

Version No. 044
Rail Corporations Act 1996
No. 79 of 1996

Version incorporating amendments as at 31 July 2009

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to establish Victorian Rail Track and certain passenger transport corporations and to provide for the transfer of property, rights and liabilities to them.

S. 1
amended by
No. 104/1997
ss 4(2), 25.

2 Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 1998, it comes into operation on that day.

3 Definitions

- (1) In this Act—

associated rail infrastructure means—

- (a) an office, building or house used in the provision of rail transport services;
- (b) a workshop;
- (c) a terminal;
- (d) rolling stock;

S. 3(1) def. of
*associated rail
infrastructure*
inserted by
No. 25/2005
s. 3(d).

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s. 3

S. 3(1) def. of
Commission
inserted by
No. 62/2001
s. 89(1)(a).

Commission means the Essential Services
Commission established under the **Essential
Services Commission Act 2001**;

S. 3(1) def. of
*declared rail
transport
service*
inserted by
No. 47/1998
s. 4(1),
repealed by
No. 25/2005
s. 3(a).

* * * *

S. 3(1) def. of
*declared
railway
service*
repealed by
No. 104/1997
s. 24(1).

* * * *

S. 3(1) def. of
Director
inserted by
No. 98/1998
s. 4(1).

Director means the Director of Public Transport
under the **Transport Act 1983**;

S. 3(1) def. of
*former
relevant
assets*
inserted by
No. 98/1998
s. 4(1).

former relevant assets, in relation to a transferor,
means assets of the transferor that, under
Division 3 of Part 4, have vested in the State,
another operator or another person;

S. 3(1) def. of
freight service
inserted by
No. 25/2005
s. 3(b),
repealed by
No. 29/2006
s. 3(Sch. 1
item 34.1).

* * * *

former transferor instrument, in Division 3 of Part 4, means an instrument or an oral agreement subsisting immediately before the relevant date—

S. 3(1) def. of *former transferor instrument* inserted by No. 98/1998 s. 4(1).

- (a) to which the transferor was a party; or
- (b) that was given to, or in favour of, the transferor; or
- (c) that refers to the transferor; or
- (d) under which—
 - (i) money is, or may become, payable to or by the transferor; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the transferor;

freight service means a service for the carrying of freight by railway;

S. 3(1) def. of *freight service* inserted by No. 29/2006 s. 3(Sch. 1 item 34.2).

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

metropolitan area means the area within a radius of 30 kilometres of the post office at the corner of Bourke Street and Elizabeth Street, Melbourne;

S. 3(1) def. of *metropolitan area* inserted by No. 98/1998 s. 4(1).

* * * * *

S. 3(1) def. of *metropolitan train operator* inserted by No. 98/1998 s. 4(1), repealed by No. 49/2004 s. 20(a).

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S. 3(1) def. of
*metropolitan
tram operator*
inserted by
No. 98/1998
s. 4(1),
repealed by
No. 49/2004
s. 20(a).

* * * *

S. 3(1) def. of
Office
repealed by
No. 104/1997
s. 24(1), new
def. of *Office*
inserted by
No. 47/1998
s. 4(1),
repealed by
No. 62/2001
s. 89(1)(b).

* * * *

S. 3(1) def. of
operator
inserted by
No. 98/1998
s. 4(1).

operator, in Division 3 of Part 4, means a train operator or a tram operator or other person to which section 70 applies;

S. 3(1) def. of
*passenger
service*
inserted by
No. 98/1998
s. 4(1).

passenger service means a service for the carrying of passengers by railway or tramway;

S. 3(1) def. of
precinct
inserted by
No. 45/1999
s. 4(2),
amended by
No. 95/2005
s. 9(2)(a),
repealed by
No. 26/2009
s. 7(1).

* * * *

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

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* * * * *

S. 3(1) def. of *public statutory body* inserted by No. 45/1999 s. 4(2), repealed by No. 26/2009 s. 7(1).

public transport service means a service—

S. 3(1) def. of *public transport service* inserted by No. 49/2004 s. 20(b).

- (a) for the manufacture, production, supply or issue of tickets, or the supply and maintenance of a ticketing system, for use by passengers on a railway or tramway;
- (b) for the distribution of tickets amongst train operators and tram operators;
- (c) for the collection of revenue from ticket sales and the distribution of that revenue amongst train operators and tram operators;
- (d) for the provision of information to passengers or members of the public relating to the operation of a passenger service;
- (e) for the marketing of passenger services or other transport services;
- (f) for the construction and supply of rail infrastructure, train infrastructure or rolling stock;
- (g) for the maintenance of rail infrastructure, tram infrastructure or rolling stock;

- (h) that is ancillary or incidental to the provision of a passenger service or other transport service including, but not limited to, the provision of financial accommodation in connection with the acquisition of rolling stock;

S. 3(1) def. of *railway* substituted as *railway track* by No. 104/1997 s. 19(1)(a).

railway track includes heavy railway track and light railway track;

S. 3(1) def. of *rail corporation* amended by Nos 104/1997 ss 7, 9, 11, 13, 47/1998 s. 4(2), 104/1997 s. 4(3), 45/1999 s. 4(1)(a), 63/1999 ss 3(2), 4(2), 5(2), 6(2), 63/1999 s. 7(2), 34/2003 s. 15(a), 95/2005 s. 9(2)(a), 26/2009 s. 7(2).

rail corporation means Rail Track or V/Line Passenger Corporation;

S. 3(1) def. of *rail infrastructure* substituted by No. 25/2005 s. 3(c).

rail infrastructure means a facility that is used to operate a railway and includes—

- (a) railway track, railway track sidings, associated track structures and works (such as cuttings, tunnels, bridges, stations, platforms, excavations, land fill, track support earthworks and drainage works), over-track structures, under-track structures, service roads, signalling systems, rolling stock control systems, communications systems, notices and signs, overhead electrical power supply systems and associated

buildings, depots, yards, plant,
machinery and equipment; and

- (b) a facility or infrastructure not referred
to in paragraph (a) that is used to
operate a railway that is prescribed to
be rail infrastructure—

but does not include associated rail
infrastructure;

Note

Associated rail infrastructure may be declared to be
rail infrastructure for the purposes of Part 2A under an
Order made by the Governor in Council: See section
38B.

Rail Track means Victorian Rail Track
established by Division 2 of Part 2;

* * * * *

S. 3(1) def. of
*rail transport
service*
inserted by
No. 47/1998
s. 4(1),
amended by
Nos 98/1998
s. 4(2),
30/2000
s. 39(1),
65/2000
s. 8(1),
repealed by
No. 25/2005
s. 3(a).

related body corporate has the same meaning as
in section 9 of the Corporations Act;

S. 3(1) def. of
*related body
corporate*
inserted by
No. 20/2002
s. 3.

relevant assets, in Division 3 of Part 4, means
assets of an operator which, under an
agreement referred to in section 70, the
parties agree are relevant assets for the
purposes of that Division;

S. 3(1) def. of
*relevant
assets*
inserted by
No. 98/1998
s. 4(1).

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S. 3(1) def. of
relevant date
inserted by
No. 98/1998
s. 4(1),
amended by
No. 45/1999
s. 4(1)(b).

relevant date, in Division 3 of Part 4, in relation to an allocation statement under section 71 or relevant assets allocated under such a statement, means the date, or the date and time, fixed by the Minister under section 71(5) for the purposes of that statement;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

S. 3(1) def. of
road
inserted by
No. 104/1997
s. 5.

road includes street, lane, bridge, thoroughfare and any other place open to or used by the public for passage with vehicles and includes every carriageway, footpath, traffic island, nature strip and any area provided to separate vehicular traffic on any such street, lane, bridge, thoroughfare or other place;

S. 3(1) def. of
rolling stock
amended by
No. 104/1997
s. 19(1)(b)
(i)–(iii).

rolling stock means a vehicle that operates on or uses a railway track or tramway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle;

S. 3(1) def. of
Safety Director
inserted by
No. 9/2006
s. 150.

Safety Director means the Director, Public Transport Safety appointed under section 9L of the **Transport Act 1983**;

S. 3(1) def. of
Secretary
inserted by
No. 98/1998
s. 4(1).

Secretary means the Secretary to the Department of Infrastructure.

