

Transport Administration Act 1988 No 109

[1988-109]



New South Wales

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Provisions in force

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

Notes—

- **Does not include amendments by**

Transport Administration Amendment (Community Road Safety Fund) Act 2012 No 70 (not commenced)

Rail Safety (Adoption of National Law) Act 2012 No 82 (not commenced — to commence on 20.1.2013)

Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012 No 90 (not commenced)

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Transport Administration Act 1988 No 109



New South Wales

Contents

Long title	16
Part 1 Preliminary	16
1 Name of Act	16
2 Commencement	16
2A Objects of Act	16
2B Common objectives and service delivery priorities of public transport agencies	16
3 Definitions	18
3A Metropolitan rail area	21
3B Ministerial responsibility and delegation	22
Part 1A Transport for NSW	22
3C Constitution and management of TfNSW	22
3D Objectives of TfNSW	22
3E Functions of TfNSW	23
3F Corporate plan for TfNSW	23
3G Directions by TfNSW to public transport agencies	23
3H Review by relevant safety regulator of directions relating to transport safety matters	24
3I Delegation of TfNSW's functions	25
3J Acceptance of delegated functions by TfNSW	26
3K Disclosure of information by agencies to TfNSW	26
3L Annual report.....	26
Part 2 Rail Corporation New South Wales	26

Division 1 Constitution of RailCorp	26
4 Constitution of RailCorp.....	26
Division 2 Objectives of RailCorp	26
5 Objectives of RailCorp	26
Division 3 Functions of RailCorp	27
6 Railway passenger services.....	27
7 Rail infrastructure functions	28
8 Metropolitan rail area access functions	28
9 Other transport services.....	28
10 Other functions of RailCorp	28
11 Acquisition of land by RailCorp.....	29
11A Sale, lease or other disposal of land.....	29
12 Effect of Division.....	30
Division 4 Management of RailCorp	30
13, 14 (Repealed).....	30
15 Chief Executive of RailCorp	30
16 Chief Executive Officer to manage RailCorp.....	30
17 (Repealed).....	30
17A RailCorp to supply information to Minister	30
17B Corporate plans.....	30
17C-17E (Repealed)	31
17F Delegation of functions of RailCorp	31
Division 5 (Repealed)	32
Parts 2A, 2B (Repealed)	32
Part 3 State Transit Authority	32
Division 1 Constitution of State Transit Authority	32
20 Constitution of STA	32
Division 1A Objectives of State Transit Authority	32

20A Objectives of STA.....	32
Division 2 General functions of State Transit Authority.....	33
21 Bus services	33
22 Newcastle ferry services.....	33
23 (Repealed).....	33
24 Miscellaneous functions of STA.....	33
Division 3 Management of State Transit Authority	34
25, 26 (Repealed)	34
27 Chief Executive of STA.....	34
28 Chief Executive to manage STA.....	34
29 (Repealed).....	34
30 STA to supply information to Minister	34
31 Corporate plans	35
32-34 (Repealed)	36
35 Delegation of functions of STA.....	36
Part 3A Sydney Ferries	36
Division 1 Constitution of Sydney Ferries	36
35A Constitution of Sydney Ferries.....	36
Division 2 Objectives of Sydney Ferries	36
35B Objectives of Sydney Ferries	36
Division 3 Functions of Sydney Ferries	37
35C Sydney ferry services	37
35D Other transport services	37
35E Other functions of Sydney Ferries	37
35EA Sale, lease or other disposal of land.....	38
35F Acquisition of land by Sydney Ferries	38
35G Effect of Division	38
Division 4 Management of Sydney Ferries.....	38
35H, 35I (Repealed).....	38

35J Chief Executive of Sydney Ferries.....	38
35K Chief Executive to manage Sydney Ferries	39
35L (Repealed)	39
35M Sydney Ferries to supply information to Minister.....	39
35N Corporate plans.....	39
35O-35Q (Repealed)	40
35QA Delegation of functions of Sydney Ferries.....	40
Division 5 (Repealed)	40
Parts 3B, 4 (Repealed)	40
Part 4A Independent Transport Safety Regulator	40
Division 1 Interpretation	40
42A Definitions	41
Division 2 Constitution of Independent Transport Safety Regulator	41
42B Constitution of Independent Transport Safety Regulator.....	41
Division 3 Charter of Independent Transport Safety Regulator	42
42C Objectives of ITSR	42
42D General functions of ITSR.....	42
42E ITSR may advise on and monitor safety	43
42F Auditing of transport authorities and owners and operators of transport services.....	43
42G Reports to Minister on performance.....	44
42H (Repealed).....	44
42I Power of ITSR to give directions relating to safe operation of transport services	44
42J Duties of authorities and owners and operators to co-operate with ITSR.....	45
42K ITSR may settle certain rail access disputes	45
42L Disclosure of information by ITSR	45
Division 4 Management of Independent Transport Safety Regulator	45
42M Chief Executive of ITSR.....	46
42N Chief Executive to manage and control affairs of ITSR.....	46
42O Acting Chief Executive	46

42P Limitations on Ministerial control of ITSr.....	46
42Q Delegation of functions of ITSr.....	47
Division 5 (Repealed)	47
Division 6 Independent Transport Safety Advisory Board	47
42T Independent Transport Safety Advisory Board.....	47
42U General functions of Board.....	48
42V (Repealed).....	48
Division 7 Review	48
42W Review of amendments.....	48
Part 5 Transport Advisory Board	49
43 Establishment of Transport Advisory Board.....	49
44 Functions of Advisory Board.....	49
44A Committees of Advisory Board.....	49
Part 5A Chief Investigator of the Office of Transport Safety Investigations	50
.....	50
45 Chief Investigator.....	50
45A General functions of Chief Investigator.....	50
45B No Ministerial control of Chief Investigator.....	50
45C Disclosure of information by Chief Investigator.....	51
45D Acting Chief Investigator.....	51
45DA Delegation of functions of Chief Investigator.....	51
Part 6 Roads and Maritime Services	52
Division 1 Interpretation	52
45E Interpretation.....	52
Division 1A Constitution and management of Roads and Maritime Services	53
.....	53
46 Constitution of RMS.....	53

47 Chief Executive of RMS	53
48 Chief Executive to manage RMS	54
49 (Repealed)	54
Division 1B RMS	54
49A General functions of RMS	54
50 Delegation	54
51, 52 (Repealed)	54
52A Functions relating to traffic management and safety	54
53 Miscellaneous functions of RMS	56
Division 1C Directions and recommendations to public authorities	56
53A Directions to public authorities	56
53B Recommendations as to lighting of roads and road related areas	57
53C Inter-relationship of Division with law relating to local government	58
Division 2 (Repealed)	58
Part 6A (Repealed)	58
Part 6B Subsidiary corporations, joint ventures etc	58
55A Definition of “transport authority”	58
55B Exercise of functions through subsidiary corporations, joint ventures etc	58
55C Public subsidiary corporations	59
55D Private subsidiary corporations etc	60
55E–55S (Repealed)	60
Part 7 Provisions relating to staff	60
Division 1 Regulations relating to staff employed in connection with certain authorities	
.....	60
56 Application of Division	60
57 Regulations relating to staff to which this Division applies	61
58 (Repealed)	61
Division 1A Staff of RailCorp	61

58A Employment of staff	61
58B Salary, conditions etc of staff	61
58C Regulations relating to RailCorp staff	61
Division 2 Staff of Chief Investigator	62
59 Employment of staff	62
59A-59C (Repealed)	62
60 Salary, wages and conditions of staff	63
61 Regulations relating to staff of Chief Investigator.....	63
Division 2A (Repealed)	63
Division 3 Staff of Sydney Ferries	63
62 Employment of staff	63
63 Salary, conditions etc of staff	63
64 Regulations relating to Sydney Ferries staff	63
Division 3A (Repealed)	64
Division 4 Transfer of staff	64
65 Definitions	64
66 Orders providing for transfer of staff of transport authorities.....	64
67 Preservation of remuneration and other conditions of employment on transfer	65
68 Preservation of leave and other entitlements for previous service.....	65
68A No payment out on transfer or dual benefits	65
Part 7A The Transport Service	66
68B The Transport Service.....	66
68C Employment of staff in the Transport Service.....	66
68D Salary, conditions etc of staff employed in the Transport Service.....	66
68E Regulations relating to staff employed in the Transport Service.....	66
68F Extended leave entitlements	67
68G Transport Senior Service	67
68H Transfer of staff within the Transport Service	68
68I Incapable staff member may be retired	68
68J Operation of privacy legislation.....	69

68K Miscellaneous provisions relating to civil liability	69
68L Construction of references relating to staff	69
68M Delegation of Director-General's functions under this Part	70
Part 8 Financial provisions	70
Division 1 Financial provisions relating to RailCorp	70
69 RailCorp Fund	70
70 Payments into RailCorp Fund	70
71 Payments from RailCorp Fund	70
72 (Repealed)	71
Division 1A (Repealed)	71
Division 2 Financial provisions relating to State Transit Authority	71
73 State Transit Authority Fund	71
74 Payments into State Transit Authority Fund	71
75 Payments from State Transit Authority Fund	71
76 Payment of dividend to Treasurer	71
Division 2A Financial provisions relating to Transport for NSW	72
76A TfNSW Fund	72
76B Payments into TfNSW Fund	72
76C Payments from TfNSW Fund	72
Division 3 Financial provisions relating to Roads and Maritime Services	
.....	72
77 RMS Fund	72
78 Payments into RMS Fund	72
79 Payments from RMS Fund	73
80 Expenditure on certain State works	74
80A Payments of subsidies to councils for traffic route lighting	74
80B RMS to make available money for subsidies	74
80C Payments of subsidies to electricity distribution network service providers for removal or relocation of electricity structures	
.....	74

Division 3A Financial provisions relating to Sydney Ferries	75
80D Sydney Ferries Fund	75
80E Payments into Sydney Ferries Fund	75
80F Payments from Sydney Ferries Fund	75
Division 3B (Repealed)	75
Division 4 Financial provisions relating to Authorities generally	76
81A Definition	76
81 Financial duties of the Authorities	76
82 Financial year	76
83 (Repealed)	76
Division 5 Charges for services of RailCorp, Sydney Ferries and State Transit Authority	76
84 Definitions	77
85 Orders fixing charges	77
86 Ministerial supervision of orders fixing charges	77
87 General provisions relating to orders fixing charges	78
88 Free or subsidised railway, bus or ferry travel	78
Part 8A ARTC arrangements	79
Division 1 Preliminary	79
88A Definitions	79
Division 2 Arrangements between rail authorities and ARTC	80
88B Lease or licence of land and rail infrastructure facilities	80
88C Other agreements or arrangements relating to freight lines	81
88D Provision of transition support services	81
88E Sale of plant, machinery, equipment, stores and consumables	81
88F Requirements for consent not applicable	81
88G Severance of rail infrastructure facilities and from leased or licensed land	81
88H Functions of ARTC relating to rail infrastructure facilities	82

88I Transfer of assets, rights or liabilities of rail authority	82
Division 3 Rail services, access and infrastructure obligations	83
88J Obligation to maintain linear continuity of rail services	83
88K Rail access obligations and functions	83
88L Network control	84
88M Restrictions on dealings with land and rail infrastructure facilities and other rights.....	84
88N Obligations and rights under Rail Safety Act 2008	85
88O Obligations and rights under Protection of the Environment Operations Act 1997	86
88P Obligations and rights under Heritage Act 1977	86
88Q Obligations and rights under Threatened Species Conservation Act 1995.....	86
88R Obligations relating to activities under Environmental Planning and Assessment Act 1979	86
Division 4 Prohibition on vertical integration	87
88S Restrictions on vertical integration of rail operations	87
88T Injunctions	87
Division 5 Staffing arrangements	88
88U Agreements for secondment of staff to ARTC.....	88
88V Temporary staff placement with ARTC (secondments)	89
88W No time limit for period of temporary placement	90
88X Obligations and rights under Rail Safety Act 2008 relating to members of staff	90
88Y Obligations and rights under Work Health and Safety Act 2011 and other legislation	90
88Z Liability under Law Reform (Vicarious Liability) Act 1983	91
88ZA Workers compensation arrangements.....	91
88ZB Effect of staffing agreements and arrangements	92
Division 6 State taxes.....	92
88ZC Exemption from State taxes	92
88ZD Rail authorities and ARTC not grouped for payroll tax purposes	93
Division 7 Effect of Part.....	93
88ZE Effect of Part.....	93
88ZF Protection of contractual and other obligations	93
88ZG Compensation not payable	94

