
- (2) The provisions referred to in subclause (1) are, in so far as they relate to a Rail Corporation, taken to have been fixed by an award.

### **8 Applications for transfer by former SRA staff**

- (1) This clause applies, in the period of 6 years after the commencement of this Schedule, to the filling of any vacant position in a Rail Corporation, the RSA or the SRA if the applicants eligible to apply for the vacancy are limited to the staff of the Rail Corporation, the RSA or the SRA, as the case may be.
- (2) Any former SRA staff who are transferred under this Schedule are eligible to apply for a vacancy to which this clause applies as if they were members of the staff of the relevant Rail Corporation, the RSA or the SRA.
- (3) This clause does not apply to former SRA staff who are no longer employed by a Rail Corporation, the RSA or the SRA.
- (4) Any former SRA staff who are employed by a Rail Corporation and who apply for any vacant position to which this clause applies in the RSA or the SRA have the same rights of appeal against the filling of the position as they would have if they were employees of the Authority concerned.
- (5) Any former SRA staff who are employed by the RSA or the SRA and who apply for any vacant position to which this clause applies in a Rail Corporation have the same rights of appeal (if any) against the filling of the position as they would have if they were employees of the Rail Corporation concerned.

#### **Note—**

Entitlements to superannuation for former SRA staff are preserved by amendments made by Schedule 2 to the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996* that declare the Rail Corporations to be employers for the purposes of the State's superannuation schemes.

### **9 No payment out on transfer or dual benefits**

- (1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of a Rail Corporation, the RSA or the SRA.
- (2) A person to whom this clause applies is not entitled to receive any payment or other

benefit merely because the person ceases to be a member of the staff of the SRA.

- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

## 10 Transport Appeal Boards Act 1980 not to apply to Rail Corporations

The *Transport Appeal Boards Act 1980* does not apply in relation to a Rail Corporation.

## Schedule 6A Powers of RIC relating to rail infrastructure facilities and land

(Section 19F)

### 1 Definitions

In this Schedule:

**SRA building** means a building owned by, vested in or under the control of the SRA but does not include any building of which the SRA is the lessor.

**SRA land** means land owned by, vested in or under the control of the SRA but does not include any land of which the SRA is the lessor.

### 2 Ownership of rail infrastructure facilities

- (1) RIC 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 RIC and of all rail infrastructure facilities vested in or transferred to RIC (whether or not the place on which the facilities are situated is owned by RIC).
- (2) RIC may, subject to this Act, inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing that is necessary or appropriate to any of its rail infrastructure facilities that are situated on SRA land or on or in a SRA building to ensure that, in the opinion of RIC, the rail infrastructure facilities are established, held and managed in an efficient, safe and reliable manner.
- (3) RIC may, subject to this Act, the NSW Rail Access Regime and the *State Owned Corporations Act 1989*, sell or otherwise deal with rail infrastructure facilities that it owns.

### 3 Entry on to land

- (1) RIC may, by persons issued with certificates of authority under this Schedule, enter and occupy SRA land or a SRA building in accordance with this Schedule for the purpose of exercising its functions including:
- (a) to inspect, operate, repair, replace, maintain, remove, extend, expand, alter,

connect, disconnect, improve or do any other thing that RIC considers is necessary or appropriate to any of its rail infrastructure facilities or to construct new rail infrastructure facilities and, for these purposes, to carry out any work on, below or above the surface of the land, and

(b) to ascertain the character and condition of the land or a building to enable RIC to inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing to RAC's rail infrastructure facilities, and

(c) to ascertain the condition or location of any rail infrastructure facilities to enable RIC to inspect, operate, repair, replace, maintain, remove, extend, expand, alter, connect, disconnect, improve or do any other thing that RIC considers necessary or appropriate to any of its rail infrastructure facilities.

(2) Material that has been excavated from SRA land for the purposes of this clause may be removed from the land by RIC.

(3) Without limiting this clause, the power of entry conferred by it includes the right of RIC to pass or repass unimpeded, with or without vehicles, plant or equipment, over, on or through SRA land and SRA buildings.

(4) RIC must, on completion of an inspection or the carrying out of other work referred to in this clause, remove, at its own cost, from the SRA land or SRA building all unused stores, materials, construction equipment and portable buildings that it has placed on or in the SRA land or SRA building.

(5) However, RIC is not required to remove unused stores, materials, construction equipment or portable buildings that are situated on or in SRA land or a SRA building on the commencement of this Schedule.

#### **4 Certificates of authority**

(1) RIC may authorise an officer or employee of RIC, or any other person, to issue certificates of authority for the purposes of this Schedule.

(2) A certificate of authority must:

(a) state that it is issued under this Act, and

(b) specify the person or class of persons who are authorised to exercise the power of entry under this Act, and

(c) describe the nature of the powers proposed to be exercised, and

(d) state the date (if any) on which it expires, and

(e) bear the signature of the person by whom it is issued.

## 5 Party to access agreement with RIC authorised to enter SRA land

- (1) A person who is a party to an access agreement is authorised to have access to the rail infrastructure facilities to which the access agreement relates, even if the facilities are situated in or on SRA land, if access is exercised in accordance with and as permitted by the access agreement.
- (2) A person to whom this clause applies does not require a certificate of authority under this Schedule to enter the SRA land concerned.
- (3) In this clause, **access agreement** means an agreement, entered into by RIC pursuant to the NSW Rail Access Regime, that permits a person to operate rolling stock on the NSW rail network.

## 6 Exercise of powers of entry

- (1) Before a person enters any SRA building under a power conferred by this Schedule, RIC or another person must serve on the SRA reasonable notice in writing of the intention to enter the building on a day or days specified in the notice unless:
  - (a) entry to the building is made with the consent of the SRA, or
  - (b) entry is required for an emergency inspection or the taking of urgent remedial action to rail infrastructure facilities, in which event the chief executive officer of RIC or a person nominated by the chief executive officer of RIC (either generally or in the particular case) must give SRA as much notice (oral or otherwise) as is practicable in the circumstances.
- (2) Nothing in this clause authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling-house.
- (3) Nothing in this clause requires RIC to give the SRA notice of the entry of a person onto SRA land under a power conferred by this Schedule.

## 7 Compensation

- (1) RIC is, in exercising its functions under this Schedule, to do as little damage as practicable.
- (2) RIC must, subject to this Schedule, compensate the SRA for damage suffered by the SRA as the result of the exercise of functions by RIC. However, RIC is required to pay compensation to the SRA only if the construction or maintenance work damages or interferes with a SRA building or other structure owned by the SRA on the land.
- (3) Any claim for compensation by the SRA for damage caused by the exercise of functions by RIC under this Schedule must be made in writing to the chief executive officer of RIC within 12 months after the construction or maintenance work concerned is completed or within such further time as may be agreed on by the chief executive

officer of RIC.

- (4) Compensation may be made by reinstatement, repair, construction of works or payment.
- (5) If compensation is to be made by payment, the amount of the compensation is the amount agreed on by RIC and the SRA. However, the amount of compensation for damage to a SRA building or other structure owned by the SRA must not exceed the value of the building or structure.
- (6) If RIC and the SRA cannot, within a reasonable time, agree on the amount of compensation or the value of the building or other structure concerned, the matter is to be referred to the Minister for settlement in accordance with clause 11.
- (7) RIC may, in exercising its functions under this Schedule, do anything that is necessary or desirable to minimise disruption to the operation of railway passenger services by the SRA. However, RIC is not required to compensate the SRA for any loss suffered or cost or expense incurred by the SRA as a result of any such disruption.
- (8) For the removal of doubt, the SRA is not entitled to claim or recover any payment or other benefit merely because rail infrastructure facilities owned by RIC are situated on or in SRA land or a SRA building.

## **8 Protection of rail infrastructure facilities**

- (1) Any SRA land (or any SRA land on which a SRA building is erected) in or on which rail infrastructure facilities owned by RIC are installed is taken to be the subject of a covenant in favour of RIC pursuant to which the SRA must ensure that:
  - (a) the rail infrastructure facilities are not wilfully or negligently destroyed, damaged or interfered with by any employee, agent or contractor of the SRA or any other person within its control, and
  - (b) RIC or any person issued with a certificate of authority is not delayed or obstructed in and about the taking, in relation to the rail infrastructure facilities, of any step referred to in clause 2 (2), and
  - (c) no structure or object is placed in, on or near the rail infrastructure facilities in a manner that interferes with their operation, and
  - (d) RIC is notified in writing of any proposed construction, repair, maintenance, alteration, removal, demolition or other similar work on SRA land that threatens or is likely to threaten the safety or operational capacity or efficiency of RAC's rail infrastructure facilities and that RIC has consented in writing to any such work before it is undertaken, and
  - (e) RIC is notified in writing of any proposal to sell or otherwise dispose of SRA land or

SRA buildings on or in which RAC's rail infrastructure facilities are situated and that RIC has consented in writing to any such sale or other disposal before it is effected.