S. 3(1) def. of
terminal
inserted by
No. 25/2005
s. 3(d).

terminal means a facility at which freight is loaded or unloaded from rolling stock, or stored, and includes hard stands, equipment and other infrastructure used for the loading or unloading of freight from rolling stock at the facility;

<i>train operator</i> , in relation to a provision of this Act, means a body corporate specified in an Order under subsection (2) to be a train operator for the purposes of that provision;	S. 3(1) def. of <i>train operator</i> inserted by No. 98/1998 s. 4(1), amended by No. 49/2004 s. 20(c)(i)(ii).
<i>tram infrastructure</i> means the facilities that are used to operate a tramway and includes, but is not limited to, tramway track, associated track structures and works (such as cuttings, tunnels, bridges, stopping places, excavations, land fill, track support earthworks and drainage works), over-track structures, under-track structures, service roads, signalling systems, rolling stock control systems, communications systems, notices and signs, overhead electrical power supply systems and associated buildings, workshops, depots, yards, plant, machinery and equipment, but does not include rolling stock;	S. 3(1) def. of <i>tram infrastructure</i> inserted by No. 104/1997 s. 19(1)(c).
<i>tram operator</i> , in relation to a provision of this Act, means a body corporate specified in an Order under subsection (3) to be a tram operator for the purposes of that provision;	S. 3(1) def. of <i>tram operator</i> inserted by No. 98/1998 s. 4(1), amended by No. 49/2004 s. 20(d)(i)(ii).
<i>transferee</i> , in Division 3 of Part 4, means a person to whom relevant assets are allocated under an allocation statement under section 71;	S. 3(1) def. of <i>transferee</i> inserted by No. 98/1998 s. 4(1).
<i>transferor</i> , in Division 3 of Part 4, means the operator from which relevant assets are transferred under an allocation statement under section 71;	S. 3(1) def. of <i>transferor</i> inserted by No. 98/1998 s. 4(1).

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S. 3(2)
repealed by
No. 104/1997
s. 19(2),
new s. 3(2)
inserted by
No. 98/1998
s. 4(3),
substituted by
No. 45/1999
s. 5.

- (2) The Governor in Council, by Order published in the Government Gazette, may declare that a specified body corporate, being a body corporate that—

S. 3(2)(a)
amended by
Nos 30/2000
s. 39(2),
95/2005
s. 9(2)(b),
26/2009
s. 7(3).

- (a) is a party to a lease of rail infrastructure by the Director acting on behalf of the Crown or Rail Track; or

- (b) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that body corporate of a passenger service—

is, on and from a specified date, a train operator for the purposes of a specified provision of this Act.

S. 3(3)
inserted by
No. 98/1998
s. 4(3),
substituted by
No. 45/1999
s. 5.

- (3) The Governor in Council, by Order published in the Government Gazette, may declare that a specified body corporate, being a body corporate that—

S. 3(3)(a)
amended by
Nos 54/2001
s. 28, 95/2005
s. 9(2)(b),
26/2009
s. 7(3).

- (a) is a party to a lease of tram infrastructure by the Director acting on behalf of the Crown or Rail Track; or

- (b) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that body corporate of a passenger service—

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is, on and from a specified date, a tram operator
for the purposes of a specified provision of this
Act.

* * * * *

S. 3A
inserted by
No. 45/1999
s. 6,
amended by
No. 95/2005
s. 9(2)(b)(c),
repealed by
No. 26/2009
s. 7(4).

PART 2—RAIL CORPORATIONS

Pt 2 Div. 1
(Heading and
ss 4–7)
amended by
Nos 104/1997
s. 3, 47/1998
ss 5(1)(2), 6,
79/1996
s. 108 (as
amended by
No. 98/1998
s. 15),
repealed by
No. 104/1997
s. 4(1).

* * * *

Division 2—Victorian Rail Track

8 Establishment

- (1) Victorian Rail Track is established.
- (2) Rail Track—
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of Rail Track affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of Rail Track must be kept in such custody as Rail Track directs and must not be used except as authorised by Rail Track.

S. 8(2)
re-numbered
as s. 8(3) by
No. 104/1997
s. 19(3)(a).

S. 8(3)
re-numbered
as s. 8(4) by
No. 104/1997
s. 19(3)(b).

8A Rail Track may trade as VicTrack

Despite anything to the contrary in the **Business Names Act 1962** or any other Act or law, Rail Track may carry on business under the name "VicTrack".

S. 8A
inserted by
No. 98/1998
s. 5.

9 Rail Track not to represent the Crown

Rail Track is a public authority but does not represent the Crown.

10 Objective

The principal objective of Rail Track is to perform its functions in a safe, efficient and commercial manner.

S. 10
amended by
No. 9/2006
s. 151.

11 Functions and powers

(1) The functions of Rail Track are—

- (a) to establish, manage and maintain railways and rail infrastructure;
- (ab) to establish, manage and maintain tramways and tram infrastructure;
- (b) to direct, control and charge for access to, and movement of rolling stock on, railways and tramways;
- (ba) if directed to do so by the Minister by Order published in the Government Gazette—
 - (i) operate rolling stock for the purposes of providing passenger services;
 - (ii) to operate services ancillary or incidental to its rail passenger or tram services;

S. 11(1)(ab)
inserted by
No. 104/1997
s. 20(1)(a).

S. 11(1)(b)
amended by
No. 104/1997
s. 20(1)(b).

S. 11(1)(ba)
inserted by
No. 104/1997
s. 20(1)(c).

S. 11(1)(ba)(i)
substituted by
No. 9/2006
s. 152.

s. 11

S. 11(1)(bb)
inserted by
No. 98/1998
s. 6(1).

S. 11(1)(bc)
inserted by
No. 34/2003
s. 17(1).

- (bb) subject to section 13F, to develop, and promote the development of, land vested in it;
- (bc) to efficiently deal with any complaints concerning the way it carries out its functions;
- (c) any other functions conferred on Rail Track by this or any other Act.

(2) Rail Track—

S. 11(2)(b)
amended by
No. 104/1997
s. 20(2).

- (a) may enter into contracts, agreements, leases and licences for the carrying out of its functions;
- (b) may acquire and operate rail infrastructure, tram infrastructure or rolling stock for the purpose of carrying out its functions;
- (c) may engage agents or consultants;
- (d) may act as agent of another person;
- (e) may do all things necessary or convenient to be done for, or in connection with, carrying out its functions or achieving its objectives.

(3) Without limiting the generality of the functions and powers conferred on it, Rail Track—

- (a) may form, or participate in the formation of, or be a member of companies;
- (b) may form, or participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
- (c) may act as trustee;
- (d) may engage in any business, undertaking or activity incidental to the performance of its functions;

- (e) may make land and other property vested in or managed by it available for use by other persons including leasing to any other person any rail infrastructure or tram infrastructure owned by it. **S. 11(3)(e) amended by No. 47/1998 s. 5(3).**
- (4) Rail Track may, with the approval or at the direction of the Minister, cease to perform all or any of its functions. **S. 11(4) inserted by No. 98/1998 s. 6(2).**
- (5) Despite subsections (2) and (3), Rail Track must not, without the written approval of the Minister— **S. 11(5) inserted by No. 34/2003 s. 18(1).**
- (a) form, or participate in the formation of, or be a member of, or hold shares in, a company that carries out the functions of a public transport industry ombudsman; or
- (b) enter into an agreement with respect to participating in a public transport industry ombudsman scheme.

12 Contingency planning for exercise of certain powers

- (1) Rail Track must develop and maintain a contingency plan for the possible carrying out of rail operations by it in the event another person carrying out such operations using railways and rail infrastructure established, owned, managed or maintained by Rail Track does not want, or is unable, to do so. **S. 12 repealed by No. 79/1996 s. 108 (as amended by No. 98/1998 s. 15), new s. 12 inserted by No. 9/2006 s. 153.**
- (2) In this section—
***rail operations* has the same meaning as in the Rail Safety Act 2006.**

Rail Corporations Act 1996
No. 79 of 1996
Part 2—Rail Corporations

s. 13C

S. 13
amended by
No. 104/1997
s. 21,
repealed by
No. 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15).

* * * *

Ss 13A, 13B
inserted by
No. 104/1997
s. 22,
repealed by
No. 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15).