Part 9 Miscellaneous	94
Division 1 Definitions	94
89 Definitions	94
Division 1A Miscellaneous provisions relating to rail authorities	94
90 State rail operators not common carriers	95
91 Regulations relating to railway and other transport services	95
92 Limitation of compensation in respect of damage to property by fire	95
93 Search of vehicles and luggage on certain railway premises	96
94 Transfers of assets, rights and liabilities	97
95 (Repealed)	97
96 Person may be chief executive of more than one authority	97
Division 1B Miscellaneous provisions relating to rail infrastructure, rail access and network control	97
97 Additional facilities may be treated as rail infrastructure facilities	97
98 Powers of rail authorities relating to rail infrastructure facilities and land	97
99 Maintenance of railway lines	98
99A Closure and disposal of railway lines	98
99AA Connections to rail infrastructure	98
99B Closure of level-crossings, bridges and other structures	98
99C NSW rail access undertakings	99
99D Network control	99
Division 1C (Repealed)	100
Division 2 Miscellaneous provisions relating to State Transit Authority	100
100 Sale, lease or other disposal of land	100
101 Acquisition of land	101
102 STA not a common carrier	101
103 Inquiries into bus or ferry accidents	101
104 Regulations relating to bus and ferry services	102

Division 2A Special provisions relating to light rail	102
104A-104K (Repealed)	102
104L Definitions	102
104M Light rail services.....	103
104N Light rail system.....	103
104O Development and operation of light rail systems	104
104P Part 5 of EPA Act to apply to development for light rail system.....	104
104Q Local government approvals not required for light rail system	104
104R Easements etc for light rail system	105
104S Exemption of light rail system from payment of rates and land tax.....	105
104T Exemption from duty	106
104U Altering position of conduit for purposes of light rail system	106
104V Resolution of disputes concerning routes of light rail systems.....	107
Division 3 Miscellaneous provisions relating to RMS	107
105 Power to accept gifts, bequests or devises of property	107
106 Grants to councils in connection with use of buses	107
106A Grants to charitable organisations	107
Division 3A Miscellaneous provisions relating to Sydney Ferries	108
106B Sydney Ferries not a common carrier.....	108
106C Regulations relating to Sydney ferry services	108
106D Transfer of certain assets, rights and liabilities of STA to Sydney Ferries.....	109
Division 4 Miscellaneous provisions relating to transport authorities	109
107 Definition of “transport authority”	109
108 Transport districts	109
109 Seals of Authorities.....	110
110 Miscellaneous provisions relating to contracts of transport authority	110
111 Referral of disputes	111
112 Personal liability of certain persons	111
113 Presumption of validity	112
114 (Repealed)	112
115 Recovery of charges etc by transport authority	112

116 Liability of vehicle owner for parking offences on Authority's land	112
117 Penalty notices for certain offences.....	114
118 Proceedings for offences	115
119 Regulations.....	115
120 Savings, transitional and other provisions.....	115

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

.....	115
121 Application of common law damages for motor accidents to railway and other public transport accidents	
.....	115

Division 6 Special provisions for Parramatta Rail Link..... 116

122 Definitions	116
123 EPA Act not affected	117
124 Acquisition of national park and other park land	117
125 Application of Public Works Act to the Parramatta Rail Link	118
126 Sections 109ZJ & 109ZK EPA Act not to apply	118
127 Order of approval under Heritage Act.....	118

Division 7 (Repealed)..... 119

Schedule 1 Functions of Transport for NSW..... 119

Schedule 2 Provisions relating to Chief Executives..... 124

Schedule 2A Constitution and procedure of Independent Transport Safety Advisory Board

.....	125
-------	-----

Schedule 2B (Repealed)..... 130

Schedule 3 Provisions relating to Transport Advisory Board..... 130

Schedule 4 Transfer of assets, rights and liabilities..... 133

Schedule 5 Extended leave for certain staff..... 136

Schedule 6 (Repealed)	140
Schedule 6A Powers relating to rail infrastructure facilities and land ...	140
Schedule 6AA Access undertakings	157
Schedule 6B Special provisions for underground rail facilities	160
Schedule 7 Savings, transitional and other provisions	164
Schedule 8 SRA Residual Holding Corporation	216
Schedule 8A Sydney Metro	220
Schedule 9 (Repealed)	223
Schedule 10 Transferred provisions—Tocumwal Railway Extension Act 1906	223
Schedule 11 (Repealed)	223

Transport Administration Act 1988 No 109



New South Wales

An Act relating to the administration of transport; 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.

2A Objects of Act

The objects of this Act with respect to the administration of the transport services provided to the people of New South Wales include the following:

- (a) to provide an efficient and accountable framework for the governance of the delivery of transport services,
- (b) to promote the integration of the transport system,
- (c) to enable effective planning and delivery of transport infrastructure and services,
- (d) to facilitate the mobilisation and prioritisation of key resources across the transport sector,
- (e) to co-ordinate the activities of those engaged in the delivery of transport services,
- (f) to maintain independent regulatory arrangements for securing the safety of transport services.

2B Common objectives and service delivery priorities of public transport agencies

(1) Public transport agencies are to exercise their functions in a manner that promotes the following objectives, which are the common objectives of public transport agencies:

- (a) **Customer focus**

To put the customer first and design the transport system around the needs and expectations of the customer.

(b) **Economic development**

To enable the transport system to support the economic development of the State (with a focus on freight transport systems).

(c) **Planning and investment**

To ensure that good planning informs investment strategies.

(d) **Coherence and integration**

To promote coherence and integration across all transport modes and all stages of decision making.

(e) **Performance and delivery**

To focus on performance and service delivery, based on a strong purchaser-provider model with clear accountabilities for outcomes.

(f) **Efficiency**

To achieve greater efficiency:

- (i) in the delivery of transport infrastructure projects, and
- (ii) through improved coordination of freight, maritime and ports operations, and their integration into the transport system, and
- (iii) by eliminating duplication of functions and resources, and
- (iv) by outsourcing the delivery of non-core services.

(g) **Environmental sustainability**

To promote the delivery of transport services in an environmentally sustainable manner.

(h) **Social benefits**

To contribute to the delivery of social benefits for customers, including greater inclusiveness, accessibility and quality of life.

(i) **Safety**

To provide safe transport services in accordance with a safety regulatory framework.

(2) Public transport agencies are to determine their service delivery priorities having

regard to the Director-General's expectations for service delivery established by a Statement of Expectations issued annually to public transport agencies by the Director-General.

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.

Advisory Board means the Transport Advisory Board established under Part 5.

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.

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 Department of Transport.

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

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

Independent Transport Safety Regulator means the Independent Transport Safety Regulator constituted under this Act.

light rail services—see section 104M.

light rail system—see section 104N.

metropolitan rail area—see section 3A.

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).

public transport agency means TfNSW, RailCorp, RMS, the State Transit Authority, Sydney Ferries and their public or private subsidiary corporations.

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 TfNSW for the purposes of exercising its functions under this Act, TfNSW, 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
- (b1) (Repealed)
- (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 Maritime Services (or **RMS**) means Roads and Maritime Services 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 Residual Holding Corporation (or **SRA Residual Holding Corporation**) means the State Rail Authority Residual Holding Corporation 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.

Sydney Metro means Sydney Metro constituted under this Act.

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

Transport for NSW (or **TfNSW**) means Transport for NSW constituted under this Act.

transport infrastructure means infrastructure used for or in connection with or to facilitate the movement of persons and freight by road, rail, sea, air or other mode of transport, and includes:

- (a) railways and railway infrastructure, and
- (b) roads and road infrastructure, and
- (c) maritime infrastructure and ports, and
- (d) transport safety infrastructure, and
- (e) systems, works, structures, buildings, plant, machinery and equipment that are associated with or incidental to transport infrastructure.

transport legislation means the following Acts and the regulations under those Acts:

- (a) this Act,
- (b) the [Passenger Transport Act 1990](#),
- (c) the [Ports and Maritime Administration Act 1995](#),
- (d) the [Roads Act 1993](#),
- (e) an Act that forms part of the road transport legislation as defined in the [Road](#)

Transport (General) Act 2005,

(f) the *Tow Truck Industry Act 1998,*

(g) the marine legislation as defined in the *Ports and Maritime Administration Act 1995,*

(h) an Act that is prescribed by the regulations for the purposes of this definition.

Transport Service means the Transport Service of New South Wales referred to in section 68B.

transport services include railway services (including heavy rail, metro rail and light rail services), bus services and ferry services.

transport system means the transport services and transport infrastructure of the State for all modes of transport.

(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) (Repealed)

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 Transport NSW, 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) (Repealed)

3B Ministerial responsibility and delegation

- (1) The Director-General and the chief executives of the following bodies are, in the exercise of their functions, subject to the control and direction of the Minister:
 - (a) RailCorp,
 - (a1) TfNSW,
 - (b) RMS,
 - (c) State Transit Authority,
 - (d) Sydney Ferries.
 - (e), (f) (Repealed)

Note—

Section 42P provides for limited Ministerial control and direction of the ITSr.

- (2) The Minister may delegate to the Director-General, or to any such chief executive, any function of the Minister under this Act, other than this power of delegation.

Part 1A Transport for NSW

3C Constitution and management of TfNSW

- (1) There is constituted by this Act a corporation with the corporate name of Transport for NSW.
- (2) TfNSW is a NSW Government agency.
- (3) The affairs of TfNSW are to be managed and controlled by the Director-General.
- (4) Any act, matter or thing done in the name of, or on behalf of, Transport for NSW by the Director-General is taken to have been done by Transport for NSW.

3D Objectives of TfNSW

The objectives of Transport for NSW are as follows:

- (a) to plan for a transport system that meets the needs and expectations of the public,
- (b) to promote economic development and investment,

- (c) to provide integration at the decision-making level across all public transport modes,
- (d) to promote greater efficiency in the delivery of transport infrastructure projects,
- (e) to promote the safe and reliable delivery of public transport and freight services.

3E Functions of TfNSW

- (1) TfNSW has the functions set out in Schedule 1.
- (2) TfNSW has such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) The functions of TfNSW do not limit the functions of the Director-General as head of the Department of Transport.
- (4) TfNSW cannot employ any staff.

Note—

Staff may be employed under Part 7A in the Transport Service to enable TfNSW to exercise its functions.

3F Corporate plan for TfNSW

TfNSW is to prepare and make publicly available a corporate plan for the activities of TfNSW in the next 5 financial years. TfNSW is to revise the corporate plan annually.

3G Directions by TfNSW to public transport agencies

- (1) TfNSW may, for the purpose of exercising its functions, give directions to the following bodies in relation to the exercise of their functions:
 - (a) RailCorp,
 - (b) RMS,
 - (c) State Transit Authority,
 - (d) Sydney Ferries,
 - (e), (f) (Repealed)
 - (g) a public or private subsidiary corporation (as referred to in Part 6B) of any of those bodies.

Note—

This Act provides that the Chief Executive of a body referred to in paragraphs (a)–(f) is, in managing the affairs of the body, to do so in accordance with any directions of TfNSW under this section.

- (2) A body referred to in subsection (1) is required to provide TfNSW, at such times and in such form as TfNSW directs, with the following:

- (a) the operating and capital works budget of the body for the next year and forward years,
- (b) any other information held by or relating to the body that TfNSW considers is required for the purposes of exercising its functions.

If a budget of the body is required to be changed as a result of a direction of TfNSW under this section, the body is to provide the revised budget to TfNSW.

- (3) This section is not subject to any contract under clause 1 (e) of Schedule 1 with a body referred to in subsection (1).

3H Review by relevant safety regulator of directions relating to transport safety matters

- (1) In this section:

direction means a direction given by TfNSW under section 3G to a body (a **transport authority**).

relevant safety regulator means:

- (a) in the case of a direction relating to rail services or infrastructure—the Independent Transport Safety Regulator, or
- (b) in the case of a direction relating to bus services—the Independent Transport Safety Regulator (but only if the ITSr is, in accordance with an arrangement under section 6B of the *Passenger Transport Act 1990*, assisting TfNSW in connection with the exercise of the functions of TfNSW under that Act in relation to bus services), or
- (c) in the case of a direction relating to ferry services—Roads and Maritime Services.

safety management system of a transport authority means any safety management system that the authority is required to have:

- (a) under section 9D or 53D of the *Passenger Transport Act 1990*, or
- (b) under section 12 of the *Rail Safety Act 2008*.

- (2) A transport authority may advise TfNSW of the likely impact on its safety management system of compliance with a direction of TfNSW (including whether the authority needs to make appropriate modifications to its safety management system before it is able to comply with the direction).
- (3) As a result of that advice, TfNSW may:
 - (a) change or revoke the direction, or
 - (b) suspend the direction and request the relevant safety regulator to review the

likely impact of the direction.

(4) If:

(a) TfNSW does not change, revoke or suspend the direction, and

(b) the transport authority considers that as a result of the direction it will not be able to comply with its safety management system,

the transport authority may, within 14 days after receiving the direction, request the relevant safety regulator to review the likely impact of the direction. Any such request operates to suspend the direction.

(5) The relevant safety regulator is to review the likely impact of the direction on the safety management system within 14 days after being requested to do so, and notify TfNSW and the transport authority of the result of its review.

(6) TfNSW may, as a result of the review, confirm, change or revoke the direction.