- (2) A covenant to which this clause relates is enforceable as a duly created covenant.
- (3) A lease or licence entered into, whether before or after the commencement of this clause, by the SRA as lessor or licensor is taken to include a term requiring the lessee or licensee to comply with the same obligations, in relation to the land and buildings, the subject of the lease or licence, as are imposed by subclause (1) on the SRA in relation to SRA land and buildings.
- (4) It is a defence to proceedings by RIC under this clause that the SRA or, in a case to which subclause (3) applies, the lessee or licensee from the SRA, could not reasonably have prevented action taken by any person that would, if capable of prevention by the SRA, lessor or licensee, have resulted in a breach of covenant by the SRA, lessor or licensee.
- (5) If a person:
  - (a) places a structure or object in, on or near rail infrastructure facilities owned by RIC that are situated in or on SRA land or a SRA building in a manner that interferes with the operation of the facilities, or
  - (b) carries out, or proposes to carry out, any construction, repair, maintenance, alteration, removal, demolition or other similar work in, on or near rail infrastructure facilities owned by RIC that are situated in or on SRA land or a SRA building in a manner that threatens or is likely to threaten the safety or operational capacity or efficiency of RAC's rail infrastructure facilities,

RIC may give the person a written notice requiring removal of the structure or object or that the work not be undertaken or, if the work has commenced, that it be stopped, altered or removed within a time and (if appropriate) in the manner specified in the notice.

- (6) On the receipt of such a notice, the person to whom it has been given must:
  - (a) remove the structure or object, or
  - (b) not undertake, or stop, alter or remove the work,and compensate RIC for all loss or damage suffered by it as a result of the placement of the structure or object on, in or near the facilities or as a result of the undertaking of the work.
- (7) If a person fails to comply with a notice under subclause (5) within the period and (if appropriate) the manner specified in the notice or within any extension of that period

allowed by RIC in writing, the Corporation may:

- (a) remove the structure or object, or
- (b) alter or remove the work,

and recover from the person the cost of the alteration or removal together with compensation for all loss or damage referred to in that subclause.

## **9 Compensation to RIC for damage**

(1) Without limiting clause 8, a person who, without the consent of RIC:

- (a) carries out any activity that causes destruction of, damage to or interference with any rail infrastructure facilities owned by RIC, and
- (b) does so in circumstances in which the person knew, or should have known, that the destruction, damage or interference would result from the carrying out of the activity,

is liable to compensate RIC for all loss or damage suffered by RIC as a result.

(2) RIC is not entitled to compensation under this clause and another provision of this Schedule for the same destruction, damage or interference.

(3) A reference in this clause to a person extends to any person:

- (a) who caused the carrying out of the activity, or
- (b) under whose order or direction the activity was carried out, or
- (c) who aided, assisted, counselled or procured the carrying out of the activity.

(4) RIC may proceed against a person for recovery of its loss or compensation for its damage under this clause whether or not RIC has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

## **10 RIC has certain rights under SRA agreements relating to works and facilities on SRA land**

(1) This clause applies to any agreement entered into by the SRA (or a predecessor of the SRA) before the commencement of this Schedule under which a person may construct, maintain or use works or facilities on SRA land or in an SRA building, being an agreement under which the SRA has the following rights (within the meaning of Schedule 4):

- (a) the right to supervise the construction, maintenance or use of the works or facilities, or

- (b) the right to direct (or carry out at the expense of the person) the repair, alteration, replacement, closure, removal or demolition of the works or facilities, or
  - (c) the right to be compensated for loss or damage suffered by the SRA because of any loss or damage, or other thing, that occurs during or as a result of the construction, maintenance or use (or the repair, alteration, replacement, removal or demolition) of the works or facilities, or
  - (d) any other rights of a kind prescribed by the regulations.
- (2) RIC has and may exercise any such rights, in addition to the SRA, if the works or facilities are, or are to be, situated on or near land or a building where there are rail infrastructure facilities vested in or owned by RIC. For that purpose, references in the agreement to the SRA are taken to include references to RIC.
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities under the agreement, or
  - (c) as giving rise to any remedy by a party to the agreement, or as causing or permitting the termination of the agreement, or
  - (d) as an event of default under the agreement.
- Without limiting this subclause, the operation of this clause is not to be regarded as giving rise to any right to compensation by a party to the agreement.
- (4) This clause does not limit the operation of clauses 8 and 9 or the operation of Schedule 4.
- (5) In this clause, **SRA land** or **SRA building** includes any land or building of which the SRA is the lessor.

## 11 Connections to NSW rail network

- (1) A person who proposes to connect railway track to the NSW rail network must obtain:
- (a) the written consent of RIC, and
  - (b) if the work proposed involves crossing and placing railway track on SRA land in order to connect with the NSW rail network, the written consent of the SRA.
- (2) RIC may grant a consent under this clause on such terms and conditions as it thinks fit.

However, RIC must not unreasonably prevent a person who occupies land adjoining



the NSW rail network connecting railway track to that network if RIC is satisfied that:

- (a) the connection accords with the objectives of RIC and, in particular, will not adversely affect the efficient, safe and reliable operation of that network, and
- (b) the NSW rail network has sufficient capacity to handle any additional traffic generated by the connection, and
- (c) the connection will comply with the requirements of the [Rail Safety Act 1993](#) and any other relevant legislation (including any planning legislation), and
- (d) the costs of making and maintaining the connection are paid by the person seeking the connection.

A consent under this clause to connect to the NSW rail network does not confer any rights of access to that network and a person does not have a right to make the connection unless access to that network from the connection is or will be authorised by an access agreement that has been made under Part 2A of this Act.

- (3) The SRA may grant a consent under this clause on such terms and conditions as it thinks fit. However, the SRA must not unreasonably prevent a person who occupies land that adjoins SRA land from constructing railway track on SRA land for the purpose of connecting it to the NSW rail network.
- (4) RIC or, in a case to which subclause (1) (b) applies, the SRA, may disconnect and remove railway track that has not been authorised as required by this clause.

## **12 Settlement of disputes**

- (1) If a dispute arises between RIC and the SRA with respect to the operation of, or compliance with, the provisions of this Schedule and if, after diligent efforts on the part of RIC and the SRA, the dispute has not been resolved, either party may submit the dispute to the Minister for settlement in accordance with this clause.
- (2) On the submission of a dispute to the Minister, the Minister is to:
  - (a) consult with RIC and the SRA, and
  - (b) inquire into the matter or appoint a person to inquire into the matter and report to the Minister with respect to the dispute.
- (3) After the completion of an inquiry and, if a report is made to the Minister, after consideration by the Minister of that report, the Minister may make such order with respect to the dispute as the Minister thinks fit.
- (4) Without limiting subclause (3), the Minister may make an order:
  - (a) imposing conditions or restrictions on certificates of authority issued under this Schedule with respect to entry into SRA buildings, or

- (b) subject to clause 7, determining that RIC is to compensate the SRA for damage suffered by the SRA as a result of the exercise of functions by RIC under this Schedule, or
  - (c) directing the SRA to permit a person to construct railway track on SRA land for the purpose of connecting it to the NSW rail network.
- (5) An order made by the Minister under this clause may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
  - (6) RIC and the SRA must comply with any order given to them under this clause and RIC and the SRA are, despite the provisions of any Act, empowered to comply with any such order.
  - (7) The provisions of any other Act relating to the settlement of disputes do not apply to the settlement of a dispute referred to in this clause.

### **13 Acquisition of land**

- (1) RIC may acquire land (including an interest in land) for the purpose of establishing and maintaining rail infrastructure facilities.
- (2) The other purposes for which land may be acquired under subclause (1) include for the purposes of a future sale, lease or disposal, that is, to enable RIC to exercise its functions in relation to land under this Act.
- (3) Land that RIC is authorised to acquire under this clause may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) for the purpose referred to in subclause (1).
- (4) RIC may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the portfolio Minister.
- (5) For the purposes of the [Public Works Act 1912](#), any such acquisition is taken to be for an authorised work and RIC is, in relation to that authorised work, taken to be the Constructing Authority.
- (6) Part 3 and section 91 (b) of the [Public Works Act 1912](#) do not apply in respect of works constructed for the purpose referred to in this clause.
- (7) Despite the exclusion by subclause (6) of the provisions of section 91 (b) of the [Public Works Act 1912](#) in respect of works constructed for the purpose referred to in this clause, RIC may in its discretion make and maintain such fences in connection with the works as it thinks fit.

