

# Transport Administration Act 1988 No 109

[1988-109]



New South Wales

## Status Information

### Currency of version

Historical version for 30 September 2005 to 31 December 2005 (accessed 26 April 2025 at 19:18)

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 \(Rail Agencies\) Act 2003 No 96](#), Sch 2 (not commenced)  
[Public Sector Employment and Management Amendment \(Extended Leave\) Act 2005 No 85](#) (not commenced — to commence on 1.1.2006)
- **See also**  
[Transport Administration Amendment \(Transport Levy for Major Events\) Bill 2005](#)  
[Transport Legislation Amendment \(Implementation of Waterfall Rail Inquiry Recommendations\) Bill 2005](#)  
[Non-government Bill: Mr B R O'Farrell, MP]  
[Transport Administration Amendment \(Public Transport Ticketing Corporation\) Bill 2005](#)

### Authorisation

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File last modified 23 December 2005

# 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 Rail Corporation New South Wales, Transport Infrastructure Development Corporation, the State Rail Authority, Rail Infrastructure Corporation, the State Transit Authority, the Independent Transport Safety and Reliability Regulator, Sydney Ferries and the Roads and Traffic Authority and to make provision for their management and functions; to establish the 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:

**access purchaser** means a person who has contracted with a rail infrastructure owner in respect of the operation of rolling stock.

**ARTC** means the Australian Rail Track Corporation Ltd (ACN 081 455 754).

**ARTC arrangement** means a lease, licence, agreement or other arrangement under Part 8A.

**ARTC lease or licence** means a lease or licence under Part 8A.

**Authority** means 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).

**Chief Investigator** means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45.

**country rail area** means that part of the NSW rail network not within the metropolitan rail area.

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

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

**Independent Transport Safety and Reliability Advisory Board** means the Independent Transport Safety and Reliability Advisory Board established under this Act.

**Independent Transport Safety and Reliability Regulator** means the Independent Transport Safety and Reliability Regulator constituted under this Act.

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

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

**metropolitan rail area**—see section 3A.

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted by section 37B of the [State Owned Corporations Act 1989](#).

**Newcastle ferry services** means ferry services provided in Newcastle Harbour.

**NSW rail access undertaking** means:

- (a) if an undertaking referred to in section 99C is in force under the [Trade Practices Act 1974](#) of the Commonwealth, that undertaking, or
- (b) in any other case, an access undertaking in force under Schedule 6AA.

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

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

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

**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, but

- (b) does not include any stations, platforms, rolling stock, rolling stock maintenance facilities, office buildings or housing, freight centres or depots, private sidings or spur lines connected to premises not vested in or owned by or managed or controlled by a rail infrastructure owner.

**rail infrastructure owner** means:

- (a) in the case of any rail infrastructure facilities that are managed or controlled by Transport Infrastructure Development Corporation for the purposes of exercising its functions under this Act, Transport Infrastructure Development Corporation, or
- (b) in the case of any rail infrastructure facilities that are subject to an ARTC lease or licence or are installed, established or replaced by ARTC in or on land subject to an ARTC lease or licence, ARTC, or
- (c) in any other case, the person in whom ownership of rail infrastructure facilities is vested by or under this Act.

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

**RailCorp** means Rail Corporation New South Wales 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.

**rolling stock** means any vehicle that operates on or uses a railway track, but does not include a vehicle designed to operate both on and off a railway track or tracks when the vehicle is not operating on a railway track or tracks.

**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.

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

**Sydney ferry services** means ferry services provided in Sydney Harbour or the Parramatta River.

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

**Transport Advisory Group** means the Transport Advisory Group constituted under this Act.

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

**Transport Infrastructure Development Corporation** (or **TIDC**) means Transport Infrastructure Development Corporation constituted under this Act.

(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.

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

### **3A Metropolitan rail area**

- (1) For the purposes of this Act, the **metropolitan rail area** is the land shown or described as being within the metropolitan rail area on the metropolitan rail area map presented to the Speaker of the Legislative Assembly (by or on behalf of the Member of the Assembly who introduced the Bill for this Act) when the Bill was introduced into the Assembly, and also lodged in the office of the Ministry of Transport, as amended or replaced under this section.
- (2) The Minister may, by notice published in the Gazette, amend or replace the metropolitan rail area map, but only for one or more of the following purposes:
  - (a) to provide a more detailed description of the land,
  - (b) to alter the boundaries of the land for the purposes of the effective management of rail infrastructure facilities in the State.
- (3) The metropolitan rail area map may consist of one or more maps.
- (4) A notice under this section which has the effect of moving land subject to an ARTC lease or licence to or from the metropolitan rail area has no effect unless ARTC has given prior written consent to the notice.
- (5) ARTC must not unreasonably withhold consent to any such notice.
- (6) Nothing in this section limits any rights of RIC or RailCorp to acquire land or rail infrastructure facilities under any other provision of this Act.

## Part 2 Rail Corporation New South Wales

### Division 1 Constitution of RailCorp as statutory SOC

#### 4 Establishment of RailCorp as statutory State owned corporation

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

**Note—**

The *State Owned Corporations Act 1989* contains many provisions that apply to RailCorp as a statutory State owned corporation. 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, 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 annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

### Division 2 Objectives of RailCorp

#### 5 Objectives of RailCorp

- (1) The principal objectives of RailCorp are:
  - (a) to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner, and
  - (b) to ensure that the part of the NSW rail network vested in or owned by RailCorp enables safe and reliable railway passenger and freight services to be provided in an efficient, effective and financially responsible manner.
- (2) The other objectives of RailCorp are as follows:
  - (a) to maintain reasonable priority and certainty of access for railway passenger services,
  - (b) to promote and facilitate access to the part of the NSW rail network vested in or owned by RailCorp,
  - (c) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable business, and
    - (ii) to maximise the net worth of the State’s investment in the Corporation,
  - (d) to exhibit a sense of social responsibility by having regard to the interests of the

community in which it operates,

- (e) 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*,
- (f) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

- (3) The other objectives of RailCorp are of equal importance, but are not as important as the principal objectives of the corporation.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to RailCorp.
- (5) Subsection (2) (b) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

## **Division 3 Functions of RailCorp**

### **6 Railway passenger services**

- (1) RailCorp is to operate railway passenger services.
- (2) RailCorp is to continue to operate the railway passenger services which were provided by the State Rail Authority immediately before the commencement of this section.
- (3) Subsection (2) does not limit the power of RailCorp:
  - (a) to establish any new railway passenger service, or
  - (b) to alter or discontinue any of its railway passenger services.
- (4) The operation of a railway passenger service by RailCorp is subject to the requirements of the *Rail Safety Act 2002*.

### **7 Rail infrastructure functions**

RailCorp is to hold, manage, maintain and establish rail infrastructure facilities vested in or owned by it, or to be vested in or owned by it, on behalf of the State.

**Note—**

Schedules 6A and 6B (see section 98) contain provisions relating to the rights and liabilities of rail infrastructure owners.

### **8 Metropolitan rail area access functions**

- (1) RailCorp is to provide persons with access under any current NSW rail access undertaking to the part of the NSW rail network vested in or owned by RailCorp.

**Note—**

As a rail infrastructure owner, RailCorp may enter into rail access undertakings in relation to that part of the

NSW rail network that is vested in it or that it owns. Section 99C and Schedule 6AA contain general provisions relating to rail access.

- (2) This section does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

## **9 Other transport services**

RailCorp may operate other transport services, including bus services, whether or not in connection with its railway services.

## **10 Other functions of RailCorp**

- (1) RailCorp has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) RailCorp may:
  - (a) provide goods, services or facilities to the rail industry, and
  - (b) without limiting paragraph (a), act as an agent for or provide services to another rail infrastructure owner or rail operator, whether or not the agency or services are for purposes related to its principal functions, and
  - (c) conduct any business (whether or not related to its principal functions) that it considers will further its objectives, and
  - (d) provide services or facilities that are ancillary to or incidental to its principal functions.
- (3) RailCorp may, with the consent of the Minister, act as an agent for a body constituted under this Act (other than the State Transit Authority, the Roads and Traffic Authority or the Independent Transport Safety and Reliability Regulator) without obtaining the consent of that body.

## **11 Acquisition of land by RailCorp**

- (1) RailCorp may, for any purposes of RailCorp, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The other purposes for which land may be acquired under subsection (1) include for the purposes of a future sale, lease or disposal, that is, to enable RailCorp to exercise its functions in relation to land under this Act.
- (3) For the purposes of the [Public Works Act 1912](#), any such acquisition of land is taken to be an authorised work and RailCorp is, in relation to that authorised work, taken to be the Constructing Authority.

- (4) RailCorp may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the portfolio Minister.
- (5) Any such acquisition is not void merely because it is expressed to be for the purposes of RailCorp or for the purposes of this Act.
- (6) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes of this section.

## **12 Effect of Division**

This Division does not limit the functions of RailCorp apart from this Division, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

## **Division 4 Management of RailCorp**

### **13 Board of directors of RailCorp**

- (1) The board of directors of RailCorp is to be appointed by the voting shareholders. The voting shareholders are to consult with the portfolio Minister on the persons (other than the chief executive officer) recommended for appointment as directors.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors.
- (3) The person for the time being holding office as chief executive officer of RailCorp is to be a director of the board.
- (4) 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 Unions NSW,being a person selected by the committee from a panel of 3 persons nominated by Unions NSW.
- (5) The procedures for constituting a selection committee for the purposes of subsection (4), 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.
- (6) The other directors of the board (other than the chief executive officer of RailCorp) must each or together have such expertise (including engineering and rail safety expertise) as the voting shareholders, after consultation with the portfolio Minister, consider necessary in order to realise the objectives of RailCorp.
- (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 RailCorp and its constitution and procedure.

- (8) Section 20J (2), (3), (4) and (5) of, and clause 4 of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of RailCorp.
- (9) Clause 7 of Schedule 8 to the *State Owned Corporations Act 1989* does not apply with respect to the chief executive officer of RailCorp.

#### **14 Chief executive officer**

- (1) The chief executive officer of RailCorp is to be appointed by the board of RailCorp after consultation with the voting shareholders and the portfolio Minister.
- (2) The chief executive officer is to hold office for the period (not exceeding 5 years) that is specified in the chief executive officer's instrument of appointment.
- (3) 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 the portfolio Minister.
- (4) 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.
- (5) 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.
- (6) The contract of employment of the chief executive officer must include performance criteria for the purpose of reviews of the chief executive officer's performance.
- (7) The board must require the chief executive officer to enter into a performance agreement and must review the chief executive officer's performance at least annually.
- (8) The *Public Sector Employment and Management Act 2002* (Chapter 5 included) does not apply to the chief executive officer.
- (9) Section 20K (2) and (4) of, and Schedule 9 to, the *State Owned Corporations Act 1989* do not apply to or in respect of the chief executive officer.
- (10) 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*.

### **15 Acting chief executive officer**

- (1) The board of RailCorp 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 of RailCorp.
- (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 chief executive officer is regarded as an absence from office of the chief executive officer.
- (5) The board is not to appoint a person to act in the office of chief executive officer during any vacancy in that office except after consultation with the voting shareholders and the portfolio Minister.
- (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*.

### **16 Ministerial directions**

- (1) The Minister may give the board of RailCorp a written direction in relation to RailCorp's functions if the Minister decides that this action is warranted on grounds involving urgency or public safety.
- (2) The board of directors and the chief executive officer of RailCorp must ensure that RailCorp complies with any such direction.
- (3) Section 20P (4)–(6) of the *State Owned Corporations Act 1989* apply to a direction given under this section in the same way as they apply to a direction given under that section.
- (4) If the Minister considers that compliance with a direction under this section may cause a significant variation in the approved financial outcomes of RailCorp, the direction must be given in consultation with the Treasurer.
- (5) The Minister's power to give directions to RailCorp under this section is in addition to any power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Except as provided by subsection (3), 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.

## **Division 5 General**

### **17 Foundation charter of RailCorp**

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of RailCorp 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 any 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.

### **17A Restrictions relating to shareholdings**

- (1) The portfolio Minister of RailCorp must not be, and is not eligible for nomination as, a shareholder of RailCorp. However, the portfolio Minister may attend meetings of the shareholders of RailCorp.
- (2) Shares in RailCorp may not be sold or otherwise disposed of except to eligible Ministers.

### **17B Dividends and tax-equivalents**

- (1) Section 20S of the *State Owned Corporations Act 1989* does not apply to RailCorp.
- (2) The Treasurer may, by notice in writing to RailCorp, suspend the obligation of RailCorp, or any subsidiary of RailCorp, to pay amounts under section 20T of the *State Owned Corporations Act 1989*, either generally or for a specified period.
- (3) A suspension under subsection (2) may be subject to conditions and may be revoked or varied by the Treasurer.

### **17C Statement of corporate intent**

- (1) The board of RailCorp must prepare and submit to the voting shareholders and portfolio Minister a draft written statement of corporate intent not later than one month after the commencement of each financial year of the corporation.
- (2) The statement of corporate intent must include:
  - (a) performance benchmarks for the rail services and rail infrastructure facilities provided by RailCorp, as agreed by the board and the portfolio Minister, and included in a rail performance agreement between the Minister and RailCorp, and
  - (b) financial and any other performance benchmarks, as agreed by the board and the voting shareholders after consultation with the portfolio Minister.

- (3) The board must consider any comments on the draft statement of corporate intent that are made to it by the voting shareholders or the portfolio Minister within 2 months after the commencement of the financial year of RailCorp.
- (4) The board must consult in good faith with the voting shareholders and the portfolio Minister following communication to it of the comments, make such changes to the statement:
  - (a) in relation to the performance benchmarks agreed under subsection (2) (a) (the ***rail performance benchmarks***), as are agreed between the board and the portfolio Minister, and
  - (b) in relation to the remainder of the statement, as are agreed between the board and the voting shareholders,and deliver the completed written statement to the voting shareholders and portfolio Minister within 3 months after the commencement of the financial year.
- (5) The statement may not, before it is laid before both Houses of Parliament, be published or made available to the public without the prior approval of the board and the voting shareholders.
- (6) The statement, other than the rail performance benchmarks, may be modified at any time by the board with the agreement of the voting shareholders after consultation with the portfolio Minister.
- (7) The rail performance benchmarks may be modified at any time by the board with the agreement of the portfolio Minister after consultation with the Independent Transport Safety and Reliability Regulator.
- (8) If the board, by written notice to the voting shareholders and the portfolio Minister, proposes a modification of the statement (other than the rail performance benchmarks), the board may, within 14 days, make the modification unless the voting shareholders, by written notice to the board, direct the board not to make it.
- (9) The voting shareholders may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent any specified matters, other than matters relating to the rail performance benchmarks.
- (10) Before giving a direction under this section, the voting shareholders are to consult with the portfolio Minister and the board as to the matters to be referred to in the notice.
- (11) RailCorp is required to comply with any such direction.
- (12) At any particular time, the statement of corporate intent for RailCorp is the completed statement, with any modifications or deletions made in accordance with

this section or Part 4 of the *State Owned Corporations Act 1989*.

- (13) The *State Owned Corporations Act 1989* (other than section 21 of that Act) applies to a statement of corporate intent for RailCorp in the same way that it applies to a statement of corporate intent under that Act.

#### **17D Payments to RailCorp**

All fines and penalties recovered for offences under the regulations under section 91, or under regulations under section 95 of the *Rail Safety Act 2002* in connection with railway services operated by RailCorp (but only if proceedings or penalty notices for the offences were instituted or issued by RailCorp or an employee of RailCorp), must be paid to RailCorp.

#### **17E Exemption from State taxes**

- (1) State tax is not chargeable in respect of any matter or thing done by RailCorp in the exercise of its functions during the period of 12 months commencing on the commencement of this section.
- (2) The regulations under this Act may, on the recommendation of the Minister and with the approval of the Treasurer, provide that State tax is not chargeable in respect of any matter or thing, or classes of matters or things, prescribed by the regulations and done by RailCorp in the exercise of its functions after the end of that period.
- (3) The provisions of this section are in addition to and do not derogate from the provisions of the *State Owned Corporations Act 1989*.
- (4) In this section:

**State tax** means duty under the *Duties Act 1997* or any other tax, duty, rate, fee or other charge imposed by or under any Act or law of the State, other than pay-roll tax.

#### **17F Appeals to Transport Appeal Boards**

- (1) Regulations made under section 20M of the *State Owned Corporations Act 1989* with respect to the staff of RailCorp may provide for appeals by members of staff in connection with their employment to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*.
- (2) This section does not limit the operation of section 20M of the *State Owned Corporations Act 1989*.

## **Part 2A Transport Infrastructure Development Corporation**

### **Division 1 Interpretation**

## 18 Definitions

(1) In this Part:

**develop a railway system or develop a transport project** includes:

- (a) carry out development (within the meaning of the *Environmental Planning and Assessment Act 1979*) or an activity (within the meaning of Part 5 of that Act) for the purposes of a railway system or other transport project,
- (b) manage any such development,
- (c) finance any such development,
- (d) maintain any such development,
- (e) facilitate any such development,
- (f) carry out any function ancillary to any such development.

**railway** means a guided system designed to transport passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track, together with its infrastructure and associated sidings, and includes a heavy railway, light railway, inclined railway, monorail or tramway.

**railway system** includes a railway, rail infrastructure facilities, stations, platforms, maintenance facilities, depots and any other transport interchanges, works, structures and facilities associated with or incidental to the railway or rail infrastructure facilities.

(2) In this Part, a reference to a railway system or other transport project includes a reference to part of a system or part of a project.

## Division 2 Constitution of Transport Infrastructure Development Corporation as statutory SOC

### 18A Establishment of Transport Infrastructure Development Corporation as statutory State owned corporation

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

#### Note—

The *State Owned Corporations Act 1989* contains many provisions that apply to Transport Infrastructure Development Corporation as a statutory State owned corporation. 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, 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 annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

## **Division 3 Objectives of Transport Infrastructure Development Corporation**

### **18B Objectives of Transport Infrastructure Development Corporation**

- (1) The principal objectives of Transport Infrastructure Development Corporation are:
  - (a) to develop major railway systems, and
  - (b) to develop other major transport projects,in an efficient, effective and financially responsible manner.
- (2) The other objectives of Transport Infrastructure Development Corporation are as follows:
  - (a) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable business, and
    - (ii) to maximise the net worth of the State's investment in the Corporation,
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (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*,
  - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of Transport Infrastructure Development Corporation are of equal importance, but are not as important as the principal objectives of the corporation.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to Transport Infrastructure Development Corporation.

## **Division 4 Functions of Transport Infrastructure Development Corporation**

### **18C Development of railway systems and other transport projects**

The principal functions of Transport Infrastructure Development Corporation are:

- (a) to develop major railway systems, and
  - (b) to develop other major transport projects,
- including facilitating their development by other persons.

#### **18D Other functions of Transport Infrastructure Development Corporation**

- (1) Transport Infrastructure Development Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) Transport Infrastructure Development Corporation may exercise the following functions:
  - (a) hold, manage, maintain and establish assets associated with major railway systems or other major transport projects developed or proposed to be developed by Transport Infrastructure Development Corporation,
  - (b) provide goods and services to the rail industry,
  - (c) conduct any business (whether or not related to its principal functions) that it considers will further its objectives,
  - (d) provide facilities or services that are ancillary to or incidental to its principal functions.

#### **18E Functions relating to development projects**

- (1) Transport Infrastructure Development Corporation may not undertake the development of a major railway system or other major transport project except with the consent of the portfolio Minister and the voting shareholders of the Corporation.
- (2) Transport Infrastructure Development Corporation must undertake the development of a major railway system or other major transport project commenced (but not completed) before the commencement of this section if directed to do so by the portfolio Minister with the concurrence of the Treasurer.
- (3) The portfolio Minister's power to give a direction to Transport Infrastructure Development Corporation under subsection (2) is in addition to any power of the portfolio 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.

#### **18F Acquisition of land by Transport Infrastructure Development Corporation**

- (1) Transport Infrastructure Development Corporation may, for any purposes of the Corporation, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.



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

#### **18G Effect of Division**

This Division does not limit the functions of Transport Infrastructure Development Corporation apart from this Division, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

### **Division 5 Management of Transport Infrastructure Development Corporation**

#### **18H Board of directors of Transport Infrastructure Development Corporation**

- (1) The board of directors of Transport Infrastructure Development Corporation is to be appointed by the voting shareholders. The voting shareholders are to consult with the portfolio Minister on the persons (other than the chief executive officer) recommended for appointment as directors.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors.
- (3) The person for the time being holding office as chief executive officer of Transport Infrastructure Development Corporation is to be a director of the board.
- (4) The person for the time being holding office as chief executive officer of RailCorp is to be a director of the board.
- (5) The directors of the board (other than the chief executive officers of RailCorp and Transport Infrastructure Development Corporation) must each or together have such expertise (including engineering and rail safety expertise) as the voting shareholders, after consultation with the portfolio Minister, consider necessary in order to realise the

objectives of Transport Infrastructure Development 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 Transport Infrastructure Development Corporation and its constitution and procedure.
- (7) Section 20J (2), (3), (4) and (5) of, and clause 4 of Schedule 8 to, the *State Owned Corporations Act 1989* do not apply with respect to the board of Transport Infrastructure Development Corporation.
- (8) Clause 7 of Schedule 8 to the *State Owned Corporations Act 1989* does not apply with respect to the chief executive officer of RailCorp or the chief executive officer of Transport Infrastructure Development Corporation.