(7) Unless a suspended direction is sooner revoked, the suspension of the direction ceases:

(a) at the end of the period of 14 days after the relevant safety regulator is requested to review the likely impact of the direction, or

(b) at such time TfNSW decides, as a result of the review, to change or confirm the direction,

whichever first occurs. However, TfNSW may extend the suspension beyond the period that it would otherwise cease under this subsection.

(8) TfNSW may, without limiting any other provision of this section, request the relevant safety regulator for advice on the safety implications of a direction or proposed direction.

31 Delegation of TfNSW's functions

(1) TfNSW may delegate to an authorised person any of its functions (including any function delegated to TfNSW), other than this power of delegation.

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

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

(a) a public transport agency or a member of staff of a public transport agency, or

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

3J Acceptance of delegated functions by TfNSW

- (1) TfNSW may accept a delegation of the functions of a public transport agency.
- (2) A public transport agency is authorised to delegate any function of the agency to TfNSW.

3K Disclosure of information by agencies to TfNSW

- (1) A public transport agency is authorised to disclose information held by the agency to TfNSW if the disclosure is for the purpose of assisting TfNSW to exercise its functions under this or any other Act or is for the purpose of complying with a requirement imposed by TfNSW.
- (2) The authority conferred by this section applies despite any provision of any other Act that would otherwise prevent the disclosure of information by the public transport agency concerned.

3L Annual report

A report under the [Annual Reports \(Departments\) Act 1985](#) in respect of the Department of Transport may include any report required to be made annually in respect of TfNSW under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

Part 2 Rail Corporation New South Wales

Division 1 Constitution of RailCorp

4 Constitution of RailCorp

- (1) There is constituted by this Act a corporation with the corporate name of Rail Corporation New South Wales.
- (2) RailCorp is a NSW Government agency.

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) (Repealed)
- (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 2008*.

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.

(1A) TfNSW has responsibility for determining the terms of any standard access agreement to be used by RailCorp in connection with the provision of access pursuant to a rail access undertaking.

(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, and
- (e) acquire and develop any land, and

- (f) acquire or build, and maintain or dispose of, any engines, carriages, vehicles, plant, machinery or equipment, and
- (g) 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
- (h) 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 RailCorp's railway or other transport services or of any of RailCorp's businesses, and
- (i) appoint agents, and act as agents for other persons.

(3) (Repealed)

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 TfNSW.
- (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.

11A Sale, lease or other disposal of land

- (1) RailCorp 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) (Repealed)

12 Effect of Division

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

Division 4 Management of RailCorp

13, 14 (Repealed)

15 Chief Executive of RailCorp

The Director-General may, with the approval of the Minister, appoint a Chief Executive of RailCorp.

Note—

Schedule 2 contains ancillary provisions relating to the Chief Executive of RailCorp.

16 Chief Executive Officer to manage RailCorp

- (1) The affairs of RailCorp are to be managed and controlled by the Chief Executive of RailCorp in accordance with any directions of TfNSW under section 3G.
- (2) Any act, matter or thing done in the name of, or on behalf of, RailCorp by the Chief Executive is taken to have been done by RailCorp.

17 (Repealed)

17A RailCorp to supply information to Minister

RailCorp must:

- (a) supply the Minister or a person nominated by the Minister with any information relating to its activities that the Minister or person may require, and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

17B Corporate plans

- (1) RailCorp must, at least 3 months before the beginning of each financial year of RailCorp, prepare and deliver to TfNSW a draft corporate plan for the financial year.
- (2) RailCorp must:
 - (a) consider any comments on the draft corporate plan that were made by TfNSW within 2 months after the draft plan was delivered to TfNSW, and
 - (b) deliver the completed corporate plan to TfNSW before the beginning of the financial year concerned.

- (3) During the preparation of a corporate plan after the commencement of this subsection, RailCorp is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
- (4) RailCorp is to make the completed corporate plan available for public inspection. However, RailCorp 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 [Government Information \(Public Access\) Act 2009](#).
- (5) RailCorp must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (6) A corporate plan is to specify:
 - (a) the separate activities of RailCorp and, in particular, the separate commercial and non-commercial activities, and
 - (b) the objectives of each such separate activity for the financial year concerned and for future financial years, and
 - (c) the strategies, policies and budgets for achieving those objectives in relation to each such separate activity, and
 - (d) the targets and criteria for assessing RailCorp's performance.
- (7) This section is subject to any requirement made by or under this Act (including the requirements of any direction by the Minister or TfNSW under this Act).

17C-17E (Repealed)

17F Delegation of functions of RailCorp

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

Division 5

(Repealed)

Parts 2A, 2B

18-19AH (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.
- (3) The State Transit Authority cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the STA to exercise its functions.

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, 26 (Repealed)

27 Chief Executive of STA

The Director-General may, with the approval of the Minister, appoint a Chief Executive of the State Transit Authority.

Note—

Schedule 2 contains ancillary provisions relating to the Chief Executive of the STA.

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 any directions of TfNSW under section 3G.
- (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 (Repealed)

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 TfNSW 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 TfNSW within 2 months after the draft plan was delivered to TfNSW, and
 - (b) deliver the completed corporate plan to TfNSW 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 [Government Information \(Public Access\) Act 2009](#).
- (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 TfNSW directs are to be addressed by the corporate plan.
- (5) This section is subject to any requirement made by or under this Act.

(6) (Repealed)

32-34 (Repealed)

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 TfNSW.

Part 3A Sydney Ferries

Division 1 Constitution of Sydney Ferries

35A Constitution of Sydney Ferries

- (1) There is constituted by this Act a corporation with the corporate name of Sydney Ferries.
- (2) Sydney Ferries is a NSW Government agency.

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) (Repealed)

Division 3 Functions of Sydney Ferries

35C Sydney ferry services

(1) Sydney Ferries may operate Sydney ferry services.

(2), (3) (Repealed)

(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, and

(c) acquire and develop any land, and

(d) acquire or build, and maintain or dispose of, any engines, vessels, vehicles, plant, machinery or equipment, and

(e) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials, and

(f) make and enter into contracts or arrangements with any person for the operation by that person, on such terms as may be agreed on, of any of Sydney Ferries' ferry or other transport services or of any of Sydney Ferries' businesses, and

(g) appoint agents, and act as agents for other persons.

35EA Sale, lease or other disposal of land

- (1) Sydney Ferries 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) (Repealed)

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 TfNSW.
- (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 this Act and any other Act or law.

Division 4 Management of Sydney Ferries

35H, 35I (Repealed)

35J Chief Executive of Sydney Ferries

The Director-General may, with the approval of the Minister, appoint a Chief Executive of Sydney Ferries.

Note—

Schedule 2 contains ancillary provisions relating to the Chief Executive of Sydney Ferries.

35K Chief Executive to manage Sydney Ferries

- (1) The affairs of Sydney Ferries are to be managed and controlled by the Chief Executive of Sydney Ferries in accordance with any directions of TfNSW under section 3G.
- (2) Any act, matter or thing done in the name of, or on behalf of, Sydney Ferries by the Chief Executive is taken to have been done by Sydney Ferries.

35L (Repealed)

35M Sydney Ferries to supply information to Minister

Sydney Ferries must:

- (a) supply the Minister or a person nominated by the Minister with any information relating to its activities that the Minister or person may require, and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

35N Corporate plans

- (1) Sydney Ferries must, at least 3 months before the beginning of each financial year of Sydney Ferries, prepare and deliver to TfNSW a draft corporate plan for the financial year.
- (2) Sydney Ferries must:
 - (a) consider any comments on the draft corporate plan that were made by TfNSW within 2 months after the draft plan was delivered to TfNSW, and
 - (b) deliver the completed corporate plan to TfNSW before the beginning of the financial year concerned.
- (3) During the preparation of a corporate plan after the commencement of this subsection, Sydney Ferries is to make a draft plan available for public comment for at least 30 days and is to have regard to any submissions it receives about the draft plan within that period. The arrangements for obtaining or inspecting the draft plan and for making submissions are to be advertised in a daily newspaper circulating throughout the State.
- (4) Sydney Ferries is to make the completed corporate plan available for public inspection. However, Sydney Ferries 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 *Government Information (Public Access) Act 2009*.

- (5) Sydney Ferries must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.
- (6) A corporate plan is to specify:
 - (a) the separate activities of Sydney Ferries and, in particular, the separate commercial and non-commercial activities, and
 - (b) the objectives of each such separate activity for the financial year concerned and for future financial years, and
 - (c) the strategies, policies and budgets for achieving those objectives in relation to each such separate activity, and
 - (d) the targets and criteria for assessing Sydney Ferries' performance.
- (7) This section is subject to any requirement made by or under this Act (including the requirements of any direction by the Minister or TfNSW under this Act).

350-35Q (Repealed)

35QA Delegation of functions of Sydney Ferries

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

Division 5

(Repealed)

Parts 3B, 4

35R-42 (Repealed)

Part 4A Independent Transport Safety Regulator

Division 1 Interpretation

42A Definitions

In this Part:

Board means the Independent Transport Safety Advisory Board.

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

Chief Executive means the Chief Executive of the ITSr.

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

ITSr means the Independent Transport Safety Regulator.

rail safety inquiry has the same meaning that it has in the [Rail Safety Act 2008](#).

transport authority means:

- (a) RailCorp, or
- (b) the State Transit Authority, or
- (b1) Sydney Ferries, or
- (c) RMS, or
- (d), (d1) (Repealed)
- (e) TfNSW, or
- (f) (Repealed)
- (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 2008](#), 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 Regulator

42B Constitution of Independent Transport Safety Regulator

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Transport Safety Regulator.

- (2) The ITSr is, for the purposes of any Act, a statutory body representing the Crown.
- (3) The ITSr cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the ITSr to exercise its functions.

Division 3 Charter of Independent Transport Safety Regulator

42C Objectives of ITSr

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

42D General functions of ITSr

- (1) The ITSr has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the ITSr 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) (Repealed)
 - (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) (Repealed)
 - (f) to accredit rail transport operators under the [Rail Safety Act 2008](#) and to investigate, or arrange investigations, for compliance purposes under that Act,
 - (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

as the ITSr considers appropriate,

(i) to provide, or facilitate the provision of, advice, education and training in relation to rail safety.

(3) The ITSr 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 ITSr may advise on and monitor safety

(1) The ITSr is to advise the Minister with respect to the performance of transport authorities in connection with the exercise of their functions relating to the safe operation of transport services.

(2) The ITSr 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) (Repealed)

(4) In carrying out its functions under this section, the ITSr 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 TfNSW.

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

(1) The ITSr may, for the purposes of exercising its functions under this Part, 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 TfNSW.

(2) Audits may be conducted on a periodic or other basis.

42G Reports to Minister on performance

- (1) The ITSr 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 of those services.
- (2) A report under subsection (1) may be included in the annual report of the ITSr under the *Annual Reports (Statutory Bodies) Act 1984*.
- (3) The ITSr is to report to the Minister on the result of any audit of compliance with requirements under section 42F.

42H (Repealed)

42I Power of ITSr to give directions relating to safe operation of transport services

- (1) The ITSr may give directions to TfNSW relating to the safe operation of transport services and associated matters but only in relation to a function of a kind that was exercisable by the Director-General before 1 July 2010 (being the date of commencement of the *Transport Administration Amendment Act 2010*).
- (2) The ITSr may give directions to RMS relating to the safe operation of a public passenger service (within the meaning of the *Passenger Transport Act 1990*) carried on by means of a ferry, and associated matters.
- (3) If TfNSW or RMS considers that complying with any such direction may cause a significant variation in the funding required for the operations of TfNSW or RMS, TfNSW or RMS must request the ITSr to review the decision.
- (4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the ITSr determines.
- (5) If TfNSW or RMS requests a review in accordance with this section:
 - (a) TfNSW or RMS (as the case requires) may request the ITSr to provide a written record of the direction if it was not given in writing, and
 - (b) TfNSW or RMS (as the case requires) is not to comply with the direction until notified of the ITSr's decision following the review.
- (6) Following the review, the ITSr may confirm or revoke the direction but the ITSr is not to confirm the direction unless:
 - (a) the ITSr has estimated the variation in the financial requirements from the information supplied by TfNSW or RMS, and
 - (b) the ITSr 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 ITSr

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

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

42K ITSr may settle certain rail access disputes

- (1) The ITSr 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 ITSr 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 ITSr

- (1) The ITSr may, if the ITSr thinks it necessary for the safe operation of a transport service, disclose information acquired by the ITSr in the performance of the ITSr's functions under this or any other Act to any other person.
- (2) The ITSr may, if the ITSr 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 2008*.
- (5) This section does not permit the disclosure of information in contravention of section 64 of the *Rail Safety Act 2008* or section 46E of the *Passenger Transport Act 1990*.
- (6) Sections 77 and 78 of the *Rail Safety Act 2008* do not apply to a disclosure permitted under this section.

Division 4 Management of Independent Transport Safety Regulator

42M Chief Executive of ITSr

- (1) The Governor, on the recommendation of the Minister, may appoint a Chief Executive of the ITSr.
- (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 ITSr

- (1) The affairs of the ITSr 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 ITSr by the Chief Executive is taken to have been done by the ITSr.