### **14 Council approval not required for work on new or existing rail infrastructure facilities**

- (1) This clause applies to work connected with:

- (a) the erection or installation of new rail infrastructure facilities by RIC after the commencement of this clause, or
  - (b) the operation, repair, replacement, maintenance, removal, extension, expansion, alteration, connection or disconnection by RIC of rail infrastructure facilities that are vested in or transferred to RIC in accordance with this Act.
- (2) Work to which this clause applies is exempt from the requirement for an approval under the *Local Government Act 1993*.
- (3) However, no such work (other than routine repairs or maintenance work) may be carried out unless:
- (a) reasonable notice of the proposal to carry out the work has been given to the local council (if any), and
  - (b) the local council (if any) has been given a reasonable opportunity to make submissions to RIC in relation to the proposal, and
  - (c) RIC has given due consideration to any submissions so made.
- (4) Subclause (3) does not apply to the carrying out of work:
- (a) to cope with emergencies, or
  - (b) for which an approval under the *Local Government Act 1993* is not required.

## **15 Regulations as concerning land and rail infrastructure facilities**

The regulations may make provision for or with respect to the following:

- (a) the obligation of the SRA and RIC to enter into a memorandum of understanding concerning the management of SRA land on which rail infrastructure facilities vested in or owned by RIC are situated and that is not used by the SRA or a lessee or licensee of the SRA,
- (b) the use of rail infrastructure facilities vested in or owned by RIC,
- (c) the protection and preservation of rail infrastructure facilities.

## **Schedule 6B Special provisions for underground rail facilities**

(Section 97)

### **1 Interpretation**

- (1) In this Schedule:

***rail authority*** means the SRA, RIC or the Director-General.

***rail infrastructure facilities*** has the same meaning as in Part 2A.

***underground rail facilities*** means:

- (a) rail infrastructure facilities that are located under the surface of land, and
  - (b) structures and facilities for or associated with the provision of railway services (such as railway stations, platforms, access ways and vents), being structures and facilities that are located under the surface of land.
- (2) For the purposes of this Schedule, an underground rail facility is taken to be owned by a rail authority if the facility is on land owned or occupied by the rail authority (even if the facility is in fact owned by another person).
- (3) This Schedule extends to underground rail facilities in existence on the commencement of this Schedule.

## **2 No compensation for acquisition of land for underground rail facilities**

- (1) If land under the surface is compulsorily acquired under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) for the purpose of underground rail facilities, compensation is not payable under that Act unless:
- (a) the surface of the overlying soil is disturbed, or
  - (b) the support of that surface is destroyed or injuriously affected by the construction of those facilities, or
  - (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.
- (2) Section 62 (2) of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) does not apply to the compulsory acquisition of land under that Act for the purpose of underground rail facilities.
- (3) Expressions used in this clause have the same meaning as in the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (4) This clause extends to the acquisition of land for the purpose of underground rail facilities before the commencement of this clause, but not so as to affect any payment or award of compensation made before that commencement.

## **3 Compensation for damage to underground rail facilities**

- (1) A person who, without the consent of a rail authority, carries out any activity that causes destruction of, damage to or interference with any underground rail facility owned by the rail authority is liable to compensate the rail authority for all loss or damage suffered by the rail authority as a result.
- (2) It is a defence in an action for compensation under this clause if the defendant establishes that the defendant did not know and could not reasonably be expected to

have known that the destruction, damage or interference concerned would result from the carrying out of the activity concerned.

- (3) A rail authority is not entitled to compensation under both this clause and another provision of this Act for the same destruction, damage or interference.
- (4) A reference in this clause to a person who carries out an activity extends to any person:
  - (a) who caused the carrying out of the activity, or
  - (b) under whose order or direction the activity was carried out, or
  - (c) who aided, assisted, counselled or procured the carrying out of the activity.
- (5) A rail authority may proceed against a person for recovery of loss or compensation for damage under this clause whether or not the rail authority has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

#### **4 Right of support for underground rail facilities**

- (1) There is declared to be a right of support for an underground rail facility owned by a rail authority and a duty of care is declared to exist in relation to that right of support for the purposes of the common law of negligence.
- (2) Accordingly, a person has a duty of care not to do anything on or in relation to land (the **supporting land**) that removes the support provided by the supporting land to any underground rail facility owned by a rail authority.
- (3) For the purposes of this clause, **supporting land** includes the natural surface of the land, the subsoil of the land, any water beneath the land, and any part of the land that has been reclaimed.
- (4) The duty of care under this clause does not extend to any support that is provided by a building or structure on the supporting land except to the extent that the supporting building or structure concerned has replaced the support that the supporting land in its natural or reclaimed state provided to the underground rail facilities.
- (5) A reference in this clause to the removal of the support provided by supporting land includes a reference to any reduction of that support.
- (6) This clause does not apply in relation to anything done or omitted to be done before the commencement of this clause.

#### **5 Implied covenant for protection of underground rail facilities**

- (1) Land above, under or adjacent to an underground rail facility owned by a rail authority is taken to be the subject of a covenant in favour of the rail authority pursuant to

which the owner from time to time of that land must ensure that:

- (a) the underground rail facility is not wilfully or negligently destroyed, damaged or interfered with, and
  - (b) no structure or object is placed in contact with or near the underground rail facility in a manner that interferes with the operation of the facility, and
  - (c) land is not excavated to expose the underground rail facility without the consent of the rail authority.
- (2) A lease, including a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1987*, is taken to include a term requiring the lessee of land referred to in subclause (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subclause on the owner who has leased the land to the lessee.
- (3) A covenant under this clause is enforceable as a duly created covenant.
- (4) It is a defence to proceedings by a rail authority in respect of a covenant under this clause that the owner or, in a case to which subclause (2) applies, the lessee could not reasonably have prevented action taken by any person that would (had it been capable of prevention by the owner or lessee) have resulted in a breach of covenant under this clause by the owner or lessee.

## **6 Removal of things interfering with underground rail facilities**

- (1) A person who places a structure or object in contact with or near an underground rail facility owned by a rail authority in a manner that interferes with the operation of the facility, must, on receiving a written notice from the rail authority requiring the removal of the structure or object:
- (a) remove the structure or object within the period specified in the notice, and
  - (b) compensate the rail authority for all loss or damage suffered by the rail authority as a result of the placement of the structure or object in contact with or near the facility.
- (2) If a person fails to comply with a notice under this clause within the period specified in the notice or within any extension of that period allowed by the rail authority in writing, the rail authority may remove the structure or object and recover from the person the cost of the removal together with compensation for all loss or damage referred to in subclause (1).

## **7 Other provisions not affected**

Nothing in this Schedule limits or otherwise affects the operation of any other provision of this Act in relation to underground rail facilities.

## Schedule 7 Savings, transitional and other provisions

(Section 120)

### Part 1 Preliminary

#### 1 Definition

In Part 2:

**cognate Acts** means the *Motor Traffic (Transport Administration) Amendment Act 1988*, the *Motor Vehicles Taxation Act 1988*, the *State Roads (Transport Administration) Amendment Act 1988*, the *State Transport (Co-ordination) (Transport Administration) Amendment Act 1988* and the *Transport Legislation (Repeal and Amendment) Act 1988*.

#### 2 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

the cognate Acts

*Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*

*Transport Administration Amendment (Light Rail) Act 1996*

*Traffic Legislation Amendment Act 1997*, but only in relation to the amendments to this Act

*Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*

*Sydney Harbour Foreshore Authority Act 1998*

*Road Transport Legislation Amendment Act 1999* (but only in relation to the amendments to this Act)

*Transport Administration Amendment (Rail Management) Act 2000*

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of [Transport Administration Act 1988](#) and cognate Acts**

### **Division 1 Provisions relating to State Rail Authority**

#### **3 Continuity of SRA**

The State Rail Authority of New South Wales constituted under this Act is a continuation of, and the same legal entity as, the State Rail Authority of New South Wales constituted under the [Transport Authorities Act 1980](#).

#### **4 Existing Chief Executive of SRA**

- (1) The person who, immediately before the repeal of the [Transport Authorities Act 1980](#), held office as Chief Executive of the State Rail Authority shall be taken to have been duly appointed under this Act as the Chief Executive of that Authority:
  - (a) for the rest of the term of office for which the person was appointed as Chief Executive under that Act, and
  - (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Chief Executive of the State Rail Authority under that Act.
- (2) Any such agreement has effect for the purposes of this clause whether or not it was valid when made.

#### **5 Existing Deputy Chief Executives of SRA**

A person who, immediately before the repeal of the [Transport Authorities Act 1980](#), held office as a Deputy Chief Executive of the State Rail Authority:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, but is entitled to be appointed on the repeal of that Act to a position in the service of the State Rail Authority not lower in salary than the salary payable to the person as a Deputy Chief Executive immediately before the repeal of that Act.

#### **6 Existing ex-officio or part-time members of SRA**

- (1) A person who, immediately before the repeal of the [Transport Authorities Act 1980](#), held office as a member of the State Rail Authority:



(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as a member of the State Rail Authority Board.