### **181 Chief executive officer**

- (1) The chief executive officer of Transport Infrastructure Development Corporation is to be appointed by the board of the Corporation after consultation with the voting shareholders and the portfolio Minister.
- (2) The chief executive officer is to hold office for the period (not exceeding 5 years) that is specified in the chief executive officer's instrument of appointment.
- (3) 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 the portfolio Minister.
- (4) 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.
- (5) 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.
- (6) The contract of employment of the chief executive officer must include performance criteria for the purpose of reviews of the chief executive officer's performance.
- (7) The board must require the chief executive officer to enter into a performance agreement and must review the chief executive officer's performance at least annually.
- (8) The *Public Sector Employment and Management Act 2002* (Chapter 5 included) does not apply to the chief executive officer.
- (9) Section 20K (2) and (4) of, and Schedule 9 to, the *State Owned Corporations Act 1989* do not apply to or in respect of the chief executive officer.

- (10) 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*.

### **18J Acting chief executive officer**

- (1) The board of Transport Infrastructure Development Corporation 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 of the Corporation.
- (2) The board may remove a person from acting as 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 chief executive officer is regarded as an absence from office of the chief executive officer.
- (5) The board is not to appoint a person to act in the office of chief executive officer during any vacancy in that office except after consultation with the voting shareholders and the portfolio Minister.
- (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*.

## **Division 6 General**

### **18K Foundation charter of Transport Infrastructure Development Corporation**

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of Transport Infrastructure Development 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 any 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 SOC's and assumptions that they have complied with that Act and their foundation charter.

### **18L Restrictions relating to shareholdings**

- (1) The portfolio Minister of Transport Infrastructure Development Corporation must not

be, and is not eligible for nomination as, a shareholder of the Corporation. However, the portfolio Minister may attend meetings of the shareholders of the Corporation.

- (2) Shares in Transport Infrastructure Development Corporation may not be sold or otherwise disposed of except to eligible Ministers.

#### **18M Dividends and tax-equivalents**

- (1) Section 20S of the *State Owned Corporations Act 1989* does not apply to Transport Infrastructure Development Corporation.
- (2) The Treasurer may, by notice in writing to Transport Infrastructure Development Corporation, suspend the obligation of Transport Infrastructure Development Corporation, or any subsidiary of Transport Infrastructure Development Corporation, to pay amounts under section 20T of the *State Owned Corporations Act 1989*, either generally or for a specified period.
- (3) A suspension under subsection (2) may be subject to conditions and may be revoked or varied by the Treasurer.

#### **18N Statement of corporate intent**

- (1) The board of Transport Infrastructure Development Corporation must prepare and submit to the voting shareholders and portfolio Minister a draft written statement of corporate intent not later than one month after the commencement of each financial year of the corporation.
- (2) The statement of corporate intent must include:
  - (a) performance benchmarks for the rail services and rail infrastructure facilities and other transport development provided by Transport Infrastructure Development Corporation, as agreed by the board and the portfolio Minister, and included in a performance agreement between the Minister and Transport Infrastructure Development Corporation, and
  - (b) financial and any other performance benchmarks, as agreed by the board and the voting shareholders after consultation with the portfolio Minister.
- (3) The board must consider any comments on the draft statement of corporate intent that are made to it by the voting shareholders or the portfolio Minister within 2 months after the commencement of the financial year of Transport Infrastructure Development Corporation.
- (4) The board must consult in good faith with the voting shareholders and the portfolio Minister following communication to it of the comments, make such changes to the statement:
  - (a) in relation to the performance benchmarks agreed under subsection (2) (a) (the

**development performance benchmarks**), as are agreed between the board and the portfolio Minister, and

(b) in relation to the remainder of the statement, as are agreed between the board and the voting shareholders,

and deliver the completed written statement to the voting shareholders and portfolio Minister within 3 months after the commencement of the financial year.

- (5) The statement may not, before it is laid before both Houses of Parliament, be published or made available to the public without the prior approval of the board and the voting shareholders.
- (6) The statement, other than the development performance benchmarks, may be modified at any time by the board with the agreement of the voting shareholders after consultation with the portfolio Minister.
- (7) The development performance benchmarks may be modified at any time by the board with the agreement of the portfolio Minister after consultation with the Independent Transport Safety and Reliability Regulator.
- (8) If the board, by written notice to the voting shareholders and the portfolio Minister, proposes a modification of the statement (other than the development performance benchmarks), the board may, within 14 days, make the modification unless the voting shareholders, by written notice to the board, direct the board not to make it.
- (9) The voting shareholders may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent any specified matters, other than matters relating to the development performance benchmarks.
- (10) Before giving a direction under this section, the voting shareholders are to consult with the portfolio Minister and the board as to the matters to be referred to in the notice.
- (11) The corporation is required to comply with any such direction.
- (12) At any particular time, the statement of corporate intent for Transport Infrastructure Development Corporation is the completed statement, with any modifications or deletions made in accordance with this section or Part 4 of the *State Owned Corporations Act 1989*.
- (13) The *State Owned Corporations Act 1989* (other than section 21 of that Act) applies to a statement of corporate intent for Transport Infrastructure Development Corporation in the same way that it applies to a statement of corporate intent under that Act.

## **180 Exemption from State taxes**

- (1) State tax is not chargeable in respect of any matter or thing, or any matter or thing of

a class, certified by the portfolio Minister, with the approval of the Treasurer, as being or having been done for the purpose of or a purpose connected with or arising out of the principal functions of Transport Infrastructure Development Corporation.

(2) In this section:

**State tax** means duty under the *Duties Act 1997* or any other tax, duty, fee or charge imposed by any Act or law of the State, other than pay-roll tax.

## **19 (Repealed)**

## **Part 2B Rail Infrastructure Corporation**

### **19A, 19B (Repealed)**

### **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 as a statutory State owned corporation. 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 part of the NSW rail network vested in or owned by Rail Infrastructure Corporation 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 part of the NSW rail network vested in or owned by Rail Infrastructure Corporation in accordance with the current NSW rail access undertaking, 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.
- (5) Subsection (2) (a) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

#### **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 under the current NSW rail access undertaking to the part of the NSW rail network vested in or owned by Rail Infrastructure Corporation.
- (2A), (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.

(c) (Repealed)

(4A)-(5) (Repealed)

(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 part of the NSW rail network vested in or owned by Rail Infrastructure Corporation, and
- (b) having regard to those trends, identifies any parts of the part of the NSW rail network vested in or owned by Rail Infrastructure Corporation 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.

(8) Subsection (2) (b) does not apply to any part of the NSW rail network subject to an ARTC lease or licence.

#### **19F (Repealed)**

#### **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-19K (Repealed)**

**19L Restriction on sale of shares**

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

**19M (Repealed)**

**19N Foundation charter of Rail Infrastructure Corporation for purposes of SOC Act**

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of Rail Infrastructure 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 Unions NSW,

being a person selected by the committee from a panel of 3 persons nominated by Unions NSW.

- (3) The members of the selection committee and the nominees of Unions NSW 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 (Repealed)**

**19P Portfolio Minister not to be shareholder of Rail Infrastructure Corporation**

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

**19Q (Repealed)**

**19R Chief executive officer**

- (1) The chief executive officer of Rail Infrastructure Corporation is to be appointed by the board with the concurrence of the voting shareholders and the Minister.
- (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 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.
- (4A) The chief executive officer of Rail Infrastructure Corporation may delegate any functions of the chief executive officer to any person of a class approved by the board of the Corporation.
- (5) The *Public Sector Employment and Management Act 2002* (Chapter 5 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 of Rail Infrastructure Corporation.
- (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 Rail Infrastructure 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 Rail Infrastructure Corporation, in consultation with the board, are to determine the Rail Infrastructure Corporation's share dividend scheme.
- (2) The dividends to be paid by Rail Infrastructure 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 Rail Infrastructure Corporation.
- (4) Rail Infrastructure Corporation is not required to comply with this section, or section 20S of the *State Owned Corporations Act 1989*, after 1 July 2004.

#### **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 services and Newcastle 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 Newcastle ferry services**

- (1) The State Transit Authority shall operate Newcastle ferry services.
- (2) The State Transit Authority is to continue to operate the Newcastle ferry services which were provided by the Authority immediately before the commencement of this subsection, as substituted by the *Transport Administration Amendment (Sydney Ferries) Act 2003*.
- (3) Subsection (2) does not limit the power of the State Transit Authority:
  - (a) to establish any new Newcastle ferry service, or
  - (b) to alter or discontinue any of its Newcastle 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 3A Sydney Ferries

### Division 1 Constitution of Sydney Ferries as statutory SOC

### **35A Establishment of Sydney Ferries as statutory State owned corporation**

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

**Note—**

The *State Owned Corporations Act 1989* contains many provisions that apply to Sydney Ferries as a statutory State owned corporation. 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, 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 annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

## **Division 2 Objectives of Sydney Ferries**

### **35B Objectives of Sydney Ferries**

- (1) The principal objective of Sydney Ferries is to deliver safe and reliable Sydney ferry services in an efficient, effective and financially responsible manner.
- (2) The other objectives of Sydney Ferries are as follows:
  - (a) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable business,
    - (ii) to maximise the net worth of the State’s investment in Sydney Ferries,
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (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*,
  - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of Sydney Ferries 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 Sydney Ferries.

## **Division 3 Functions of Sydney Ferries**

### **35C Sydney ferry services**

- (1) Sydney Ferries is to operate Sydney ferry services.
- (2) Sydney Ferries is to continue to operate the Sydney ferry services which were provided by the State Transit Authority immediately before the commencement of this section.
- (3) Subsection (2) does not limit the power of Sydney Ferries:
  - (a) to establish any new Sydney ferry service, or
  - (b) to alter or discontinue any of its Sydney ferry services.
- (4) The operation of a ferry service by Sydney Ferries is subject to the requirements of the [Passenger Transport Act 1990](#).

### **35D Other transport services**

Sydney Ferries may operate other transport services, including bus services, whether or not in connection with its ferry services.

### **35E Other functions of Sydney Ferries**

- (1) Sydney Ferries has the functions conferred or imposed on it by or under this or any other Act.
- (2) Sydney Ferries may:
  - (a) conduct any business (whether or not related to its functions) that it considers will further its objectives, and
  - (b) provide facilities or services that are ancillary to or incidental to its functions.

### **35F Acquisition of land by Sydney Ferries**

- (1) Sydney Ferries may, for any purposes of Sydney Ferries, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The other purposes for which land may be acquired under subsection (1) include for the purposes of a future sale, lease or disposal, that is, to enable Sydney Ferries to exercise its functions in relation to land under this Act.
- (3) For the purposes of the [Public Works Act 1912](#), any such acquisition of land is taken to be an authorised work and Sydney Ferries is, in relation to that authorised work, taken to be the Constructing Authority.

- (4) Sydney Ferries may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the portfolio Minister.
- (5) Any such acquisition is not void merely because it is expressed to be for the purposes of Sydney Ferries or for the purposes of this Act.
- (6) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed for the purposes of this section.

### **35G Effect of Division**

This Division does not limit the functions of Sydney Ferries apart from this Division, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

## **Division 4 Management of Sydney Ferries**

### **35H Board of directors of Sydney Ferries**

- (1) The board of directors of Sydney Ferries is to be appointed by the voting shareholders. The voting shareholders are to consult with the portfolio Minister on the persons recommended for appointment as directors.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors.
- (3) 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 Unions NSW,being a person selected by the committee from a panel of 3 persons nominated by Unions NSW.
- (4) The procedures for constituting a selection committee for the purposes of subsection (3), 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 maritime safety expertise and expertise in vessel operations) as the voting shareholders, after consultation with the portfolio Minister, consider necessary in order to realise the objectives of Sydney Ferries.
- (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 Sydney Ferries 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 Sydney Ferries.

### **35I Chief executive officer**

- (1) The chief executive officer of Sydney Ferries is to be appointed by the board of Sydney Ferries after consultation with the voting shareholders and the portfolio Minister.
- (2) The chief executive officer is to hold office for the period (not exceeding 5 years) that is specified in the chief executive officer's instrument of appointment.
- (3) 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 the portfolio Minister.
- (4) 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.
- (5) 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.
- (6) The contract of employment of the chief executive officer must include performance criteria for the purpose of reviews of the chief executive officer's performance.
- (7) The board must require the chief executive officer to enter into a performance agreement and must review the chief executive officer's performance at least annually.
- (8) The *Public Sector Employment and Management Act 2002* (Chapter 5 included) does not apply to the chief executive officer.
- (9) The provisions of section 20K (2) and (4) of, and Schedule 9 to, the *State Owned Corporations Act 1989* do not apply to or in respect of the chief executive officer.
- (10) 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*.

### **35J Acting chief executive officer**

- (1) The board of Sydney Ferries 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 of Sydney Ferries.
- (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 chief executive officer is regarded as an absence from office of the chief executive officer.
- (5) The board is not to appoint a person to act in the office of chief executive officer during any vacancy in that office without the concurrence of the voting shareholders and the portfolio Minister.
- (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*.

### **35K Ministerial directions**

- (1) The Minister may give the board of Sydney Ferries a written direction in relation to Sydney Ferries' functions if the Minister decides that this action is warranted on grounds involving urgency or public safety.
- (2) The board of directors and the chief executive officer of Sydney Ferries must ensure that Sydney Ferries complies with any such direction.
- (3) Section 20P (4)–(6) of the *State Owned Corporations Act 1989* apply to a direction given under this section in the same way as they apply to a direction given under section 20P of that Act.
- (4) If the Minister considers that compliance with the direction may cause a significant variation in the approved financial outcomes of Sydney Ferries, the direction must be given in consultation with the Treasurer.
- (5) The Minister's power to give directions to Sydney Ferries under this section is in addition to any power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Except as provided by subsection (3), 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.

## **Division 5 General**



### **35L Foundation charter of Sydney Ferries**

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of Sydney Ferries 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 any 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.

### **35M Restrictions relating to shareholdings**

- (1) The portfolio Minister of Sydney Ferries must not be, and is not eligible for nomination as, a shareholder of Sydney Ferries. However, the portfolio Minister may attend meetings of the shareholders of Sydney Ferries.
- (2) Shares in Sydney Ferries may not be sold or otherwise disposed of except to eligible Ministers.

### **35N Dividends and tax-equivalents**

- (1) Section 205 of the *State Owned Corporations Act 1989* does not apply to Sydney Ferries.
- (2) The Treasurer may, by notice in writing to Sydney Ferries, suspend the obligation of Sydney Ferries, or any subsidiary of Sydney Ferries, to pay amounts under section 20T of the *State Owned Corporations Act 1989*, either generally or for a specified period.
- (3) A suspension under subsection (2) may be subject to conditions and may be revoked or varied by the Treasurer.

### **35O Statement of corporate intent**

- (1) The board of Sydney Ferries must prepare and submit to the voting shareholders and portfolio Minister a draft written statement of corporate intent not later than one month after the commencement of each financial year of the corporation.
- (2) The statement of corporate intent must include:
  - (a) performance benchmarks for the ferry services provided by Sydney Ferries, as agreed by the board and the portfolio Minister, and included in a performance agreement between the Minister and Sydney Ferries, and
  - (b) financial and any other performance benchmarks, as agreed by the board and the voting shareholders after consultation with the portfolio Minister.
- (3) The board must consider any comments on the draft statement of corporate intent that are made to it by the voting shareholders or the portfolio Minister within 2 months after the commencement of the financial year of Sydney Ferries.

- (4) The board must consult in good faith with the voting shareholders and the portfolio Minister following communication to it of the comments, make such changes to the statement:
- (a) in relation to the performance benchmarks agreed under subsection (2) (a) (the **ferry service performance benchmarks**), as are agreed between the board and the portfolio Minister, and
  - (b) in relation to the remainder of the statement, as are agreed between the board and the voting shareholders,
- and deliver the completed written statement to the voting shareholders and portfolio Minister within 3 months after the commencement of the financial year.
- (5) The statement may not, before it is laid before both Houses of Parliament, be published or made available to the public without the prior approval of the board and the voting shareholders.
- (6) The statement, other than the ferry service performance benchmarks, may be modified at any time by the board with the agreement of the voting shareholders after consultation with the portfolio Minister.
- (7) The ferry service performance benchmarks may be modified at any time by the board with the agreement of the portfolio Minister after consultation with the Independent Transport Safety and Reliability Regulator.
- (8) If the board, by written notice to the voting shareholders and the portfolio Minister, proposes a modification of the statement (other than the ferry service performance benchmarks), the board may, within 14 days, make the modification unless the voting shareholders, by written notice to the board, direct the board not to make it.
- (9) The voting shareholders may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent any specified matters, other than matters relating to the ferry service performance benchmarks.
- (10) Before giving a direction under this section, the voting shareholders are to consult with the portfolio Minister and the board as to the matters to be referred to in the notice.
- (11) Sydney Ferries is required to comply with any such direction.
- (12) At any particular time, the statement of corporate intent for Sydney Ferries is the completed statement, with any modifications or deletions made in accordance with this section or Part 4 of the *State Owned Corporations Act 1989*.
- (13) The *State Owned Corporations Act 1989* (other than section 21 of that Act) applies to a statement of corporate intent for Sydney Ferries in the same way that it applies to a

statement of corporate intent under that Act.

### **35P Payments to Sydney Ferries**

All fines and penalties recovered for offences under the regulations under section 104, or under regulations under section 63 of the *Passenger Transport Act 1990* in connection with ferry services operated by Sydney Ferries (but only if proceedings or penalty notices for the offences were instituted or issued by Sydney Ferries or an employee of Sydney Ferries), must be paid to Sydney Ferries.

### **35Q Appeals to Transport Appeal Boards**

- (1) Regulations made under section 20M of the *State Owned Corporations Act 1989* with respect to the staff of Sydney Ferries may provide for appeals by members of staff in connection with their employment to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*.
- (2) This section does not limit the operation of section 20M of the *State Owned Corporations Act 1989*.

## **Part 4 Director-General of the Ministry 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 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 (Repealed)**

### **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 RailCorp or the State Transit Authority or Sydney Ferries in connection with the provision of passenger services within the State, but each 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**

- (1) The Director-General shall administer, or arrange for the administration of, any scheme approved by the Minister for Government subsidised travel 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 Ministry 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 (Repealed)**

## **Part 4A Independent Transport Safety and Reliability Regulator**

### **Division 1 Interpretation**

## 42A Definitions

In this Part:

**Board** means the Independent Transport Safety and Reliability Advisory Board.

**bus** has the same meaning as it has in the [Passenger Transport Act 1990](#).

**Chief Executive** means the Chief Executive of the ITSRR.

**ferry** has the same meaning as it has in the [Passenger Transport Act 1990](#).

**funded transport service** means a transport service owned or operated by a statutory authority (including a State owned corporation) or any other transport service that receives a Government subsidy or other Government funding.

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

**rail safety inquiry** has the same meaning that it has in the [Rail Safety Act 2002](#).

**reliability**, in relation to a transport service, means the quality, effectiveness and efficiency of the service, having regard to the following matters:

- (a) management and administration of infrastructure, assets, resources and liabilities,
- (b) fulfilment of obligations under contracts and arrangements relating to the provision of services, including timeliness and quality of services,
- (c) any other matters prescribed by the regulations.

**transport authority** means:

- (a) RailCorp, or
- (b) the State Transit Authority, or
- (b1) Sydney Ferries, or
- (c) the Waterways Authority, or
- (d) the Rail Infrastructure Corporation, or
- (e) the Director-General, or
- (f) the Ministry of Transport, or
- (g) any other person or body prescribed as a transport authority by the regulations.

**transport safety inquiry** has the same meaning that it has in the [Passenger Transport Act 1990](#).

**transport service** means:

- (a) a railway operation within the meaning of the *Rail Safety Act 2002*, or
- (b) a public passenger service, within the meaning of the *Passenger Transport Act 1990*, carried on by means of a bus or ferry, or
- (c) any other operation or service prescribed as a transport service by the regulations.