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 ITSr

- (1) The ITSr is subject to the direction and control of the Minister, except as provided by subsection (2).
- (2) The ITSr 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 2008* (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 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 ITSr,
- (f) the exercise of a function under section 42I (except as provided by section 42I (6)),
- (g) the exercise of a function as a relevant safety regulator under section 3H.

42Q Delegation of functions of ITSr

- (1) The ITSr may delegate to an authorised person any of the functions of the ITSr 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 ITSr, if the delegate is authorised to do so by the ITSr.
- (3) The ITSr may not delegate a function delegated to the ITSr by the Minister under the *Rail Safety Act 2008*.
- (4) In this section:

authorised person means:

- (a) an officer of the ITSr, or
- (b) a member of a class of persons prescribed by the regulations or approved by the ITSr.

Division 5

42R, 42S (Repealed)

Division 6 Independent Transport Safety Advisory Board

42T Independent Transport Safety Advisory Board

- (1) There is established by this Act an Independent Transport Safety 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 ITSr.
- (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 ITSr 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).

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 Board

43 Establishment of Transport Advisory Board

- (1) There is established by this Act a Transport Advisory Board.
- (2) The Advisory Board is to consist of the following members:
 - (a) the Director-General or a member of staff of the Department of Transport or of the Transport Service nominated by the Director-General,
 - (b) no fewer than 3, and no more than 7, members appointed by the Minister.

Note—

Schedule 3 contains provisions relating to the members and procedure of the Advisory Board.

44 Functions of Advisory Board

- (1) The Advisory Board has the following functions:
 - (a) to provide advice to the Minister on such matters as are referred to it by the Minister,
 - (b) to provide advice to TfNSW on such matters as are referred to it by TfNSW,
 - (c) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) (Repealed)
- (3) The Advisory Board may, with the approval of TfNSW or the Minister, undertake public consultation for the purpose of exercising its functions.

44A Committees of Advisory Board

- (1) The Advisory Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Advisory Board.
- (3) The procedure for calling meetings of a committee and for the conduct of those meetings is to be determined by the Advisory Board or (subject to any determination by the Advisory Board) by the committee.

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 2008* 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 2008*.
- (5) This section does not permit the disclosure of information in contravention of section 64 of the *Rail Safety Act 2008* or section 46E of the *Passenger Transport Act 1990*.
- (6) Sections 77 and 78 of the *Rail Safety Act 2008* 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 59 (1), or
- (b) a member of a class of persons prescribed by the regulations.

Part 6 Roads and Maritime Services

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 NSW Police Force,
- (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 RMS has, by reason of the volume of vehicular or pedestrian traffic carried on it, determined requires lighting to a standard approved by RMS.
- (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 Maritime Services

46 Constitution of RMS

- (1) There is constituted by this Act a corporation with the corporate name of Roads and Maritime Services.
- (2) RMS is a NSW Government agency.

47 Chief Executive of RMS

The Director-General may, with the approval of the Minister, appoint a Chief Executive of Roads and Maritime Services.

Note—

Schedule 2 contains ancillary provisions relating to the Chief Executive of RMS.

48 Chief Executive to manage RMS

- (1) The affairs of RMS are to be managed and controlled by the Chief Executive of RMS in accordance with any directions of TfNSW under section 3G.
- (2) Any act, matter or thing done in the name of, or on behalf of, RMS by the Chief Executive is taken to have been done by RMS.

49 (Repealed)

Division 1B RMS

49A General functions of RMS

- (1) RMS has the functions conferred or imposed on it by or under the transport legislation or any other Act.
- (2) RMS cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable RMS to exercise its functions.

50 Delegation

- (1) RMS may delegate to an authorised person any of the functions of RMS, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by RMS if the delegate is authorised in writing to do so by RMS.
- (3) In this section, **authorised person** means:
 - (a) the Director-General, or
 - (b) a member of staff of TfNSW, or
 - (c) a member of staff of RMS, or
 - (d) a person of a class prescribed by the regulations.

51, 52 (Repealed)

52A Functions relating to traffic management and safety

- (1) The functions of RMS 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 RMS 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 RMS's functions under this Part.

(2) RMS 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 RMS's functions under this Part, and
- (d) carry out or promote research or investigations into matters connected with any of RMS'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 RMS

- (1) Without limiting any other functions conferred or imposed on it, RMS 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 RMS, 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) RMS may exercise its functions within or outside New South Wales.

Division 1C Directions and recommendations to public authorities

53A Directions to public authorities

- (1) RMS 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 RMS in the exercise of RMS's functions under this Part.
- (2) RMS 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 RMS 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) RMS 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) RMS 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, RMS is authorised by this section so to co-operate or do or perform the act or thing.

Division 2

54, 55 (Repealed)

Part 6A

(Repealed)

Part 6B Subsidiary corporations, joint ventures etc

55A Definition of “transport authority”

In this Part, **transport authority** means any of the following:

- (a) TfNSW,
- (b) RailCorp,
- (c) RMS,
- (d) State Transit Authority,
- (e) Sydney Ferries.
- (f), (g) (Repealed)

55B Exercise of functions through subsidiary corporations, joint ventures etc

(1) In this section:

subsidiary corporation of a transport authority means:

- (a) a public subsidiary corporation referred to in section 55C that is constituted for the purposes of the transport authority, or
- (b) a private subsidiary corporation referred to in section 55D that is formed for the

purposes of the transport authority.

- (2) Any function of a transport authority may be exercised:
 - (a) by the transport authority itself, or
 - (b) by a subsidiary corporation of the transport authority, or
 - (c) by the transport authority or a subsidiary corporation of the transport authority, or both, in a partnership, joint venture or other association with other persons or bodies.
- (3) This section does not extend to the function of TfNSW to give directions under section 3G.

55C Public subsidiary corporations

- (1) In this section:

public subsidiary corporation means a corporation constituted in accordance with this section for the purposes of a transport authority.
- (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 transport authority in respect of which it is constituted as are specified in the regulations or delegated to it under this Act, and
 - (b) is, for the purposes of any Act, a NSW Government agency.
- (4) The provisions of or made under this Act or any other Act relating to a transport authority apply to and in respect of a public subsidiary corporation constituted for the purposes of that authority in such manner and to such extent as are prescribed by the regulations.
- (5) With the approval of the Minister:
 - (a) a transport authority may transfer any of its assets, rights or liabilities to a public subsidiary corporation of the authority, and
 - (b) a public subsidiary corporation of a transport authority may transfer any of its assets, rights or liabilities to the transport authority or to another public subsidiary corporation of the authority.
- (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 transport authority in respect of which the corporation was constituted.

55D 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 a transport authority has a controlling interest.

- (2) A transport 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 transport authority.

- (3) A transport 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 a NSW Government agency.

55E-55S (Repealed)

Part 7 Provisions relating to staff

Division 1 Regulations relating to staff employed in connection with certain authorities

56 Application of Division

This Division applies to and in respect of such staff as are employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in a Division of the Government

Service (other than a Department within the meaning of that Act) to enable any of the following bodies to exercise its functions:

- (a) RMS,
- (b) State Transit Authority,
- (c) Independent Transport Safety Regulator,
- (d) until its dissolution, Sydney Metro.

57 Regulations relating to staff to which this Division applies

- (1) The regulations may make provision for or with respect to the staff to which this Division applies, 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 the staff to which this Division applies:
 - (a) have effect subject to any State industrial instrument relating to that staff, and
 - (b) have effect despite any determination under section 4E (1) of the *Public Sector Employment and Management Act 2002*, and
 - (c) are subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, and
 - (d) in the case of staff employed in a Division of the Government Service to enable the State Transit Authority to exercise its functions—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*.

58 (Repealed)

Division 1A Staff of RailCorp

58A Employment of staff

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

58B Salary, conditions etc of staff

RailCorp 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.

58C Regulations relating to RailCorp staff

- (1) The regulations may make provision for or with respect to the employment of the staff of RailCorp, 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 RailCorp is a party, and
 - (b) have effect despite any determination of RailCorp under section 58B, 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) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to the employment of staff under this Division.

Division 2 Staff of Chief Investigator

59 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.

59A-59C (Repealed)

60 Salary, wages and conditions of staff

The Chief Investigator may fix the salary, wages and conditions of employment of any staff appointed under section 59 (1) in so far as they are not fixed by or under any other Act or law.

61 Regulations relating to staff of Chief Investigator

- (1) The regulations may make provision for or with respect to the employment of staff appointed under section 59 (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 60, and
 - (c) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

Division 2A

61A-61C (Repealed)

Division 3 Staff of Sydney Ferries

62 Employment of staff

Sydney Ferries may employ such staff as it requires to exercise its functions.

63 Salary, conditions etc of staff

Sydney Ferries 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.

64 Regulations relating to Sydney Ferries staff

- (1) The regulations may make provision for or with respect to the employment of the staff of Sydney Ferries, 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 Sydney Ferries is a party, and

- (b) have effect despite any determination of Sydney Ferries under section 63, 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) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to the employment of staff under this Division.

Division 3A

64A-64C (Repealed)

Division 4 Transfer of staff

65 Definitions

In this Division:

transferred staff member means a member of staff of a transport authority who is the subject of an order under this Division.

transport authority means any of the following:

- (a) the Department of Transport,
 - (a1) TfNSW,
- (b) RailCorp,
- (c) RMS,
- (d) State Transit Authority,
- (e) Sydney Ferries,
- (f), (g) (Repealed)
- (h) a public subsidiary corporation (as referred to in Part 6B) of any of the above bodies,
- (i) Independent Transport Safety Regulator,
- (j) until its dissolution, Sydney Metro.

66 Orders providing for transfer of staff of transport authorities

- (1) TfNSW may, by order in writing, provide that any member of staff of a transport authority who is specified or described in the order is transferred to another transport

authority specified in the order.

- (2) The transferred staff member is taken for all purposes as having become an employee of the other transport authority, in accordance with the terms of the order, on the day specified in the order.
- (3) TfNSW cannot make an order under this Division that relates to the Independent Transport Safety Regulator except with the approval of the Chief Executive of the Independent Transport Safety Regulator.

67 Preservation of remuneration and other conditions of employment on transfer

- (1) Except as otherwise provided by this Division or the regulations, the terms and conditions on which a transferred staff member becomes employed on being transferred by an order under this Division (including terms and conditions as to remuneration, allowances and duration of employment) are, on the transfer date, those on which the staff member was employed immediately before the transfer.
- (2) Nothing in this section prevents the terms and conditions of employment referred to in subsection (1) from being varied.

68 Preservation of leave and other entitlements for previous service

- (1) Continuous service of a transferred staff member with any transport authority is taken, for all purposes, as service with the transport authority that is the staff member's current employer.
- (2) This section 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, a transferred staff member retains, on being transferred under this Division, any rights to annual leave, long service leave and sick leave accrued in the staff member's previous employment with a transport authority.
- (4) A transferred staff member'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 staff member 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 staff member after that day.

68A No payment out on transfer or dual benefits

A person who is transferred under this Division:

- (a) is not entitled to receive any payment or other benefit merely because the person

ceases to be a member of staff of the transport authority from which the person is transferred, and

- (b) is not entitled to elect, because of the transfer, to be paid the money value of any extended or annual leave that the person accrued as a member of staff of the transport authority from which the person is transferred, and
- (c) is not entitled to claim, under this or any other Act, dual benefits of the same kind for the same period of service.

Part 7A The Transport Service

68B The Transport Service

The Transport Service of New South Wales consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.

68C Employment of staff in the Transport Service

- (1) The Government of New South Wales may employ staff under this Part to enable TfNSW to exercise its functions.
- (2) The Director-General exercises, on behalf of the Government of New South Wales, the employer functions of the Government in relation to the staff employed in the Transport Service.

68D Salary, conditions etc of staff employed in the Transport Service

- (1) The Director-General may fix the salary, wages and conditions of employment of staff employed under this Part in so far as they are not fixed by or under any other law.
- (2) The Director-General may enter into an agreement with any association or organisation representing a group or class of members of the Transport Service with respect to the conditions of employment (including salaries, wages or remuneration) of that group or class in so far as they are not fixed by or under any other law.

68E Regulations relating to staff employed in the Transport Service

- (1) The regulations may make provision for or with respect to the employment of members of the Transport Service, including the conditions of employment and the discipline of any such members.
- (2) Any such regulations relating to the conditions of employment or the discipline of staff have effect:
 - (a) despite any determination of the Director-General under section 68D (1), and
 - (b) subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Director-General is a party.

68F Extended leave entitlements

Schedule 3 to the *Public Sector Employment and Management Act 2002* applies (with any necessary modifications) to or in respect of the members of the Transport Service in the same way as it applies to officers and temporary employees in the Public Service.

Note—

Schedule 3A (Recognition of prior government service for public sector employees extended leave entitlements) to the *Public Sector Employment and Management Act 2002* also applies to members of the Transport Service (which is a “public sector service” within the meaning of that Act).