(2) A person who so ceases to hold office as a member of the State Rail Authority is not entitled to any remuneration or compensation because of the loss of that office.

## **7 Existing staff of SRA**

Any members of the staff of the State Rail Authority employed under the *Transport Authorities Act 1980* immediately before the repeal of that Act shall be taken to be members of the staff of the State Rail Authority employed under this Act.

## **8 SRA Fund**

The State Rail Authority Fund established under the *Transport Authorities Act 1980* shall be taken to be the State Rail Authority Fund established under this Act.

## **9 Abolition of Railway Workshops Board**

(1) The Railway Workshops Board is abolished.

(2) A person who, immediately before the commencement of this clause, held office as a member of the Railway Workshops Board:

(a) ceases to hold that office, and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

(3) Any assets, rights, liabilities or obligations of the Railway Workshops Board shall be assets, rights, liabilities or obligations of the State Rail Authority.

## **10 Authorised officers under sec 134B Government Railways Act 1912**

A person who was, immediately before the repeal of section 134B of the *Government Railways Act 1912*, an authorised officer under that section shall on that repeal be taken to have been appointed as an authorised officer under section 98 of this Act.

## **11 Railway staff (alcohol or other drugs)—transitional provision**

Any appointment, requirement, certificate or other act, matter or thing made, given or done under a provision of Part 4A of the *Transport Authorities Act 1980* and in force or having effect immediately before the repeal of that Part shall be taken to have been made, given or done under the corresponding provision of Schedule 4 to this Act.

## **12 Saving of certain easements for city underground railway**

Despite the repeal of the *City and Suburban Electric Railways Act 1915*, the powers,

functions and rights conferred by the easement for railway transit referred to in section 19 of that Act are not affected.

### **Division 3 Provisions relating to State Transit Authority**

#### **13 Continuity of UTA**

The State Transit Authority of New South Wales constituted under this Act is a continuation of, and the same legal entity as, the Urban Transit Authority of New South Wales constituted under the *Transport Authorities Act 1980*.

#### **14 Existing Managing Director of UTA**

- (1) The person who, immediately before the repeal of the *Transport Authorities Act 1980*, held office as Managing Director of the Urban Transit Authority shall be taken to have been duly appointed under this Act as the Chief Executive of the State Transit Authority:
  - (a) for the rest of the term of office for which the person was appointed as Managing Director of the Urban Transit Authority under that Act, and
  - (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Managing Director of the Urban Transit Authority under that Act.
- (2) Any such agreement has effect for the purposes of this clause whether or not it was valid when made.

#### **15 Existing ex-officio or part-time members of UTA**

- (1) A person who, immediately before the repeal of the *Transport Authorities Act 1980*, held office as a member of the Urban Transit Authority:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the State Transit Authority Board.
- (2) A person who so ceases to hold office as a member of the Urban Transit Authority is not entitled to any remuneration or compensation because of the loss of that office.

#### **16 Existing staff of UTA**

Any members of the staff of the Urban Transit Authority employed under the *Transport Authorities Act 1980* immediately before the repeal of that Act shall be taken to be members of the staff of the State Transit Authority employed under this Act.

## **17 UTA Fund**

The Urban Transit Authority Fund established under the *Transport Authorities Act 1980* shall be taken to be the State Transit Authority Fund established under this Act.

## **Division 4 Provisions relating to both the State Rail Authority and the State Transit Authority**

### **18 Saving of penalty notices**

Section 75 of the *Transport Authorities Act 1980* shall, after the repeal of that section, continue to apply to a penalty notice served under that section before its repeal.

### **19 Saving of SRA and UTA orders fixing fares etc**

An order made under section 71 of the *Transport Authorities Act 1980* and in force immediately before the repeal of that section shall be taken to be an order under section 85.

### **20 Saving of existing free or concessional travel arrangements**

Any free or concessional travel pass issued by the State Rail Authority or the Urban Transit Authority and in force before the commencement of section 88 shall be taken to be a pass issued in accordance with that section and subject to the same conditions as those to which it was subject immediately before that commencement.

### **21 Saving of certain annual and public holiday leave rights of SRA and STA staff until other provision made**

The provisions of clauses 1-3 of Schedule 4 to the *Transport Authorities Act 1980* continue to apply to members of the staff of the State Rail Authority or the State Transit Authority, but those provisions are subject to:

- (a) any determination made by the relevant Authority under this Act, and
- (b) any regulation under Part 7 of this Act, and
- (c) any relevant award made by a competent industrial tribunal, and
- (d) any industrial agreement to which the relevant Authority is a party.

## **Division 5 Provisions relating to Roads and Traffic Authority**

### **22 Definition**

In this Part:

**former Authority** means:

- (a) The Commissioner for Main Roads (being the corporation constituted under section 6

of the *State Roads Act 1986*), or

- (b) The Commissioner for Motor Transport (being the corporation constituted under section 6 of the *Transport (Division of Functions) Further Amendment Act 1952*), or
- (c) the Traffic Authority of New South Wales.

### **23 Abolition of former Authorities and associated Departments**

- (1) Each former Authority is abolished.
- (2) The Department of Main Roads and the Department of Motor Transport are abolished.

### **24 Transfer of assets of former Authorities**

On the abolition of a former Authority, the following provisions have effect:

- (a) all real and personal property (including any estate or interest in, or right to control or manage, real or personal property) that, immediately before that abolition, was vested in the former Authority vests in the Roads and Traffic Authority,
- (b) all money that, immediately before that abolition, was payable to the former Authority becomes payable to the Roads and Traffic Authority,
- (c) any liquidated or unliquidated claim that, immediately before that abolition, was enforceable by or against the former Authority becomes enforceable by or against the Roads and Traffic Authority,
- (d) any proceeding pending immediately before that abolition at the suit of or against the former Authority becomes a proceeding pending at the suit of or against the Roads and Traffic Authority,
- (e) any contract or arrangement entered into with the former Authority and in force immediately before that abolition becomes a contract or arrangement entered into with the Roads and Traffic Authority,
- (f) any security or charge given to or by the former Authority and in force immediately before that abolition becomes a security or charge given to or by the Roads and Traffic Authority,
- (g) any act, matter or thing done or omitted to be done before that abolition by, to or in respect of the former Authority shall (to the extent that that act, matter or thing has any force or effect) be taken to have been done or omitted by, to or in respect of the Roads and Traffic Authority.

### **25 Commissioner for Main Roads**

- (1) The person who, immediately before the repeal of Part 2 of the *State Roads Act 1986*, held office as the Commissioner for Main Roads shall be taken to have been duly

appointed under this Act as the Chief Executive of the Roads and Traffic Authority:

- (a) for the rest of the term of office for which the person was appointed as Commissioner for Main Roads under that Act, and
  - (b) under the same terms and conditions as those agreed on by the person and by or on behalf of the Government and applicable to the person as Commissioner for Main Roads under that Act.
- (2) Any such agreement has effect for the purposes of this clause, whether or not it was valid when made.
- (3) Any determination under the *Statutory and Other Offices Remuneration Act 1975* of the remuneration of the Commissioner for Main Roads shall, on the commencement of this clause, be taken to be a determination by the Governor of the remuneration of the Chief Executive of the Roads and Traffic Authority, until altered by a further determination of the Governor.

## **26 Commissioner and Assistant Commissioner for Motor Transport**

A person who, immediately before the repeal of the *Transport (Division of Functions) Further Amendment Act 1952*, held office as the Commissioner or Assistant Commissioner for Motor Transport:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, but is entitled to be appointed on the repeal of that Act to a position in the service of the Government not lower in salary than the salary payable to the person as Commissioner or Assistant Commissioner immediately before the repeal of that Act.

## **27 Existing staff of DMR, DMT and Traffic Authority**

- (1) Any members of the staff of the Department of Main Roads or the Department of Motor Transport or of the staff attached to the Traffic Authority immediately before the commencement of this clause shall be taken to be members of the staff of the Roads and Traffic Authority employed under this Act.
- (2) Any such members of staff shall (until other provision is duly made) be employed in accordance with the awards, industrial agreements and determinations applying immediately before the commencement of this clause to members of the staff of the Department of Main Roads.
- (3) For the purpose of the application of any such awards, industrial agreements or determinations to persons who were previously members of the staff of the Department of Motor Transport (including members of staff to whom Schedule 9 to the *Traffic Authority Act 1976* applied), the classification and grade of any such member of staff shall be the classification and grade determined by the Roads and Traffic

Authority, by order published in the Gazette, for the group of staff to which that member belongs.