* * * *

S. 13C
inserted by
No. 104/1997
s. 23.

13C Acquisition of land

- (1) Rail Track may, with the approval of the Minister, purchase or compulsorily acquire any land which is or may be required by it for, or in connection with, carrying out its functions or achieving its objectives.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) the **Rail Corporations Act 1996** is the special Act; and
 - (b) Rail Track is the Authority; and
 - (c) **land** includes strata above or below the surface of land and easements and rights to use land or strata above or below the surface of the land; and
 - (d) section 75 of the **Land Acquisition and Compensation Act 1986** has effect as if it empowered Rail Track to enter any land and section 75(6) did not apply.

- (3) If any right to use land or any right in the nature of an easement or purporting to be an easement is acquired by Rail Track, that right is deemed for all purposes to be an easement despite there being no land vested in Rail Track or its successors which is in fact benefited or capable of being benefited by that right.
- (4) If by or under this Act any private right of way or easement is extinguished or any easement is acquired by Rail Track, the Registrar of Titles must make any recordings in the Register that are necessary or expedient because of that extinguishment or acquisition and the holder of any relevant certificate of title must deliver it to the Registrar of Titles.
- (5) Subsection (4) does not apply to an easement acquired compulsorily by Rail Track.

S. 13C(4)
substituted by
No. 85/1998
s. 24(Sch.
item 49.1).

13D Rail Track may use Crown lands reserved under Crown Land (Reserves) Act 1978

S. 13D
inserted by
No. 104/1997
s. 23.

- (1) Rail Track may, with the approval of the Minister administering section 22A of the **Land Act 1958** (in this section referred to as *the relevant Minister*) given after consultation with any other Ministers concerned with the management or use of the land, use any Crown land for transport purposes.
- (2) If any Crown land proposed to be used for transport purposes by Rail Track is reserved under the **Crown Land (Reserves) Act 1978** for a purpose which is inconsistent with that use, Rail Track must not use the land unless and until the reservation is revoked in accordance with section 9 of that Act.

s. 13D

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- (3) Rail Track must make compensation, in respect of the use under this section by it of any Crown land reserved under the **Crown Land (Reserves) Act 1978** for a purpose inconsistent with that use, in the manner and to the extent agreed by Rail Track and the relevant Minister.
- (4) An agreement under subsection (3) may provide for—
- (a) the payment by Rail Track of a sum of money agreed by Rail Track and the relevant Minister; or
 - (b) the undertaking of works or making of provision by Rail Track in place of any improvements on the land as agreed by Rail Track and the relevant Minister; or
 - (c) both matters referred to in paragraphs (a) and (b).
- (5) If an agreement under subsection (3) provides for the payment of a sum of money, that money must be paid to the relevant Minister, unless he or she otherwise directs.
- (6) The relevant Minister may direct that money to be paid under an agreement under subsection (3) must be paid to—
- (a) the trustees in whom or the municipal council in which the land is vested; or
 - (b) the committee of management appointed in respect of the land; or
 - (c) the authority under whose control and management the land has been placed under section 18 of the **Crown Land (Reserves) Act 1978**; or
-

(d) any other person or persons agreed by Rail Track and the relevant Minister—

and may further direct how the money is to be applied.

(7) If any dispute arises as to the amount of any sum of money payable under this section, that dispute is to be determined by the Governor in Council.

13E Grant of unalienated Crown land

S. 13E
inserted by
No. 104/1997
s. 23.

(1) If any land vested in Rail Track under this Act was immediately before its use for transport purposes unalienated land of the Crown, whether set apart as a government road or not, the Governor in Council, on the recommendation of the Minister administering section 22A of the **Land Act 1958**, may grant that land to Rail Track subject to any conditions, exceptions and reservations that the Governor in Council thinks fit.

(2) Subsection (1) is subject to section 8 of the **Crown Land (Reserves) Act 1978** and section 349 of the **Land Act 1958**.

13F Land

S. 13F
inserted by
No. 104/1997
s. 23.

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S. 13F(1)
repealed by
No. 98/1998
s. 7(a).

(2) Rail Track with the approval of the Minister—

(a) may sell or dispose of land or an interest in land; or

S. 13F(2)(a)
amended by
No. 98/1998
s. 7(b).

s. 13F

S. 13F(2)(c)
amended by
No. 98/1998
s. 7(c).

- (b) may grant leases of any land even land which was granted to Rail Track or to any other person subject to a trust or condition requiring it to be used for some particular purpose or land temporarily or permanently reserved for any purpose under the **Crown Land (Reserves) Act 1978** or any previous Act relating to Crown land; or
- (c) may develop any land and for this purpose may—
 - (i) subdivide and re-subdivide the land; or
 - (ii) consolidate the title to the land; or
 - (iii) grant or create in favour of any person any easement over the land on any terms and conditions that Rail Track thinks fit; or
 - (iv) effect or arrange with other persons for the development of the land on any terms and conditions that Rail Track thinks fit; or
 - (v) maintain, operate and manage or arrange with other persons to maintain, operate and manage the land and any buildings, works, structures and other property on the land; or
 - (vi) promote a Property Trust and—
 - (A) with the consent of the Treasurer, subscribe for or otherwise acquire and dispose of any unit or units in the Trust; or
 - (B) enter into arrangements with the Trust for the management by Rail Track of the Trust; or

- (C) enter into any contracts with the Trust that Rail Track deems necessary to guarantee to unit holders in the Trust an agreed return; or
 - (D) make any loans to the Trust on any terms that Rail Track thinks fit.
- (3) Any Property Trust promoted under this section must provide that the trustees are to be appointed by the Minister.
- (4) In this section *develop* means improve land for any commercial or civic or other public or private purpose and includes the construction, demolition or substantial alteration of any structure in or on the land or the excavation of the land.
- (5) On Rail Track divesting itself, or being divested, of its interest in any land on, under or over which there was constructed a railway or tramway, the liability (if any) of Rail Track to—
 - (a) maintain a railway or tramway on, under or over that land; and
 - (b) maintain any bridge bearing a road over the whole or any part of that land or any crossing, culvert, drain or stream diversion appurtenant to that land—

absolutely ceases and determines.

13G Powers to enter land to construct or maintain works

- (1) Rail Track may enter any land and do all things necessary and convenient for constructing, maintaining, altering and using any works supporting any rail signalling system.

S. 13G
inserted by
No. 47/2006
s. 32.

s. 13H

- (2) Rail Track may exercise its powers under this section by any officer or employee of Rail Track who is authorised in writing by Rail Track to do so.
- (3) Rail Track must not exercise a power under this section unless—
 - (a) Rail Track has given 7 days notice in writing to the occupier of the land that is to be entered; or
 - (b) the occupier of the land consents to entry to the land; or
 - (c) immediate entry is necessary because of an emergency.
- (4) A person who is exercising a power under this section must not enter land that is used primarily for residential purposes except between 7.30 a.m. and 6.00 p.m. unless the occupier consents to a different time.

S. 13H
inserted by
No. 47/2006
s. 32.

13H Obligations in relation to entry onto land

In exercising the powers under section 13G, Rail Track must—

- (a) cause as little harm and inconvenience as possible; and
- (b) stay on the land only for as long as is reasonably necessary to exercise the power; and
- (c) remove from the land on completing the exercise of the power, all plant, machinery, equipment, goods or temporary buildings brought onto the land for the exercise of the power, other than anything that the owner or occupier of the land agrees may be left there; and

- (d) leave the land as nearly as possible in the condition in which he or she found it; and
- (e) ensure that as little damage as possible is done to the land; and
- (f) co-operate as much as possible with the owner and any occupier of the land.

13I Rail Track to pay compensation

S. 13I
inserted by
No. 47/2006
s. 32.

- (1) If Rail Track has caused any damage to land while exercising a power under section 13G, Rail Track must pay compensation to the owner and any other person with an interest in the land.
- (2) Compensation under subsection (1) may, if so agreed by the person entitled to the compensation, be paid as a lump sum or by way of an annual rent, and, if no agreement can be reached, must be determined in the manner provided in the **Land Acquisition and Compensation Act 1986**.

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Ss 14–18
repealed by
No. 104/1997
s. 24(2).