## **Division 2 Constitution of Independent Transport Safety and Reliability Regulator**

### **42B Constitution of Independent Transport Safety and Reliability Regulator**

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Transport Safety and Reliability Regulator.
- (2) The ITSRR is, for the purposes of any Act, a statutory body representing the Crown.

## **Division 3 Charter of Independent Transport Safety and Reliability Regulator**

### **42C Objectives of ITSRR**

- (1) The principal objective of the ITSRR is to facilitate the safe operation of transport services in the State.
- (2) The ITSRR also has the following objectives:
  - (a) to exhibit independence, rigour and excellence in carrying out its regulatory and investigative functions,
  - (b) to promote safety and reliability as fundamental objectives in the delivery of transport services.

### **42D General functions of ITSRR**

- (1) The ITSRR has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the ITSRR are as follows:
  - (a) to provide strategic co-ordination of safety regulation by transport authorities in relation to transport services and owners or operators of transport services,
  - (b) to review and evaluate any matter related to the safe operation of transport services and the functions of transport authorities in relation to the safe operation of transport services,

- (c) to review and evaluate any matter related to the reliability of funded transport services and the functions of transport authorities in relation to the reliability of funded transport services,
  - (d) to advise the Minister, or make recommendations to the Minister, or both, about any matter related to the safe operation of transport services, including safety regulation by transport authorities in relation to transport services,
  - (e) to advise the Minister, or make recommendations to the Minister, or both, about any matter related to the reliability of funded transport services,
  - (f) to accredit operators of railways under the *Rail Safety Act 2002*,
  - (g) to investigate and report on accidents and incidents involving transport services,
  - (h) to disseminate information to the public relating to the safety of transport services or the reliability of funded transport services, as the ITSRR considers appropriate.
- (3) The ITSRR may, to the extent necessary to carry out its functions, or to achieve its objectives, in this State exercise its functions within or outside this State.

**42E ITSRR may advise on and monitor safety and reliability**

- (1) The ITSRR is to advise the Minister with respect to:
- (a) the performance of transport authorities in connection with the exercise of their functions relating to the safe operation of transport services, and
  - (b) the performance of transport authorities in connection with the exercise of their functions relating to the reliability of funded transport services.
- (2) The ITSRR is to monitor the following matters relating to the safe operation of transport services:
- (a) the performance of transport authorities in connection with the exercise of their functions relating to the safe operation of transport services,
  - (b) the performance of owners or operators of transport services in connection with the safe operation of those services,
  - (c) the compliance by transport authorities with any recommendations relating to the safe operation of transport services contained in any report by the Chief Investigator under this or any other Act or in a report of a rail safety inquiry or a transport safety inquiry,
  - (d) the compliance by transport authorities with any safety management systems required to be implemented by them under any other Act or law or conditions of accreditation or other contracts or arrangements.

- (3) The ITSRR is to monitor the following matters relating to the reliability of funded transport services:
  - (a) the performance of transport authorities in connection with the exercise of their functions relating to the reliability of funded transport services,
  - (b) the performance of owners or operators of funded transport services or other transport services in connection with the reliability of funded transport services.
- (4) In carrying out its functions under this section, the ITSRR is to have regard to any requirements applicable to transport authorities or owners or operators of transport services under this or any other Act or under any contractual or other arrangement entered into under this or any other Act or with the Minister or the Director-General.

#### **42F Auditing of transport authorities and owners and operators of transport services**

- (1) The ITSRR may conduct audits of the compliance of transport authorities and owners or operators of transport services with requirements applicable to them under this or any other Act or under any contractual or other arrangement entered into under this or any other Act or with the Minister or the Director-General.
- (2) Audits may be conducted on a periodic or other basis.

#### **42G Reports to Minister on performance**

- (1) The ITSRR must report to the Minister each year on the performance of transport authorities and owners and operators of transport services in connection with the exercise of their functions relating to the safe operation and reliability of those services.
- (2) A report under subsection (1) may be included in the annual report of the ITSRR under the [Annual Reports \(Statutory Bodies\) Act 1984](#).
- (3) The ITSRR is to report to the Minister on the result of any audit of compliance with requirements under section 42F.

#### **42H (Repealed)**

#### **42I Power of ITSRR to give directions relating to transport services**

- (1) The ITSRR may give directions to the Director-General or the Waterways Authority relating to the safe operation of transport services and associated matters.
- (2) If the Director-General or Waterways Authority considers that complying with any such direction may cause a significant variation in the funding required for the operation of the functions of the Ministry of Transport relating solely to the Ministry or for the operations of the Waterways Authority, the Director-General or Waterways Authority must request the ITSRR to review the decision.



- (3) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the ITSRR determines.
- (4) If the Director-General or the Waterways Authority requests a review in accordance with this section:
  - (a) the Director-General or Waterways Authority may request the ITSRR to provide a written record of the direction if it was not given in writing, and
  - (b) the Director-General or Waterways Authority is not to comply with the direction until notified of the ITSRR's decision following the review.
- (5) Following the review, the ITSRR may confirm or revoke the direction but the ITSRR is not to confirm the direction unless:
  - (a) the ITSRR has estimated the variation in the financial requirements from the information supplied by the Director-General or Waterways Authority, and
  - (b) the ITSRR has referred the matter to the Minister, and
  - (c) the Minister, after consultation with the Treasurer, has approved the direction.

#### **42J Duties of authorities and owners and operators to co-operate with ITSRR**

The Director-General, the board and chief executive officer of a transport authority and an owner or operator of a transport service must:

- (a) co-operate with the ITSRR in exercising their functions, and
- (b) notify the ITSRR of all matters of which they are aware that could reasonably be expected to affect the exercise of the ITSRR's functions under this or any other Act, and
- (c) provide the ITSRR or the Chairperson of the Board with any information relating to their activities or any documents or other things requested by the ITSRR or Chairperson in the exercise of functions under this or any other Act, and
- (d) in the case of the Director-General and the Waterways Authority, comply with any direction in force under section 42I.

#### **42K ITSRR may settle certain rail access disputes**

- (1) The ITSRR may, if requested to do so by the parties to a rail access agreement, determine a dispute between the parties that relates to rail safety.
- (2) Nothing in this section confers power on the ITSRR to determine a dispute that is required by or under this or any other Act or under any other agreement or arrangement to be determined by any other person.

#### **42L Disclosure of information by ITSRR**

- (1) The ITSRR may, if the ITSRR thinks it necessary for the safe operation of a transport service, disclose information acquired by the ITSRR in the performance of the ITSRR's functions under this or any other Act to any other person.
- (2) The ITSRR may, if the ITSRR thinks it desirable for the promotion of the safe operation of a transport service, publish any information, including the report of a rail safety inquiry or a transport safety inquiry.
- (3) A publication under subsection (2) must not identify a person by name.
- (4) This section does not apply to the disclosure of the whole or part of a train safety record to the Commonwealth or an authority of the Commonwealth under the *Rail Safety Act 2002*.
- (5) This section does not permit the disclosure of information in contravention of section 65A of the *Rail Safety Act 2002* or section 46E of the *Passenger Transport Act 1990*.
- (6) Sections 72 and 73 of the *Rail Safety Act 2002* do not apply to a disclosure permitted under this section.

### **Division 4 Management of Independent Transport Safety and Reliability Regulator**

#### **42M Chief Executive of ITSRR**

- (1) The Governor, on the recommendation of the Minister, may appoint a Chief Executive of the ITSRR.
- (2) The Minister is to consult with the Chairperson of the Board before making a recommendation under subsection (1).
- (3) The employment of a Chief Executive is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2 of that Act.
- (4) The Chief Executive may hold office for terms totalling not more than 10 years.
- (5) The Chief Executive may be removed from office under section 77 of the *Public Sector Employment and Management Act 2002* only for incapacity, incompetence or misbehaviour.

#### **42N Chief Executive to manage and control affairs of ITSRR**

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

#### **42O Acting Chief Executive**

- (1) The Minister may, from time to time, appoint a person to act in the office of the 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 is 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 section.
- (3) A person while acting in the office of the 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 section, a vacancy in the office of the Chief Executive is to be regarded as an absence from office of the Chief Executive.

#### **42P Limitations on Ministerial control of ITSRR**

- (1) The ITSRR is subject to the direction and control of the Minister, except as provided by subsection (2).
- (2) The ITSRR is not subject to the direction and control of the Minister in respect of the following matters:
  - (a) the exercise of a function relating to the accreditation of a person under the *Rail Safety Act 2002* (including the variation, suspension or cancellation of an accreditation),
  - (b) any decision to take or not to take enforcement action under any Act,
  - (c) the exercise of a function relating to a rail safety inquiry or a transport safety inquiry or other inquiry under an Act into a transport accident or incident,
  - (d) the outcome of any monitoring or auditing of the safety or reliability of a transport service (and any decision to carry out or not to carry out any such monitoring or auditing),
  - (e) the contents of any report or recommendation of the ITSRR,
  - (f) the exercise of a function under section 42I (except as provided by section 42I (5)).

#### **42Q Delegation of functions of ITSRR**

- (1) The ITSRR may delegate to an authorised person any of the functions of the ITSRR under this or any other Act, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the ITSRR, if the delegate is authorised to do so by the ITSRR.

(3) The ITSRR may not delegate a function delegated to the ITSRR by the Minister under the *Rail Safety Act 2002*.

(4) In this section:

**authorised person** means:

(a) an officer of the ITSRR, or

(b) a member of a class of persons prescribed by the regulations or approved by the ITSRR.

## **Division 5**

**42R, 42S (Repealed)**

## **Division 6 Independent Transport Safety and Reliability Advisory Board**

**42T Independent Transport Safety and Reliability Advisory Board**

(1) There is established by this Act an Independent Transport Safety and Reliability Advisory Board.

(2) The Board is to consist of the following 5 members:

(a) a Chairperson appointed by the Governor, on the recommendation of the Minister,

(b) 3 members appointed by the Minister,

(c) the Chief Executive.

(3) The members appointed by the Minister must have experience in one or more of the following areas, as the Minister considers necessary to enable the Board's functions to be carried out:

(a) rail safety management systems,

(b) safety science,

(c) customer service,

(d) accident investigation,

(e) public administration.

(4) The Chairperson of the Board must have experience in transport safety management systems (including rail safety management systems).

(4A) For the purposes of exercising its functions, the Board may arrange for the use of

any staff or facilities of the ITSRR.

(5) Schedule 2A has effect with respect to the members and procedure of the Board.

#### **42U General functions of Board**

- (1) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal function of the Board is to advise and make recommendations to the Minister or the ITSRR about any matter.
- (3) The Board may also advise the Minister, or make recommendations to the Minister, or both, about any matter related to the safe operation of transport services (including safety regulation by transport authorities) or the reliability of funded transport services.

#### **42V (Repealed)**

### **Division 7 Review**

#### **42W Review of amendments**

- (1) The Minister is to review the operation of the amendments made by the *Transport Legislation Amendment (Safety and Reliability) Act 2003* to determine whether the policy objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 3 months after the end of the period of 12 months.

### **Part 5 Transport Advisory Group**

#### **43 Constitution of Transport Advisory Group**

- (1) The Minister is to establish a Transport Advisory Group.
- (2) The Group is to consist of the following part-time members:
  - (a) a member of staff of the Ministry of Transport, nominated by the Director-General, who is to be the Chairperson of the Group,
  - (b) a representative of the Independent Pricing and Regulatory Tribunal,
  - (c) (Repealed)

(d) 4 members appointed by the Minister, who are to be representatives of public transport stakeholders.

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

#### **44 Functions of Transport Advisory Group**

(1) The Transport Advisory Group is to advise the Director-General on community expectations of the reliability of public transport services in this State.

(2) The Transport Advisory Group may undertake public consultation for the purpose of exercising its functions.

(3) The Transport Advisory Group may give advice either at the request of the Director-General or without any such request.

(4) In this section, **reliability**, in relation to a transport service, has the same meaning as it has in Part 4A.

### **Part 5A Chief Investigator of the Office of Transport Safety Investigations**

#### **45 Chief Investigator**

(1) The Governor, on the recommendation of the Minister, may appoint a Chief Investigator of the Office of Transport Safety Investigations.

(2) The employment of a Chief Investigator is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2 of that Act.

(3) The Chief Investigator may be removed from office under section 77 of the *Public Sector Employment and Management Act 2002* only for incapacity, incompetence or misbehaviour.

(4) The office of the Chief Investigator may be known as the Office of Transport Safety Investigations.

#### **45A General functions of Chief Investigator**

(1) The Chief Investigator has the functions conferred or imposed on the Chief Investigator by or under this or any other Act.

(2) The principal functions of the Chief Investigator are:

(a) to conduct investigations into rail and passenger transport accidents or incidents under the *Rail Safety Act 2002* and the *Passenger Transport Act 1990*, and

(b) to determine the causes of those accidents or incidents, and

(c) to report on the outcome of any investigation to the Minister, and

(d) to review investigation reports prepared by transport authorities and other transport operators.

(3) The Chief Investigator may, to the extent necessary to carry out his or her functions in this State, exercise the Chief Investigator's functions within or outside this State.

#### **45B No Ministerial control of Chief Investigator**

(1) The Chief Investigator is not subject to the direction and control of the Minister in the exercise of the Chief Investigator's investigative and reporting functions.

(2) Despite subsection (1), the Chief Investigator is to investigate and report on a particular rail or passenger transport accident or incident when given a written direction to do so by the Minister.

#### **45C Disclosure of information by Chief Investigator**

(1) The Chief Investigator may, if he or she thinks it necessary for the safe operation of a transport service, disclose information acquired by the Chief Investigator in the performance of the Chief Investigator's functions under this or any other Act to any other person.

(2) The Chief Investigator may, if the Chief Investigator thinks it desirable for the promotion of the safe operation of a transport service, publish any information.

(3) A publication under subsection (2) must not identify a person by name.

(4) This section does not apply to the disclosure of the whole or part of a train safety record to the Commonwealth or an authority of the Commonwealth under the [Rail Safety Act 2002](#).

(5) This section does not permit the disclosure of information in contravention of section 65A of the [Rail Safety Act 2002](#) or section 46E of the [Passenger Transport Act 1990](#).

(6) Sections 72 and 73 of the [Rail Safety Act 2002](#) do not apply to a disclosure permitted under this section.

#### **45D Acting Chief Investigator**

(1) The Minister may, from time to time, appoint a person to act in the office of the Chief Investigator during the illness or absence of the Chief Investigator, and the person, while so acting, has all the functions of the Chief Investigator and is taken to be the Chief Investigator.

(2) The Minister may, at any time, remove any person from an office to which the person was appointed under this section.

- (3) A person while acting in the office of the Chief Investigator 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 section, a vacancy in the office of the Chief Investigator is to be regarded as an absence from office of the Chief Investigator.

#### **45DA Delegation of functions of Chief Investigator**

- (1) The Chief Investigator may delegate to an authorised person any of the functions of the Chief Investigator under this or any other Act, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Chief Investigator, if the delegate is authorised to do so by the Chief Investigator.
- (3) In this section:  
**authorised person** means:
  - (a) a person appointed by the Chief Investigator under section 65F (1), or
  - (b) a member of a class of persons prescribed by the regulations.

## **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 2005](#).

**road related area** has the same meaning as it has in the [Road Transport \(General\) Act 2005](#).

**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 2005*, 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, and
  - (d) perform, in accordance with the *Interstate Road Transport Act 1985* of the Commonwealth, the functions of a Regulatory Authority under that Act.
- (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 Unions NSW, 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, ITSRR and Chief Investigator**

### **Divisions 1, 1A**

#### **56-59C (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 3.1 of the [Public Sector Employment and Management Act 2002](#).

## **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 3.1 of the *Public Sector Employment and Management Act 2002*.

### **Division 3A Staff of Independent Transport Safety and Reliability Regulator**

#### **65A Definition of “ITSRR”**

In this Division:

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

#### **65B Employment of staff**

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

#### **65C Salary, wages and conditions of staff**

The ITSRR 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.

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

- (1) The regulations may make provision for or with respect to the employment of the staff of the ITSRR, 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 ITSRR is a party, and
  - (b) have effect despite any determination of the ITSRR under section 65C, and
  - (c) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

### **65E Application of Division 4**

Division 4 applies to the ITSRR in the same way as it applies to an Authority.

## **Division 3B Staff of Chief Investigator**

### **65F Employment of staff**

- (1) The Chief Investigator may appoint such staff as the Chief Investigator requires to exercise the Chief Investigator's functions.
- (2) Those members of staff are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by subsection (3).
- (3) The Chief Investigator is, for the purposes of any proceedings relating to those members of staff held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of the staff.
- (4) The Chief Investigator may enter into an agreement with any association or organisation representing a group or class of those members of staff with respect to industrial matters.
- (5) Any such agreement binds all persons in the class or group affected by the agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (6) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Chief Investigator may enter into such an enterprise agreement as the employer of the members of staff concerned.

### **65G Salary, wages and conditions of staff**

The Chief Investigator may fix the salary, wages and conditions of employment of any staff appointed under section 65F (1) in so far as they are not fixed by or under any other Act or law.

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

- (1) The regulations may make provision for or with respect to the employment of staff appointed under section 65F (1), 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 Chief Investigator is a party, and

- (b) have effect despite any determination of the Chief Investigator under section 65G, and
- (c) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

#### **65I Application of Division 4**

Division 4 (other than section 68) applies to the Chief Investigator in the same way as it applies to an Authority.

### **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**

#### **Divisions 1, 1A**

#### **69-72D (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 services or Newcastle 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 (Repealed)**

# **Division 5 Charges for services of RailCorp, Sydney Ferries and State Transit Authority**

## **84 Definitions**

In this Division:

**Authority** means the State Transit Authority, Sydney Ferries or RailCorp.

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

## **85 Orders fixing charges**

- (1) The charges to be demanded by RailCorp 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 RailCorp.
- (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.
- (2A) The charges to be demanded by Sydney Ferries in respect of its ferry services or for any other purpose are to be as from time to time determined by order made by Sydney Ferries.



- (3) RailCorp 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) An Authority must, 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, an Authority must have regard to any pricing policies approved by the Minister and notified to the Authority.
- (3) Unless otherwise directed by the Minister under section 29 of this Act or section 20P of the *State Owned Corporations Act 1989*, 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 or ferry 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 an 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 29 of this Act or section 20P of the *State Owned Corporations Act 1989*, as the case requires.

## Part 8A ARTC arrangements

### Division 1 Preliminary

#### 88A Definitions

In this Part:

**freight line** means a railway line that is part of the NSW rail network and that is predominantly used for freight services or freight services and passenger services on non-electrified railway lines.

**lease** includes sub-lease and an agreement to lease or sub-lease.

**licence** includes sub-licence and an agreement to license or sub-license.

**linear continuity** of railway lines means the continuity and availability of the railway lines for rail operations.

**member of staff** of a rail authority means any person employed by a rail authority (whether as a permanent or temporary employee or a casual employee).

**rail authority** means RailCorp, Rail Infrastructure Corporation, the State Rail Authority, Transport Infrastructure Development Corporation or any other person or body prescribed by the regulations.

**rail infrastructure facilities** includes disused stations, disused platforms, rolling stock maintenance facilities, freight centres or depots, works and maintenance depots and storage yards.

**related body corporate** has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**station facilities** means stations, platforms and associated access works, but does not include disused stations or disused platforms or their associated access works.

### Division 2 Arrangements between rail authorities and ARTC

#### 88B Lease or licence of land and rail infrastructure facilities

- (1) A rail authority may, with the approval of the Minister, lease to ARTC, or grant a licence to ARTC with respect to, the whole or any part of the following:
  - (a) land (and all or any related rail infrastructure facilities) used for, or relating to, freight lines or proposed freight lines,
  - (b) land providing access to any such land or rail infrastructure facilities,
  - (c) such additional land (and all or any related rail infrastructure facilities) as ARTC

may request, and that is required in connection with rail operations.

- (2) Rail infrastructure facilities may be leased or licensed to ARTC by a rail authority under this section even though the facilities are situated on land that is not otherwise subject to such a lease or licence.
- (3) A rail authority may, with the approval of the Minister, enter into a lease, licence, agreement or other arrangement with ARTC for the carrying out of development by or on behalf of ARTC for the purposes of constructing proposed freight lines and associated facilities or other rail infrastructure facilities.
- (4) A lease or licence entered into by a rail authority may make provision for or with respect to rights relating to intellectual property.
- (5) Subsections (3) and (4) do not limit the matters that may be included in a lease or licence under this section.
- (6) A rail authority may enter into an agreement or other arrangement with ARTC with respect to matters that are ancillary to or incidental to an ARTC lease or licence.
- (7) The total maximum term for which any land or rail infrastructure facilities may be leased or licensed under one or more leases or licences under this section is 60 years.

**Editorial note—**

Date of commencement of first lease under this section, of interstate and Hunter Valley rail lines to ARTC:  
5.9.2004.