- (4) If a classification or grade is not determined under subclause (3) for any particular member of staff to which that subclause applies, the rate of pay and other conditions of employment of that member shall be specially determined by the Roads and Traffic Authority.
- (5) The rate of pay for a member of staff to whom a determination under this clause relates shall not be less than the rate of pay for that member immediately before the commencement of this clause.
- (6) Members of staff to whom this clause applies are entitled to any accrued sick, recreational or extended leave (or any other leave or entitlement prescribed by the regulations) not taken before the commencement of this clause.
- (7) Despite anything to the contrary in Schedule 9 to the *Traffic Authority Act 1976* or in any award or industrial agreement, a member of staff of the Department of Motor Transport who was transferred to the Department of Main Roads by virtue of that Schedule and who becomes a member of the staff of the Roads and Traffic Authority by virtue of this clause shall not be entitled to any special condition of employment preserved by that Schedule that does not apply to other members of the staff of the Department of Main Roads or of the Department of Motor Transport after they become members of the staff of the Roads and Traffic Authority under this clause.

## **28 Pending appeals by DMT staff to Transport Appeal Board**

If an appeal is pending to a Transport Appeal Board by a member of the staff of the Department of Motor Transport when the member becomes a member of the staff of the Roads and Traffic Authority under this Act, the appeal may continue to be heard and disposed of and the decision on the appeal shall be given effect to by the Roads and Traffic Authority.

## **29 Existing delegation**

A delegation by the Commissioner for Main Roads of any of the Commissioner's functions made under section 8 of the *State Roads Act 1986* and in force immediately before the repeal of that section shall, to the extent that the function is exercisable by the Roads and Traffic Authority and the delegation could be made under section 50, be taken to be a delegation made under section 50.

## **30 Traffic Facilities Fund**

On the repeal of the *Traffic Authority Act 1976*:

- (a) the Traffic Facilities Fund is abolished, and
- (b) any balance standing to the credit of that Fund shall be transferred to the Roads and

Traffic Authority Fund.

### 31 DMR Funds

On the repeal of Divisions 1–3 of Part 4 of the *State Roads Act 1986*:

- (a) the Metropolitan Roads Fund, the Country Roads Fund and the Commonwealth Fund in the Special Deposits Account in the Treasury are abolished, and
- (b) any balance standing to the credit of any such fund shall be transferred to the Roads and Traffic Authority Fund.

### 32 Saving of directions etc of Traffic Authority

Any direction, recommendation or other act, matter or thing given, made or done by the Traffic Authority under a provision of the *Traffic Authority Act 1976* and in force or having effect immediately before the repeal of that Act shall be taken to have been given, made or done under the corresponding provision of Part 1A of the *Traffic Act 1909*.

### 33 Saving of shared traffic zone under General Traffic Act 1900

A shared traffic zone designated under the *General Traffic Act 1900* by a notice in force immediately before the repeal of that Act shall be taken to have been designated under section 3B of the *Traffic Act 1909*.

### 34 Saving of public passenger vehicles registered under Transport Act 1930

A public passenger vehicle registered under the *Transport Act 1930* immediately before the repeal of that Act shall be taken to have been registered under the *Traffic Act 1909*.

### 35 Saving of certain orders under Motor Traffic Act 1909

An order under the *Motor Traffic Act 1909* for the approval of a camera detection device or a radar speed measuring device and in force immediately before the amendment of the definitions of **approved camera detection device** and **approved radar speed measuring device** in section 2 of that Act shall be taken to be an approval of such devices in connection with all vehicles.

## Division 6 Provisions relating to licensing of public passenger vehicles and ferries

### 36 Bus service licences etc under Transport Act 1930—conditions to continue

- (1) In this clause, **service licence** means a service licence (including a provisional service licence) issued for a bus service under the *Transport Act 1930* and in force immediately before the repeal of section 135 of that Act.
- (2) The conditions of a licence under the *Transport Licensing Act 1931* (formerly the *State Transport (Co-ordination) Act 1931*) for a bus to which a service licence applies

immediately before the repeal of section 135 of the *Transport Act 1930* shall be taken to include the conditions to which the service licence was subject immediately before that repeal.

### **37 Special bus permits under *Transport Act 1930***

A permit issued under section 143 of the *Transport Act 1930* and in force immediately before the repeal of that section shall be taken to be a permit issued under section 22 of the *Transport Licensing Act 1931*.

### **38 Bus services operated in transport districts by means of taxi-cabs**

A contract or agreement in force under section 134A of the *Transport Act 1930*, immediately before the repeal of that section, shall be taken to be a contract or agreement in force under section 17B of the *Transport Licensing Act 1931*.

### **39 Public Vehicles Fund**

On the repeal of section 204 of the *Transport Act 1930*:

- (a) the Public Vehicles Fund is abolished, and
- (b) any balance standing to the credit of that Fund shall be transferred to the Consolidated Fund.

### **40 Transport Appeal Court**

An appeal pending before the Transport Appeal Court immediately before the repeal of section 167 of the *Transport Act 1930* shall be taken to be an appeal pending before the District Court and may be heard and disposed of accordingly.

## **Division 7 General provisions**

### **41 Superseded references**

- (1) In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference to (or required immediately before the commencement of this clause to be read as a reference to):
  - (a) the Urban Transit Authority shall be read as a reference to the State Transit Authority, and
  - (b) The Commissioner for Main Roads shall be read as a reference to the Roads and Traffic Authority, and
  - (c) The Commissioner for Motor Transport shall be read as a reference to the Roads and Traffic Authority, and
  - (d) the Traffic Authority shall be read as a reference to the Roads and Traffic Authority,



and

(e) the Railway Workshops Board shall be read as a reference to the State Rail Authority.

(2) In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference required immediately before the commencement of this Act to be read as a reference to the State Rail Authority or the Chief Executive of that Authority shall continue to be read as a reference to that Authority or that Chief Executive, as the case may be.

#### **42 Enforcement of judgments against staff of Authorities**

Anything done or omitted under section 77 of the *Transport Authorities Act 1980* or section 11 of the *State Roads Act 1986* shall be taken to have been done or omitted under the *Attachment of Wages Limitation Act 1957*.

#### **43 (Repealed)**

#### **44 Determined fees under transport legislation**

A fee for the purposes of a provision of an Act or regulation determined by an order in force under section 265B of the *Transport Act 1930* immediately before the repeal of that Act shall be the fee for the purposes of that provision until another fee is prescribed under that provision.

#### **45 (Repealed)**

#### **46 Saving of certain workers compensation entitlements**

(1) In this clause, **former provisions** means:

- (a) Schedule 5 to the *Transport Authorities Act 1980*, and
- (b) sections 124-124C of the *Transport Act 1930*.

(2) The former provisions continue to apply to and in respect of a member of the staff of an Authority, but only if:

- (a) the member is incapacitated for work (whether totally or partially), and
- (b) that incapacity results solely from an injury received before the repeal of those provisions.

(3) If:

- (a) the Authority which employs any such partially incapacitated member of staff offers that member employment for which that member is fit (whether or not of the same classification or kind as that in which that member was engaged before becoming incapacitated), and

(b) that member refuses or fails to accept that offer of employment,

the former provisions cease to apply to and in respect of that member on such date as the Authority notifies that member.

- (4) A member of staff of an Authority in respect of whom the former provisions have ceased to apply:
- (a) is entitled to compensation (if any) under the *Workers Compensation Act 1987*, and
  - (b) is not precluded from any entitlement to compensation or damages against the Authority merely because that member did not elect to make a claim against the Authority for compensation or damages within the time prescribed by the former provisions.
- (5) In the application of the *Workers Compensation Act 1987* to a member of staff referred to in subclause (4) a period of incapacity before the repeal of the former provisions shall be regarded as a period of incapacity under that Act.
- (6) The provisions of clause 5 of Schedule 5 to the *Transport Authorities Act 1980* and section 124B of the *Transport Act 1930* shall, in their application to a person to whom those provisions continue to apply, be read as if the period during which the person may elect to make a claim for compensation or damages were extended until the date that is 12 months after the repeal of the former provisions.
- (7) The workers compensation commissioners have the same jurisdiction to hear and determine matters arising under this clause as they have for matters arising under the *Workers Compensation Act 1987*.
- (8) The provisions of Divisions 4 and 5 of Part 4 of the *Workers Compensation Act 1987* and the provisions of the *Compensation Court Act 1984* apply to proceedings under this clause.

### **Part 3 Provisions consequent on enactment of *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996***

#### **47 Definitions**

In this Part:

**amending Act** means the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*.

**former SRA officer** means a person who was a member of the staff of the SRA immediately before 1 July 1996 and who, after that date, is transferred to a Rail

Corporation or the RSA by an order made under Schedule 6.

**RAC** means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the *Transport Administration Amendment (Rail Management) Act 2000*.