Pt 2 Div. 2A
(Heading and
ss 18A–18F)
inserted by
No. 104/1997
s. 6,
amended by
Nos 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15), 98/1998
s. 8,
repealed by
No. 63/1999
s. 3(1), new
Pt 2 Div. 2A
(Heading and
ss 14–18)
inserted by
No. 34/2003
s. 14.

New s. 14
inserted by
No. 34/2003
s. 14.

Division 2A—V/Line Passenger Corporation

14 Establishment

- (1) V/Line Passenger Corporation is established.
- (2) V/Line Passenger Corporation—
 - (a) is a body corporate with perpetual succession; and
 - (b) is to have an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of V/Line Passenger Corporation affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of V/Line Passenger Corporation must be kept in such custody as V/Line Passenger Corporation directs and must not be used except as authorised by V/Line Passenger Corporation.

15 Trading name

Despite anything to the contrary in the **Business Names Act 1962** or any other act or law, V/Line Passenger Corporation may carry on business under the name "V/Line Passenger".

New s. 15
inserted by
No. 34/2003
s. 14.

16 V/Line Passenger Corporation not to represent the Crown

V/Line Passenger Corporation is a public authority, but does not represent the Crown.

New s. 16
inserted by
No. 34/2003
s. 14.

17 Objective

The principal objective of V/Line Passenger Corporation is to perform its functions in an efficient and commercial manner.

New s. 17
inserted by
No. 34/2003
s. 14.

18 Functions and powers

(1) The functions of V/Line Passenger Corporation are—

New s. 18
inserted by
No. 34/2003
s. 14.

- (a) to operate rural rail passenger services;
- (b) to operate services ancillary or incidental to its rail passenger services, including road transport passenger services;
- (c) to efficiently deal with any complaints concerning the way it carries out its functions;

- (ca) to report on the activities of any person carrying out a function specified in paragraph (a), (b) or (c);
- (d) to do anything else it is required to do by this or any other Act.

S. 18(1)(ca)
inserted by
No. 47/2006
s. 37(1).

S. 18(2A)
inserted by
No. 47/2006
s. 37(2).

(2) For the purpose of carrying out its functions and achieving its objectives, V/Line Passenger Corporation may—

- (a) enter into contracts, agreements, leases and licences;
- (b) acquire and operate rail infrastructure, rolling stock and other vehicles;
- (c) engage agents or consultants;
- (d) act as agent of another person;
- (e) do any thing else that is necessary or convenient to be done for, or in connection with, achieving that purpose.

(2A) Nothing in this Act affects or limits the Director's power under section 9(4) of the **Transport Act 1983** to enter into an agreement, lease or licence with another person to carry out a function specified in subsection (1).

(3) Without limiting the generality of the functions and powers conferred on it, V/Line Passenger Corporation may—

- (a) form, or participate in the formation of, or be a member of companies;
- (b) form, or participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
- (c) act as trustee;
- (d) engage in any business, undertaking or activity incidental to the performance of its functions;
- (e) make its staff and land and other property vested in or managed by it available for engagement or use by other persons.

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- (4) Despite subsections (2) and (3), V/Line Passenger Corporation must not, without the written approval of the Minister—
- (a) form, or participate in the formation of, or be a member of, or hold shares in, a company that carries out the functions of a public transport industry ombudsman; or
 - (b) enter into an agreement with respect to participating in a public transport industry ombudsman scheme.
- (5) V/Line Passenger Corporation may, with the approval or at the direction of the Minister, cease to perform all or any of its functions.
- (6) Without limiting, or taking away, any of his or her other powers, the Minister, for and on behalf of the Crown, may be a party to any agreement providing for the sale, assignment, transfer or disposal of all or any part of the property, rights, liabilities, undertaking or business of V/Line Passenger Corporation or to any related franchise or other agreement of any kind.

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Pt 2 Div. 2B
(Heading and
ss 18G–18L)
inserted by
No. 104/1997
s. 8,
amended by
Nos 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15), 98/1998
s. 9,
repealed by
No. 63/1999
s. 4(1).

Rail Corporations Act 1996
No. 79 of 1996
Part 2—Rail Corporations

s. 18M

Pt 2 Div. 2C
(Heading and
ss 18M–18S)
inserted by
No. 104/1997
s. 10,
amended by
Nos 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15), 98/1998
s. 10,
repealed by
No. 63/1999
s. 5(1).

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Pt 2 Div. 2D
(Heading and
ss 18T–18Z)
inserted by
No. 104/1997
s. 12,
amended by
Nos 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15), 98/1998
s. 11,
repealed by
No. 63/1999
s. 6(1).

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Pt 2 Div. 2E
(Heading and
ss 18ZA–
18ZF)
inserted by
No. 47/1998
s. 7,
amended by
Nos 79/1996
s. 108 (as
amended by
No. 98/1998
s. 15), 98/1998
s. 12,
repealed by
No. 63/1999
s. 7(1).

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Pt 2 Div. 2F
(Heading and
ss 18ZG–
18ZM)
inserted by
No. 45/1999
s. 7,
amended by
Nos 34/2003
ss 17(2), 18(2),
95/2005
s. 9(1),
repealed by
No. 26/2009
s. 6.

Division 3—Rail corporations generally

19 Schedule 1

Schedule 1 applies to each rail corporation.

20 Extra-territoriality

A rail corporation may carry out its functions and exercise its powers within or outside Victoria and outside Australia.

21 Delegation

- (1) A rail corporation, by instrument under its official seal, may delegate to 2 or more directors of the corporation, to an officer or employee of the corporation or, with the consent of the Minister, to another person any function or power of the corporation, other than—
 - (a) this power of delegation; and
 - (b) any other power that is prescribed for the purposes of this section.
- (2) The Governor in Council may make regulations prescribing powers for the purpose of subsection (1)(b).

22 Borrowing and investment by rail corporations

A rail corporation has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

23 Duties of directors

- (1) A director of a rail corporation must at all times act honestly in the performance of the functions of his or her office.
- (2) A director of a rail corporation must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
- (3) A director, or former director, of a rail corporation must not make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the rail corporation.
- (4) A director of a rail corporation must not make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the rail corporation.
- (5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

24 Rail corporation or Minister may bring proceedings

If a person contravenes section 23 in relation to a rail corporation, the rail corporation or the Minister, in the name of the rail corporation, may recover from the person as a debt due to the rail corporation by action in a court of competent jurisdiction either or both of the following—

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;
- (b) if the rail corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

25 Rail corporation not to make loans to directors

- (1) The powers of a rail corporation do not include a power, whether directly or indirectly—
 - (a) to make a loan to a director of the rail corporation, a spouse of such a director, or a relative (as defined in the Corporations Act) of such a director or spouse; or
 - (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director, spouse or relative referred to in paragraph (a).
- (2) Nothing in subsection (1) prohibits a rail corporation entering into an agreement or arrangement with a person referred to in subsection (1) if similar agreements or arrangements are entered into by the rail corporation with members of the public on the same terms and conditions.

S. 25(1)(a)
amended by
No. 44/2001
s. 3(Sch.
item 97.1).

26 Indemnity

The powers of a rail corporation do not include a power to exempt, whether directly or indirectly, a director of a rail corporation from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of the rail corporation against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to the rail corporation.

27 Corporate plan

- (1) The board of each rail corporation must prepare a corporate plan for each financial year.
- (2) The board must give a copy of the proposed plan to the Minister on or before 31 May in each year.
- (3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and must include—
 - (a) a statement of corporate intent in accordance with section 28;
 - (b) a business plan and financial statements containing such information as the Minister requires.
- (4) The board must consider any comments on the proposed plan that are made to it by the Minister within 2 months after the plan was submitted to the Minister.
- (5) The board must consult in good faith with the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Minister and the board and must deliver the completed plan to the Minister within 2 months after the commencement of the financial year.