**88C Other agreements or arrangements relating to freight lines**

- (1) A rail authority may, with the approval of the Minister, enter into an agreement or other arrangement with ARTC for or with respect to the management by ARTC of freight lines not subject to an ARTC lease or licence (and all or any associated rail infrastructure facilities).
- (2) The total maximum term for which any one or more agreements or other arrangements may be entered into under this section in relation to any freight line or rail infrastructure facilities is 60 years.

**88D Provision of transition support services**

A rail authority may, with the approval of the Minister, enter into an agreement or other arrangement with ARTC for the provision to ARTC by the rail authority of transition support services in connection with an ARTC arrangement.

**88E Sale of plant, machinery, equipment, stores and consumables**

Despite any other provision of this Act, a rail authority that enters into an ARTC arrangement may sell to ARTC movable plant, machinery, equipment, stores and

consumables, not being rail infrastructure facilities, whether or not it is used in connection with land or rail infrastructure facilities subject to an ARTC arrangement.

#### **88F Requirements for consent not applicable**

A rail authority may enter into an ARTC arrangement, and any such arrangement has effect, despite any requirement for consent under any other lease, licence, agreement or other arrangement between a rail authority and any other person.

#### **88G Severance of rail infrastructure facilities and from leased or licensed land**

- (1) Rail infrastructure facilities owned by RailCorp, RIC or the State Rail Authority that are subject to an ARTC lease or licence or situated on land subject to an ARTC lease or licence, or rail infrastructure facilities installed or established by ARTC for the purposes of an ARTC lease or licence, are taken to be severed from the land on which they are situated and may be dealt with as personal property separate from the land.
- (2) Station facilities owned by RailCorp, RIC or the State Rail Authority that are situated on land subject to an ARTC lease or licence are taken to be severed from the land on which they are situated and may be dealt with as personal property separate from the land.
- (3) The severance of a facility from land under this section:
  - (a) does not affect the right of the facility to be situated on that land, and
  - (b) does not affect any right to drain water or sewage from the facility across and through the land or to use any means of drainage of water or sewage from the facility across and through the land.
- (4) This section does not have effect in respect of rail infrastructure facilities or station facilities on land subject to an existing lease or licence by the rail authority as lessor when an ARTC lease or licence is entered into, while any such existing lease or licence, or any renewal of that lease or licence, remains in force.
- (5) To avoid doubt, a reference in subsection (4) to a lease or licence does not include a reference to a rail access agreement.

#### **88H Functions of ARTC relating to rail infrastructure facilities**

- (1) ARTC may hold, manage, maintain and establish rail infrastructure facilities subject to an ARTC arrangement.
- (2) Any such arrangement may vest in ARTC rail infrastructure facilities installed or established by ARTC for the term of the arrangement or without limitation.
- (3) An ARTC lease or licence may provide that rail infrastructure facilities subject to the lease or licence and vested in or owned by a rail authority may be sold or disposed of

by ARTC in accordance with the lease or licence.

- (4) This section is subject to the terms of any applicable ARTC arrangement and section 88M.

**Note—**

Section 88M prohibits ARTC from selling or otherwise dealing with rail infrastructure facilities in a way that affects, or is likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement.

**88I Transfer of assets, rights or liabilities of rail authority**

- (1) The Minister may, by order in writing, direct that assets, rights or liabilities of a rail authority, or any subsidiary of a rail authority, that are specified or referred to in the order, be transferred to ARTC.
- (2) The Minister may, by further order under this section, further direct the transfer to a rail authority, or a subsidiary of a rail authority, a State owned corporation, the Crown or any other person or body acting on behalf of the Crown of any assets, rights or liabilities previously transferred under this section.
- (3) An order under subsection (1) or (2) may be made only:
- (a) in relation to assets, rights or liabilities concerning, or relating to, an ARTC arrangement or a proposed ARTC arrangement, and
  - (b) with the consent of ARTC or in accordance with an ARTC arrangement.
- (4) On termination of an ARTC arrangement, the Minister may, by order in writing, direct that rail infrastructure facilities (within the meaning of section 3) established by ARTC under the arrangement, and any related assets, rights or liabilities of ARTC, that are specified or referred to in the order, be transferred to a rail authority, a State owned corporation, the Crown or any other person or body acting on behalf of the Crown.
- (5) In the case of rail infrastructure facilities (including any related assets, rights or liabilities) used by ARTC partly for the purposes of an ARTC arrangement and partly for other business purposes, an order under subsection (4) must, if the rail infrastructure facilities were predominantly used for the purposes of the ARTC arrangement, be made subject to the conferral on ARTC of a continuing right to the use and benefit of those facilities for those other purposes.
- (6) An order under subsection (4) may transfer rail infrastructure facilities (including any related assets, rights or liabilities) that are predominantly used by ARTC for business purposes other than the purposes of an ARTC arrangement only to the extent necessary to confer on a rail authority an irrevocable right to the use and benefit of those facilities for the purposes of its rail operations.
- (7) An order under this section may be subject to specified terms and conditions.

- (8) Schedule 4 applies to the transfer of assets, rights and liabilities under this section.
- (9) Words and expressions used in this section have the same meanings as they have in Schedule 4.

### **Division 3 Rail services, access and infrastructure obligations**

#### **88J Obligation to maintain linear continuity of rail services**

- (1) It is the duty of ARTC to maintain the linear continuity of railway lines affected by, or subject to, an ARTC arrangement between ARTC and a rail authority.
- (2) This section does not extend to closures of rail lines in emergencies, for normal, routine maintenance or repairs or for the construction of works authorised or otherwise provided for by an ARTC arrangement.

#### **88K Rail access obligations and functions**

- (1) ARTC is to provide persons with access under any current NSW rail access undertaking to any part of the NSW rail network for which it is a rail infrastructure owner.

**Note—**

ARTC's rail access obligations are also set out in section 99C and Schedule 6AA.

- (2) A rail authority may authorise ARTC to act as the agent of the rail authority or to provide other services to the rail authority for the purpose of selling access to parts of the NSW rail network.
- (3) For the purposes of section 24A of the *Independent Pricing and Regulatory Tribunal Act 1992*, ARTC is, in respect of rail infrastructure facilities subject to an ARTC lease or licence, taken to be a government agency that provides services by means of rail infrastructure facilities.

**Note—**

The effect of this provision is that disputes relating to rail infrastructure access involving ARTC may be referred to arbitration.

#### **88L Network control**

- (1) An ARTC arrangement may make provision for or with respect to the conferral on ARTC of responsibility for network control with respect to any part of the NSW rail network for which ARTC is a rail infrastructure owner.
- (2) ARTC is responsible for network control with respect to any such part of the NSW rail network while that responsibility is conferred on ARTC under the ARTC arrangement.
- (3) In exercising its responsibility for network control, ARTC must:
  - (a) give reasonable priority to passenger services, and

(b) subject to giving priority to those services, promote and facilitate access to the part of the NSW rail network for which it is responsible in accordance with the current NSW rail access undertaking.

(4) If responsibility for network control is not conferred on ARTC with respect to a part of the NSW rail network for which ARTC is a rail infrastructure owner, the rail authority in whom that part is vested or who owns it is, for the purposes of section 99D, taken to be the rail infrastructure owner for that part and that section applies accordingly.

**Note—**

Under section 99D, the rail infrastructure owner has responsibility for network control, so that subsection (4) has the effect of conferring that responsibility on a rail authority if there is no conferral of it on ARTC under this section.

(5) In this section:

**network control** with respect to any part of the NSW rail network has the same meaning as it has in section 99D.

**88M Restrictions on dealings with land and rail infrastructure facilities and other rights**

(1) ARTC must not sell or otherwise deal with land or rail infrastructure facilities subject to an ARTC lease or licence, or installed or established by ARTC in or on the NSW rail network for the purposes of an ARTC arrangement, in a way that affects, or is likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement.

(2) ARTC must not assign (other than by granting a security interest), or grant a mortgage over, all or any of its rights under an ARTC arrangement.

(3) ARTC may grant a security interest over all or any of its rights under an ARTC arrangement, but only if the granting of that interest complies with the following:

(a) it does not affect, or is not likely to affect, the linear continuity of railway lines affected by, or subject to, an ARTC arrangement,

(b) it does not materially interfere with or restrict, or is not likely to materially interfere with or restrict, the carrying out of rail operations by ARTC in accordance with an ARTC arrangement,

(c) it does not permit or potentially permit the assignment or other disposition of ARTC's obligations or rights under an ARTC arrangement by the holder of the security interest,

(d) it does not permit or potentially permit the exercise of a power of sale or foreclosure in respect of any land or rail infrastructure facilities subject to, or assets or rights under, an ARTC arrangement.

(4) A transaction entered into by ARTC is, to the extent that it contravenes this section,



void.

- (5) In this section, a reference to ARTC includes a reference to a successor of ARTC.
- (6) This section does not apply to or in respect of any thing permitted to be sold to ARTC under section 88E.
- (7) In this section:  
**security interest** means any pledge, lien, charge or preferential interest or arrangement, but does not include a mortgage.

#### **88N Obligations and rights under [Rail Safety Act 2002](#)**

- (1) This section applies to railway operations within the meaning of the [Rail Safety Act 2002](#) that are carried out by ARTC instead of a rail authority under a lease entered into under this Part.
- (2) To avoid doubt, ARTC is the operator responsible for any such operation for the purposes of that Act.
- (3) The rail authority is not required to be accredited under that Act:
  - (a) in respect of any such railway operation, or
  - (b) merely because it is the owner of rail infrastructure facilities, being facilities subject to an ARTC lease or licence.
- (4) Nothing in this section affects the obligation of the rail authority to be accredited under that Act for a rail operation it carries out.

#### **88O Obligations and rights under [Protection of the Environment Operations Act 1997](#)**

- (1) This section applies to railway systems activities referred to in Schedule 1 to the [Protection of the Environment Operations Act 1997](#) that are carried out separately by ARTC and a rail authority in or on land that is subject to an ARTC lease or licence or is adjacent to any such land.
- (2) For the purposes of that Act, both the rail authority and ARTC are taken to be occupiers of the land concerned and are each required to hold a licence under that Act authorising the railway systems activity carried out by each of them on the land.

#### **88P Obligations and rights under [Heritage Act 1977](#)**

- (1) This section applies to land or rail infrastructure facilities subject to an ARTC lease or licence between ARTC and a rail authority.
- (2) For the purposes of the [Heritage Act 1977](#) and any instrument under that Act, ARTC is taken to be the owner of the land or rail infrastructure facilities instead of the rail

authority and that Act applies accordingly.

- (3) For the purposes of sections 170 and 170A of the *Heritage Act 1977*, ARTC has, in relation to land or rail infrastructure facilities, the functions of a government instrumentality.

#### **88Q Obligations and rights under *Threatened Species Conservation Act 1995***

- (1) This section applies to land or rail infrastructure facilities subject to an ARTC lease or licence.
- (2) ARTC is to be treated as the public authority having responsibility for the land or rail infrastructure facilities for the purposes of the conferral of, and implementation of, responsibilities under or relating to a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995*.

#### **88R Obligations relating to activities under *Environmental Planning and Assessment Act 1979***

- (1) This section applies if ARTC is prescribed under the *Environmental Planning and Assessment Act 1979* as a public authority for the purposes of Part 5 of that Act in relation to activities for the purposes of rail infrastructure facilities with respect to land subject to an ARTC lease or licence or land owned by ARTC.
- (2) In addition to any requirements applicable under that Part, regulations may be made under the *Environmental Planning and Assessment Act 1979* for or with respect to the following matters:
  - (a) additional circumstances in which an environmental impact statement may be required to be prepared under that Part in respect of an activity,
  - (b) requirements for public consultation in respect of activities for which an environmental impact statement is not required to be prepared under that Part,
  - (c) matters to be considered, and documentation relating to any such consideration, for the purposes of that Part,
  - (d) availability to the public of documents relating to any consideration of an activity for the purposes of that Part.

### **Division 4 Prohibition on vertical integration**

#### **88S Restrictions on vertical integration of rail operations**

- (1) ARTC, or any associate of ARTC, or any successor of ARTC or any associate of any successor of ARTC, must not provide rail freight services or any rail passenger services for reward on or with respect to the NSW rail network while any ARTC arrangement is in force.

- (2) If the Minister is of the opinion that a person has engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of this section, the Minister may, by order in writing, direct the person not to engage in that conduct.
- (3) Nothing in this section prevents:
  - (a) ARTC or any successor of ARTC, or a rail authority, from carrying out a function conferred on it by or under this Act or an ARTC arrangement or from providing any services under an agreement with a rail authority, or
  - (b) a rail authority from carrying out a function conferred on it by or under this Act or an ARTC arrangement or from providing any services under an agreement with ARTC or another rail authority, or
  - (c) an associate of ARTC from providing rail freight services or any passenger services for reward, if the provision of those services is approved by the Minister.
- (4) In this section, a reference to an associate of ARTC or a successor of ARTC (the **rail track operator**) is a reference to:
  - (a) a related body corporate of the rail track operator, or
  - (b) an associate of the rail track operator within the meaning of sections 11, 12 (2), 15 and 16 of the *Corporations Act 2001* of the Commonwealth.

### **88T Injunctions**

- (1) If the Supreme Court, on the application of the Minister, is satisfied that a person has engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of section 88S, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Without prejudice to the generality of subsection (1), an injunction granted under this section may be, or include, an injunction restraining a person from carrying on a business (whether as part of, or incidental to, the carrying on of another business) for a specified period or except on specified terms and conditions.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) The Court may rescind or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and
  - (b) whether or not the person has previously engaged in conduct of that kind, and

(c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) If the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.

## **Division 5 Staffing arrangements**

### **88U Agreements for secondment of staff to ARTC**

- (1) A rail authority may, with the approval of the Minister, enter into an agreement with ARTC for or with respect to the use of members of staff of the authority for the purposes of an ARTC arrangement.
- (2) Without limiting subsection (1), an agreement may provide for the following:
  - (a) the temporary placement of members of staff with ARTC,
  - (b) the exercise by ARTC of functions of the rail authority for or with respect to members of staff (including disciplinary functions other than dismissal),
  - (c) permitting the disclosure of personal information (within the meaning of the [Privacy and Personal Information Protection Act 1998](#)) relating to members of staff by a rail authority to ARTC.
- (3) Without limiting subsection (1), an agreement must contain provisions requiring ARTC to facilitate compliance by the rail authority with any industrial awards or agreements applicable to members of staff temporarily placed with ARTC under this Division.
- (4) ARTC may, in accordance with an agreement, instead of or in conjunction with a rail authority, exercise functions for or with respect to members of staff (including disciplinary functions other than dismissal).
- (5) A rail authority is not required to comply with the [Privacy and Personal Information Protection Act 1998](#) in respect of the disclosure of information about members of staff, placed or proposed to be placed, under this Division with ARTC, if the information is relevant to the exercise by ARTC of its functions in respect of members of staff temporarily placed with it or to workplace safety or the safety of the NSW rail network.
- (6) This section has effect despite any other Act or law.

### **88V Temporary staff placement with ARTC (secondments)**

- (1) A member of staff of a rail authority may apply to be placed temporarily with ARTC and may, with the approval of the chief executive of the rail authority, be temporarily placed with ARTC.

- (2) If an agreement for or with respect to the use of members of staff under this Division provides for the temporary placement of members of staff with ARTC, the chief executive of the rail authority may, in accordance with the agreement, direct in writing that members of staff of the rail authority be placed with ARTC.
- (3) A temporary placement under subsection (2) takes effect on the day specified in the direction.
- (4) A member of staff may be placed with ARTC under this section at the person's existing level of remuneration or at a different level of remuneration. However, a temporary placement cannot be made at a lower level of remuneration, except with the consent of the member of staff.
- (5) A temporary placement of a member of staff under this section may be ended at any time by written direction of the chief executive of the rail authority.
- (6) A rail authority exercising a power of dismissal of a member of staff who is or has been temporarily placed with ARTC under this Division may take into account and act on the basis of any disciplinary or other action taken or finding made by ARTC.
- (7) A rail authority must, in taking into account and acting on the basis of any disciplinary or other action taken by ARTC as referred to in subsection (6), have regard to any matters raised by the member of staff in relation to that action at the time that action was taken.
- (8) The Public Employment Office may, from time to time, issue guidelines (not inconsistent with this section) for or with respect to the following matters:
  - (a) the matters to be taken into consideration by the chief executive of a rail authority in respect of the temporary placement of members of staff with ARTC under this section,
  - (b) requirements relating to the obtaining of consent to placement of members of staff with ARTC at a lower level of remuneration,
  - (c) the exercise by a rail authority of a power of dismissal of a member of staff as referred to in subsection (6).
- (9) A rail authority and the chief executive of a rail authority must have regard to any applicable guidelines issued by the Public Employment Office under this section.
- (10) In this Division:

**Public Employment Office** means the Public Employment Office constituted by the [Public Sector Employment and Management Act 2002](#).

**temporary member of staff of ARTC** means a member of staff of a rail authority who is temporarily placed with ARTC under this Division.

**transferring rail authority** means the rail authority from which a temporary member of staff of ARTC is temporarily placed with ARTC under this Division.

**88W No time limit for period of temporary placement**

A temporary placement of staff under this Division may be for a specified period or a specified minimum period.

**88X Obligations and rights under [Rail Safety Act 2002](#) relating to members of staff**

- (1) A temporary member of staff of ARTC who performs railway safety work is taken to be an employee of ARTC, instead of the transferring rail authority, for the purposes of the [Rail Safety Act 2002](#) and any instrument under that Act.
- (2) In this section, **railway safety work** has the same meaning as it has in the [Rail Safety Act 2002](#).

**88Y Obligations and rights under [Occupational Health and Safety Act 2000](#) and other legislation**

- (1) For the purposes of the [Occupational Health and Safety Act 2000](#) and the employer liability legislation, ARTC has the functions and liabilities of an employer in respect of a temporary member of staff of ARTC.
- (2) Nothing in subsection (1) affects the functions and liabilities of a transferring rail authority, or a director or a person concerned in the management of a transferring rail authority, in respect of a temporary member of staff of ARTC under the [Occupational Health and Safety Act 2000](#) or any employer liability legislation.

- (3) In this section:

**employer liability legislation** means:

- (a) instruments under the [Occupational Health and Safety Act 2000](#), and
- (b) associated occupational health and safety legislation within the meaning of that Act, and
- (c) the [Road and Rail Transport \(Dangerous Goods\) Act 1997](#) and any instruments under that Act, and
- (d) any other Act or instrument under an Act that makes an employer liable for an act or omission of an employee, or for an act of omission of the employer in relation to an employee, being a law prescribed by the regulations for the purposes of this section.

**88Z Liability under [Law Reform \(Vicarious Liability\) Act 1983](#)**

- (1) A temporary member of staff of ARTC is, during any period of the temporary

placement with ARTC, taken not to be in the service of the Crown for the purposes of the *Law Reform (Vicarious Liability) Act 1983*.

- (2) Nothing in this section affects any liability under that Act of a rail authority as the employer of a temporary member of staff of ARTC.

#### **88ZA Workers compensation arrangements**

- (1) For the purposes of the Workers Compensation Acts, the regulations may make provision for or with respect to the following:
  - (a) the treatment of ARTC as the employer of temporary members of staff of ARTC for the purposes of all or any of the provisions of the Workers Compensation Acts,
  - (b) the conferral of the functions of an employer under provisions of those Acts with respect to temporary members of staff of ARTC on the transferring rail authority or ARTC, or both of them,
  - (c) the liability of a transferring rail authority or ARTC, or both, or directors of, or persons concerned in the management of the transferring rail authority or ARTC, or both, for offences under those Acts,
  - (d) the modification of requirements relating to insurance policies under those Acts in relation to temporary members of staff of ARTC,
  - (e) the modification, in relation to ARTC and a rail authority, of requirements of those Acts relating to the grouping of employers for insurance purposes.
- (2) The regulations may apply any of the provisions of the Workers Compensation Acts to work injury damages recoverable by or in respect of a temporary member of staff of ARTC from the transferring rail authority or ARTC, or both, in respect of an injury to or the death of the member of staff.
- (3) Without limiting subsections (1) and (2), the regulations may provide that a specified provision or provisions of the Workers Compensation Acts do or do not apply in respect of the transferring rail authority or ARTC.
- (4) For the purposes of subsections (1) and (2), the regulations may apply provisions of the Workers Compensation Acts with any necessary modifications.
- (5) Nothing in this section permits a regulation to be made that has the effect of:
  - (a) removing from a transferring rail authority the obligation to have and maintain in force an insurance policy, or to be self-insurer, under the Workers Compensation Acts in respect of any of its employees who are temporary members of staff of ARTC, or
  - (b) removing any liability of any such transferring rail authority in respect of injury to

a temporary member of staff of ARTC under those Acts or that exists independently of those Acts.