**rail business** means a Rail Corporation (other than Rail Services Australia), the RSA or the SRA.

**RSA** means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

#### **48 Chief executive officers of Rail Corporations**

- (1) Despite section 19R (1), on the commencement of that subsection and this clause:
  - (a) the holder of the senior executive position of Director, Planning and Access in the SRA becomes, and is taken to be appointed as, the chief executive officer of RAC for the residue of the holder's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as those of the holder's appointment as, Director, Planning and Access with the SRA, and
  - (b) the holder of the senior executive position of Group General Manager, Freight Rail in the SRA becomes, and is taken to be appointed as, the chief executive officer of FRC for the residue of the holder's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as those of the holder's appointment as, Group General Manager, Freight Rail with the SRA.
- (2) Despite subclause (1), a person who is the holder of an executive position under Part 2A of the *Public Sector Management Act 1988* referred to in that subclause is not entitled to exercise a right to return to the public sector or to seek the benefit of section 42R or 42S of the *Public Sector Management Act 1988*:
  - (a) on ceasing, on the commencement of this clause, to hold that position, or
  - (b) on ceasing to be employed with a Rail Corporation.
- (3) The other provisions of section 19R apply to a chief executive officer taken to be appointed in accordance with this clause.

#### **49 Chief executive officer of RSA**

- (1) Despite section 19Y (1), on the commencement of that subsection and this clause, the holder of the senior executive position of General Manager, Railway Services in the SRA becomes, and is taken to be appointed as, the chief executive officer of the RSA for the residue of the holder's term of office as, and subject to the same conditions

(including conditions as to remuneration and duration of employment) as those of the holder's appointment as, General Manager, Railway Services with the SRA.

- (2) The provisions of section 19Y (2) and Schedule 2 apply to a chief executive officer taken to be appointed in accordance with this section.

#### **50 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of a Rail Corporation may be extended by the voting shareholders of the Rail Corporation.

#### **51 Saving of Rail Safety Act 1993**

Nothing in the amending Act affects the operation of the *Rail Safety Act 1993*.

#### **52 Rail Corporations and RSA taken to hold certain authorisations and licences under Electricity Supply Act 1995**

A Rail Corporation and the RSA are, on the commencement of this clause, taken to hold the same authorisations and licences, on the same terms and conditions, as the authorisations and licences that the SRA is taken to hold pursuant to clause 16 (3) of Schedule 6 to the *Electricity Supply Act 1995*.

#### **53 References to Commissioner for Railways in provision dealing with supply of sufficient electricity for railways (sec 12, Electricity (Pacific Power) Act 1950 No 22)**

- (1) On and from the commencement of this clause until the repeal of section 12 (Commission to supply sufficient electricity for railways and road transport) of the *Electricity (Pacific Power) Act 1950* by the operation of Schedule 5.2 [7] to the *Electricity Supply Act 1995*, references in that section to the Commissioner for Railways are to be read as references to:
- (a) the SRA, and
  - (b) if a Rail Corporation requires electricity to be supplied for use in providing motive power for electric trains, the Rail Corporation.
- (2) If, on the commencement of Schedule 2 to the amending Act, the repeal of section 12 of the *Electricity (Pacific Power) Act 1950* made by Schedule 5.2 [7] to the *Electricity Supply Act 1995* has not commenced, the amendment contained in Schedule 2.5 [3] of the amending Act is taken to be of no effect until such time as the amendment to section 12 of the *Electricity (Pacific Power) Act 1950* commences.

#### **54 References to SRA in Railway Construction (Maldon to Port Kembla) Act 1983 No 112**

On and from the commencement of this clause:

- (a) a reference to the State Rail Authority in the *Railway Construction (Maldon to Port*

*Kembla Act 1983* (except in section 2 (2)) is to be read as a reference to RAC, and

(b) a reference to the State Rail Authority is to be read as a reference to RAC.

#### **55 Reference to Constructing Authority for purposes of certain easements for city underground railway**

On and from the commencement of this clause, the reference to the Constructing Authority in section 19 of the *City and Suburban Electric Railways Act 1915* (the operation of which is saved by clause 12 of Division 1 of Part 2) is to be read as extending to RAC.

#### **56 Applications for review of promotion appointments**

- (1) If an application made by an SRA officer before 1 July 1996 under the review provision for a review of an appointment to a position is pending on the commencement of this clause, the review is to be conducted and disposed of, in accordance with the review provision, by the rail business in which the position is located on that commencement.
- (2) If, as a result of the review, a determination is made that the applicant for the review should be appointed to the position in place of the incumbent in the position and the applicant is not employed by the rail business in which the position is located on the commencement of this clause:
  - (a) the rail business by whom the applicant is employed and the rail business in which the position is located must arrange for the applicant to be transferred to the latter rail business, and
  - (b) the rail businesses concerned must arrange for the placement of the displaced incumbent in the position that the incumbent occupied immediately before he or she was promoted to the position that was the subject of the review, whether the incumbent's former position is located, after the commencement of this clause, in the SRA or in another rail business.
- (3) An applicant whose application for a review is unsuccessful is, subject to any other arrangements that may be made concerning the employment of the applicant under this or any other Act or law, to remain employed with the rail business by whom the applicant was employed on commencement of this clause.

(4) In this clause:

**review provision** means clause 7 of the *Transport Administration (Staff) Regulation 1995*.

#### **57 Disciplinary proceedings pending against former SRA officers**

- (1) A Rail Corporation or the RSA may, before 1 August 1996, in respect of conduct that occurred before 1 July 1996:
  - (a) impose on, in disciplinary proceedings, any one or more of the punishments

referred to in clause 12 of the *Transport Administration (Staff) Regulation 1995*, or

(b) temporarily suspend from duty in accordance with clause 13 of that Regulation, any former SRA officer who has been transferred to the Rail Corporation or the RSA by a Ministerial order made under Schedule 6.

- (2) A former SRA officer may appeal, in accordance with Part 3 of the *Transport Appeal Boards Act 1980*, to a Transport Appeal Board against the imposition of any such punishment or suspension.
- (3) Except as provided by subclause (4), a decision of a Transport Appeal Board is final and conclusive and binding on a rail business.
- (4) Section 24 of the *Transport Appeal Boards Act 1980* applies with respect to the decision of a Transport Appeal Board on such an appeal as if:
  - (a) the reference in that section to the SRA were a reference to a rail business, and
  - (b) the references in that section to that Authority or an Authority, in so far as they relate to the SRA, were references to the rail business by whom the former SRA officer is employed after 1 July 1996.

#### **58 Pending appeals to Transport Appeal Boards**

- (1) A Transport Appeal Board is to hear and determine any appeal lodged by a former SRA officer under the *Transport Appeal Boards Act 1980* before 1 July 1996.
- (2) Clause 57 (3) and (4) applies to an appeal referred to in this clause.

#### **59 No entitlement to review or appeal for ceasing to be member of staff of SRA**

A former SRA officer is not entitled to apply for a review under the *Transport Administration (Staff) Regulation 1995*, to lodge an appeal under the *Transport Appeal Boards Act 1980* or to apply for or obtain any other relief merely because the officer ceases to be a member of the staff of the SRA because of the making of an order under Schedule 6.

#### **60 Extension of certain provisions of Transport Administration (Staff) Regulation 1995 to staff of RSA**

The provisions of Parts 1 and 2 of the *Transport Administration (Staff) Regulation 1995* apply to officers of the RSA in the same way that they apply to officers of the SRA and as if references in those Parts:

- (a) to the SRA were references to the RSA, and
- (b) to SRA officers were references to RSA officers.

#### **61 Further amendment or repeal of regulations amended by Schedule 2 to amending Act**

The amendments made by the amending Act to the regulations referred to in Schedule 2 to that Act do not affect the future amendment or repeal of those regulations.

#### **62 Saving of Roads and Traffic Advisory Council**

Nothing in the amending Act affects the constitution or procedure of the Roads and Traffic Advisory Council or the operation of Schedule 3 so far as it relates to that Council.

### **Part 4 Provisions consequent on enactment of [Transport Administration Amendment \(Light Rail\) Act 1996](#)**

#### **63 Definitions**

In this Part:

**roads transfer order** means the order under section 150 of the [Roads Act 1993](#), published in the Gazette of 24 November 1995 at page 7988 for the transfer of certain public roads from the Sydney City Council to the Roads and Traffic Authority.

**Ultimo/Pymont light rail roads authority agreement** means the agreement made on 22 December 1995 between the Sydney City Council, the State Rail Authority of New South Wales and the Director-General of the Department of Transport relating to the Ultimo/Pymont Light Rail Transit System from Central Station, Sydney to Wattle Street, Pymont.

#### **64 Termination of agreement**

- (1) The Ultimo/Pymont light rail roads authority agreement is terminated by virtue of this clause and the parties to the agreement have no further obligations or rights under the agreement.
- (2) In particular, any indemnity under the agreement ceases on its termination, but without affecting any obligations actually incurred under the indemnity during the period the agreement was in force.
- (3) The consent of the Sydney City Council, as roads authority, to the roads transfer order is not affected by the termination of the agreement.