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- (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the board and the Minister.
 - (7) The plan may be modified at any time by the board with the agreement of the Minister.
 - (8) If the board, by written notice to the Minister, proposes a modification to the plan, the board may make the modification unless the Minister, by written notice within 14 days, directs the board not to make it.
 - (9) From time to time, the Minister, by written notice, may direct the board to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.
 - (10) Before giving a direction under this section, the Minister must consult with the board as to the matters referred to in the notice.
 - (11) The board must comply with a direction under this section.
 - (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for a rail corporation are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

28 Statement of corporate intent: contents

Each statement of corporate intent must specify for the rail corporation and its subsidiaries (if any), in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

- (a) the business objectives of the rail corporation and of its subsidiaries;

- (b) the main undertakings of the rail corporation and of its subsidiaries;
- (c) the nature and scope of the activities to be undertaken by the rail corporation and its subsidiaries;
- (d) the accounting policies to be applied in the accounts;
- (e) the performance targets and other measures by which the performance of the rail corporation and of its subsidiaries may be judged in relation to their stated business objectives;
- (f) the kind of information to be provided to the Minister by the rail corporation during the course of those financial years;
- (g) such other matters as may be agreed on by the Minister and the board of the rail corporation from time to time.

29 Corporate plan to be followed

A rail corporation must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister to do otherwise.

30 Nothing void merely because of non-compliance

Nothing done by a rail corporation is void or unenforceable merely because the rail corporation has failed to comply with section 27, 28 or 29.

31 Board to give notice of significant events

If the board of a rail corporation forms the opinion that matters have arisen—

- (a) that may prevent, or significantly affect, achievement of the business objectives of the rail corporation and its subsidiaries (if any) under the corporate plan; or

- (b) that may prevent, or significantly affect, achievement of the targets under the plan—

the board must immediately notify the Minister of its opinion and the reasons for the opinion.

32 Non-commercial functions

- (1) The Minister, with the approval of the Treasurer, may direct the board of a rail corporation—
 - (a) to perform certain functions that the Minister considers to be in the public interest but that may cause the rail corporation to suffer financial detriment; or
 - (b) to cease to perform functions of a kind referred to in paragraph (a); or
 - (c) to cease to perform certain functions that the Minister considers not to be in the public interest.
- (2) The board of the rail corporation must comply with a direction given under subsection (1).
- (3) If the rail corporation satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given under subsection (1), the rail corporation may be reimbursed by the State an amount determined by the Minister, with the approval of the Treasurer, and the Consolidated Fund is appropriated to the necessary extent accordingly.
- (4) The reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the direction were not complied with.

33 Determination of initial capital

- (1) The Minister must determine the amount of initial capital of each rail corporation.
- (2) In making the determination, the Minister must have regard to any relevant advice that the board of the rail corporation has given to the Minister.
- (3) The determination must be in writing.
- (4) The value of the capital is the value specified in the determination or, if the Minister and the board of the rail corporation agree that the value so specified does not correctly represent the value, the value agreed by the Minister and the board.

34 Capital

The capital of each rail corporation is equal to the sum of—

- (a) the amount of the rail corporation's initial capital under this Act in accordance with section 33(1); and
- (b) any part of the rail corporation's liabilities that is converted into capital at the direction of the Minister; and
- (c) any amounts paid to the rail corporation out of money appropriated by the Parliament for the purpose of providing capital; and
- (d) any part of the rail corporation's reserves that is converted into capital at the direction of the Minister after consultation with the board—

less any amount of capital repaid under section 35.

35 Repayment of capital

- (1) The capital of a rail corporation is repayable to the State at such times, and in such amounts, as the Minister directs in writing after consultation with the board of the rail corporation.
- (2) In giving such a direction, the Minister must have regard to any advice that the board of the rail corporation has given to the Minister in relation to the rail corporation's affairs.

36 Dividends

A rail corporation must pay to the State such amounts, at such times and in such manner, as are determined by the Treasurer after consultation with the board of the rail corporation and the Minister.

37 Reports to Minister

The Minister may, in writing, require the board of a rail corporation to give the Minister such information as he or she requires.

37A Directions

**S. 37A
inserted by
No. 47/1998
s. 8.**

- (1) The Treasurer and the Minister, acting jointly, may, from time to time, by written notice to the board of a rail corporation, give such directions to the board as the Treasurer and Minister think fit.
- (2) The board of a rail corporation must comply with a direction given under this section but an act or decision of the board is not invalid merely because of a failure to comply with such a direction.

38 Annual report

A rail corporation, in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, must include—

S. 38(a)
amended by
No. 47/1998
s. 9.

- (a) a copy of each direction given to it during that year under section 32 or 37A together with a statement of its response to that direction; and
 - (b) a copy of the statement of corporate intent last completed.
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PART 2A—ACCESS REGIME

Pt 2A
(Heading and
ss 38A–38P,
38R)
inserted by
No. 47/1998
s. 10 (as
amended by
No. 98/1998
ss 41(a), 42,
43)).¹

Division 1—Introduction

Pt 2A Div. 1
(Heading and
ss 38A–38D)
amended by
Nos 47/1998
s. 10 (as
amended by
No. 98/1998
ss 42, 43(1)),
45/1999
s. 8(a)(b),
65/2000 s. 9,
62/2001
s. 89(1)(c)–(f),
20/2002
s. 4(1)(a),
substituted as
Pt 2A Div. 1
(Heading and
ss 38A–38L)
by No.
25/2005 s. 4.

38A Definitions

S. 38A
substituted by
No. 25/2005
s. 4.

In this Part—

access activity means any of the following
activities carried out by an access provider—

- (a) the management or maintenance of, or
investment in, rail infrastructure used in
the provision of declared rail transport
services;
- (b) negotiation or management of
agreements for the provision of
declared rail transport services;

- (c) the assessment, allocation and management of capacity;
- (d) the provision, scheduling and management of train control services;
- (e) an activity that is incidental to an activity referred to in paragraphs (a) to (d);

access arrangement means—

- (a) an access arrangement approved in a final decision under section 38ZF; or
- (b) an access arrangement made under section 38ZJ or 38ZL; or
- (c) a proposed access arrangement deemed to be an access arrangement by operation of section 38ZK;

access arrangement information means information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement so as to form an opinion as to whether the access arrangement complies with this Part;

access provider means any of the following persons if they provide, or are capable of providing, a declared rail transport service—

- (a) a rail infrastructure manager who is accredited under Part 5 of the **Rail Safety Act 2006** in respect of rail infrastructure operations the manager carries out;
- (b) a rail infrastructure manager who is exempted under section 63 of the **Rail Safety Act 2006**, or regulations made under that Act, from the requirement to be accredited under that Act in respect

S. 38A def. of
access
provider
amended by
Nos 95/2005
s. 9(2)(d),
9/2006
s. 154(a).

of rail infrastructure operations the manager carries out;

- (c) the Southern Cross Station Authority;
- (d) the Crown;
- (e) a related body corporate of a person referred to in paragraphs (a) to (c);
- (f) any other person declared by Order in Council under section 38D to be an access provider;

access regime dispute means—

- (a) a dispute described in section 38ZU(1);
or
- (b) a belief of an access seeker or a user of the kind described in section 38ZU(2) that is taken to give rise to an access regime dispute by operation of that subsection;

access seeker means a person seeking to be provided a declared rail transport service by an access provider or seeking interconnection;

account keeping rules means the rules made under section 38R;

binding access arrangement, in relation to an access provider, means an access arrangement with which the access provider is, under this Part, bound to comply;

capacity, in relation to a rail network, means the capability of the rail network, when used, to provide declared rail transport services;

capacity use rules means the rules made under section 38T;

declared rail transport service means a rail transport service declared by an Order under section 38I;

dispute resolution decision means a decision of the Commission under section 38ZX(1);

draft decision means a decision of the Commission made under section 38ZB;

final decision means a decision of the Commission made under section 38ZF;

interconnection means the connection of an access seeker's railway track or railway siding to an access provider's relevant railway track as provided for by section 38ZT;

interested person means a person whom the Commission considers has a sufficient interest in the approval of a proposed access arrangement;

internal transfer terms means the terms and conditions upon which, including prices, an access provider provides a declared rail transport service to itself or a related body corporate;

negotiation guidelines means the guidelines made under section 38V;

network management rules means the rules made under section 38U;

operate has the meaning given to it by section 38G;

penalty provision means section 38W(1), 38W(2), 38ZR(1), 38ZZK(2), 38ZZK(4), 38ZZM(3), 38ZZS, 38ZZT, 38ZZU(a) and (b), 38ZZV, 38ZZW, 38ZZX, 38ZZY(1), 38ZZZ(1), 38ZZZ(4), 38ZZZA(1), 38ZZZA(4) or 38ZZZB(3);

pricing principles means the principles specified in the Pricing Principles Order;