(6) In this section:

**motor accident damages** means damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

**work injury damages** means damages recoverable from the transferring rail authority or ARTC in respect of injury to or the death of a temporary member of staff of ARTC caused by the negligence or other tort of the rail authority or ARTC and arising out of the employment of the member of staff, whether the damages are recoverable in an action for tort or breach of contract or in any other action, but does not include motor accident damages.

**Workers Compensation Acts** mean the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and any instruments made under those Acts.

#### **88ZB Effect of staffing agreements and arrangements**

Temporary members of staff of ARTC remain members of staff of the transferring rail authority and do not become employees of ARTC, despite any other provision of this Act or of any other law or any provision of any agreement under which the members of staff are temporarily placed with ARTC.

### **Division 6 State taxes**

#### **88ZC Exemption from State taxes**

- (1) The regulations may, on the recommendation of the Minister and with the approval of the Treasurer, provide that State tax is not chargeable in respect of any matter or thing, or classes of matters or things, prescribed by the regulations and done by a rail authority or ARTC in connection with an ARTC arrangement or a proposed ARTC arrangement or for the purposes of this Part or the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.
- (2) The regulations may, on the recommendation of the Minister and with the approval of the Treasurer, provide that land tax or rates are not payable by a rail authority or ARTC in connection with land subject to an ARTC lease or licence.

(3) In this section:

**State tax** means duty under the *Duties Act 1997* or any other tax, duty, rate, fee or other charge imposed by or under any Act or law of the State, other than pay-roll tax.



### **88ZD Rail authorities and ARTC not grouped for pay-roll tax purposes**

For the purposes of the *Pay-roll Tax Act 1971*, and section 106H of the *Taxation Administration Act 1996* as it applies in relation to the *Pay-roll Tax Act 1971*, a rail authority and ARTC do not constitute a group merely because of an arrangement entered into for the purposes of Division 5.

## **Division 7 Effect of Part**

### **88ZE Effect of Part**

Except as provided by this Part, nothing in this Part:

- (a) limits or otherwise affects any function of a rail authority (whether conferred under this or any other Act or law), or
- (b) prevents a rail authority, in the exercise of any of its functions, from entering into any arrangement or agreement or other transaction with ARTC or any other person.

### **88ZF Protection of contractual and other obligations**

(1) This section applies to the following:

- (a) the operation of this Part and the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004* (including anything done or omitted to be done for the purposes of this Part or that Act),
- (b) a disclosure of information made for any of those purposes.

(2) None of the matters or things to which this section applies are to be regarded:

- (a) as a breach of confidence, or
- (b) as a breach of contract or other instrument or as requiring any act to be done under an instrument, or
- (c) as giving rise to any right or remedy by a party to an instrument, or as causing or permitting the termination of an instrument, or as giving rise to a breach of an offence against a provision of an Act that prohibits or restricts the disclosure of information.

### **88ZG Compensation not payable**

(1) Compensation is not payable by or on behalf of the State:

- (a) because of the enactment or operation of this Part or the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*, or for any consequence of that enactment or operation, or
- (b) because of any statement or conduct relating to this Part or that Act.

(2) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Part** includes the operation of any notice, direction or order under this Part or any ARTC arrangement or other arrangement entered into for the purposes of this Part.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false or misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a rail authority or an officer, employee or agent of the Crown or of a rail authority.

## Part 9 Miscellaneous

### Division 1 Definitions

#### 89 Definitions

In this Part:

**rail authority** means RailCorp, Rail Infrastructure Corporation, Transport Infrastructure Development Corporation or any other person or body prescribed by the regulations.

**railway system** has the same meaning as it has in Part 2A.

**State rail operator** means RailCorp or any other person or body prescribed by the regulations.

### Division 1A Miscellaneous provisions relating to rail authorities

#### 90 State rail operators not common carriers

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

#### 91 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 a State rail operator.

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

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

In any action brought against a rail authority 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) because of fire alleged to have been caused by:

- (a) any act or thing done or omitted to be done by the rail authority in the operation of its railway services or in the exercise of its functions under this Act, or
- (b) any person for whose act or omission the rail authority is liable,

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

## **93 Search of vehicles and luggage on certain railway premises**

- (1) An authorised officer may:
- (a) stop any vehicle or person on any land that is vested in or under the control of a State rail operator 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: 20 penalty units.

- (4) An authorised officer must 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 a State rail operator appointed in writing by the chief executive officer of the State rail operator to be an authorised officer.

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

#### **94 Transfers of assets, rights and liabilities**

- (1) The Minister may, by order in writing, direct that the assets, rights or liabilities of a specified rail authority, or any subsidiary of a rail authority, that are specified or referred to in the order, be transferred to another rail authority, a subsidiary of a rail authority, a State owned corporation, the Crown or any other person or body acting on behalf of the Crown.
- (2) The Minister may, by further order under this section, further direct the transfer any assets, rights or liabilities previously transferred under this section.
- (3) An order under this section may be subject to specified terms and conditions.

- (4) Schedule 4 applies to the transfer of assets, rights and liabilities under this section.
- (5) Words and expressions used in this section have the same meanings as they have in Schedule 4.
- (6) In this section:

***rail authority*** includes the State Rail Authority, the Transport Administration Corporation, the Director-General and any other person or body prescribed by the regulations.

#### **95 Transfer of staff**

Schedule 6 has effect.

#### **96 Person may be a member of one or more boards or CEO of more than one authority**

Nothing in this or any other Act prevents a person from being a member of the board of one or more rail authorities or the chief executive officer of one or more rail authorities.

### **Division 1B Miscellaneous provisions relating to rail infrastructure, rail access and network control**

#### **97 Additional facilities may be treated as rail infrastructure facilities**

The Minister may, by order in writing, direct that specified facilities that are vested in or owned by a rail infrastructure owner are to be treated as rail infrastructure facilities for the purposes of this Act or the regulations.

#### **98 Powers of rail authorities relating to rail infrastructure facilities and land**

Schedules 6A (Powers relating to rail infrastructure facilities and land) and 6B (Special provisions for underground rail facilities) have effect.

#### **99 Maintenance of railway lines**

A rail infrastructure owner is not required to maintain a railway line on which no services are operated.

#### **99A Closure and disposal of railway lines**

- (1) A rail infrastructure owner must 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 a rail infrastructure owner has entered into an ARTC arrangement or a lease or other arrangement in respect of it pursuant to an agreement entered into by the

Commonwealth and the State.

### **99AA Connections to rail infrastructure**

A rail infrastructure owner must not sever, or fail to maintain, a connection between any part of the NSW rail network for which it is the rail infrastructure owner and any other part of the NSW rail network without the consent of the rail infrastructure owner of the other part of the NSW rail network.

### **99B Closure of level-crossings, bridges and other structures**

- (1) A rail infrastructure owner 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 owner.
- (2) A rail infrastructure owner 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) A rail infrastructure owner 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.

### **99C NSW rail access undertakings**

- (1) A rail infrastructure owner may give written undertakings from time to time to the Australian Competition and Consumer Commission, in connection with the provision of access to that part of the NSW rail network vested in or owned by or managed or controlled by the owner, under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth.
- (2) Any such undertaking is not to be given, and (once given) is not to be withdrawn or varied, except with the approval of the Minister given with the concurrence of the Premier.
- (3) Clauses 2, 3 and 4 of Schedule 6AA apply to any such undertaking in the same way as they apply to an access undertaking referred to in clause 1 of that Schedule.
- (4) In exercising its functions, a rail authority or ARTC must act in accordance with the

current NSW rail access undertaking.

- (5) Schedule 6AA (Access undertakings) has effect.
- (6) Subsection (2) and clause 2 of Schedule 6AA do not apply to undertakings given, or taken to have been given, by ARTC.

#### **99D 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 authority or any person prescribed by the regulations 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) To the extent that responsibility for network control, or any aspect of network control, with respect to any part of the NSW rail network is not covered by an order under this section the rail infrastructure owner for that part of the NSW rail network is responsible for network control or that aspect.
- (4) The exercise of the functions of a rail authority is subject to an order under this section.
- (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 part of the NSW rail network for which it is responsible in accordance with the current NSW rail access undertaking.
- (6) The Minister may, by order published in the Gazette, amend or revoke an order made under this section.
- (7) This section is subject to section 88L.

**Note—**

See section 88L for network control responsibilities relating to parts of the NSW rail network subject to an ARTC lease or licence.

## **Division 1C Delegation by Minister**

### **99E Delegation by Minister**

The Minister may delegate to the Director-General or the Chief Executive of the State Transit Authority or the chief executive officer of a rail authority any function of the Minister under this Act, other than this power of delegation.

## **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 Ministry 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 or Independent Transport Safety and Reliability Regulator may require the State Transit Authority or Sydney Ferries or a person nominated by the Minister or Independent Transport Safety and Reliability Regulator to inquire into and report to the Minister or Independent Transport Safety and Reliability Regulator on any bus or ferry accident.
- (2) The State Transit Authority or Sydney Ferries shall, in addition to any report required by the Minister or Independent Transport Safety and Reliability Regulator, forward to the Minister or Independent Transport Safety and Reliability Regulator a copy of the report of any formal inquiry into a bus or ferry accident instituted by the State Transit Authority or Sydney Ferries.

- (3) In this section:

***bus or ferry accident*** means an accident involving the bus or ferry services operated by the State Transit Authority or Sydney Ferries, 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 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 Ministry 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*.

**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 Ministry 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:

- (a) operate or move, or cause the operation or moving, by any means, of any rolling stock on a light rail system, and includes operate a light rail service if the operator of the service operates or moves, or causes the operation or moving of, rolling stock, or
- (b) construct and maintain, or construct or maintain, rolling stock.

### **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 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 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 *Road Transport (General) Act 2005*.

- (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 or road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road or road related area that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

#### **104O 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 duty**

The regulations may exempt any matter concerning the development or operation of a light rail system from liability for the payment of duty under the *Duties Act 1997*.

**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 Ministry 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, bequests or devises of property

- (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 *Duties Act 1997* 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 3A Miscellaneous provisions relating to Sydney Ferries**

### **106B Sydney Ferries not a common carrier**

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

### **106C Regulations relating to Sydney ferry services**

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

### **106D Transfer of certain assets, rights and liabilities of STA to Sydney Ferries**

- (1) The Minister may, by order in writing, direct that the assets, rights and liabilities of the State Transit Authority, or any subsidiary of the Authority, that are specified or referred to in the order, be transferred to Sydney Ferries or to the Crown.
- (2) An order under this section may be subject to specified terms and conditions.
- (3) Schedule 4 applies to the transfer of assets, rights and liabilities under this section.

- (4) Words and expressions used in this section have the same meanings as they have in Schedule 4.

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

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

- (1) In this Division, **transport authority** means:
- (a) (Repealed)
  - (a1) the Independent Transport Safety and Reliability Regulator, or
  - (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.
- (2) In sections 111, 113 and 115, a reference to a transport authority includes a reference to RailCorp and Transport Infrastructure Development Corporation.
- (3) In sections 111, 113 and 115, a reference to a transport authority includes a reference to Sydney Ferries.

### **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 (including the ITSRR) 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.
- (5) This section does not apply to a dispute between the Independent Transport Safety and Reliability Regulator and another transport authority relating to a matter referred to in section 42P (2).

### **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 Transit Authority, the Independent Transport Safety and Reliability Regulator and the Roads and Traffic Authority and the Chairperson of the Independent Transport Safety and Reliability Advisory Board.

**transport authority** includes:

- (a) the State Transit Authority Board, and
  - (a1) the Transport Advisory Group, and
  - (a2) the Independent Transport Safety and Reliability Advisory Board, and
  - (a3) the Chief Investigator, 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 RailCorp, Transport Infrastructure Development Corporation, Sydney Ferries 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.

### **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.

- (1A) Without limiting subclause (1), the regulations may prescribe fees in respect of the performance by the Roads and Traffic Authority of the functions of a Regulatory Authority under the *Interstate Road Transport Act 1985* of the Commonwealth.
- (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 RailCorp, TIDC, 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.

## Division 7 State Rail Authority

### 128 State Rail Authority

Schedule 8 has effect.

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

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

### 1 Definitions

In this Schedule:

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

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

**Chief Executive** means the Chief Executive of the State Transit Authority.

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

## **2 (Repealed)**

## **3 Chairperson of Board**

- (1) Of the members (including the Chief Executive) of the 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 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 the 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 the 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 the 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 the 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 the 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 the 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 the 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 the 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 the Board is a majority of the members for the time being.

## **13 Presiding member**

- (1) The Chairperson of the 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 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 the 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 the Board at which a quorum is present is the decision of the Board.

## 15 Transaction of business outside meetings by telephone or other means

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member of the 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 the 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 the 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 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 2A Constitution and procedure of Independent Transport Safety and Reliability Advisory Board**

(Section 42T (5))

#### **1 Definitions**

In this Schedule:

**appointed member** of the Board means a member of the Board other than the Chief Executive of the Independent Transport Safety and Reliability Regulator.

**Board** means the Independent Transport Safety and Reliability Advisory Board.

**Chairperson** means the Chairperson of the Board.

**member** means the Chief Executive of the Independent Transport Safety and Reliability Regulator or an appointed member.

#### **2 Appointed members**

The Minister is to consult with the Chairperson before appointing any person to be an appointed member of the Board.

#### **3 Terms of office of members**

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

- (2) A person may not be an appointed member for consecutive terms totalling more than 10 years.

#### **4 Chairperson**

The Chairperson may be appointed on a full-time basis or a part-time basis.

#### **5 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.

#### **6 Deputies**

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.
- (6) An appointed member may appoint a deputy only with the approval of the Chairperson.
- (7) A person appointed as a deputy under this clause must have experience in one or more of the areas listed in section 42T (3) (a)-(e).

#### **7 Vacancy in office of member**

- (1) The office of an appointed member (other than the Chairperson) becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice

has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 6 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

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

(3) The Chairperson may be removed from office only for incapacity, incompetence or misbehaviour.

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

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

## **9 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the

disclosure and which is required to be disclosed under subclause (1).

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

#### **10 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be

recorded in the minutes of the meetings of the Board.

- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **11 Effect of certain other Acts**

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

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

#### **12 Personal liability**

A matter or thing done or omitted to be done by the Board, a member of the Board or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

#### **13 General procedure**

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

#### **14 Quorum**

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

#### **15 Presiding member**

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

## 16 Voting

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

## 17 First meeting

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

# Schedule 3 Provisions relating to Transport Advisory Group and Roads and Traffic Advisory Council

(Sections 43 (3), 54 (3))

## 1 Definitions

In this Schedule:

**Advisory Council** means the Transport Advisory Group 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 Chapter 5 of the *Public Sector Employment and Management Act 2002*, 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 Employment and Management Act 2002* does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act (except Chapter 5).
- (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

(Section 94)

### 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 authority** has the same meaning as it has in section 94.

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

### 2 Application and interpretation

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

- (a) an order under section 94 transferring assets, rights or liabilities of a rail authority to another rail authority or a subsidiary of a rail authority, a State owned corporation, the Crown or a person or body acting on behalf of the Crown,
- (b) an order under section 88I transferring assets, rights or liabilities to a person or body specified or referred to in the order,

(c) (Repealed)

(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,

(d1) an order under section 106D transferring assets, rights or liabilities of the State Transit Authority, or a subsidiary of the Authority, to Sydney Ferries or the Crown,

(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,

(f) any other order under Schedule 7 transferring assets, rights or liabilities to a body specified or referred to in the order.

(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 Duties**

Duty under the *Duties Act 1997* is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a person 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 transferor without transferring the whole of the interests of the transferor 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 and the Independent Transport Safety and Reliability Regulator**

(Section 68)

## **1 Application**

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

## **2 Definitions**

In this Schedule:

**Authority** includes the Independent Transport Safety and Reliability Regulator.

**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 spouse of the officer, or
- (b) if there is no such spouse, the children of the officer, or
- (c) if there is no such spouse 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 spouse of the officer, or
- (b) if there is no such spouse, the children of the officer, or
- (c) if there is no such spouse 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.
- (4A) If it appears to the relevant Authority that more than one person is entitled as a spouse to payment of the money value of leave under this section, the Authority must pay the amount to the deceased 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.
- (7) In this clause, **spouse** of an officer includes a person with whom the officer had a de facto relationship (within the meaning of the [Property \(Relationships\) Act 1984](#)) at the

time of his or her death.

## Schedule 6 Transfer of certain staff

(Section 95)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**former Ministry staff** means the members of staff of the Ministry of Transport who, after the commencement of clause 10A, are transferred to a transport authority by an order made under this Schedule.

**former OCG staff** means the members of staff of the Office of Co-ordinator General of Rail who, after the commencement of clause 10A, are transferred to a transport authority by an order made under this Schedule.

**former RailCorp staff** means the members of staff of RailCorp who, after the commencement of clause 11C or 11D, are transferred to the SRA or RIC by an order made under this Schedule.

**former RIC staff** means the members of staff of the RIC who, after the commencement of Part 3, are transferred to another transport authority by an order made under this Schedule.

**former SRA staff** means:

- (a) 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 and before the commencement of Part 3, are transferred to a Rail Corporation or the RSA by an order made under this Schedule, or
- (b) the members of staff of the SRA who, after the commencement of Part 3, are transferred to another transport authority by an order made under this Schedule.

**former TIDC staff** means the members of staff of TIDC who, after the commencement of clause 11C or 11D, are transferred to the SRA or RIC 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).

**transport authority** means the Ministry of Transport, the Independent Transport Safety and Reliability Regulator, the State Rail Authority, Rail Infrastructure Corporation, RailCorp or Transport Infrastructure Development Corporation.

#### **1A Transport Appeal Boards Act 1980 not to apply to RIC or TIDC**

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

## **Part 2 Original transfers of SRA staff to Rail Corporations**

### **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.

### **3A Transfers to cease**

An order may not be made under this Part on or after the commencement of Part 3.

### **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.
- (3) This clause does not apply to or in respect of staff transferred under Part 3.

### **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 11 (relating to sick leave) of the *Transport Administration (Staff) Regulation 2000* 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 certain SRA staff**

- (1) This clause applies 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.

## **Part 3 Transfer of SRA and RIC staff**

### **10 Transfer of SRA staff to Rail Infrastructure Corporation**

- (1) The Minister may, by order in writing, provide that such SRA staff as are specified or described in the order are transferred to the Rail Infrastructure Corporation.
- (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 Infrastructure Corporation, in accordance with

the terms of the order, on the day specified in the order.

#### **10A Transfer of OCG staff and Ministry staff to transport authorities**

- (1) The Minister may, by order in writing, provide that such staff of the Office of Co-ordinator General of Rail or of the Ministry of Transport as are specified in the order are transferred to the transport authority 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 transport authority, in accordance with the terms of the order, on the day specified in the order.

#### **11 Transfer of RIC staff to State Rail Authority**

- (1) The Minister may, by order in writing, provide that such RIC staff as are specified or described in the order are transferred to the State Rail Authority.
- (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 State Rail Authority, in accordance with the terms of the order, on the day specified in the order.

#### **11A Transfer of SRA staff and RIC staff to RailCorp**

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

#### **11B Transfer of SRA staff and RIC staff to Transport Infrastructure Development Corporation**

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

**11C Transfer of RailCorp and TIDC staff to SRA**

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

**11D Transfer of RailCorp and TIDC staff to RIC**

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

**12 Preservation of remuneration and other conditions of employment on transfer**

- (1) Except as otherwise provided by this Part and the regulations, the terms and conditions on which former SRA staff, former RIC staff, former OCG staff or former Ministry 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 immediately before the transfer.
- (2) Nothing in this clause prevents the terms and conditions of employment referred to in subclause (1) from being varied.

**13 Preservation of leave and other entitlements for previous service and mobility entitlements for future service**

- (1) Continuous service of former SRA staff, former RIC staff, former RailCorp staff, former TIDC staff, former OCG staff or former Ministry staff with any one or more transport authorities is taken, for all purposes, as service with whichever of them is the current employer.
- (2) This clause applies, without limiting its operation, for the purpose of the accrual of leave with the current employer and for the purpose of any entitlements to redundancy payments from the current employer.



- (3) In particular, former SRA staff, former RIC staff, former RailCorp staff, former TIDC staff, former OCG staff and former Ministry staff retain, on transfer under this Schedule (or on subsequent transfer under this Schedule), any rights to annual leave, long service leave and sick leave accrued in their previous employment with an employer or employers from whose employ they are transferred under this Schedule.
- (4) A person's entitlement to any such leave is to be calculated:
  - (a) for the part of any period during which that leave accrued or was accruing that occurred before the day of transfer—at the rate for the time being applicable to the person before that day, and
  - (b) for the part of the period that occurred after the day of transfer—at the rate for the time being applicable to the person after that day.