#### **65 Revocation of roads transfer order**

- (1) The roads transfer order is revoked by virtue of this clause.
- (2) On the revocation of the order, a further order is taken to have been made under section 150 of the [Roads Act 1993](#) transferring the public roads to which the revoked roads transfer order applied from the Roads and Traffic Authority to the Sydney City Council. The requirements of section 150 of that Act do not apply to the further order.

- (3) Any consent, approval, authorisation or other thing done by the Roads and Traffic Authority under the *Roads Act 1993* as the roads authority for those public roads and having any force or effect on the commencement of this clause:
  - (a) is not affected by subclause (1) or (2), and
  - (b) is taken to have been given or done in accordance with the *Roads Act 1993*, as amended by the *Transport Administration Amendment (Light Rail) Act 1996*.

#### **66 Amendment of Roads (General) Regulation 1994**

The *Roads (General) Regulation 1994* is amended by omitting clause 79A.

**Note—**

The clause concerned declared the RTA to be the roads authority for a certain area in the vicinity of Hay Street between Elizabeth and Quay Streets.

### **Part 5 Provisions consequent on enactment of *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998***

#### **67 Definitions**

In this Part:

**amending Act** means the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

**former RSA officer** means a person who was a member of the staff of the Railway Services Authority immediately before the dissolution of that Authority (other than the Chief Executive of that Authority).

**Rail Services Australia** means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by the *Transport Administration Amendment (Rail Management) Act 2000*.

**Railway Services Authority** means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the amending Act.

#### **68 Dissolution of Railway Services Authority**

- (1) The Railway Services Authority is dissolved.
- (2) Any public subsidiary corporation of the Railway Services Authority (as referred to in section 19AE before its repeal by the amending Act) is dissolved.
- (3) The assets, rights and liabilities (if any) of the Railway Services Authority or any such public subsidiary corporation of the Railway Services Authority immediately before its dissolution are transferred to the Ministerial Holding Corporation, if any such assets,



rights or liabilities remain after the operation of any order under clause 70 or 71 that takes effect on or before its dissolution.

- (4) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to any transfer under this clause in the same way as it applies to a transfer by an order under clause 71.

#### **69 Rail Services Australia to be same legal entity as Railway Services Authority**

- (1) On the dissolution of the Railway Services Authority, Rail Services Australia is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the Railway Services Authority.
- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 68, 70 or 71.

#### **70 Transfer of Railway Services Authority assets, rights and liabilities**

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the Railway Services Authority or any subsidiary corporation of the Railway Services Authority, as are specified or referred to in the order, be transferred to Rail Services Australia.
- (2) Assets, rights or liabilities may not be transferred under this clause unless Rail Services Australia is a statutory State owned corporation.
- (3) Schedule 4 applies to an order under this clause.
- (4) For the purposes of this clause, the assets, rights and liabilities of the Railway Services Authority and of any subsidiary corporation of the Railway Services Authority include:
  - (a) any assets, rights or liabilities of the Railway Services Authority and of any subsidiary corporation of the Railway Services Authority that have vested in the Ministerial Holding Corporation under this Act, and
  - (b) any assets, rights or liabilities used by or attaching to the Railway Services Authority or any subsidiary corporation of the Railway Services Authority and belonging to the State or an authority of the State.
- (5) An order under this clause may be made on such terms and conditions as are specified in the order.
- (6) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the Railway Services Authority or of a subsidiary corporation of the Railway Services Authority.

**Note—**

See section 19J for provisions relating to the transfer of assets, rights and liabilities of the SRA to the Rail Corporations (including RSA).

### **71 Transfer of other assets, rights and liabilities**

- (1) The Minister may, by order in writing, direct that such other assets, rights or liabilities used by or attaching to the Railway Services Authority or to any subsidiary corporation of the Railway Services Authority as are specified or referred to in the order be transferred to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) An order under this clause may be made on such terms and conditions as are specified in the order.
- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this clause.

### **72 Chief Executive of Railway Services Authority**

- (1) The person who, immediately before the dissolution of the Railway Services Authority, held office as Chief Executive of the Railway Services Authority:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as the chief executive officer of Rail Services Australia.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q (4) of that Act.

### **73 Transfer of staff**

- (1) All former RSA officers are transferred to Rail Services Australia and become employees of Rail Services Australia on the dissolution of the Railway Services Authority.
- (2) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which former RSA officers become employed on being transferred under this Schedule (including terms and conditions as to remuneration, allowances and duration of employment) are those on which they were employed by the Railway Services Authority immediately before its dissolution.
- (3) The terms and conditions of employment referred to in subclause (2) apply to new employees of Rail Services Australia in the same way as they apply to former RSA officers of the same class or classification who are transferred to Rail Services

Australia.

- (4) The terms and conditions of employment referred to in subclause (2) may be varied but only by the means by which they could be varied immediately before the commencement of this clause.
- (5) Clauses 4, 6, 7, 8 and 10 of Schedule 6 extend to Rail Services Australia and its staff as follows:
  - (a) a reference to a Rail Corporation includes a reference to Rail Services Australia,
  - (b) a reference to former SRA staff includes a reference to former RSA officers,
  - (c) a reference to a transfer of former SRA staff by an order under that Schedule includes a reference to a transfer of former RSA officers under this Schedule.
- (6) A former RSA officer is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Railway Services Authority.
- (7) A former RSA officer is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

#### **74 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under section 21 of the [State Owned Corporations Act 1989](#) in connection with the first statement of corporate intent of Rail Services Australia may be extended by the voting shareholders of Rail Services Australia.

#### **75 Saving of Rail Safety Act 1993**

Nothing in the amending Act affects the operation of the [Rail Safety Act 1993](#).

#### **76 Pending appeals to Transport Appeal Boards**

- (1) A Transport Appeal Board is to hear and determine any appeal lodged by a former RSA officer under the [Transport Appeal Boards Act 1980](#) before the dissolution of the Railway Services Authority.
- (2) Except as provided by subclause (3), a decision of the Transport Appeal Board is final and conclusive and binding on Rail Services Australia.
- (3) Section 24 of the [Transport Appeal Boards Act 1980](#) applies with respect to the decision of a Transport Appeal Board on such an appeal as if references in that section to the SRA were references to Rail Services Australia.

### **Part 5A Provisions consequent on enactment of [Sydney Harbour](#)**

## Foreshore Authority Act 1998

### 76A Darling Harbour monorail transport system

- (1) The Darling Harbour monorail transport system is taken to be a light rail system for the purposes of this Act.
- (2) Subject to the regulations, the route of the Darling Harbour monorail transport system, as it was immediately before the repeal of the *Darling Harbour Authority Act 1984*, is taken to have been declared under section 104N (2).
- (3) Section 104P (3) does not apply to the operation of the Darling Harbour monorail transport system along the route referred to in subclause (2).

## Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment Act 1999

### 77 Definitions

- (1) In this Part:

**amending Act** means the *Road Transport Legislation Amendment Act 1999*.

**repealed Act** means the *Traffic Act 1909* as in force immediately before its repeal by the amending Act.

- (2) For the purposes of this Part, a provision of this Act corresponds to a provision of the repealed Act if the provision is in the same (or in substantially the same) terms as the provision in the repealed Act.

### 78 Traffic routes under section 10X of repealed Act

A public road that was a traffic route within the meaning of paragraph (b) of the definition of **traffic route** in section 10X of the repealed Act immediately before its repeal is taken to be a traffic route within the meaning of section 45E (1) of this Act.

### 79 Directions to public authorities under section 2G of repealed Act

Any direction given by the Authority to a public authority under section 2G of the repealed Act that was in force immediately before the repeal of that Act is taken to be a directive given to the public authority under section 53A of this Act.

### 80 Recommendations to public authorities under section 2H of repealed Act in respect of lighting

Any recommendation made by the Authority to a public authority under section 2H of the repealed Act that was in force immediately before the repeal of that Act is taken to be a recommendation made to the public authority under section 53B of this Act.

### **81 Subsidies granted but not paid under Part 3C or 3D of repealed Act**

- (1) Any subsidy granted to a council under Part 3C of the repealed Act that is still payable to the council immediately before the repeal of that Act is taken to be a subsidy granted and payable to the council under the corresponding provisions of Division 3 of Part 8 of this Act (as amended by the amending Act).
- (2) Any subsidy granted to an electricity distributor under Part 3D of the repealed Act that is still payable to the council immediately before the repeal of that Act is taken to be a subsidy granted and payable to the electricity distribution network service provider under the corresponding provisions of Division 3 of Part 8 of this Act (as amended by the amending Act).