Pricing Principles Order means the Order made under section 38J;

principle of passenger priority has the meaning given to it by section 38H;

proposed access arrangement means an access arrangement submitted to the Commission for approval under section 38W;

rail infrastructure manager has the same meaning as in the **Rail Safety Act 2006**;

S. 38A def. of *rail infrastructure manager* inserted by No. 9/2006 s. 154(b).

rail infrastructure operations has the same meaning as in the **Rail Safety Act 2006**;

S. 38A def. of *rail infrastructure operations* inserted by No. 9/2006 s. 154(b).

rail network means the rail infrastructure used to provide declared rail transport services;

rail transport service means—

- (a) a service provided, or that may be provided, to a user or an access seeker by an access provider, or by an access provider to itself or to a related body corporate, by means of rail infrastructure or tram infrastructure owned or operated by that access

provider that enables the user, access seeker, that access provider, or a related body corporate of that access provider, to provide freight services, passenger services or other transport services, and includes—

- (i) the service of allowing a user to use rail infrastructure or tram infrastructure (as the case requires);
- (ii) the service of assessing the capacity of a rail network owned or operated by the access provider;
- (iii) the service of allocating the capacity of a rail network owned or operated by the access provider;
- (iv) the service of allocating train paths;
- (v) the service of planning train services;
- (vi) the service of scheduling train services;
- (vii) the service of managing and controlling train services, including train traffic management;
- (viii) the service of managing and controlling a rail network owned or operated by the access provider;
- (ix) the service of maintaining a rail network owned or operated by the access provider;

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- (x) the service of extending, enhancing or expanding a rail network owned or operated by the access provider;
 - (b) a service provided, or that may be provided, by an access provider for, or associated with, the connection of railway track or tramway track owned or operated by another person to railway track or tramway track owned or operated by that access provider;
 - (c) any service that is ancillary to a service referred to in paragraph (a) or (b);

reference service means a declared rail transport service that—

- (a) is provided by an access provider to itself or a related body corporate; or
- (b) is likely to represent a significant proportion of demand by access seekers for declared rail transport services; or
- (c) is provided by means of a terminal;

relevant capacity allocation activity means—

- (a) assessing the capacity of a rail network;
- (b) allocating the capacity of a rail network;
- (c) allocating train paths;
- (d) any activity that is ancillary to an activity referred to in paragraph (a) to (c);

relevant rail network management activity

means—

- (a) scheduling and planning train services;
- (b) an activity carried out for the provision of train control services, including train traffic management;
- (c) the management of the interaction of rail infrastructure and rolling stock;
- (d) the management of incidents that affect or may affect the operation or safe operation of a rail network;
- (e) any activity that is ancillary to an activity referred to in paragraphs (a) to (d);

ring fencing rules means the rules made under section 38S;

train control services means services involving the giving of directions or the granting of permission to operate rolling stock on a rail network consistent with the safe and efficient operation of that rolling stock and that rail network;

train path means a right (whether arising under an agreement or otherwise) to operate rolling stock between particular locations on a railway at particular times;

user means a person who—

- (a) is a party to an agreement under which they acquire a declared rail transport service; or
- (b) has a right to be provided a declared rail transport service under a dispute resolution decision.

38B Associated rail infrastructure may be declared to be rail infrastructure

S. 38B
substituted by
No. 25/2005
s. 4.

Despite the definition of *rail infrastructure* in section 3(1), the Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette, declare associated rail infrastructure to be rail infrastructure for the purposes of this Part.

38C Tabling and disallowance of Orders under section 38B

S. 38C
substituted by
No. 25/2005
s. 4.

- (1) On or before the 6th sitting day after an Order under section 38B is published in the Government Gazette, the Minister must ensure that a copy of that Order is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the Order but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) An Order under section 38B may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order under section 38B as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to an Order under section 38B; and
 - (b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).
- (5) A reference to an Order under section 38B in this section includes a reference to any amendment to an Order under section 38B.

s. 38D

S. 38D
substituted by
No. 25/2005
s. 4.

38D Declaration of persons to be access providers

The Governor in Council may, by Order published in the Government Gazette, declare a person who provides, or is capable of providing, a rail transport service (other than a person referred to in paragraphs (a) to (d) of the definition of *access provider*) to be an access provider.

S. 38E
substituted by
No. 25/2005
s. 4.

38E Application of Essential Services Commission Act 2001

- (1) This Part is relevant legislation for the purposes of the **Essential Services Commission Act 2001** (other than Part 3 of that Act).
- (2) For the purposes of the **Essential Services Commission Act 2001** (other than Part 3 of that Act)—
 - (a) railways and rail infrastructure; and
 - (b) tramways and tram infrastructure—are each a regulated industry.

S. 38F
substituted by
No. 25/2005
s. 4.

38F Objectives of the Commission

The objectives of the Commission in relation to each regulated industry are, in addition to the objectives under section 8 of the **Essential Services Commission Act 2001** (but subject to section 5(2) of that Act)—

- (a) to ensure access seekers, and any other person the Commission considers may want to be provided declared rail transport services, have a fair and reasonable opportunity to be provided declared rail transport services; and
- (b) to promote competition in rail transport services to achieve an increase in the use of, and efficient investment in, rail infrastructure or tram infrastructure (as the case requires).

38G Meaning of *operate*

S. 38G
substituted by
No. 25/2005
s. 4.

A person operates rail infrastructure or tram infrastructure, or a rail network, for the purposes of this Part if the person—

- (a) owns or leases rail infrastructure or tram infrastructure, or a rail network, or has a right conferred by an Act or a contract to manage rail infrastructure or tram infrastructure, or a rail network; and
- (b) either—
 - (i) operates, or appoints an agent or contractor to operate, the signalling, rolling stock control and communications facilities of the railway or tramway, as the case requires; or
 - (ii) carries out, or appoints an agent or contractor to carry out, on or about the railway or tramway (as the case requires), the construction, maintenance, repair or alteration of any of the rail infrastructure or tram infrastructure or rail network.

38H Principle of passenger priority

S. 38H
substituted by
No. 25/2005
s. 4.

- (1) For the purposes of this Part, the principle of passenger priority is the giving of priority to the provision of declared rail transport services to passenger service users over the provision of declared rail transport services to other users.
- (2) In this section—

other users means users of declared rail transport services who use those services to provide freight services and other transport services (other than passenger services);

passenger service users means users of declared rail transport services who use those services to provide passenger services.

S. 38I
substituted by
No. 25/2005
s. 4.

38I Declaration of rail transport services

- (1) The Governor in Council on the recommendation of the Minister may, by Order published in the Government Gazette, declare a rail transport service to be a declared rail transport service for the purposes of this Part until the date (if any) for the expiry of the declaration specified in the Order.
- (2) An Order under subsection (1) must specify whether a rail transport service is a declared rail transport service in respect of passenger services, freight services or other transport services.
- (3) An Order under subsection (1) may—
 - (a) specify that a rail transport service is a declared rail transport service in respect of a person named in the Order;
 - (b) declare a rail transport service as a declared rail transport service by reference to—
 - (i) the person who owns or operates the rail infrastructure used to provide the rail transport service; or
 - (ii) the location of the rail infrastructure used to provide the rail transport service; or
 - (iii) the type of rail infrastructure used to provide the rail transport service.
- (4) The Minister may only make a recommendation under subsection (1) if he or she is satisfied that it is necessary to do so to promote competition or increase efficiency or the level of services to the public.