#### **14 Special provision relating to long service leave and sick leave for staff of RIC, RailCorp or TIDC**

- (1) For the purposes of this Part, terms and conditions, in relation to former SRA staff, former OCG staff or former Ministry staff who are transferred to the RIC, RailCorp or TIDC pursuant to an order to which this Part applies, include the provisions of:
  - (a) Schedule 5 (Extended leave for staff of each Authority) as if references in that Schedule to:
    - (i) an officer included references to an employee of the RIC, RailCorp or TIDC, and
    - (ii) a relevant Authority included references to the RIC, RailCorp or TIDC, and
  - (b) clause 11 (relating to sick leave) of the *Transport Administration (Staff) Regulation 2000* as if the references in that clause to:
    - (i) SRA officers and other employees of the SRA included references to employees of the RIC, RailCorp or TIDC, and
    - (ii) the SRA included references to the RIC, RailCorp or TIDC.
- (2) The provisions referred to in subclause (1) are, in so far as they relate to the RIC, RailCorp or TIDC, taken to have been fixed by an award.

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

- (1) This clause applies to a person who becomes, because of this Part, a member of staff of the RIC or the SRA or any other transport authority.
- (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 staff of the RIC, the SRA, RailCorp, TIDC, the Office of Co-ordinator General of Rail or the Ministry of Transport.

- (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.

## **16 Multiple transfers**

A person may be the subject of more than one order under this Part.

## **17 Applications for transfer by former SRA, RIC, RailCorp or TIDC staff**

- (1) This clause applies to the filling of any vacant position in the SRA or RIC if the applicants eligible to apply for the vacancy are limited to the staff of the SRA or RIC.
- (2) Any former SRA or RIC staff who are transferred under this Part are eligible to apply for a vacancy to which this clause applies as if they were members of staff of the SRA or RIC.
- (3) This clause does not apply to former SRA or RIC staff who are no longer employed by the SRA, the RIC, RailCorp or TIDC.
- (4) Any former SRA or RIC staff who apply for any vacant position to which this clause applies have the same rights of appeal against the filling of the position as they would have if they were employees of the SRA or RIC, as the case may be.

## **18 Personal information about employees**

The SRA is not required to comply with the [Privacy and Personal Information Protection Act 1998](#) in respect of the disclosure of information about employees, transferred or proposed to be transferred under this Schedule, to the new or proposed employer of those employees.

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

(Section 98)

## **1 Definitions**

In this Schedule:

**building owner** means an owner of a railway building.

**infrastructure owner** means an owner of rail infrastructure facilities.

**owner** of railway land, rail infrastructure facilities or a railway building means:

- (a) in the case of any land, rail infrastructure facilities or any railway building that is managed or controlled by Transport Infrastructure Development Corporation for the purposes of exercising its functions under this Act, the Transport Infrastructure Development Corporation, or
- (b) in the case of any rail infrastructure facilities that are, or railway building that is,

installed, established or replaced by ARTC, ARTC, or

- (c) in the case of any land, rail infrastructure facilities or any railway building that is subject to an ARTC lease or licence, ARTC, or
- (d) in any other case, the rail authority that owns the land, rail infrastructure facilities or railway building or in whom it is vested.

**rail authority** means:

- (a) RailCorp, RIC, Transport Infrastructure Development Corporation and the State Rail Authority, and
- (b) in the case of land, rail infrastructure facilities or buildings subject to an ARTC lease or licence, ARTC.

**railway building** means a building or structure (not being a rail infrastructure facility) situated on railway land.

**railway land** means land owned by, vested in or under the control of a rail authority.

**railway land owner** means an owner of railway land.

**station facilities** means stations, platforms and associated access works, but does not include disused stations or disused platforms or their associated access works.

### **1A Application to ARTC rail infrastructure facilities under ARTC arrangements**

Clauses 2E-12 and 15 of this Schedule, and any regulations made under clause 15 of this Schedule, do not apply to or in respect of land, rail infrastructure facilities or buildings to the extent that an ARTC arrangement entered into with a rail authority provides that specified provisions or all of those provisions do not apply to or in respect of ARTC and the rail authority in relation to that land or those facilities or buildings.

### **2 RIC's rail infrastructure facilities**

- (1) (Repealed)
- (2) 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).
- (3) This clause is subject to any interest of Transport Infrastructure Development Corporation in rail infrastructure facilities.

### **2A RailCorp's rail infrastructure facilities**

- (1) (Repealed)

- (2) RailCorp 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 RailCorp and of all rail infrastructure facilities vested in or transferred to RailCorp (whether or not the place on which the facilities are situated is owned by RailCorp).
- (3) This clause is subject to any interest of Transport Infrastructure Development Corporation in rail infrastructure facilities.

## **2B Provisions relating to vesting of rail infrastructure facilities in RailCorp**

- (1) On the commencement of this clause (the **transfer day**), the rail infrastructure facilities (and any associated assets, rights and liabilities) situated in the metropolitan rail area and vested in or owned by RIC immediately before the transfer day (the **metropolitan rail infrastructure facilities**) are vested in RailCorp.
- (2) On the transfer day, the following provisions have effect:
  - (a) all proceedings relating to the metropolitan rail infrastructure facilities commenced before the transfer day by or against Rail Infrastructure Corporation or a predecessor of Rail Infrastructure Corporation and pending immediately before the transfer day are taken to be proceedings pending by or against RailCorp,
  - (b) any act, matter or thing done or omitted to be done in relation to the metropolitan rail infrastructure facilities before the transfer day by, to or in respect of Rail Infrastructure Corporation 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 RailCorp,
  - (c) a reference in any Act, in any instrument made under any Act or in any document of any kind to Rail Infrastructure Corporation is, to the extent that it relates to the metropolitan rail infrastructure facilities, but subject to the regulations, to be read as or including a reference to RailCorp.
- (3) The Minister may, by order in writing, declare that a specified right, asset or liability is not vested in RailCorp by the operation of this clause.
- (4) The operation of clauses 2, 2A and 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 contractual provision prohibiting, restricting or regulating the assignment or transfer of the metropolitan rail infrastructure facilities, 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 the metropolitan rail infrastructure facilities.
- (5) Words and expressions used in this clause have the same meanings as they have in

Schedule 4.

**2C Changes in ownership of rail infrastructure facilities arising from changes to areas**

- (1) If, as a result of a replacement or an alteration of the metropolitan rail area map under section 3A, rail infrastructure facilities are transferred from the metropolitan rail area to the country rail area or from the country rail area to the metropolitan rail area:
  - (a) the rail infrastructure facilities (and any associated assets, rights and liabilities) vest in the owner of rail infrastructure facilities in the area to which the rail infrastructure facilities are transferred (the **new owner**) on the day the notice is published in the Gazette under that section, or on such later day as may be specified in the notice (the **transfer day**), and
  - (b) all proceedings relating to the rail infrastructure facilities (and any associated assets, rights and liabilities) commenced before the transfer day by or against the original owner or a predecessor of the original owner and pending immediately before the transfer day are taken to be proceedings pending by or against the new owner, and
  - (c) any act, matter or thing done or omitted to be done in relation to the rail infrastructure facilities (and any associated assets, rights and liabilities) before the transfer day by, to or in respect of the original owner is (to the extent that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new owner, and
  - (d) a reference in any Act, in any instrument made under any Act or in any instrument of any kind to the original owner is (to the extent that it relates to the rail infrastructure facilities), but subject to the regulations, to be read as or including a reference to the new owner.
- (2) The Minister may, by order in writing, declare that a specified right, asset or liability is not vested in the new owner by the operation of this clause.
- (3) The operation of section 3A (2) and 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 contractual provision prohibiting, restricting or regulating the assignment or transfer of the rail infrastructure facilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any rights or liabilities of the original owner.
- (4) For the purposes of subclause (1) (a), RailCorp is taken to be the owner of rail infrastructure facilities in the metropolitan rail area and RIC is taken to be the owner of rail infrastructure facilities in the country rail area.

- (5) This clause is subject to any interest of Transport Infrastructure Development Corporation in rail infrastructure facilities.
- (6) Without limiting subclause (3), that subclause extends to an ARTC lease or licence.

## **2D General powers**

- (1) An owner may, subject to this Act, the current NSW rail access undertaking and the *State Owned Corporations Act 1989*, sell or otherwise deal with rail infrastructure facilities that it owns.
- (2) In this clause, **owner**, in relation to rail infrastructure facilities RIC owns that are subject to an ARTC lease or licence, includes RIC and ARTC.
- (3) The powers conferred on ARTC by this clause are subject to Part 8A of the Act.

### **Note—**

Restrictions on ARTC relating to selling or otherwise dealing with rail infrastructure facilities are contained in Part 8A of the Act.

## **2E Powers relating to railway land, railway buildings and rail infrastructure facilities**

- (1) An infrastructure owner or a building owner 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 or railway buildings that are situated on railway land or on or in a railway building or rail infrastructure facility to ensure that, in the opinion of the owner, the rail infrastructure facilities or railway buildings are established, held and managed in an efficient, safe and reliable manner.
- (2) Subclause (1) does not permit ARTC to extend or expand rail infrastructure facilities.

## **3 Entry on to land, buildings or facilities**

- (1) An infrastructure owner or a building owner may, by persons issued with certificates of authority under this Schedule, enter and occupy railway land or a railway building or rail infrastructure facility, or land adjacent to railway land, 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 the owner considers is necessary or appropriate to any of its rail infrastructure facilities or railway buildings or to construct new rail infrastructure facilities or railway buildings 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 or facility to enable the owner to inspect, operate, repair, replace, maintain, remove, extend,

expand, alter, connect, disconnect, improve or do any other thing to the owner's rail infrastructure facilities or railway buildings, and

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

(1A) ARTC may, by persons issued with certificates of authority under this Schedule, enter and occupy land adjacent to railway land for the purpose of constructing, extending or expanding new rail infrastructure facilities on the railway land in accordance with an ARTC lease or licence.

(1B) Subclause (1) (a) does not permit ARTC to enter railway land or railway buildings or rail infrastructure facilities to construct, extend or expand new rail infrastructure facilities.

(2) Material that has been excavated from railway land for the purposes of this clause may be removed from the land by the infrastructure owner or building owner with the railway land owner's consent and may be disposed of by the rail infrastructure owner or building owner with the railway land owner's consent.

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

(4) An infrastructure owner or a building owner 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 railway land or railway building or rail infrastructure facility all unused stores, materials, construction equipment, rubbish and unused excavated material and portable buildings that it has placed on or in the railway land or railway building or rail infrastructure facility.

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

(6) In this clause:

**land adjacent to railway land** means land that is adjacent to or adjoins land owned or occupied by a rail authority, or land in or on which rail infrastructure facilities are or a railway building is situated in which an infrastructure owner or a building owner has an interest by way of easements or stratum parcel.

- (7) This clause does not apply if the owner of the rail infrastructure facilities or railway building concerned is also the owner of the railway building or railway land or rail infrastructure facility in or on which the facilities or building is situated.

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

- (1) An infrastructure owner or a building owner may authorise an officer or employee of the owner, 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 owner authorised to enter railway land, railway buildings or rail infrastructure facilities**

- (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 railway land, or to a railway building or rail infrastructure facility that is not vested in, owned by or managed or controlled by the person, 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 railway land or railway building or rail infrastructure facility concerned.
- (3) In this clause, **access agreement** means an agreement, entered into by the owner pursuant to the current NSW rail access undertaking, 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 railway building or rail infrastructure facility under a power conferred by this Schedule, the relevant owner exercising the power or another person must serve on the building owner or infrastructure owner reasonable notice in writing of the intention to enter the building or facility on a day or days specified in the notice unless:
- (a) entry to the building or facility is made with the consent of the building owner or



infrastructure owner, 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 the owner or a person nominated by the chief executive officer of the owner (either generally or in the particular case) must give the building owner or infrastructure owner 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 notice to be given of the entry of a person onto railway land under a power conferred by this Schedule.
- (4) This clause does not apply if the person entering a railway building or rail infrastructure facility is the owner of the building or facility.

## **7 Compensation**

- (1) An infrastructure owner or a building owner is, in exercising its functions under this Schedule, to do as little damage as practicable.
- (2) An infrastructure owner or a building owner must, subject to this Schedule, compensate a railway land owner, an owner of land adjacent to railway land, infrastructure owner or a building owner (an **affected owner**) for damage suffered by the affected owner as the result of the exercise of functions by the owner. However, the owner is required to pay compensation to the affected owner only if the construction or maintenance work damages or interferes with a railway building or rail infrastructure facility or other structure owned by the affected owner on the land.
- (3) Any claim for compensation by an affected owner for damage caused by the exercise of functions by an infrastructure owner or building owner under this Schedule must be made in writing to the chief executive officer of the owner 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 the owner.
- (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 an infrastructure owner or building owner and an affected owner. However, the amount of compensation for damage to a railway building or rail infrastructure facility or other structure owned by the affected owner must not exceed the value of the building, facility or structure.
- (6) If an infrastructure owner or building owner and an affected owner 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 dealt with as a dispute in accordance with clause 12.

- (7) An infrastructure owner or a building owner 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 a rail operator. However, an owner is not required to compensate a rail operator for any loss suffered or cost or expense incurred by a rail operator as a result of any such disruption.
- (8) For the removal of doubt, an affected owner is not entitled to claim or recover any payment or other benefit merely because rail infrastructure facilities owned by the affected owner or railway buildings owned by an infrastructure owner or building owner are situated on or in railway land or a railway building or rail infrastructure facility.
- (9) This clause does not apply if the owner of the rail infrastructure facilities or railway building concerned is also the owner of the railway building or railway land or rail infrastructure facility in or on which the facilities or building is situated.

## **8 Protection of rail infrastructure facilities and railway buildings**

- (1) Any railway land (or any railway land on which a railway building or rail infrastructure facility is erected) in or on which rail infrastructure facilities or railway buildings owned by another infrastructure owner or building owner are installed is taken to be the subject of a covenant in favour of the owner pursuant to which the railway land owner (the **affected owner**) must ensure that:
  - (a) the rail infrastructure facilities or railway buildings are not wilfully or negligently destroyed, damaged or interfered with by any employee, agent or contractor of the affected owner or any other person within its control, and
  - (b) the infrastructure owner or building owner 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 or railway buildings, 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 or railway buildings in a manner that interferes with their operation, and
  - (d) the infrastructure owner or building owner is notified in writing of any proposed construction, repair, maintenance, alteration, removal, demolition or other similar work on railway land or a railway building or a rail infrastructure facility that threatens or is likely to threaten the safety or operational capacity or efficiency of the owner's rail infrastructure facilities or railway buildings and that the infrastructure owner or building owner has consented in writing to any such work

before it is undertaken, and

(e) the infrastructure owner or building owner is notified in writing of any proposal to sell or otherwise dispose of railway land or railway buildings or rail infrastructure facilities on or in which the owner's rail infrastructure facilities or railway buildings are situated and that the infrastructure owner or building owner 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 a railway land owner 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 and facilities, the subject of the lease or licence, as are imposed by subclause (1) on the affected owner in relation to the affected owner's land and buildings and facilities.
- (4) It is a defence to proceedings by an infrastructure owner or building owner under this clause that the affected owner or, in a case to which subclause (3) applies, the lessee or licensee from the affected owner, could not reasonably have prevented action taken by any person that would, if capable of prevention by the affected owner, lessee or licensee, have resulted in a breach of covenant by the affected owner, lessee or licensee.
- (5) If a person:
- (a) places a structure or object in, on or near rail infrastructure facilities or railway buildings owned by an infrastructure owner or building owner that are situated in or on railway land or a railway building or rail infrastructure facility in a manner that interferes with the operation of the facilities or railway buildings, or
  - (b) carries out, or proposes to carry out, any construction, repair, maintenance, alteration, removal, excavation, demolition or other similar work in, on or near rail infrastructure facilities or railway buildings owned by an infrastructure owner or building owner that are situated in or on railway land or a railway building or rail infrastructure facility in a manner that threatens or is likely to threaten the safety or operational capacity or efficiency of the owner's rail infrastructure facilities or railway buildings,

the infrastructure owner or building owner 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, or

(c) reinstate any loss of support caused to the rail infrastructure facilities or railway buildings,

and compensate the infrastructure owner or building owner 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 railway buildings 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 the infrastructure owner or building owner in writing, the infrastructure owner or building owner may:

(a) remove the structure or object, or

(b) alter or remove the work, or

(c) reinstate any loss of support caused to the rail infrastructure facilities or railway buildings,

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.

(8) (Repealed)

## **9 Compensation to owners for damage**

(1) Without limiting clause 8, a person who, without the consent of an infrastructure owner or building owner:

(a) carries out any activity that causes destruction of, damage to or interference with any rail infrastructure facilities or railway buildings owned by the owner, 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 the owner for all loss or damage suffered by the owner as a result.

(2) An infrastructure owner or a building owner 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) An infrastructure owner or a building owner may proceed against a person for recovery of its loss or compensation for its damage under this clause whether or not the owner 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 Infrastructure owners rights under agreements relating to workers and facilities on railway land**

- (1) This clause applies to any agreement entered into by RailCorp or the SRA (or a predecessor of them) before the commencement of Schedule 1 [145] to the *Transport Administration Amendment (Rail Agencies) Act 2003* under which a person may construct, maintain or use works or facilities on railway land or in a railway building or rail infrastructure facility, being an agreement under which the infrastructure owner 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 infrastructure owner 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) An infrastructure owner has and may exercise any such rights, in addition to RailCorp or the SRA, if the works or facilities are, or are to be, situated on or near land or a building or rail infrastructure facility where there are rail infrastructure facilities vested in or owned by the infrastructure owner. For that purpose, references in the agreement to RailCorp or the SRA are taken to include references to the infrastructure owner.
- (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, **railway land** or **railway building** includes any land or building of which RailCorp or 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 the infrastructure owner concerned, and
  - (b) if the work proposed involves crossing and placing railway track on railway land in order to connect with the NSW rail network, the written consent of the railway land owner.
- (2) An infrastructure owner may grant a consent under this clause on such terms and conditions as it thinks fit.

However, the owner must not unreasonably prevent a person who occupies land adjoining the NSW rail network connecting railway track to its network if the owner is satisfied that:

- (a) the connection accords with the objectives of the owner 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 2002](#) 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 this Act.

- (3) A railway land owner may grant a consent under this clause on such terms and conditions as it thinks fit. However, the railway land owner must not unreasonably

prevent a person who occupies land that adjoins railway land from constructing railway track on railway land for the purpose of connecting it to the NSW rail network.

- (4) An infrastructure owner or, in a case to which subclause (1) (b) applies, a railway land owner, 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 an infrastructure owner, building owner or railway land owner and another owner with respect to the operation of, or compliance with, the provisions of this Schedule and if, after diligent efforts on the part of the parties to the dispute, the dispute has not been resolved, either party may submit the dispute to the Minister for settlement in accordance with this clause.
- (1A) If ARTC is a party to a dispute and the dispute has not been resolved as referred to in subclause (1), the dispute is to be referred to arbitration, unless the parties agree to submit the dispute to the Minister under this clause. The [Commercial Arbitration Act 1984](#) applies to any dispute referred to arbitration.
- (2) On the submission of a dispute to the Minister, the Minister is to:
- (a) consult with the parties to the dispute, 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, or
  - (b) subject to clause 7, determining that a party is to compensate another party for damage suffered as a result of the exercise of functions under this Schedule, or
  - (c) directing a party to permit a person to construct railway track on railway 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) An owner must comply with any order given to the owner under this clause, and the owner is, despite the provisions of any Act, empowered to comply with any such order.
- (7) Except as provided by subclause (1A), 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.

### **13A Acquisition of rail infrastructure facilities**

- (1) RailCorp or RIC may acquire rail infrastructure facilities for purposes that are consistent with their objectives.
- (2) Rail infrastructure facilities that RailCorp or RIC are 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* (as applied by this clause) for the purposes referred to in subclause (1).
- (3) The *Land Acquisition (Just Terms Compensation) Act 1991* applies with the following modifications:
  - (a) a reference in that Act to land includes a reference to rail infrastructure facilities and any interest in such facilities,
  - (b) a reference in that Act to the owner of land includes a reference to the owner of



rail infrastructure facilities or any person who has an interest in rail infrastructure facilities,

- (c) sections 6, 7A, 7B, 12 (1) (a), (4) and (5), 17 and 18, Division 3 of Part 2, sections 29, 31 (5), 37A, 55 (e) and (f), 60 and 62 of that Act do not apply.
- (4) RailCorp or 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 RailCorp or 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 an acquisition under 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, RailCorp or RIC may at their discretion maintain such fences in connection with the works as they think fit.
- (8) This clause applies in respect of rail infrastructure facilities severed from the land by operation of this Act or any other law.