### **82 Running of subsidy periods under section 10Z of repealed Act**

If a period of 12 months commencing on a 1 July commenced under section 10Z of the repealed Act had not expired immediately before the repeal of that section, section 80B applies to the unexpired period as if it had been in force when the period of 12 months first commenced.

## **Part 7 Co-ordinator General of Rail and other provisions consequent on enactment of [Transport Administration Amendment \(Rail Management\) Act 2000](#)**

### **Division 1 Definitions**

#### **83 Definitions**

In this Part:

**amending Act** means the [Transport Administration Amendment \(Rail Management\) Act 2000](#).

**Co-ordinator General of Rail** means the Co-ordinator General of Rail holding office as such under Part 2 of the [Public Sector Management Act 1988](#) before the commencement of Schedule 4.1 to the amending Act.

**Office of Co-ordinator General of Rail** means the department of the Public Service by that name established under the [Public Sector Management Act 1988](#) before the commencement of Schedule 4.1 to the amending Act.

**Rail Access Corporation** (or **RAC**) means Rail Access Corporation as constituted under section 19C immediately before the amendment of that section by Schedule 2.1 to the amending Act.

**Rail Services Australia** means Rail Services Australia as constituted under section 19IA immediately before the repeal of that section by Schedule 2.1 to the amending Act.

## **Division 2 Transitional arrangements relating to Co-ordinator General of Rail**

### **84 Application and interpretation**

(1) This Division ceases to apply on the establishment of the Rail Regulator by Schedule 4.1 to the amending Act.

(2) In this Division:

***relevant rail agencies*** means:

(a) the State Rail Authority, and

(b) Rail Access Corporation, Rail Services Australia and, after their merger, Rail Infrastructure Corporation.

### **85 Functions of Co-ordinator General of Rail**

The Co-ordinator General of Rail has the following functions:

(a) to manage and co-ordinate the exercise of the functions of the relevant rail agencies,

(b) to manage and co-ordinate the merger of Rail Access Corporation and Rail Services Australia,

(c) to manage and co-ordinate the implementation of structural reforms in connection with the management of the State Rail Authority,

(d) to determine priorities for the exercise of functions by the relevant rail agencies in accordance with their approved financial outcomes,

(e) to develop rail performance standards in connection with the exercise of functions by the relevant rail agencies,

(f) to conduct, with the Director General of the Department of Transport, a joint review and report on the effectiveness of the Transport Safety Bureau of that Department as a rail safety regulator.

### **86 Powers of Co-ordinator General of Rail: directions**

(1) The Co-ordinator General of Rail may, for the purposes of exercising his or her functions under this Division, give directions to relevant rail agencies.

(2) Without limiting subclause (1), the Co-ordinator General of Rail may direct a relevant rail agency to provide information, resources or other assistance to the Co-ordinator General.

(3) A direction is not to be given to a relevant rail agency under this clause without the approval of the Treasurer if the Co-ordinator General of Rail considers that compliance

with the direction may cause a significant variation in the approved financial outcomes of the relevant rail agency.

- (4) The following directions of the Minister for Transport cease to apply:
  - (a) the directions of 7 June 2000 given to the boards of directors of Rail Access Corporation and Rail Services Australia under the *State Owned Corporations Act 1989* (published in the Government Gazette of 23 June 2000 at pages 5235–5237),
  - (b) the directions of 7 June 2000 given to the State Rail Authority Board under this Act.
- (5) A direction of the Co-ordinator General of Rail does not have effect to the extent to which it is inconsistent with a direction of the Minister under this Act or the *State Owned Corporations Act 1989*.
- (6) Until the establishment of Rail Infrastructure Corporation and the commencement of section 19FA (as inserted by Schedule 2.1 to the amending Act), the provisions of that section with respect to Ministerial control of that Corporation apply with respect to Ministerial control of Rail Access Corporation and Rail Services Australia.

#### **87 Powers of Co-ordinator General of Rail: statements of corporate intent**

The Co-ordinator General of Rail may:

- (a) settle with the voting shareholders the first statement of corporate intent of Rail Infrastructure Corporation under section 21 of the *State Owned Corporations Act 1989* (and for that purpose may act for the board of that Corporation),
- (b) until the establishment of Rail Infrastructure Corporation—settle with the voting shareholders of Rail Access Corporation or Rail Services Australia any changes to the statement of corporate intent of that Corporation under section 21 of the *State Owned Corporations Act 1989* (and for that purpose may act for the board of that Corporation).

#### **88 Duties of boards and chief executive officers of relevant rail agencies**

- (1) The board and chief executive officer of a relevant rail agency must:
  - (a) ensure that any direction of the Co-ordinator General of Rail under this Division is carried out, and
  - (b) co-operate with the Co-ordinator General of Rail in exercising their functions, and
  - (c) notify the Co-ordinator General of Rail of all matters of which they are aware that may affect the exercise of the Co-ordinator General's functions under this Division.
- (2) If the direction relates to a subsidiary of the relevant rail agency, the board and chief executive officer of the agency must, as far as practicable, ensure that the direction is

carried out.

### **Division 3 Provisions consequent on merger of RAC and RSA**

#### **89 RIC an amalgamation of RAC and RSA**

- (1) Rail Access Corporation and Rail Services Australia are amalgamated to form Rail Infrastructure Corporation.
- (2) On that amalgamation:
  - (a) Rail Access Corporation and Rail Services Australia are dissolved as separate entities, and
  - (b) Rail Infrastructure Corporation is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, Rail Access Corporation and Rail Services Australia, and
  - (c) without limiting the operation of this clause—the assets, rights and liabilities of Rail Access Corporation and Rail Services Australia are the assets, rights and liabilities of Rail Infrastructure Corporation.

#### **90 Former boards of RAC and RSA**

- (1) In this clause:

**former board** means the board of directors of Rail Access Corporation or the board of directors of Rail Services Australia.
- (2) A person who, immediately before the establishment of Rail Infrastructure Corporation by the amending Act, held office as a director of a former board:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a director of the board of Rail Infrastructure Corporation.
- (3) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

#### **91 Former CEOs of RAC and RSA**

- (1) A person who, immediately before the establishment of Rail Infrastructure Corporation by the amending Act, held office as the chief executive officer of Rail Access Corporation or Rail Services Australia:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as the chief executive officer of Rail Infrastructure Corporation.



- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by the person's contract of employment in that office.

## **92 Staff of RAC and RSA (other than CEOs)**

- (1) In this clause, **existing employee** means a person who was a member of the staff of Rail Access Corporation or Rail Services Australia immediately before the amalgamation of those Corporations (other than the chief executive officer of Rail Access Corporation or Rail Services Australia).
- (2) All existing employees are, on the amalgamation of Rail Access Corporation and Rail Services Australia, employees of Rail Infrastructure Corporation.
- (3) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which existing employees are employed on that amalgamation (including terms and conditions as to remuneration, allowances, and duration of employment) are those on which they were employed by Rail Access Australia or Rail Services Australia immediately before that amalgamation.
- (4) The terms and conditions of employment referred to in subclause (3) may be varied but only by the means by which they could be varied immediately before that amalgamation.
- (5) An existing employee is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of Rail Access Corporation or Rail Services Australia.

## **93 Superseded references**

In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference to (or required immediately before the commencement of this clause to be read as a reference to) Rail Access Corporation or Rail Services Australia is to be read as a reference to Rail Infrastructure Corporation.

## **94 Savings and transitional provisions relating to financial matters**

- (1) Any approval or exemption held by Rail Access Corporation or Rail Services Australia:
  - (a) under the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* with respect to any accounts or annual report, or
  - (b) under the *Public Authorities (Financial Arrangements) Act 1987* with respect to any financial arrangement or joint venture arrangement,is taken to be an approval or exemption held by Rail Infrastructure Corporation.
- (2) Statements of accounts and the first annual report of Rail Infrastructure Corporation

must include accounts and an annual report with respect to any period from the end of the last financial year of Rail Access Corporation and Rail Services Australia until the establishment of Rail Infrastructure Corporation by the amending Act.

- (3) Duty is not chargeable in respect of anything certified by the Minister as having been done in consequence of the amalgamation of Rail Access Corporation and Rail Services Australia.

#### **95 Application of section 19E (5A) to existing businesses**

Section 19E (5A), as inserted by the amending Act, does not apply to the conduct of any business after the commencement of that provision in accordance with a contract or other arrangement made before that commencement.

#### **96 Operation of Schedule**

- (1) The operation of this Schedule (in connection with the assets, rights and liabilities and the staff of Rail Access Corporation and Rail Services Australia) is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, on the basis of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule (in that connection) is not to be regarded as an event of default under any contract or instrument.
- (3) In this clause, **contract** includes any contract of employment with Rail Access Corporation or Rail Services Australia.
- (4) Words and expressions used in this clause have the meanings given in Schedule 4.