68G Transport Senior Service

- (1) The Transport Senior Service comprises the persons holding positions in the Transport Service that have a salary not less than the minimum salary applicable to a Transport Senior Service Level 1 position.
- (2) For the purposes of this section, **executive position** means a position referred to in subsection (1) and **executive officer** means a person holding such a position.
- (3) The employment of an executive officer may be governed by, or otherwise be subject to, a contract of employment between the officer and the Director-General.
- (4) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (5) Part 6 (Unfair dismissals), Part 7 (Public sector promotion and disciplinary appeals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of an executive officer.
- (6) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.
- (7) Subsection (6) does not however prevent the Director-General from applying the provisions of an award or industrial agreement (including a determination under section 68D) to the employment of an executive officer.
- (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (9) This section prevails over any inconsistent provision of any other Act or law or of the terms of appointment of, or contract of employment with, an executive officer.

(10) In this section:

employment of an executive officer means:

- (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
- (b) the removal, retirement, termination of employment or other cessation of office of the executive officer, or
- (c) any disciplinary proceedings or disciplinary action taken against the executive officer, or
- (d) the remuneration or conditions of employment of the executive officer.

68H Transfer of staff within the Transport Service

- (1) The Director-General may, subject to this section, transfer a member of the Transport Service to another position within the Transport Service, following consultation with the member of staff.
- (2) The following provisions apply to the transfer of a person under this section:
 - (a) the transfer is to be made at the person's existing level of remuneration, unless the person consents to the transfer at a lower level of remuneration,
 - (b) the Director-General must be satisfied that the person possesses the essential qualifications specified for the other position and the work assigned to the other position is appropriate to the skills and qualifications of the person,
 - (c) the person is entitled, on the transfer date, to any conditions of employment applicable to that person under section 67 immediately before the transfer, until such time as further provision is made under this Act or any other law.

68I Incapable staff member may be retired

If:

- (a) a member of the Transport Service is found on medical grounds to be unfit to discharge or incapable of discharging his or her duties as such a member, and
- (b) the person's unfitness or incapacity:
 - (i) appears likely to be of a permanent nature, and
 - (ii) has not arisen from actual misconduct on the part of the person, or from causes within the person's control,

the Director-General may cause the person to be retired.

68J Operation of privacy legislation

Any staff who are employed under this Part in the Transport Service are, for the purposes of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*, taken to be part of TfNSW.

68K Miscellaneous provisions relating to civil liability

- (1) Part 5 of the *Workers Compensation Act 1987* applies to work injury damages recoverable from the Government of New South Wales, and to work injury damages recoverable from TfNSW, by or in respect of a person employed in the Transport Service. That Part so applies as if TfNSW:
 - (a) were an employer of the person in addition to the Government, and
 - (b) were an employer liable to pay compensation under that Act.
- (2) A policy of insurance may be issued to the Government of New South Wales under the *Workers Compensation Act 1987* that is limited to workers employed in the Transport Service.
- (3) If:
 - (a) a person is employed in the Transport Service, and
 - (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and
 - (c) TfNSW is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that TfNSW may incur in respect of that negligence or other tort,the Government is subrogated to the rights of TfNSW under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.
- (4) In this section:

work injury damages means damages recoverable from TfNSW or the Government of New South Wales in respect of injury to or the death of a person employed in the Transport Service caused by the negligence or other tort of TfNSW or the Government and arising out of the employment of the person by the Government, 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 to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

68L Construction of references relating to staff

In this or any other Act, or in any instrument made under this or any other Act or in any other instrument of any kind, a reference to a member of staff or employee (however

described) of TfNSW is to be read as a reference to a member of the Transport Service.

68M Delegation of Director-General's functions under this Part

The Director-General may delegate any of the Director-General's functions under this Part (other than this power of delegation) to a member of the Transport Service or a member of staff of the Department of Transport.

Part 8 Financial provisions

Division 1 Financial provisions relating to RailCorp

69 RailCorp Fund

There is established in the Special Deposits Account a fund called the RailCorp Fund.

70 Payments into RailCorp Fund

There is to be paid into the RailCorp Fund:

- (a) all money received by or on account of RailCorp, and
- (b) all money advanced to RailCorp by the Treasurer, and
- (c) all money:
 - (i) appropriated by Parliament for the purposes of TfNSW and allocated to RailCorp by TfNSW, or
 - (ii) otherwise appropriated by Parliament for the purposes of RailCorp, and
- (d) all fines and penalties recovered for offences under the regulations under section 91, or under section 95 of the *Rail Safety Act 2002* or under the *Passenger Transport Act 1990*, 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), and
- (e) the proceeds of the investment of money in the Fund, and
- (f) all other money required by or under this or any other Act to be paid into the Fund.

71 Payments from RailCorp Fund

There is to be paid from the RailCorp Fund:

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

72 (Repealed)

Division 1A

72A-72D (Repealed)

Division 2 Financial provisions relating to State Transit Authority

73 State Transit Authority Fund

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

74 Payments into State Transit Authority Fund

There shall be paid into the State Transit Authority Fund:

- (a) all money received by or on account of the State Transit Authority, and
- (b) all money advanced to the State Transit Authority by the Treasurer, and
- (b1) all money:
 - (i) appropriated by Parliament for the purposes of TfNSW and allocated to the State Transit Authority by TfNSW, or
 - (ii) otherwise appropriated by Parliament for the purposes of the State Transit 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 2A Financial provisions relating to Transport for NSW

76A TfNSW Fund

There is established in the Special Deposits Account a fund called the Transport for NSW Fund (the **TfNSW Fund**).

76B Payments into TfNSW Fund

There is to be paid into the TfNSW Fund:

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

76C Payments from TfNSW Fund

There is to be paid from the TfNSW Fund:

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

Division 3 Financial provisions relating to Roads and Maritime Services

77 RMS Fund

There is established in the Special Deposits Account in the Treasury a fund called the Roads and Maritime Services Fund (the **RMS Fund**).

78 Payments into RMS Fund

- (1) There shall be paid into the RMS Fund:
- (a) all money:

- (i) advanced to RMS by the Treasurer, or
 - (ii) appropriated by Parliament for the purposes of TfNSW and allocated to RMS by TfNSW, or
 - (iii) otherwise appropriated by Parliament for the purposes of RMS,
- but excluding 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 RMS, except:
 - (i) any tax paid under the *Motor Vehicles Taxation Act 1988* or charges and administration fees paid under Part 2A of the *Road Transport (Vehicle Registration) Act 1997*, 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
 - (iia) any money received under the *Tow Truck Industry 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 RMS, 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 RMS Fund

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

- (2) Payments for any non-capital expenditure that is prescribed by the regulations under section 78 (1) (a) are not to be paid from the RMS Fund.

80 Expenditure on certain State works

- (1) Money in the RMS 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) RMS may, with the approval of the Minister, grant annual subsidies to councils for the lighting, to a standard approved by RMS, of traffic routes.
- (2) Before granting any such subsidy RMS may require a council to enter into an agreement with RMS 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 RMS to make available money for subsidies

- (1) In the period of 12 months commencing on 1 July each year, RMS 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 RMS 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) RMS may make the whole or any part of a payment required by this section out of the RMS Fund.

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

- (1) RMS 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 RMS has determined require removal or relocation for the purposes of traffic safety.

- (2) Before granting any such subsidy, RMS may require an electricity distribution network service provider referred to in subsection (1) to enter into an agreement with RMS 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 3A Financial provisions relating to Sydney Ferries

80D Sydney Ferries Fund

There is established in the Special Deposits Account a fund called the Sydney Ferries Fund.

80E Payments into Sydney Ferries Fund

There is to be paid into the Sydney Ferries Fund:

- (a) all money received by or on account of Sydney Ferries, and
- (b) all money advanced to Sydney Ferries by the Treasurer, and
- (c) all money:
 - (i) appropriated by Parliament for the purposes of TfNSW and allocated to Sydney Ferries by TfNSW, or
 - (ii) otherwise appropriated by Parliament for the purposes of Sydney Ferries, and
- (d) all fines and penalties recovered for offences under the regulations under section 104, or 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), and
- (e) the proceeds of the investment of money in the Fund, and
- (f) all other money required by or under this or any other Act to be paid into the Fund.

80F Payments from Sydney Ferries Fund

There is to be paid from the Sydney Ferries Fund:

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

Division 3B

80G-80I (Repealed)

Division 4 Financial provisions relating to Authorities generally

81A Definition

In this Division:

Authority means any of the following:

- (a) RailCorp,
- (a1) TfNSW,
- (b) RMS,
- (c) State Transit Authority,
- (d) Sydney Ferries.
- (e)-(g) (Repealed)

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 this Act, 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.
- (3A) If the regulations so provide, persons of a class prescribed by the regulations are not entitled to be issued with a free travel pass or a concessional travel pass under this section. This subsection applies despite any determination or direction of the Minister or of an Authority or the [Anti-Discrimination Act 1977](#).
- (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 104EA, unless required to do so by a direction of the Minister under this Act.

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-licence.

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, TfNSW 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 or TfNSW 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 or TfNSW 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 2008](#)

- (1) This section applies to railway operations within the meaning of the [Rail Safety Act 2008](#) 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 Service Commissioner 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 Service Commissioner under this section.
- (10) In this Division:

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 2008](#) relating to members of staff

- (1) A temporary member of staff of ARTC who performs rail safety work is taken to be an employee of ARTC, instead of the transferring rail authority, for the purposes of the [Rail Safety Act 2008](#) and any instrument under that Act.
- (2) In this section, **rail safety work** has the same meaning as it has in the [Rail Safety Act 2008](#).

88Y Obligations and rights under [Work Health and Safety Act 2011](#) and other legislation

- (1) For the purposes of the [Work Health and Safety Act 2011](#) 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 [Work Health and Safety Act 2011](#) or any employer liability legislation.
- (3) In this section:

employer liability legislation means:

- (a) instruments under the *Work Health and Safety Act 2011*, and
- (b) (Repealed)
- (c) the *Dangerous Goods (Road and Rail Transport) Act 2008* 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.

882B 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

882C 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 payroll tax purposes

For the purposes of the *Payroll Tax Act 2007*, 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, TfNSW, Sydney Metro or any other person or body prescribed by the regulations.

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 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 or a local council.
- (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 SRA Residual Holding Corporation, the Director-General and any other person or body prescribed by the regulations.
- (7) In this section and Schedule 4, a reference to the Minister, in relation to the transfer of any assets, rights or liabilities of the SRA Residual Holding Corporation, is to be read as a reference to the Treasurer.

95 (Repealed)

96 Person may be chief executive of more than one authority

Nothing in this or any other Act prevents a person from being the chief executive 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.
- (4) (Repealed)

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 RMS 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.

Note—

TfNSW has responsibility for determining the Standard Working Timetable in the metropolitan rail area. See clause 5 of Schedule 1.

- (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 reasonable priority to rail passenger services, and
 - (b) subject to giving reasonable 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, and
 - (c) allocate priority between rail passenger services and freight services consistently with the requirements of any agreement between the Commonwealth and the State or TfNSW for the funding of railway infrastructure that is part of the NSW rail network.
- (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

99E (Repealed)

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) (Repealed)

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.
- (3A) The State Transit Authority may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Director-General.
- (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 Regulator may require the State Transit Authority or Sydney Ferries or a person nominated by the Minister or Independent Transport Safety Regulator to inquire into and report to the Minister or Independent Transport Safety 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 Regulator, forward to the Minister or Independent Transport Safety 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 Special provisions relating to light rail

104A-104K (Repealed)

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) TfNSW may develop light rail systems, or facilitate their development by other persons.
- (2) TfNSW 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 TfNSW 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 TfNSW 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) TfNSW or a person authorised by TfNSW 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 TfNSW 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, TfNSW, or a person authorised by TfNSW, 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 routes of light rail systems

- (1) This section applies to a dispute between the relevant Ministers about a recommendation under section 104N relating to the declaration of a route of a light rail system.
- (2) The annual report of the Department of Transport is to include a report of any dispute to which this section applies that is determined by the Premier.
- (3) (Repealed)

Division 3 Miscellaneous provisions relating to RMS

105 Power to accept gifts, bequests or devises of property

- (1) RMS may acquire by gift, bequest or devise any property for any of the purposes of RMS 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 RMS 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 RMS.

106 Grants to councils in connection with use of buses

- (1) RMS 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 Part 2A of the *Road Transport (Vehicle Registration) Act 1997* 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) RMS 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 RMS 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 RMS 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) RailCorp, or
 - (a1) the Independent Transport Safety Regulator, or
 - (a2) TfNSW, or
 - (b) the State Transit Authority, or
 - (c) RMS, or
 - (c1) Sydney Ferries, or
 - (c2)–(d) (Repealed)
 - (e) Sydney Metro.
- (2), (3) (Repealed)

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 Seals of Authorities

- (1) The seal of an Authority shall be kept by the Chief Executive of the Authority and shall be affixed to a document only:
 - (a) in the presence of that Chief Executive or a member of the staff of the Authority authorised in that behalf by that Chief Executive, and
 - (b) with an attestation by the signature of that Chief Executive or that member of staff of the fact of the affixing of the seal.
- (2) In this section:

Authority means any of the following:

- (a) RailCorp,
- (a1) TfNSW,
- (b) RMS,
- (c) State Transit Authority,
- (d) Sydney Ferries,
- (e), (f) (Repealed)
- (g) Independent Transport Safety Regulator.