### **13B Access to station facilities**

- (1) An owner of station facilities is entitled to have access across railway land or other land adjacent to the station facilities to those facilities for the purposes of carrying out its railway operations, including the movement of passengers and freight.
- (2) An owner of station facilities may grant access across any such land to passengers and other persons for the purposes of passenger access and access to its railway operations.
- (3) A person who has a right of access under this clause is not required to comply with any other requirement of this Schedule relating to access to the land concerned.

### **13C Access to railway land by roads authorities and to roads by rail authorities**

- (1) This clause applies:
- (a) to the exercise by a roads authority, the Roads and Traffic Authority or an authorised officer of a roads authority or the Roads and Traffic Authority of a power under any Act or law to enter, use or occupy railway land, a railway building or rail infrastructure facilities for the purposes of carrying out road works, and
- (b) to the exercise by a rail authority of a power under any Act or law to enter, use or occupy a public road.

- (2) The following provisions apply to the exercise of a power to which this clause applies:
- (a) the authority exercising the power is required to pay compensation to the affected authority in respect of the following matters arising from the exercise of the power but is not required to pay any other compensation to the affected authority:
    - (i) damage caused to a building or structure of the affected authority (being compensation for an amount not exceeding the value of the building or structure),
    - (ii) expenses necessarily incurred by the affected authority to ensure that the power is exercised safely,
  - (b) the affected authority must facilitate the exercise of the power by the authority exercising the power,
  - (c) the authority exercising the power must do all things that are reasonably practicable to minimise disruption to or closure of rail services, railway lines or roads.
- (3) This clause has effect despite this Act, the [Roads Act 1993](#) or any other Act or law.
- (4) In this clause:
- affected authority** means the roads authority (including the Roads and Traffic Authority) or rail authority that owns or manages or controls the public road, land, railway building or rail infrastructure facilities subject to the exercise of the power to which this clause applies.
- (5) Words and expressions used in this clause have the same meanings as they have in the [Roads Act 1993](#).

#### **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 an owner after the commencement of this clause, or
  - (b) the operation, repair, replacement, maintenance, removal, extension, expansion, alteration, connection or disconnection by an owner of rail infrastructure facilities that are vested in or transferred to or managed or controlled by an owner 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 the owner in relation to the proposal, and
  - (c) the owner 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 concerning land and rail infrastructure facilities**

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

- (a) the obligations of infrastructure owners, building owners and railway land owners to enter into a memorandum of understanding with other owners concerning the management of railway land or railway buildings or rail infrastructure facilities on or in which rail infrastructure facilities or railway buildings owned by other owners are situated,
- (a1) requirements to be observed between infrastructure owners, building owners and railway land owners with respect to access by infrastructure owners and building owners to railway land and management of that access,
- (b) the use of rail infrastructure facilities or railway buildings vested in or owned by an owner,
- (c) the protection and preservation of rail infrastructure facilities or railway buildings.

### **16 Powers of entry under other Acts onto railway land, rail infrastructure facilities or railway buildings**

- (1) This clause applies to an officer of a public or local authority who is entitled, under any other Act or law, to enter railway land, rail infrastructure facilities or a railway building.
- (2) Despite the operation of any other Act or law, the owner may refuse entry to the land, facilities or building, or grant entry subject to conditions, if of the opinion that it is necessary to do so in the interests of public safety or the safety of the officer or other persons.
- (3) The Director-General may direct that entry be granted, despite any decision of an owner under this clause.
- (4) This clause does not apply to or in respect of a police officer investigating an offence

or otherwise acting in the course of his or her duties or an officer of the Independent Transport Safety and Reliability Regulator.

## **Schedule 6AA Access undertakings**

(Section 99C (5))

### **1 Preparation of access undertaking**

(1) A rail infrastructure owner may from time to time prepare:

- (a) an access undertaking, or
- (b) a variation of an existing access undertaking,

for the purpose of implementing the Competition Principles Agreement in respect of third party access to the part of the NSW rail network for which it is the rail infrastructure owner by the national rail track corporation, by rail operators and by access purchasers.

(2) Before completing its preparation of an access undertaking or variation, a rail infrastructure owner:

- (a) must cause a copy of the proposed undertaking or variation to be made available for public inspection, and posted on its Internet website, for at least 30 days, and
- (b) must cause notice of the proposed undertaking or variation:
  - (i) containing details of the places (including the address of the relevant Internet website) where it can be inspected, and
  - (ii) stating that public submissions may be made in relation to it during that period,

to be published in a daily newspaper circulating throughout New South Wales, and

- (c) must take into consideration any submissions made in relation to the proposed undertaking or variation during that period.

(3) Subclause (2) does not apply if the access undertaking or variation (or a substantially similar access undertaking or variation):

- (a) has been submitted to the Australian Competition and Consumer Commission under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, and
- (b) has been withdrawn without having been accepted under that section, and
- (c) prior to its being withdrawn, has been subject to a public consultation process under section 44ZZA (4) of that Act.

- (4) In this clause, **Competition Principles Agreement** means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.

## **2 Access undertaking to apply Part 4A of IPART Act 1992**

- (1) An access undertaking 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:
- (a) by the national rail track corporation, or
  - (b) by persons in their capacities as rail operators or access purchasers.
- (2) In any arbitration of such a dispute, the arbitrator:
- (a) must give effect to the access undertaking, and
  - (b) must take into account (in addition to the matters referred to in section 24B (3) of the *Independent Pricing and Regulatory Tribunal Act 1992*) the desirability of ensuring priority and certainty of access for passenger services.

## **3 Access undertaking may make provision for intending access purchasers**

- (1) An access undertaking may make provision for persons:
- (a) who intend to be access purchasers, and
  - (b) who, in the opinion of the rail infrastructure owner, 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 part of the NSW rail network for which it is the rail infrastructure owner.
- (2) Such a person may be provided with access under an undertaking 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.

## **4 Access undertaking may confer or impose functions on IPART**

An access undertaking may confer or impose functions on the Independent Pricing and Regulatory Tribunal in connection with the undertaking.

## **5 Access undertaking to be submitted for Minister's approval**

- (1) An access undertaking or variation prepared under this Schedule must be submitted for the Minister's approval, together with:
- (a) a summary of the submissions made in relation to the proposed undertaking or variation, whether under clause 1 of this Schedule or under section 44ZZA of the

*Trade Practices Act 1974* of the Commonwealth, and

- (b) the rail infrastructure owner's comments on those submissions.
- (2) When considering the access undertaking or variation, the Minister is to take into consideration all of the public benefits arising from the undertaking or variation (including those that do not have a direct commercial value).
- (3) An approval under this clause is not to be given except with the concurrence of the Premier.

## **6 Commencement of access undertaking or variation**

- (1) An access undertaking or variation takes effect:
  - (a) on the day on which notice of the Minister's approval of the undertaking or variation is published in the Gazette, or
  - (b) on such later day as may be specified in the notice.
- (2) As soon as practicable after the relevant notice is published in the Gazette, the rail infrastructure owner must ensure that:
  - (a) the terms of the access undertaking or variation are published on its website on the Internet, and
  - (b) copies of the access undertaking or variation are made available for inspection and purchase at each of its offices.

## **7 Existing access agreements unaffected**

The commencement of an access undertaking or variation under this Schedule does not affect any access agreements in relation to the part of the NSW rail network for which it is the rail infrastructure owner that have been entered into between a rail infrastructure owner and any other person before that commencement.

## **8 Rail Safety Act 2002 unaffected**

Nothing in this Schedule affects the operation of the *Rail Safety Act 2002*.

## **9 Definition**

In this Schedule, ***national rail track corporation*** means:

- (a) subject to paragraph (b), Australian Rail Track Corporation Limited (ACN 081 455 754), or
- (b) if some other corporation is prescribed by the regulations for the purposes of this definition (being a corporation established under an agreement between the Commonwealth, the Territories and the States with respect to the provision of

interstate access to Australian rail networks), that other corporation.

## Schedule 6B Special provisions for underground rail facilities

(Section 97)

### 1 Interpretation

(1) In this Schedule:

**rail authority** means RailCorp, TIDC, RIC, ARTC or the Director-General.

**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).
- (3) A rail authority in whom an underground rail facility is vested, or who manages or controls an underground rail facility, has the same functions under this clause as any other rail authority that is the owner of the facility for the purposes of this Schedule.
- (4) This clause does not apply to or in respect of underground rail facilities to the extent that an ARTC arrangement provides that any specified provisions of this clause do not apply to or in respect of ARTC and a rail authority in relation to those facilities.

## **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*

*Freight Rail Corporation (Sale) Act 2001* (but only in relation to amendments to this Act)

*Transport Administration Amendment (Rail Access) Act 2001*

*Rail Safety Act 2002* (but only in relation to amendments to this Act)

*Transport Legislation Amendment (Safety and Reliability) Act 2003*

*Transport Administration Amendment (Rail Agencies) Act 2003*

*Transport Administration Amendment (Sydney Ferries) Act 2003*

*Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only in relation to the amendments made to this Act)

*Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005* (but only in relation to the amendments made to this Act)

- (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 191A 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

### 84-88 (Repealed)

## 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.

### **Part 8 Provisions consequent on enactment of [Transport Administration Amendment \(Rail Access\) Act 2001](#)**

#### **99 Definition**

In this Part, **the 2001 amending Act** means the [Transport Administration Amendment \(Rail Access\) Act 2001](#).

### **100 NSW Rail Access Regime**

The NSW Rail Access Regime in force under section 19B (as in force immediately before the repeal of that section by the 2001 amending Act) continues to have effect for the purposes of this Act as if it were an access undertaking in force under Schedule 6AA, and may be varied accordingly, until a new access undertaking takes effect under:

- (a) section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth, or
- (b) Schedule 6AA to this Act,

as the case may be.

### **101 Directions under former section 19B**

Any order that, immediately before the commencement of section 19A (3), was in force under section 19B (2) is taken to have been made under section 19A (3).

## **Part 9 Provisions consequent on enactment of *Transport Legislation Amendment (Safety and Reliability) Act 2003***

### **102 Definitions**

In this Part:

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

**the amending Act** means the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.

### **103 Co-ordinator General of Rail and other executive officers cease to hold office**

- (1) The person who, immediately before the constitution of the ITSRR, held office as the Co-ordinator General of Rail ceases to hold that office.
- (2) A person who, immediately before the constitution of the ITSRR, held a senior executive position (within the meaning of the *Public Sector Employment and Management Act 2002*) within the Office of Co-ordinator General of Rail:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the staff of the ITSRR or the Ministry of Transport.
- (3) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (4).
- (4) Part 3.1 of the *Public Sector Employment and Management Act 2002* applies to a person who ceases under this clause to hold office as if the person had ceased to be

an executive officer as referred to in section 77 of that Act.

**Note—**

Subclause (4) ensures that the person retains any rights to compensation or right of return that the person would have had if removed from office by the Governor instead of by operation of this clause.

**104 Abolition of Office of Co-ordinator General of Rail**

The Office of Co-ordinator General of Rail is abolished.

**105 References to Office of Co-ordinator General of Rail**

In any 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) the Co-ordinator General of Rail or the Office of Co-ordinator General of Rail is to be read as a reference to the ITSRR, except as provided by the regulations.

**106 Transfer of staff**

Schedule 6 has effect with respect to members of staff of the Office of Co-ordinator General of Rail and of the Ministry of Transport.

**107 Advisory Councils**

- (1) A person who, immediately before the repeal of Parts 5 and 5A by the amending Act, held office as a member of the Public Transport Authority or the Public Transport Advisory Council ceases to hold that office.
- (2) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office.

**108 Transfer of assets, rights and liabilities to ITSRR**

- (1) The Minister may, by order in writing, direct that such assets, rights or liabilities of the Transport Administration Corporation or the Office of Co-ordinator General of Rail, or in respect of a contract or arrangement entered into by the Director-General, as are specified or referred to in the order be transferred to the ITSRR or any other body constituted under this Act.
- (2) An order under this clause may be made on such terms and conditions as are specified in the order.
- (3) Schedule 4 applies to an order made under this clause.

**Part 10 Provisions consequent on enactment of [Transport](#)**

## Administration Amendment (Rail Agencies) Act 2003

### 109 Definition

In this Part:

**the amending Act** means the *Transport Administration Amendment (Rail Agencies) Act 2003*.

### 110 RailCorp may act as agent of other rail authorities

For the purposes of giving effect to a transfer of assets, rights or liabilities to RailCorp under this Act (as amended by the amending Act), or the vesting of rail infrastructure facilities in RailCorp under this Act (as amended by the amending Act), RailCorp may act as the agent of the SRA or RIC.

### 111 Rail authorities may enter into arrangements for joint facilities and other matters

- (1) For the purposes of giving effect to the amending Act, a rail authority may make and enter into contracts, leases, licences or other arrangements with another rail authority or any other person with respect to the provision of services or the supply of goods jointly to both rail authorities or to one of the authorities.
- (2) Any such contract, lease, licence or other arrangement may apply to the provision of services or the supply of goods by either of the authorities or by any other person.
- (3) Any such contract, lease, licence or other arrangement may be entered into, and has effect, despite any requirement for consent under any other contract, lease, licence or arrangement between a rail authority and any other person.
- (4) The operation of this clause is not to be regarded:
  - (a) as a breach of a contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment 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.
- (5) Nothing in this clause limits any other power of a rail authority to enter into any contract, lease, licence or other arrangement with another rail authority or any other person.
- (6) In this clause:

**rail authority** means the State Rail Authority, RailCorp, Rail Infrastructure Corporation or Transport Infrastructure Development Corporation.

### **112 Rights of staff who join RailCorp or Transport Infrastructure Development Corporation**

- (1) This clause applies to an employee of the SRA or Rail Infrastructure Corporation who changes (other than by transfer under Schedule 6) from that employment to employment with RailCorp or Transport Infrastructure Development Corporation within 2 years of the commencement of this clause.
- (2) Clauses 13 and 14 of Schedule 6 apply to an employee in the same way as they apply to an employee transferred to RailCorp or Transport Infrastructure Development Corporation under that Schedule.
- (3) The SRA is not required to comply with the *Privacy and Personal Information Protection Act 1998* in respect of the disclosure of information about employees referred to in subclause (1) to the new or proposed employer of those employees.

### **113 Rail access**

- (1) A rail access agreement entered into by Rail Infrastructure Corporation, and in force immediately before the commencement of this clause:
  - (a) continues in force, and
  - (b) to the extent that it relates to rail infrastructure facilities vested in RailCorp by the amending Act, is taken to have been entered into by RailCorp.
- (2) For the purposes of any such agreement, RailCorp may act as the agent of Rail Infrastructure Corporation under the agreement and may exercise any of the functions of Rail Infrastructure Corporation under that agreement.
- (3) Nothing in this clause prevents the variation, termination or replacement of a rail access agreement continued by this clause.
- (4) In this clause, **rail access agreement** means an agreement entered into by Rail Infrastructure Corporation pursuant to the NSW Rail Access Regime or the RIC access undertaking, that permits a person to operate rolling stock on the NSW rail network.

### **114 Orders fixing train fares and travel terms and conditions**

An order made by the State Rail Authority under section 85, and in force immediately before the commencement of this clause, is taken to have been made by RailCorp under that section and that section applies accordingly.

### **115 Saving of existing free or concessional travel arrangements**

Any free or concessional travel pass issued by the State Rail Authority under section 88 before the commencement of this clause, and in force immediately before the commencement of this clause, is taken to have been issued by RailCorp under that section and that section applies accordingly.



### **116 Saving of tickets**

Any ticket issued by or on behalf of the State Rail Authority, and valid immediately before the commencement of this clause, is taken to have been issued by RailCorp and continues (if otherwise valid) to be a valid ticket.

### **117 Saving of regulations**

A regulation made under section 99, and in force before the commencement of this clause, is taken to have been made under section 91 as inserted by the amending Act.

### **118 Penalty notices**

Nothing in the amending Act affects the validity of a penalty notice (whether under this or any other Act or law) issued by or on behalf of the State Rail Authority before the commencement of this clause.

### **119 Previous transfers of assets, rights and liabilities**

Nothing in this Schedule affects the transfer, before the commencement of this clause, of any assets, rights or liabilities under this Act and Schedule 4 continues to apply to or in respect of any such transfer.

### **120 Previous transfers of staff of SRA or RIC**

Nothing in this Schedule affects the transfer, before the commencement of this clause, of any staff of the State Rail Authority or Rail Infrastructure Corporation under this Act and Schedule 6 continues to apply to or in respect of any such transfer.

### **121 Saving of [Rail Safety Act 2002](#)**

Nothing in the amending Act affects the operation of the [Rail Safety Act 2002](#).

### **122 References to SRA**

- (1) Except as provided by the regulations, a reference in any Act, in any instrument made under any Act or in any document of any kind to the State Rail Authority is, to the extent that it relates:
  - (a) to the metropolitan rail area or the exercise of functions relating to railway passenger services in this State, to be read as or including a reference to RailCorp, or
  - (b) to its responsibility for network control, to be read as or including a reference to the person having responsibility for the network control under this Act, or
  - (c) to the development of a railway system or other transport project undertaken by Transport Infrastructure Development Corporation under section 18E (2), to be read as or including a reference to Transport Infrastructure Development

Corporation.

- (2) This clause has effect subject to any transfers of assets, rights or liabilities under this Act.

### **123 Existing development applications and other matters**

- (1) This clause applies to a development application or matter relating to:
- (a) rail infrastructure facilities or other assets transferred to RailCorp from the State Rail Authority or Rail Infrastructure Corporation under this Act, or
  - (b) a function conferred on RailCorp under this Act that was, immediately before the commencement of this clause, conferred on the State Rail Authority or Rail Infrastructure Corporation, or
  - (c) the development of a railway system or other transport project undertaken by Transport Infrastructure Development Corporation under section 18E (2) (a **transferred development**).
- (2) A development application relating to a matter referred to in subclause (1) (a) or (b) made by the State Rail Authority or Rail Infrastructure Corporation under the *Environmental Planning and Assessment Act 1979* before the commencement of this clause, and not finally determined before that commencement, is taken to have been made by RailCorp.
- (3) A development application relating to a transferred development made by the State Rail Authority or Rail Infrastructure Corporation under the *Environmental Planning and Assessment Act 1979* before the commencement of this clause, and not finally determined before that commencement, is taken to have been made by Transport Infrastructure Development Corporation.
- (4) For the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*, RailCorp is taken to be the determining authority in respect of any matter (other than a matter relating to a transferred development) not finally determined under that Part before the commencement of this clause in which the State Rail Authority or Rail Infrastructure Corporation was the determining authority.
- (5) For the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*, Transport Infrastructure Development Corporation is taken to be the determining authority in respect of any matter relating to a transferred development not finally determined under that Part before the commencement of this clause in which the State Rail Authority or Rail Infrastructure Corporation was the determining authority.
- (6) Transport Infrastructure Development Corporation is, subject to the regulations, taken to be the holder of any development approval under the *Environmental Planning and Assessment Act 1979* relating to a transferred development and in force immediately

before the commencement of this clause.

#### **124 IPART determinations**

- (1) For the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*, a determination of the pricing for transport services provided by the State Rail Authority, in force immediately before the commencement of this clause, extends to transport services operated by RailCorp.
- (2) Nothing in this clause prevents any such determination from being revoked, or a further determination being issued for RailCorp.

#### **125 Timetable for first statements of corporate intent**

A period within which any matter is required to be done under this Act in relation to a statement of corporate intent, in connection with the first statement of corporate intent of RailCorp or Transport Infrastructure Development Corporation, may be extended by the voting shareholders of the Corporation concerned.

#### **126 Licences and other authorisations**

- (1) This clause applies to a licence, permit, approval or other authorisation granted to the State Rail Authority or Rail Infrastructure Corporation under any of the following Acts or under a regulation under any of those Acts, and in force immediately before the commencement of this clause:
  - (a) *Dangerous Goods Act 1975*,
  - (b) *Environmental Planning and Assessment Act 1979*,
  - (c) *Home Building Act 1989*,
  - (d) *Occupational Health and Safety Act 2000*,
  - (e) *Protection of the Environment Operations Act 1997*,
  - (f) *Sydney Harbour Foreshore Authority Act 1998*,
  - (g) *Sydney Water Act 1994*,
  - (h) any other Act prescribed by the regulations.
- (2) An authorisation is, to the extent that it relates to former SRA or RIC functions or former RIC infrastructure, taken to be held by RailCorp on the same terms and conditions as the State Rail Authority or Rail Infrastructure Corporation held the authorisation immediately before the commencement of this clause.
- (3) The regulations may exempt an authorisation from the operation of this clause.
- (4) Nothing in this clause prevents an authorisation from being varied, cancelled or

replaced.