38J Pricing Principles Order

S. 38J
substituted by
No. 25/2005
s. 4.

- (1) The Governor in Council, on the recommendation of the Minister, may, by Order published in the Government Gazette—
 - (a) specify the principles for the calculation of prices that an access provider may charge in respect of declared rail transport services that it may provide;
 - (b) authorise the Commission to determine the methodology, in accordance with the principles specified under paragraph (a), for the calculation of prices that—
 - (i) an access provider may charge in respect of declared rail transport services that the access provider may provide;
 - (ii) the Commission may, in a relevant decision, decide an access provider may charge in respect of declared rail transport services provided by that access provider.
- (2) To avoid doubt, the methodology determined by the Commission under an Order under this section for the calculation of prices that may be charged in respect of declared rail transport services is not a determination for the purposes of the **Essential Services Commission Act 2001**.
- (3) The pricing principles specified in an Order under this section must not require, entitle or allow a relevant access provider to recover from a relevant user any capital expenses incurred by that relevant access provider in respect of relevant rail infrastructure other than expenses that have been or are incurred on or after 30 April 1999 for the purpose of extending or replacing that infrastructure.

s. 38J

(4) Nothing in an Order under subsection (1) limits the capacity of an access provider to agree to provide a declared rail transport service to an access seeker at a price that is inconsistent with anything specified in the Order.

(5) In this section—

S. 38J(5)
def. of
*PIL rail
infrastructure*
repealed by
No. 26/2009
s. 9(a).

* * * *

S. 38J(5)
def. of
*Primary
Infrastructure
Lease*
repealed by
No. 26/2009
s. 9(a).

* * * *

S. 38J(5)
def. of
*Regional
Infrastructure
Lease*
inserted by
No. 26/2009
s. 9(b).

Regional Infrastructure Lease means the agreement entitled the "Regional Infrastructure Lease", entered into between the Director and V/Line Passenger Pty Ltd (ACN 087 425 269) on or about 4 May 2007 as varied from time to time;

relevant decision means—

- (a) a final decision;
- (b) a final decision in respect of an access arrangement made under section 38ZJ(1) or 38ZL;
- (c) a decision under section 38ZO or 38ZP;
- (d) a final decision in respect of an application for the renewal of an access arrangement under section 38ZR;
- (e) a dispute resolution decision;
- (f) an interim decision under section 38ZZO;

(g) a decision under section 38ZZP varying a dispute resolution decision;

relevant access provider means an access provider who owns, operates or controls relevant rail infrastructure;

relevant rail infrastructure means—

- (a) RIL rail infrastructure; or
- (b) rail infrastructure that is the subject of a relevant rail infrastructure agreement (other than the Regional Infrastructure Lease);

New s. 38J(5) def. of *relevant rail infrastructure* inserted by No. 26/2009 s. 9(b).

relevant rail infrastructure agreement means—

- (a) the Regional Infrastructure Lease; or
- (b) any agreement declared by the Governor in Council under section 38K;

S. 38J(5) def. of *relevant rail infrastructure agreement* repealed by No. 26/2009 s. 9(a), new def. of *relevant rail infrastructure agreement* inserted by No. 26/2009 s. 9(b).

* * * * *

S. 38J(5) def. of *relevant rail infrastructure* repealed by No. 26/2009 s. 9(a).

relevant user means a user provided a declared rail transport service by a relevant access provider by means of relevant rail infrastructure;

S. 38J def. of *relevant user* amended by No. 26/2009 s. 9(c).

RIL rail infrastructure means rail infrastructure that is "Railway Infrastructure" as defined in the Regional Infrastructure Lease.

S. 38J def. of *RIL rail infrastructure* inserted by No. 26/2009 s. 9(b).

s. 38K

S. 38K
substituted by
No. 25/2005
s. 4.

38K Declaration of certain agreements to be relevant rail infrastructure agreements

- (1) The Minister may, by Order published in the Government Gazette, declare an agreement under which rail infrastructure is leased to be a relevant rail infrastructure agreement for the purposes of section 38J.
- (2) In this section—
relevant rail infrastructure agreement has the same meaning as in section 38J(5).

S. 38L
substituted by
No. 25/2005
s. 4.

38L Extra-territorial operation

It is the intention of the Parliament that the operation of this Part should, so far as possible, include operation in relation to—

- (a) railways and rail infrastructure situated outside Victoria;
- (b) a rail transport service operating outside Victoria.

Division 2—Commission rules and guidelines

Pt 2A Div. 2
(Heading and
ss 38DA–
38PA)
amended by
Nos 47/1998
s. 10 (as
amended by
No. 98/1998
s. 43(2)),
45/1999
s. 8(c)(d),
63/1999
s. 9(2),
65/2000
ss 10–16,
62/2001
ss 89(1)(c)(e)
(g)–(n)(2)
(a)–(f), 90,
20/2002
s. 4(1)(b)
(2)–(9),
73/2003 s. 19,
110/2004 s. 19,
repealed by
No. 25/2005
s. 4, new
Pt 2A Div. 2
(Heading and
ss 38M–38V)
inserted by
No. 25/2005
s. 5.

38M Definition

In this Division—

Commission instrument means—

- (a) the account keeping rules; or
- (b) the ring fencing rules; or
- (c) the capacity use rules; or
- (d) the network management rules; or
- (e) the negotiation guidelines.

New s. 38M
inserted by
No. 25/2005
s. 5.

New s. 38N
inserted by
No. 25/2005
s. 5.

38N Procedural requirements for the making of a Commission instrument

- (1) The Commission, before making a Commission instrument, must—
 - (a) publish a draft of the Commission instrument on its website; and
 - (b) make available for inspection at its offices a draft of the Commission instrument; and
 - (c) by notice published on its website and in a newspaper circulating generally throughout the State on the same day, invite written submissions or comments in relation to the draft of the Commission instrument by the date specified in the notice.
- (2) The date specified in a notice under subsection (1)(c) must not be a date that is less than 21 days after the date the notice is published.
- (3) The Commission—
 - (a) must consider any written submissions or comments it receives by the date specified in the notice; and
 - (b) may, but need not, consider any written submissions or comments received after the date specified in the notice.
- (4) The Commission must, as soon as practicable after making a Commission instrument, publish the Commission instrument in the Government Gazette and on its website.
- (5) A Commission instrument does not have effect for the purposes of this Part until it is published in the Government Gazette.

38O Commission instruments may incorporate documents and other material

New s. 38O
inserted by
No. 25/2005
s. 5.

- (1) A Commission instrument may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person, authority or body whether—
 - (a) wholly or partially or as amended by the Commission instrument; or
 - (b) as formulated, issued, prescribed or published at the time the Commission instrument is made or at any time before the Commission instrument is made; or
 - (c) as amended from time to time.
- (2) Section 32 of the **Interpretation of Legislation Act 1984** does not apply to a Commission instrument.

38P General powers applicable to the making of a Commission instrument

New s. 38P
inserted by
No. 25/2005
s. 5.

A Commission instrument—

- (a) may be of general or limited application;
- (b) may differ according to differences in time, place or circumstance.

38Q Commission instruments must be in force at all times

New s. 38Q
inserted by
No. 25/2005
s. 5.

- (1) There must be in force, at all times, every Commission instrument providing for the matters or things specified in a relevant provision.
- (2) Subsection (1) applies on and from the date every Commission instrument is first made under a relevant provision.

(3) In this section—

relevant provision means—

- (a) in relation to the account keeping rules, section 38R;
- (b) in relation to the ring fencing rules, section 38S;
- (c) in relation to the capacity use rules, section 38T(1);
- (d) in relation to the network management rules, section 38U(1);
- (e) in relation to the negotiation guidelines, section 38V(1).

New s. 38R
inserted by
No. 25/2005
s. 5.

38R Account keeping rules

- (1) The Commission must make rules for or with respect to requiring an access provider to—
 - (a) prepare, maintain and keep accounting records in relation to access activities and other activities of the access provider; and
 - (b) prepare, maintain and keep accounts in relation to access activities and other activities of the access provider; and
 - (c) provide the accounting records and accounts referred to in paragraphs (a) and (b) to the Commission.
- (2) Without limiting subsection (1), rules must be made that—
 - (a) require an access provider to prepare, maintain and keep records relating to internal transfer terms; and
 - (b) require an access provider to prepare, maintain and keep records that disclose the allocation of the costs it incurs in operating

- its business as between activities carried out in operating that business; and
- (c) require an access provider to provide the records referred to in paragraphs (a) and (b) to the Commission; and
 - (d) specify accounting principles with which an access provider must prepare accounts in relation to access activities and other activities of the access provider.

Note

The procedure for the making of the account keeping rules is set out in section 38N.