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 Referral of disputes

- (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.

- (1A) If any dispute with respect to the carrying out of the functions of TfNSW under this Act arises between TfNSW and a public authority (other than a transport 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 a dispute under this section, 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 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 or omitted to be 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 or omitted to be 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, RailCorp, the Independent Transport Safety Regulator, Sydney Ferries and RMS, the Director-General and the Chairperson of the Independent Transport Safety Advisory Board.

transport authority includes:

- (a) the Independent Transport Safety Advisory Board, and
- (b) the Chief Investigator.

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 or TfNSW.
- (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, TfNSW, 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 NSW 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 the 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 RMS 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 or TfNSW.

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

128 (Repealed)

Schedule 1 Functions of Transport for NSW

Part 1 General functions

1 General functions of TfNSW

TfNSW has the following general functions:

(a) **Transport planning and policy**

Transport planning and policy, including for integrated rail network, road network, maritime operations and maritime transport and land use strategies for metropolitan and regional areas.

(b) **Transport public funding**

The administration of the allocation of public funding for the transport sector, including the determination of budgets and programs across that sector.

(c) **Transport infrastructure**

The planning, oversight and delivery of transport infrastructure in accordance with integrated transport and land use strategies and available financial resources, including prioritising of expenditure and projects across the transport system.

(d) **Capital works programs and budgets**

Co-ordination of capital works programs and budgets across the transport sector.

(e) **Contracting for the delivery of transport services**

Contracting, on behalf of the State, with public transport agencies or the private sector, for the delivery of transport services, including the setting of performance targets and service standards.

(f) **Transport services co-ordination**

The co-ordination of transport services, including timetabling for transport services and providing for effective transport interchanges.

(g) **Incident management**

The management of incidents affecting the efficiency of road and public transport networks, including the co-ordination of communications with and responses by relevant agencies.

(h) **Transport information**

The provision of information about transport services and transport infrastructure to assist people to use those services or infrastructure.

(i) **Provision and deployment of staff and services**

The provision of corporate and shared services to public transport agencies and the deployment of staff to public transport agencies and the Department of Transport.

(j) **Ticketing for transport services**

The provision of integrated ticketing arrangements for transport services, and regulating the types of tickets and other ticketing arrangements for the setting of fares for transport services.

(k) **Precinct land planning**

Assisting the Minister for Planning and Infrastructure and other relevant agencies with the preparation of precinct plans for the development of land for, or in the vicinity of, public transport stations or wharves and transport interchanges.

(l) **Procurement**

Co-ordinating and carrying out the procurement of transport infrastructure and transport vehicles, rolling stock and vessels.

2 Advice and recommendations to the Minister

- (1) The transport policy and planning function of TfNSW includes the function of advising, assisting and making recommendations to the Minister in connection with the following:
 - (a) the development of policy (including regulatory policy) for or in connection with the implementation or enforcement of the transport legislation,
 - (b) the development of policy (including regulatory policy) for promoting and improving road safety, road travel efficiency and road traffic management,
 - (c) policy and planning for or in connection with ports and maritime matters,
 - (d) the initiation, development and implementation of proposals for the amendment of the transport legislation and other legislation relevant to the functions of TfNSW.
- (2) In this clause, a reference to the Minister includes a reference to any Minister administering any provision of the transport legislation or other legislation relevant to the functions of TfNSW.

Part 2 Transport functions

3 Transport infrastructure development

(1) TfNSW may:

- (a) develop, establish, hold, manage and maintain transport infrastructure on behalf of the State, and
- (b) hold, manage, maintain and establish assets associated with transport infrastructure developed or proposed to be developed by TfNSW, and
- (c) make and enter into leases or licences, or other arrangements, with persons for developing transport infrastructure, and
- (d) provide goods and services to the bus, rail, ferry or other transport industries.

(2) In this clause, a reference to developing transport infrastructure includes:

- (a) carrying out development for the purposes of or incidental to transport infrastructure (including development of land in the vicinity of transport infrastructure), and
- (b) facilitating, managing, financing or maintaining any such development, and
- (c) carrying out any function ancillary to any such development.

(3) In this clause:

development means development within the meaning of the [Environmental Planning and Assessment Act 1979](#) or an activity within the meaning of Part 5 of that Act.

transport infrastructure includes:

- (a) infrastructure associated with the use or operation of transport infrastructure, and
- (b) retail, commercial and residential development associated with or developed in conjunction with transport infrastructure.

4 Road safety, road travel efficiency and road traffic management

(1) TfNSW may:

- (a) conduct testing, research and investigations in connection with promoting or improving road safety, road travel efficiency and road traffic management, and
- (b) develop and implement programs, projects, strategies and campaigns for promoting or improving road safety, road travel efficiency and road traffic management, and
- (c) provide advice and assistance to public and local authorities for the promotion or

improvement of road safety, road travel efficiency and road traffic management.

- (2) In this clause, **road safety** refers to safety in connection with roads, road vehicles and all aspects of road usage.

5 Standard Working Timetable

- (1) TfNSW has responsibility for determining the Standard Working Timetable for the delivery of transport services by public transport agencies for all modes of transport in the metropolitan rail area. TfNSW may alter or replace the Standard Working Timetable from time to time.
- (2) The **Standard Working Timetable** is the timetable that provides the specifications for the following aspects of the daily provision of rail, bus and ferry services by public transport agencies:
- (a) frequency of services,
 - (b) daily service periods (that is, the times of first and last services),
 - (c) size and carrying capacity of the trains, buses and ferries to be used to provide services,
 - (d) movement of trains, buses and ferries when not in service,
 - (e) access and non-operational times for maintenance and other operational purposes.
- (3) TfNSW is to determine the Standard Working Timetable (including any alteration or replacement of that timetable) in consultation with the public transport agencies concerned.
- (4) The Standard Working Timetable (as in force from time to time) is to be adopted by all public transport agencies as the timetable for the delivery of the transport services for which they are responsible.
- (5) The Standard Working Timetable does not operate to prevent timetable changes due to incident management or maintenance.
- (6) This clause overrides section 99D (Network control) and any order under that section, to the extent of any inconsistency with this clause.

6 Provision of rail access

TfNSW may provide persons with access under the current NSW rail access undertaking to the part of the NSW rail network vested in or owned by TfNSW and that is not subject to an ARTC lease or licence.

7 Community transport schemes

TfNSW may allocate funding for and administer or arrange for the administration of any scheme approved by the Minister for the provision of community transport schemes and services.

8 Government subsidised travel schemes

- (1) TfNSW is to administer, or arrange for the administration of, any scheme approved by the Minister for Government subsidised travel on passenger services.
- (2) If the regulations so provide, persons of a class prescribed by the regulations are not entitled to subsidised travel under any such scheme. This subclause applies despite any approval or direction of the Minister or the [Anti-Discrimination Act 1977](#).
- (3) Payments required to be made in accordance with any such scheme are to be made from such money as may be provided by Parliament for the purpose.

Part 3 Ancillary functions

9 Power to contract

- (1) TfNSW may make or enter into contracts or arrangements with any person in connection with the exercise of TfNSW's functions.
- (2) This clause does not limit the operation of any provision of the [Passenger Transport Act 1990](#).

10 Sale, lease or other disposal of land

TfNSW may sell, lease or otherwise dispose of any of TfNSW's land.

11 Acquisition of land

- (1) TfNSW may, for the purpose of the exercise of TfNSW's functions, 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 subclause (1) include for the purposes of a future sale, lease or disposal, that is, to enable TfNSW to exercise its functions in relation to land under this Act.
- (3) An acquisition of land under this clause is not void merely because it is expressed to be for the purposes of exercising the functions of TfNSW or for the purposes of this Act.
- (4) Without limiting the generality of this clause, the purposes for which land may be acquired under this clause include acquiring land for future use for transport infrastructure or services.

12 Application of *Public Works Act 1912*

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land under clause 11 is taken to be for an authorised work and TfNSW 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.

13 Other functions concerning land

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

14 Regulations

- (1) The regulations may make provision for or with respect to passenger transport facilities (including light rail systems) provided in the exercise of TfNSW'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.

Schedule 2 Provisions relating to Chief Executives

(Sections 15 (2), 27 (3), 35J (2), 47 (2))

1 Definition

In this Schedule:

Chief Executive means the Chief Executive of any of the following bodies:

- (a) RailCorp,
- (b) RMS,
- (c) State Transit Authority,
- (d) Sydney Ferries.

(e), (f) (Repealed)

1A Employment of Chief Executives

- (1) 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.
- (2) This clause is subject to clauses 164 and 175 of Schedule 7.

2 (Repealed)

3 Acting Chief Executive

- (1) The Director-General 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 Director-General 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 Director-General 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 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 Regulator.

Board means the Independent Transport Safety Advisory Board.

Chairperson means the Chairperson of the Board.

member means the Chief Executive of the Independent Transport Safety 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 2B (Repealed)

Schedule 3 Provisions relating to Transport Advisory Board

1 Definition

In this Schedule:

member means an ex-officio or appointed member of the Advisory Board.

2 (Repealed)

3 Chairperson of Advisory Board

- (1) Of the appointed members of the Advisory Board, one is (in and by the member's instrument of appointment or in and by another instrument executed by the Minister) to be appointed as Chairperson of the Advisory Board.
- (2) The Minister may remove a member from the office of Chairperson of the Advisory Board at any time.
- (3) A person who is a member and Chairperson of the Advisory Board 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 the Advisory Board 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 the Advisory 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 Advisory Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory 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 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.

9A Personal liability

A matter or thing done or omitted to be done by the Advisory Board, a member of the Advisory Board or a person acting under the direction of the Advisory 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.

10 General procedure

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

11 Quorum

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

12 Presiding member

- (1) The Chairperson of the Advisory Board 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 Board.
- (2) The person presiding at any meeting of the Advisory Board 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 the Advisory Board at which a quorum is present is the decision of the Advisory Board.

14 First meeting

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

Schedule 4 Transfer of assets, rights and liabilities

1 Definitions

In this Schedule:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) 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 and whether personal or assignable).

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 and whether personal or assignable).

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

1 Application

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

2 Definitions

In this Schedule:

Authority means any of the following:

- (a) RailCorp,
- (b) RMS,
- (c) State Transit Authority,
- (d) Sydney Ferries,
- (e), (f) (Repealed)
- (g) Independent Transport Safety Regulator,
- (h) until its dissolution, Sydney Metro.

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 Schedule 3A to the *Public Sector Employment and Management Act 2002* 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 clause 7 of Schedule 3A to the *Public Sector Employment and Management Act 2002*.

(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 de facto partner of the officer at the time of his or her death.

Note—

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

Schedule 6 (Repealed)

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) (Repealed)

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

1B TfNSW's rail infrastructure facilities

- (1) TfNSW 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 TfNSW and of all rail infrastructure facilities vested in or transferred to TfNSW (whether or not the place on which the facilities are situated is owned by TfNSW).
- (2) This clause does not apply to rail infrastructure facilities transferred to RailCorp.

2 (Repealed)

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) (Repealed)
- (4) This clause is subject to any interest of TfNSW 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 TfNSW is taken to be the owner of rail infrastructure facilities in the country rail area.
- (5) This clause is subject to any interest of TfNSW in rail infrastructure facilities in the metropolitan rail area.
- (6) Without limiting subclause (3), that subclause extends to an ARTC lease or licence.

2CA (Repealed)

2D General powers

- (1) An owner may, subject to this Act and the current NSW rail access undertaking, sell or otherwise deal with rail infrastructure facilities that it owns.
- (2) In this clause, **owner**, in relation to rail infrastructure facilities TfNSW owns that are subject to an ARTC lease or licence, includes TfNSW 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.
- (1C) Without limiting this clause, the power of entry conferred by it for the purposes referred to in subclause (1) includes the power to enter land for the purpose of carrying out geotechnical surveys with respect to railway land.
- (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 of the owner or a person nominated by the chief executive 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 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 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 2008](#) 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 2010* 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 (Repealed)

13A Acquisition of rail infrastructure facilities

- (1) RailCorp or TfNSW may acquire rail infrastructure facilities for purposes that are consistent with their objectives.
- (2) Rail infrastructure facilities that RailCorp or TfNSW 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 may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the Director-General.
- (5) For the purposes of the [Public Works Act 1912](#), any such acquisition is taken to be for an authorised work and RailCorp or TfNSW 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 TfNSW 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, RMS or an authorised officer of a roads authority or RMS 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 RMS) 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) TfNSW 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 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 2008 unaffected

Nothing in this Schedule affects the operation of the [Rail Safety Act 2008](#).

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, ARTC or TfNSW.

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 2010*, 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.