(5) In this clause:

**former RIC infrastructure** means rail infrastructure facilities vested in or owned by RailCorp that, immediately before the commencement of clause 2B of Schedule 6A, were vested in or owned by RIC.

**former SRA or RIC functions** means a function conferred on RailCorp under Part 2, as inserted by the amending Act, that was, immediately before the commencement of that Part, conferred on the State Rail Authority or Rail Infrastructure Corporation.

## **Part 11 Provisions consequent on enactment of [Transport Administration Amendment \(Sydney Ferries\) Act 2003](#)**

### **127 Definition**

In this Part:

**the amending Act** means the [Transport Administration Amendment \(Sydney Ferries\) Act 2003](#).

### **128 Sydney Ferries may act as agent of STA**

For the purposes of giving effect to a transfer of assets, rights or liabilities to Sydney Ferries under this Act (as amended by the amending Act) Sydney Ferries may act as the agent of the State Transit Authority.

### **129 STA may enter into arrangements for joint facilities and other matters**

- (1) For the purposes of giving effect to the amending Act, the State Transit Authority or Sydney Ferries may make and enter into contracts, leases, licences or other arrangements with each other or any other person with respect to the provision of services or the supply of goods jointly to the Authority and Sydney Ferries or to Sydney Ferries.
- (2) Any such contract, lease, licence or other arrangement may apply to the provision of services or the supply of goods by either the State Transit Authority or Sydney Ferries or by any other person.
- (3) Any such contract, lease, licence or other arrangement may be entered into, and has effect, despite any requirement for consent under any other contract, lease, licence or arrangement between the State Transit Authority and any other person.
- (4) The operation of this clause is not to be regarded:
  - (a) as a breach of a contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the

assignment 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.

(5) Nothing in this clause limits any other power of the State Transit Authority or Sydney Ferries to enter into any contract, lease, licence or other arrangement with any other person.

### **130 Orders fixing fares and travel terms and conditions**

An order made by the State Transit Authority under section 85 applying to charges for Sydney ferry services, and in force immediately before the commencement of this clause, is taken to have been made by Sydney Ferries under that section and that section applies accordingly.

### **131 Saving of existing free or concessional travel arrangements**

Any free or concessional travel pass issued by the State Transit Authority under section 88 before the commencement of this clause, and in force in relation to Sydney ferry services immediately before that commencement, is taken to have been issued by Sydney Ferries and that section applies accordingly.

### **132 Saving of tickets**

Any ticket issued by or on behalf of the State Transit Authority for a Sydney ferry service, and valid immediately before the commencement of this clause, is taken to have been issued by Sydney Ferries and continues (if otherwise valid) to be a valid ticket.

### **133 Application of regulations**

(1) A regulation made under section 104, and in force immediately before the commencement of this clause:

(a) is taken to have also been made under section 106C, and

(b) applies to or in respect of Sydney Ferries in the same way that it applies to or in respect of the State Transit Authority.

(2) Nothing in this clause prevents the amendment or repeal of any such regulation.

### **134 Penalty notices**

Nothing in the amending Act affects the validity of a penalty notice (whether under this or any other Act or law) issued by or on behalf of the State Transit Authority immediately before the commencement of this clause.

### **135 References to State Transit Authority**

(1) Except as provided by the regulations, a reference in any Act, in any instrument made

under any Act or in any document of any kind to the State Transit Authority is, to the extent that it relates to any act, matter or thing relating to the provision of Sydney ferry services, to be read as or including a reference to Sydney Ferries.

- (2) This clause has effect subject to any transfers of assets, rights or liabilities under this Act.

### **136 IPART determinations**

- (1) For the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*, a determination of the pricing for ferry services provided by the State Transit Authority, in force immediately before the commencement of this clause, extends to Sydney ferry services operated by Sydney Ferries.
- (2) Nothing in this clause prevents any such determination from being replaced, or a further determination being issued for Sydney Ferries.

### **137 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under this Act in relation to a statement of corporate intent, in connection with the first statement of corporate intent of Sydney Ferries, may be extended by the voting shareholders of Sydney Ferries.

### **138 Transfer of staff from STA to Sydney Ferries**

- (1) The Minister may, by order in writing, provide that the State Transit Authority staff specified in the order are transferred to Sydney Ferries.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of Sydney Ferries, in accordance with the terms of the order, on the day specified in the order.
- (3) Clauses 12, 13, 14 and 15 of Schedule 6 apply to or in respect of the transfer of State Transit Authority staff to Sydney Ferries under this clause in the same way as they apply to or in respect of the transfer of State Rail Authority staff to another transport authority.

### **139 Customer service contracts and exemptions**

- (1) Any exemption in force immediately before the commencement of this clause of the State Transit Authority, under the *Passenger Transport Act 1990*, from the requirements of section 16 (1) and (3) of that Act is taken to apply also to Sydney Ferries in respect of the kinds of regular passenger services subject to the exemption immediately before the commencement of Part 3A.
- (2) Nothing in this clause prevents the exemption from being varied or revoked.

#### 140 Licences and other authorisations under certain Acts

- (1) This clause applies to a licence, permit, approval or other authorisation granted to the State Transit Authority under any of the following Acts or under a regulation under any of those Acts, and in force immediately before the commencement of this clause:
  - (a) *Commercial Vessels Act 1979*,
  - (b) *Dangerous Goods Act 1975*,
  - (c) *Protection of the Environment Operations Act 1997*,
  - (d) any other Act prescribed by the regulations.
- (2) An authorisation is, to the extent that it relates to former STA functions, taken to be held by Sydney Ferries on the same terms and conditions as the State Transit Authority held the authorisation immediately before the commencement of this clause.
- (3) The regulations may exempt an authorisation from the operation of this clause.
- (4) Nothing in this clause prevents an authorisation from being varied, cancelled or replaced.
- (5) In this clause:

**former STA function** means a function conferred on Sydney Ferries by Part 3A that was, immediately before the commencement of that Part, conferred on the State Transit Authority.

### Part 12 Provisions consequent on enactment of **Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004**

#### 141 Definitions

In this Part:

**rail access agreement** means an agreement entered into by a rail authority pursuant to the NSW Rail Access Regime or RIC access undertaking that permits a person to operate rolling stock on the NSW rail network.

**rail authority** has the same meaning as it has in Part 8A of the Act.

**the amending Act** means the *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.

#### **142 Existing rail access undertakings**

An access undertaking entered into by a rail authority under Schedule 6AA and in force immediately before the commencement of this clause is, to the extent to which it relates to land or rail infrastructure facilities subject to an ARTC lease or licence, taken to have been entered into by ARTC instead of the rail authority.

#### **143 Existing rail access agreements**

- (1) A rail access agreement entered into by a rail authority and in force immediately before the commencement of this clause continues in force, subject to this clause.
- (2) If a rail access agreement applies or is to apply to a part of the NSW rail network for which there are or are to be 2 or more rail infrastructure owners, the Minister may determine that the rail access agreement is terminated and determine that it is replaced by one or more separate rail access agreements entered into with each rail infrastructure owner.
- (3) The Minister may for the purposes of this clause:
  - (a) determine the parties to each separate agreement, and
  - (b) determine the terms of each separate agreement, and
  - (c) determine the date on which each separate agreement takes effect.
- (4) The Minister must give written notice to the parties to a separate agreement of the agreement and its terms not less than 14 days before the separate agreement takes effect.
- (5) A separate agreement under this clause must not substantially change rights or obligations under the previous agreement. This subclause does not prevent a change in parties to agreements.
- (6) 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 contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities (within the meaning of Schedule 4), 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.

#### **144 Disputes relating to terms of rail access agreements**

- (1) A party to a rail access agreement may, not more than 14 days after being notified of



a new separate rail access agreement under this Part, give notice in writing to the Independent Pricing and Regulatory Tribunal that the terms of the agreement are not acceptable to it and refer the dispute to the Tribunal under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992*.

- (2) Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* (other than section 24C) applies to any such dispute in the same way that it applies to a dispute with respect to a public infrastructure access regime.
- (3) A dispute may not be referred or dealt with under this clause unless it is a dispute relating to terms of the new separate rail access agreement that are substantially different from those of the agreement it replaces or relating to whether terms of the previous agreement should be adjusted because of the separation.
- (4) To avoid doubt, the terms of an agreement are not substantially different merely because it is replaced by more than one agreement with different parties.
- (5) The arbitrator of the dispute is to determine the dispute by making a written determination.
- (6) The determination may vary the terms of a separate rail access agreement and any such rail access agreement has effect accordingly. The determination may not vary any terms of a separate rail access agreement that are not substantially different from terms contained in the agreement it replaces.
- (7) Nothing in this clause prevents the further amendment of the rail access agreement in accordance with its terms or any other law.

#### **145 Compliance with development legislation**

- (1) This clause applies:
  - (a) to development or an activity carried out before, or being carried out immediately before, the commencement of this clause by a rail authority (with or without development consent or approval under the *Environmental Planning and Assessment Act 1979*), or
  - (b) to any such development or activity that is continued after that commencement and is carried out in substantially the same manner as it was carried out before that commencement,being development or an activity that is carried out on land subject to an ARTC lease or licence.
- (2) The development or activity is taken to comply with any requirements for consents or approvals or any other requirements of the *Environmental Planning and Assessment Act 1979* and any other law relating to the carrying out of the development or activity.

- (3) This clause does not apply to the requirements of this Act, the *Occupational Health and Safety Act 2000*, the *Dangerous Goods Act 1975*, the *Rail Safety Act 2002*, the *Protection of the Environment Operations Act 1997* or any regulation under those Acts or any other Act or law prescribed by the regulations.
- (4) To avoid doubt, nothing in this clause prevents any person from relying on or acting in accordance with a development consent or other approval, or any rights relating to the continuation of an existing use, under the *Environmental Planning and Assessment Act 1979*.
- (5) Words and expressions used in this clause have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

#### **146 Existing applications and approvals under the *Environmental Planning and Assessment Act 1979***

- (1) This clause applies to rail infrastructure facilities or other assets subject to an ARTC lease or licence.
- (2) An assessment of a development or an activity, a development application or any other application, under the *Environmental Planning and Assessment Act 1979* relating to rail infrastructure facilities made by or on behalf of a rail authority before the commencement of the ARTC lease or licence (including any related environmental impact statement or other material prepared and lodged by or on behalf of the rail authority), and not finally determined before that commencement, is taken to have been made by or on behalf of ARTC.
- (3) A development consent or an approval granted under the *Environmental Planning and Assessment Act 1979* in relation to a rail infrastructure facility before the commencement of the ARTC lease or licence is taken to have been granted to ARTC.
- (4) This clause is subject to the regulations.

#### **147 Entitlements of former rail authority employees**

- (1) This section applies to a member of staff of a rail authority (the ***new rail employer***) who was, within 30 days before becoming a member of staff of the rail authority, a member of staff of another rail authority (the ***former rail employer***).
- (2) Regulations may be made for or with respect to the following matters:
  - (a) providing for service with one or more rail authorities to be taken, for the purpose of accrual of leave and any entitlements, as service with a new rail employer,
  - (b) the payment of leave entitlements on termination of employment with a former rail employer,
  - (c) the preservation and transfer of leave entitlements on employment with a new rail

employer,

(d) eligibility to apply for vacant positions in rail authorities (other than ARTC), including rights of appeal.

(3) This clause does not apply to a temporary member of staff of ARTC within the meaning of Division 5 of Part 8A.

(4) In this clause, **rail authority** includes ARTC.

## **Part 13 Provisions consequent on enactment of Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005**

### **148 Definition**

In this Part:

**the amending Act** means the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

### **149 Chief Investigator**

(1) The person holding office as the Chief Investigator under section 42S immediately before the repeal of that section by the amending Act is appointed as the Chief Investigator under section 45 as inserted by the amending Act.

(2) The person appointed under subclause (1) holds office for the residue of the person's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as, those of the person's appointment as Chief Investigator under section 42S.

(3) Part 3.1 of the *Public Sector Employment and Management Act 2002* applies to and in respect of the employment of the Chief Investigator under this clause.

### **150 Staff of Office of Transport Safety Investigations**

(1) On the repeal of Division 5 of Part 4A by the amending Act, each member of staff of the Office of Transport Safety Investigations is transferred to the employment of the Government of New South Wales in the service of the Crown, subject to section 65F (3).

(2) Each such member of staff is taken to have been appointed under section 65F (1) and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the Office of Transport Safety Investigations.

(3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Act for the

purposes of any law, award or agreement relating to the employment of that member of staff.

- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the Office of Transport Safety Investigations.
- (6) A member of staff concerned 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.

### **151 Transport safety investigators**

- (1) A member of staff who is transferred under clause 150 and who, immediately before the transfer was an authorised officer within the meaning of the *Rail Safety Act 2002* or the *Passenger Transport Act 1990*, is taken to be a person to whom the Chief Investigator has delegated his functions under section 67A of the *Rail Safety Act 2002* or section 46BB of the *Passenger Transport Act 1990*.
- (2) This clause does not prevent the variation or revocation of any such delegation.

## **Schedule 8 State Rail Authority**

(Section 128)

### **Part 1 Constitution and functions of State Rail Authority**

#### **1 Constitution of SRA**

- (1) The corporation constituted under section 4 immediately before the commencement of this clause is continued by this clause 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.

#### **2 Objectives of State Rail Authority**

The objectives of the State Rail Authority are as follows:

- (a) to manage its assets, rights and liabilities effectively and responsibly,
- (b) to minimise the risk exposure of the State arising from its activities,

(c) to achieve the efficient and timely winding up of residual business activities.

### **3 Functions of State Rail Authority**

(1) The State Rail Authority has the following functions:

- (a) to facilitate the transfer of its staff, assets, rights and liabilities to RailCorp, Rail Infrastructure Corporation and other bodies under this Act,
- (b) to hold on behalf of the State, retain, transfer or dispose of assets, rights and liabilities,
- (c) to carry on any business or activity that relates to its assets, rights and liabilities or that is ancillary to those assets, rights or liabilities,
- (d) to acquire and develop any land,
- (e) to make and enter contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials,
- (f) to make and enter 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 services or businesses,
- (g) to appoint agents and act as agent for other persons,
- (h) to do any other thing that is supplemental or incidental to the exercise of its functions,
- (i) any other functions conferred or imposed on it by or under this or any other Act.

(2) The State Rail Authority may exercise its functions within or outside New South Wales.

### **4 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 subclause (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 clause to the Chief Executive of the State Rail Authority, a member of staff of the Ministry of Transport or a person of a class prescribed by the regulations.

(4) The approval of the Minister is not required under this clause to any ARTC

arrangement that the State Rail Authority is authorised to enter into under Part 8A of the Act.

## **Part 2 Management of State Rail Authority**

### **5 Old Board to continue for limited period**

- (1) The State Rail Authority Board, as constituted under Part 2 of this Act immediately before the commencement of this clause, continues in force and may exercise any functions that it was entitled to exercise immediately before that commencement.
- (2) Sections 9 and 13 and Schedule 1, as in force before the commencement of this clause, continue to have effect in relation to the State Rail Authority Board.
- (3) Subclauses (1) and (2) cease to have effect 6 months after that commencement or on such later day as may be prescribed by the regulations.
- (4) A person who, immediately before subclause (1) ceases to have effect, held the office of a member of the State Rail Authority Board, ceases to hold that office on the date subclause (1) ceases to have effect and is not entitled to any remuneration or compensation because of that loss of office.

### **6 Chief Executive of State Rail Authority**

- (1) The Governor may appoint a Chief Executive of the State Rail Authority.
- (2) The employment of the Chief Executive is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2 of that Act.
- (3) The person who held office as Chief Executive immediately before the commencement of this clause is taken to have been duly appointed under this clause as Chief Executive:
  - (a) for the remainder of the term for which the person was appointed under that Part, and
  - (b) on the same terms and conditions.

### **7 Acting Chief Executive**

- (1) The Minister may, from time to time, appoint a person to act in the absence or illness of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and is 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 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 Chief Executive is to be regarded as an absence from office of the Chief Executive.

## **8 Chief Executive to manage and control affairs of State Rail Authority**

- (1) The affairs of the State Rail Authority are to be managed and controlled by the Chief Executive of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the State Rail Authority by the Chief Executive is taken to have been done by the Authority.
- (3) The Chief Executive is, in the exercise of the Chief Executive's functions, subject to the direction and control of the Minister.
- (4) Until clause 5 (1) ceases to have effect, the Chief Executive is to manage and control the affairs of the State Rail Authority in accordance with the policies of the State Rail Authority Board.

## **9 Ministerial control**

The State Rail Authority (and its Chief Executive) are, in the exercise of their functions, subject to the direction and control of the Minister.

## **10 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 Minister.
- (4) A delegation by the State Rail Authority, and in force immediately before the commencement of this clause, continues in force (but may be revoked or amended) to the extent that it relates to functions of the Authority re-enacted in this Schedule.

## **11 Staff of State Rail Authority**

- (1) The State Rail Authority may employ such staff as it requires to exercise its functions.
- (2) 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.

- (3) Sections 66–68 and Schedule 5 apply to the State Rail Authority and to staff of the State Rail Authority.
- (4) Any members of staff of the State Rail Authority employed immediately before the commencement of this clause are taken to be members of staff employed under this Schedule.
- (5) This clause does not prevent a member of staff of the State Rail Authority from being transferred under this Act.

## **12 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 clause 11, and
  - (c) may provide for appeals by members of staff in connection with their employment, including appeals to a Transport Appeal Board constituted under the *Transport Appeal Boards Act 1980*, and
  - (d) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.
- (3) Any regulations in force under section 58 immediately before the commencement of this clause continue in force and are taken to have been made under this clause.

## **Part 3 Financial provisions**

### **13 State Rail Authority Fund**

The State Rail Authority Fund established under section 69 immediately before the commencement of this clause is continued.

### **14 Payments into and from State Rail Authority Fund**

- (1) There is to 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 other money required by or under this or any other Act to be paid into the Fund.

(2) There is to 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.

#### **15 Payment of dividend to Treasurer**

(1) The State Rail Authority must pay to the Treasurer, out of any surplus for a financial year, a dividend determined by the Minister.

(2) The Minister must not make a determination under this clause 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.

#### **16 Financial duties generally**

Sections 81 and 82 apply to the State Rail Authority.

#### **17 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 must, if the Minister so directs, be paid into the other Fund.

### **Part 4 Miscellaneous**

#### **18 Application of miscellaneous provisions**

(1) Sections 109, 110, 111, 112, 113 and 115 apply to the State Rail Authority, the Chief Executive of the Authority, the State Rail Authority Board or a person acting under the direction of any of them in the same way as they apply to or in respect of an Authority, a transport authority, a member of a transport authority or a person acting under the direction of a transport authority or a member of a transport authority.

(2) Schedule 6B applies to the State Rail Authority in the same way that it applies to a rail authority.

### **18A RIC may act as agent of SRA**

Rail Infrastructure Corporation may, with the consent of the Minister, act as an agent for the State Rail Authority without obtaining the consent of the State Rail Authority.

### **19 Dissolution of SRA and subsidiaries**

- (1) The Governor may, by proclamation published in the Gazette, appoint a day on which the State Rail Authority is to be dissolved.
- (2) On that day, the State Rail Authority, and each State Rail Authority subsidiary, are dissolved and any assets, rights and liabilities of the Authority and any subsidiary become assets, rights and liabilities of the Crown.
- (3) Section 94 and Schedule 4 apply to the assets, rights and liabilities vested in the Crown under this clause in the same way as they apply to the assets, rights and liabilities of a rail authority.
- (4) Despite subclause (3), the Minister may not transfer an asset, right or liability vested in the Crown under this clause, except with the concurrence of the Treasurer.
- (5) Regulations of a savings and transitional nature may be made consequent on the dissolution of the State Rail Authority and any subsidiary of the Authority.

### **20 Chief Executive of SRA**

The person who, immediately before the dissolution of the State Rail Authority held office as Chief Executive of the Authority ceases to hold that office and is not entitled to any remuneration or compensation because of the loss of that office.

### **21 References to SRA**

- (1) On the dissolution of the State Rail Authority, a reference in any other Act or instrument made under any other Act or in any other instrument of any kind to the State Rail Authority is, except as provided by the regulations, taken to be a reference to RailCorp.
- (2) This clause has effect subject to any transfers of assets, rights and liabilities under this Act.

### **22 Previous transfers of assets, rights and liabilities of SRA**

Nothing in this Schedule affects the transfer, before the dissolution of the State Rail Authority, of any assets, rights or liabilities of the State Rail Authority under this Act and Schedule 4 continues to apply to or in respect of any such transfer.

### **23 Previous transfers of staff of SRA**

Nothing in this Schedule affects the transfer, before the dissolution of the State Rail

Authority, of any staff of the State Rail Authority under this Act and Schedule 6 continues to apply to or in respect of any such transfer.