8 Application of section 42 of [Real Property Act 1900](#)

The provisions of this Schedule have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

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)

Transport Administration Amendment (Public Transport Ticketing Corporation) Act 2006

Transport Administration Amendment (Travel Concession) Act 2006

State Revenue and Other Legislation Amendment (Budget) Act 2007

Rail Safety Act 2008, but only to the extent that it amends this Act

Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008

Transport Administration Amendment (Metro Rail) Act 2008

Transport Administration Amendment Act 2010

Transport Legislation Amendment Act 2011

- (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 (Repealed)

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 (Repealed)

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.

Part 15 Provisions consequent on enactment of Transport Administration Amendment (Travel Concession) Act 2006

159 Student travel passes—transitional provision

- (1) Until the regulations otherwise provide, full fee paying overseas students:
- (a) are not entitled to be issued with a concessional travel pass (as referred to in section 88) of a kind that is available only to persons who are students at tertiary educational institutions, and
 - (b) are not entitled to the benefit of concessional travel in circumstances where only a person who is entitled to be issued with such a pass is entitled to that benefit.
- (2) This clause extends to travel under a scheme for Government subsidised travel as referred to in section 39.
- (3) In this clause, **full fee paying overseas student** means a person who has been permitted to enter Australia on a visa issued on the basis that while in Australia the person will be enrolled as a full-time student at a tertiary educational institution, paying the full cost of their tuition and will have sufficient funds to meet their educational and living costs in Australia.

Part 16 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget) Act 2007

160 Chief Executive

- (1) On the repeal of clause 6 of Schedule 8, the person holding office as the Chief Executive of the State Rail Authority immediately before that repeal ceases to hold that office.
- (2) No compensation or remuneration is payable to any person because of the operation of this clause.

161 References to State Rail Authority

- (1) Subject to the regulations, a reference in any Act (other than this Act) or instrument, or in any other document, to the State Rail Authority is to be read as a reference to the SRA Residual Holding Corporation.
- (2) Without limiting subclause (1), the regulations may provide that a reference in any Act (other than this Act), instrument or other document to the State Rail Authority is to be

read as a reference to another statutory corporation.

Part 17 Provisions consequent on enactment of Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008

Division 1 Preliminary

162 Definition

In this Part:

2008 amending Act means the *Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*.

Division 2 Provisions relating to constitution of RailCorp

163 Continuity of RailCorp

RailCorp, as constituted under this Act immediately after the substitution of section 4 (2) by the 2008 amending Act, is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as, RailCorp as constituted immediately before that substitution.

164 Existing Chief Executive Officer of RailCorp

- (1) The person who, immediately before the commencement of section 15 (as inserted by the 2008 amending Act), held office as chief executive officer of RailCorp is taken to have been appointed as Chief Executive Officer of RailCorp under that section:
 - (a) for the balance of the term of office for which the person was so appointed before the commencement of that section, and
 - (b) on the same terms and conditions as the person was so determined.
- (2) The Minister may, by order, vary the terms and conditions of the appointment of the Chief Executive Officer as continued by this clause, having regard to terms and conditions of appointment of members of the Chief Executive Service under the *Public Sector Employment and Management Act 2002*.

165 Existing Board members

- (1) An existing Board member of RailCorp ceases to hold office on the commencement of section 13, as inserted by the 2008 amending Act, but is eligible (if otherwise qualified) to be appointed as a member of the RailCorp Board.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of the office.

(3) In this clause:

existing Board member means a person (other than the Chief Executive Officer) who held office as a member of the Board of RailCorp immediately before the commencement of section 13, as inserted by the 2008 amending Act.

166 Corporate plan

- (1) RailCorp is to prepare its first corporate plan, in accordance with section 17B as inserted by the 2008 amending Act, within the period approved by the Minister for the purposes of this clause.
- (2) The statement of corporate intent applicable to RailCorp under the *State Owned Corporations Act 1989* immediately before the commencement of section 17B continues to apply to RailCorp until RailCorp complies with that section, subject to any direction of the Minister.

Division 3 Provisions relating to constitution of Sydney Ferries

167 Continuity of Sydney Ferries

Sydney Ferries, as constituted under this Act immediately after the substitution of section 35A (2) by the 2008 amending Act, is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as, Sydney Ferries as constituted immediately before that substitution.

168 Existing Chief Executive Officer of Sydney Ferries

- (1) The person who, immediately before the commencement of section 35J (as inserted by the 2008 amending Act), held office as chief executive officer of Sydney Ferries is taken to have been appointed as Chief Executive Officer of Sydney Ferries under that section:
 - (a) for the balance of the term of office for which the person was so appointed before the commencement of that section, and
 - (b) on the same terms and conditions as the person was so appointed.
- (2) The Minister may, by order, vary the terms and conditions of the appointment of the Chief Executive Officer as continued by this clause, having regard to terms and conditions of appointment of members of the Chief Executive Service under the *Public Sector Employment and Management Act 2002*.

169 Existing Board members

- (1) An existing Board member of Sydney Ferries ceases to hold office on the commencement of section 35H, as inserted by the 2008 amending Act, but is eligible (if otherwise qualified) to be appointed as a member of the Sydney Ferries Board.

(2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of the office.

(3) In this clause:

existing Board member means a person (other than the Chief Executive Officer) who held office as a member of the Board of Sydney Ferries immediately before the commencement of section 35H, as inserted by the 2008 amending Act.

170 Corporate plan

- (1) Sydney Ferries is to prepare its first corporate plan, in accordance with section 35N as inserted by the 2008 amending Act, within the period approved by the Minister for the purposes of this clause.
- (2) The statement of corporate intent applicable to Sydney Ferries under the *State Owned Corporations Act 1989* immediately before the commencement of section 35N continues to apply to Sydney Ferries until Sydney Ferries complies with that section, subject to any direction of the Minister.

Part 18 Provisions consequent on enactment of [Transport Administration Amendment \(Metro Rail\) Act 2008](#)

171 Interpretation

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

172 First corporate plan

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

173 Transfers of assets and liabilities—validation

- (1) Schedule 4, as amended by the amending Act, extends to any transfer of assets, rights or liabilities, consequent on an order to which that Schedule applies, that was made at any time before the commencement of those amendments.
- (2) For that purpose:
 - (a) the amendments are taken to have been in force when the relevant transfers occurred, and
 - (b) any such transfer is taken to have been validly made if it could have been made after that commencement.
- (3) This clause does not apply to any transfer to the extent that it is affected by any

proceedings of a court that were finally determined before that commencement.

- (4) For the purposes of this clause, proceedings are not finally determined if:
- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

Part 19 Provisions consequent on enactment of **Transport Administration Amendment Act 2010**

174 References to Department of Transport and Infrastructure

A reference in any Act (other than this Act), in any instrument made under any Act or in any document of any kind to the Department of Transport and Infrastructure is to be construed as a reference to Transport NSW.

175 Existing chief executives of transport agencies

- (1) The person holding office as the chief executive (however described) of any of the following bodies immediately before the commencement of this clause is taken to have been appointed by the Director-General, for the balance of the person's term of appointment, as the chief executive of the body in respect of which the person formerly held office as chief executive:
- (a) RailCorp,
 - (b) Roads and Traffic Authority,
 - (c) State Transit Authority,
 - (d) Sydney Ferries.
- (2) The person holding office as the chief executive officer of Transport Infrastructure Development Corporation immediately before the commencement of this clause is taken to have been appointed by the Director-General, for the balance of the person's term of appointment, as the chief executive of the Transport Construction Authority:
- (a) with the same remuneration as that payable to the person immediately before that commencement, and
 - (b) on such other terms and conditions relating to that previous appointment as the Director-General determines after consultation with the Director of Public Employment.
- (3) The person holding office as the chief executive officer of Rail Infrastructure

Corporation immediately before the commencement of this clause is taken to have been appointed by the Director-General, for the balance of the person's term of appointment, as the chief executive of the Country Rail Infrastructure Authority:

- (a) with the same remuneration as that payable to the person immediately before that commencement and,
 - (b) on such other terms and conditions relating to that previous appointment as the Director-General determines after consultation with the Director of Public Employment.
- (4) The person holding office as the chief executive officer of Sydney Metro immediately before the commencement of this clause ceases to hold that office.
- (5) The person holding office as the chief executive officer of the Public Transport Ticketing Corporation immediately before the commencement of this clause ceases to hold that office.
- (6) No compensation or remuneration is payable to any person as a consequence of:
- (a) the person ceasing to hold any office, or
 - (b) the effect on a person's existing contract of employment,
- because of the operation of this clause.
- (7) Except as provided by this clause and clause 164, the continuation of a person's appointment under this clause is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

176 Existing Boards of transport agencies

- (1) In this clause:

existing Board means any of the following as constituted under this Act immediately before the commencement of this clause:

- (a) RailCorp Board,
- (b) State Transit Authority Board,
- (c) Sydney Ferries Board,
- (d) Public Transport Ticketing Corporation Board,
- (e) Sydney Metro Board,
- (f) board of directors of Transport Infrastructure Development Corporation,
- (g) board of directors of Rail Infrastructure Corporation.

- (2) Each existing Board is abolished.
- (3) A person who, immediately before the commencement of this clause, held office as a member of an existing Board:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.

177 Existing Advisory Councils

- (1) In this clause:

existing Advisory Council means the Transport Advisory Group or the Roads and Traffic Advisory Council as constituted under this Act immediately before the commencement of this clause.
- (2) Each existing Advisory Council is abolished.
- (3) A person who, immediately before the commencement of this clause, held office as an appointed member of an existing Advisory Council:
 - (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 eligible to be appointed as a member of the Transport Advisory Council established under Part 5 of this Act.

178 Existing subsidiary corporations of transport authorities

- (1) Each subsidiary corporation constituted under a provision of this Act immediately before the repeal of that provision by the [Transport Administration Amendment Act 2010](#) is, subject to the regulations, taken to be constituted under Part 6B (as inserted by that Act) as a subsidiary corporation of the transport authority in respect of which the subsidiary corporation was previously constituted.
- (2) Without limiting the operation of subclause (1), Western Sydney Buses is, on the repeal of section 33 by the [Transport Administration Amendment Act 2010](#), taken to have been constituted as a public subsidiary corporation of the State Transit Authority by the regulations under section 55C (as inserted by that Act).

179 Existing delegations of functions under [Passenger Transport Act 1990](#)

Any delegation by the Director-General under this Act of the Director-General's functions under the [Passenger Transport Act 1990](#) is taken to have been delegated under section 62A of that Act (as inserted by the [Transport Administration Amendment Act 2010](#)).

180 Abolition of Transport Administration Corporation

- (1) The Transport Administration Corporation is abolished.
- (2) The assets, rights and liabilities of the Transport Administration Corporation are, on the abolition of the Corporation, transferred to the Crown.
- (3) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Transport Administration Corporation by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.

Part 20 Provisions consequent on enactment of [Transport Legislation Amendment Act 2011](#)

Division 1 Preliminary

181 Interpretation

In this Part:

amending Act means the [Transport Legislation Amendment Act 2011](#).

Division 2 General provisions

182 Transfer of assets, rights and liabilities of Director-General to TfNSW

- (1) The assets, rights and liabilities of the Director-General of the Department of Transport acquired or incurred in the exercise of a function under the transport legislation, or in connection with the execution or administration of that legislation, before the commencement of this clause are, on the commencement of this clause, transferred to TfNSW.
- (2) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Director-General by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.
- (3) The Minister may by order in writing exempt specified assets, rights and liabilities from the operation of this clause.

183 Abolition of Roads and Traffic Authority

- (1) The Roads and Traffic Authority of New South Wales is abolished.
- (2) The assets, rights and liabilities of the Roads and Traffic Authority are, on the abolition of that Authority, transferred to Roads and Maritime Services.
- (3) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Roads and Traffic Authority by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.

- (4) A reference in any Act (other than this Act), in any instrument made under any Act or in any document of any kind to the Roads and Traffic Authority is to be construed as a reference to Roads and Maritime Services.
- (5) The Roads and Maritime Services Fund is a continuation of the Roads and Traffic Authority Fund.

184 Abolition of Roads and Traffic Authority Division

- (1) The Roads and Traffic Authority Division of the Government Service is abolished as a Division of the Government Service.
- (2) A person who was employed in the Roads and Traffic Authority Division immediately before the abolition of that Division becomes employed in the Roads and Maritime Services Division of the Government Service on the commencement of this clause.
- (3) The terms and conditions on which a person becomes employed in the Roads and Maritime Services Division under this clause (including terms and conditions as to remuneration, allowances and duration of employment) are, until such time as provision is otherwise made under this Act or any other law, those on which the person was employed immediately before the commencement of this clause.
- (4) Division 4 of Part 7 of this Act applies in relation to persons who become employed in the Roads and Maritime Services Division under this clause in the same way as that Division applies to persons who are transferred under that Division.

185 Transfer of assets, rights and liabilities of Maritime Authority

- (1) The assets, rights and liabilities of the Maritime Authority of NSW are, on the abolition of that Authority by the amending Act, transferred to Roads and Maritime Services.
- (2) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Maritime Authority of NSW by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.

186 Transfer of licences and other authorisations

- (1) This clause applies to an authorisation granted to a public transport agency under an Act or statutory rule and in force immediately before the commencement of this clause.

Note—

Acts under which authorisations are granted to public transport agencies include the *Environmental Planning and Assessment Act 1979*, *Home Building Act 1989*, *National Parks and Wildlife Act 1974*, *Protection of the Environment Operations Act 1997*, *Sydney Harbour Foreshore Authority Act 1998* and *Sydney Water Act 1994*.

- (2) An authorisation is, to the extent that it relates to transferred functions or assets of a transferee agency, taken to be held by the transferee agency on the same terms and

conditions as the public transport agency held the authorisation immediately before the commencement of this clause.

- (3) The regulations may exempt an authorisation from the operation of this clause.
- (4) This clause does not prevent an authorisation from being varied, cancelled or replaced.
- (5) In this clause:

authorisation includes a licence, permit, approval or consent.

public transport agency includes a body that was a public transport agency immediately before its abolition by the amending Act.

transferee agency means TfNSW or RMS.

transferred functions or assets of a transferee agency means functions conferred on, or assets, rights or liabilities vested in, the transferee agency by or under this Act, that were, immediately before the conferral or vesting, conferred on, or vested in, a public transport agency.

187 Existing awards do not apply to members of Transport Service

Any award or order of the Industrial Relations Commission in force immediately before the commencement of Part 7A of this Act does not apply to any member of the Transport Service.

Division 3 Provisions consequent on abolition of TCA

188 Abolition of TCA

- (1) The Transport Construction Authority is abolished.
- (2) The assets, rights and liabilities of the Transport Construction Authority are, on the abolition of the Authority, transferred to Transport for NSW.
- (3) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Transport Construction Authority by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.
- (4) A reference in any Act (other than this Act), in any instrument made under any Act or in any document of any kind to the Transport Construction Authority is to be construed as a reference to Transport for New South Wales.

Division 4 Provisions consequent on abolition of CRIA

189 Abolition of CRIA

- (1) The Country Rail Infrastructure Authority is abolished.
- (2) The assets, rights and liabilities of the Country Rail Infrastructure Authority are, on the abolition of the Authority, transferred to Transport for NSW.
- (3) Schedule 4 applies to the transfer of the assets, rights and liabilities of the Country Rail Infrastructure Authority by the operation of this clause and so applies as if this clause were an order to which that Schedule applies when this clause takes effect.
- (4) A reference in any Act (other than this Act), in any instrument made under any Act or in any document of any kind to the Country Rail Infrastructure Authority is to be construed as a reference to Transport for New South Wales.

Schedule 8 SRA Residual Holding Corporation

Part 1 Constitution and functions of SRA Residual Holding Corporation

1 Constitution of SRA Residual Holding Corporation

- (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.
 - (1A) On and from the commencement of this subclause:
 - (a) the corporate name of the State Rail Authority of New South Wales is changed to the State Rail Authority Residual Holding Corporation, and
 - (b) that body, for all purposes (including the rules of private international law), continues in existence under its new name so that its identity is not affected.
- (2) The SRA Residual Holding Corporation:
 - (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.

1A Definitions

In this Schedule:

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

special lease means any lease or sublease, or any associated contract or arrangement, under which the SRA Residual Holding Corporation has rights or liabilities and which is

declared by the Treasurer, by order, to be a special lease for the purposes of this Schedule.

2 Objectives of SRA Residual Holding Corporation

The objectives of the SRA Residual Holding Corporation 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 SRA Residual Holding Corporation

(1) The SRA Residual Holding Corporation has the following functions:

- (a) such functions as may be necessary or convenient to enable it to exercise its rights and discharge its obligations under or in connection with a special lease or any sublease or sub-sublease of the property to which a special lease applies,
- (b) to acquire any or all of the property the subject of a special lease or any other property that it is necessary or convenient for the Corporation to acquire in connection with the exercise of the Corporation's functions in relation to a special lease,
- (c) any other functions conferred or imposed on it by or under this or any other Act.

(1A) The SRA Residual Holding Corporation may do any thing that is supplemental or incidental to the exercise of its functions.

(2) The SRA Residual Holding Corporation may exercise its functions within or outside New South Wales.

4 Disposal of property

- (1) The SRA Residual Holding Corporation may sell, lease or otherwise dispose of any of its property.
- (2) Despite subclause (1), the SRA Residual Holding Corporation may not transfer, novate or otherwise dispose of any rights or liabilities under any special lease unless the Treasurer has determined that the disposal will not breach any term of any special lease or the disposal is required by a term of a special lease.

Part 2 Management of SRA Residual Holding Corporation

5-7 (Repealed)

8 Treasurer to manage and control affairs of SRA Residual Holding Corporation

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

9 (Repealed)

10 Delegation of functions of SRA Residual Holding Corporation

- (1) The SRA Residual Holding Corporation may delegate to any person any of the functions of the Corporation, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the SRA Residual Holding Corporation if the delegate is authorised in writing to do so by the Corporation.
- (3) In this clause, **authorised person** means:
 - (a) a member of staff of the SRA Residual Holding Corporation, or
 - (b) a person of a class prescribed by the regulations or approved by the Treasurer.

11 Staff of SRA Residual Holding Corporation

- (1) The SRA Residual Holding Corporation may arrange for the use of the services of any staff or facilities of any government department or public authority, including the staff or facilities of RailCorp, the Country Rail Infrastructure Authority or the New South Wales Treasury Corporation.
- (2) A person whose services are made use of by the SRA Residual Holding Corporation under subclause (1) is taken to be a member of staff of the Corporation.
- (3) Without limiting subclause (1), the SRA Residual Holding Corporation may appoint any such person to a position with the Corporation that is designated by the Corporation and may remove the person from that designated position at any time.

12 (Repealed)

Part 3 Financial provisions

13-15 (Repealed)

16 Financial duties generally

Sections 81 and 82 apply to the SRA Residual Holding Corporation.

17 (Repealed)

Part 4 Miscellaneous

18 Seal

The seal of the SRA Residual Holding Corporation is to be kept by the Treasurer and affixed to a document only:

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

18A (Repealed)

19 Dissolution of SRA Residual Holding Corporation and subsidiaries

- (1) The Governor may, by proclamation published in the Gazette, appoint a day on which the SRA Residual Holding Corporation is to be dissolved.
- (1A) A proclamation may not be made under subclause (1) unless the Treasurer has certified that the dissolution of the SRA Residual Holding Corporation will not result in a breach of any term of a special lease.
- (2) On that day, the SRA Residual Holding Corporation, and each SRA Residual Holding Corporation subsidiary, are dissolved and any assets, rights and liabilities of the Corporation 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 except that, in so applying those provisions, a reference to the Minister is to be read as a reference to the Treasurer.
- (4) (Repealed)
- (5) Regulations of a savings and transitional nature may be made consequent on the dissolution of the SRA Residual Holding Corporation and any subsidiary of the Corporation.

20 (Repealed)

21 References to SRA Residual Holding Corporation

- (1) On the dissolution of the SRA Residual Holding Corporation, a reference in any other

Act or instrument made under any other Act or in any other instrument of any kind to the SRA Residual Holding Corporation 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 Residual Holding Corporation

Nothing in this Schedule affects the transfer, before the dissolution of the SRA Residual Holding Corporation, of any assets, rights or liabilities of the SRA Residual Holding Corporation under this Act and Schedule 4 continues to apply to or in respect of any such transfer.

23 (Repealed)

Schedule 8A Sydney Metro

1 Definitions

In this Schedule:

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

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

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

2 Continuation of Sydney Metro

- (1) The corporation constituted under section 55B immediately before the commencement of this Schedule is continued by this clause with the corporate name of Sydney Metro.
- (2) The corporation continued by this clause is for all purposes (including the rules of private international law) the same legal entity as Sydney Metro constituted under section 55B immediately before the commencement of this Schedule.
- (3) Sydney Metro:
- (a) has the functions conferred or imposed on it by or under this or any other Act, and
 - (b) is a NSW Government agency.

3 Objectives and functions of Sydney Metro

- (1) The objectives of Sydney Metro 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.
- (2) Sydney Metro has the following functions:
 - (a) such functions as may be necessary or convenient to enable it to exercise its rights and discharge its obligations under or in connection with its assets, rights and liabilities (including the sale, lease or disposal of any of its property),
 - (b) any other functions conferred or imposed on it by or under this or any other Act.
- (3) Sydney Metro may do any thing that is supplemental or incidental to the exercise of its functions.

4 Director-General to manage and control affairs of Sydney Metro

- (1) The affairs of Sydney Metro are to be managed and controlled by the Director-General.
- (2) Any act, matter or thing done in the name of, or on behalf of, Sydney Metro by the Director-General is taken to have been done by Sydney Metro.
- (3) The seal of Sydney Metro is to be kept by the Director-General and affixed to a document only:
 - (a) in the presence of the Director-General or a member of staff of the Department of Transport or of the Transport Service authorised by the Director-General, and
 - (b) with an attestation by the signature of the Director-General or that member of staff of the fact of the affixing of the seal.
- (4) Until its dissolution, Sydney Metro is taken to be a public transport agency for the purposes of clause 1 of Schedule 1 (General functions of TfNSW).

5 Delegation of functions of Sydney Metro

- (1) Sydney Metro may delegate to an authorised person any of the functions of Sydney Metro, other than this power of delegation.
- (2) A delegate may subdelegate to an authorised person any function delegated by Sydney Metro if the delegate is authorised in writing to do so by Sydney Metro.
- (3) In this clause, **authorised person** means:

- (a) a member of staff of the Department of Transport or of the Transport Service, or
- (b) a person of a class prescribed by the regulations or approved by the Director-General.

6 Sydney Metro Fund

- (1) There is to continue in the Special Deposits Account a Sydney Metro Fund.
- (2) The following is to be paid into the Sydney Metro Fund:
 - (a) all money received by or on account of Sydney Metro,
 - (b) all money advanced to Sydney Metro by the Treasurer or appropriated by Parliament for the purposes of Sydney Metro,
 - (c) all other money required by or under this or any other Act to be paid into the Sydney Metro Fund.
- (3) The following is to be paid from the Sydney Metro Fund:
 - (a) all payments made on account of Sydney Metro or otherwise required to meet expenditure incurred in relation to the functions of Sydney Metro,
 - (b) such amounts as the Treasurer considers are required to reimburse the Treasury for refunding surplus Commonwealth grants relating to metro projects,
 - (c) such amounts as the Treasurer considers to be surplus to the requirements of the Sydney Metro Fund pending the dissolution of Sydney Metro,
 - (d) all other payments required by or under this or any other Act to be paid from the Sydney Metro Fund.

7 Annual report

A report under the [Annual Reports \(Departments\) Act 1985](#) in respect of the Department of Transport may include any annual report required to be made in respect of Sydney Metro under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

8 Dissolution of Sydney Metro

- (1) The Governor may, by proclamation published on the NSW legislation website, appoint a day on which Sydney Metro is to be dissolved.
- (2) On that day, Sydney Metro and each Sydney Metro subsidiary corporation are dissolved and any assets, rights and liabilities of Sydney Metro or the subsidiary corporation become assets, rights and liabilities of the Crown.
- (3) Schedule 4 applies to the transfer of the assets, rights and liabilities of Sydney Metro and each Sydney Metro subsidiary corporation by the operation of this clause and so

applies as if this clause were an order to which that Schedule applies when this clause takes effect.

- (4) Regulations of a savings and transitional nature may be made consequent on the dissolution of Sydney Metro and each Sydney Metro subsidiary corporation.

Schedule 9 (Repealed)

Schedule 10 Transferred provisions—[Tocumwal Railway Extension Act 1906](#)

1 Authority for construction and maintenance of line by Government of the State of Victoria

The Government of the State of Victoria may construct and maintain a line of railway and other works incidental thereto from a point on the flood channel or flats of the river Murray to Tocumwal, in the State of New South Wales, a distance of approximately two miles (which said line is more fully described in Schedule Two to the 1906 Act), and for that purpose may occupy and use any land appropriated, resumed, or acquired by the Secretary for Public Works as provided by section 4 of the 1906 Act.

2 Ratification of agreement

The agreement, a copy of which is set out in Schedule One to the 1906 Act, is hereby ratified and confirmed.

Note—

The agreement, entered into by the States of New South Wales and Victoria, contains provisions that may have ongoing effect. These provisions include clause 6, which provides that the State of Victoria is to bear the cost of maintaining and working both the line authorised to be extended from Victoria to Tocumwal, New South Wales and the Tocumwal bridge.

3 Meaning of “1906 Act”

In this Schedule, **the 1906 Act** means the [Tocumwal Railway Extension Act 1906](#) as in force immediately before its repeal.

4 Transferred provisions to which [Interpretation Act 1987](#) applies

Clauses 1-3 re-enact (with minor modifications) sections 2 and 3 of the [Tocumwal Railway Extension Act 1906](#) and are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

Schedule 11 (Repealed)