38S Ring fencing rules

**S. 38S
inserted by
No. 25/2005
s. 5.**

The Commission must make rules for or with respect to—

- (a) requiring an access provider to separate its access activities from its other activities as if the access activities are being carried out by a different entity; and
- (b) the manner in which the access provider is to effect the separation of its access activities from its other activities as provided for by paragraph (a); and
- (c) requiring an access provider that provides declared rail transport services to itself or related bodies corporate, to provide those services on an arm's length basis.

Note

The procedure for the making of the ring fencing rules is set out in section 38N.

S. 38T
inserted by
No. 25/2005
s. 5.

38T Capacity use rules

- (1) The Commission must make rules for or with respect to the carrying out of a relevant capacity allocation activity.
- (2) Without limiting subsection (1), rules must be made that—
 - (a) require an access provider, or a related body corporate of the access provider, to surrender unutilised or under utilised train paths allocated to that access provider or that related body corporate and the circumstances for the surrender; and
 - (b) require a user to surrender unutilised or under utilised train paths allocated to them under this Part and the circumstances for that surrender; and
 - (c) require an access provider to report to the Commission actual train path utilisation and the method of that reporting.
- (3) The Commission may make rules—
 - (a) for or with respect to requiring an access provider to prepare and maintain protocols for the allocation of the capacity of a rail network;
 - (b) for or with respect to requiring an access provider to comply with protocols referred to in paragraph (a);
 - (c) for or with respect to the method by which an access provider must report to the Commission actual train path utilisation;
 - (d) that confer a function or power on, or leave anything to be decided by, the Commission in relation to any matter or thing specified in subsection (1), (2) or this subsection, including the power to approve protocols

referred to in paragraph (a) consistent with the rules.

- (4) Rules made under this section—
 - (a) must be consistent with the principle of passenger priority; and
 - (b) must prohibit an access provider from, while carrying out a relevant capacity allocation activity, unreasonably favouring itself or another person over any other person.
- (5) In making rules under this section, the Commission must have regard to the desirability, where practicable, of reserving train paths for access seekers who are not related bodies corporate of an access provider.

Note

The procedure for the making of the capacity use rules is set out in section 38N.

38U Network management rules

**S. 38U
inserted by
No. 25/2005
s. 5.**

- (1) The Commission must make rules for or with respect to the carrying out of a relevant rail network management activity.
- (2) The Commission may make rules—
 - (a) for or with respect to requiring an access provider to prepare and maintain protocols for the management of a rail network;
 - (b) for or with respect to requiring an access provider to comply with protocols referred to in paragraph (a);
 - (c) that confer a function or power on or leave anything to be decided by the Commission in relation to any matter or thing specified in subsection (1) or this subsection, including the power to approve protocols referred to in paragraph (a) consistent with the rules.

(3) Rules made under this section—

- (a) must be consistent with the principle of passenger priority; and
- (b) must prohibit an access provider from, while carrying out a relevant network management activity, unreasonably favouring itself or another person over any other person.

Note

The procedure for the making of the network management rules is set out in section 38N.

S. 38V
inserted by
No. 25/2005
s. 5.

38V Negotiation guidelines

- (1) The Commission must make guidelines for or with respect to—
 - (a) the information an access provider must provide to an access seeker, including information that relates to—
 - (i) the management of the capacity of a rail network; and
 - (ii) the availability of train paths; and
 - (iii) timetabling; and
 - (b) the procedure under which an access seeker may make an application for the provision of a declared rail transport service to it by an access provider; and
 - (c) the procedure and method as to how an access provider will assess and determine applications referred to in paragraph (b); and
 - (d) specifying a period of time within which an access provider must assess and determine applications referred to in paragraph (b); and

-
- (e) prohibiting an access provider from requiring or requesting the following persons to identify a consignee—
 - (i) an access seeker seeking the provision of declared rail transport services for the purpose of providing freight services; or
 - (ii) a user using declared rail transport services for the purpose of providing freight services.
 - (2) The Commission may make guidelines for or with respect to—
 - (a) fees or levies that an access provider may charge for assessing and determining applications referred to in subsection (1)(b);
 - (b) fees or levies that an access provider may charge an access seeker for information relating to a declared rail transport service;
 - (c) prohibiting fees or levies of the kind referred to in paragraphs (a) and (b) if those fees or levies exceed an amount specified in the guidelines;
 - (d) interconnection.

Note

The procedure for the making of the negotiation guidelines is set out in section 38N.

Pt 2A Div. 3
(Heading and
ss 38Q–
38QC)
inserted by
No. 20/2002
s. 5,
repealed by
No. 25/2005
s. 4, new
Pt 2A Div. 3
(Heading and
ss 38W–38ZS)
inserted by
No. 25/2005
s. 5.

S. 38W
inserted by
No. 25/2005
s. 5.

Division 3—Access arrangements

38W Submission of access arrangement to Commission for approval

- (1) An access provider must submit to the Commission for approval a proposed access arrangement in relation to a declared rail transport service provided by the access provider or capable of being provided by the access provider within 60 days of the relevant declaration.

Note

Subsection (1) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (2) An access provider must include in the proposed access arrangement access arrangement information.

Note

Subsection (2) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (3) A proposed access arrangement submitted for approval may relate to 2 or more declared rail transport services.

38X Contents of proposed access arrangements

**S. 38X
inserted by
No. 25/2005
s. 5.**

- (1) A proposed access arrangement must—
- (a) in relation to every reference service to which the arrangement relates, include—
 - (i) a description of the service; and
 - (ii) information as to whether that service is being provided by the access provider to itself or a related body corporate of the access provider; and
 - (iii) the terms and conditions for the provision of that service; and
 - (iv) the price, or methodology for the calculation of the price, to be charged in respect of the provision of that service; and
 - (b) include information in relation to the availability and the indicative terms and conditions, for the provision of declared rail transport services that are not reference services; and
 - (c) include a description of the information that the access provider will make available to an access seeker; and
 - (d) set out the procedure for the making of an application by an access seeker for the provision to them of a declared rail transport service; and
 - (e) describe the procedure and method how the access provider will assess and determine an application for the provision by them of a declared rail transport service; and

- (f) specify a date for the expiry of the access arrangement, being a date that is not less than 3 years, and not more than 5 years, after the date on which the access arrangement may be approved by the Commission under this Part in a final decision.
- (2) A proposed access arrangement may also include any other matter that the access provider considers relevant.
- (3) The price or methodology referred to in subsection (1)(a)(iv) must be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order.
- (4) Information referred to in subsection (1)(c), the procedure referred to in subsection (1)(d) and the procedure and method referred to in subsection (1)(e) must be consistent with the negotiation guidelines.
- (5) The proposed access arrangement must also be consistent with—
 - (a) the account keeping rules; and
 - (b) the ring fencing rules; and
 - (c) the capacity use rules; and
 - (d) the network management rules.

S. 38Y
inserted by
No. 25/2005
s. 5.

38Y Notification by Commission of submission to it of proposed access arrangement

- (1) As soon as practicable after receipt of a proposed access arrangement, the Commission must—
 - (a) notify, in writing, every interested person of that receipt; and

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- (b) publish, on the same day, on its website and in a newspaper circulating generally throughout the State, a notice that—
- (i) states that a proposed access arrangement has been received by the Commission for approval and the name of the access provider who submitted the proposed access arrangement; and
 - (ii) specifies how copies of the proposed access arrangement and access arrangement information may be obtained; and
 - (iii) requests written submissions or comments in relation to the proposed access arrangement on or before the date specified in the notice; and
 - (iv) contains the prescribed information (if any).
- (2) The date specified in a notice under subsection (1)(b)(iii) must not be a date that is less than 21 days after the date the notice is published.

38Z Submission and comments in relation to proposed access arrangement

S. 38Z
inserted by
No. 25/2005
s. 5.

Any person may make a written submission or comment in relation to a proposed access arrangement in accordance with a notice referred to in section 38Y(1)(b).

38ZA Consideration of submission or comments by Commission

S. 38ZA
inserted by
No. 25/2005
s. 5.

Before making a draft decision, the Commission—

- (a) must consider every written submission or comment it receives on or before the date specified in a notice referred to in section 38Y(1)(b); and

- (b) may, but need not, consider a written submission or comment it receives after the date specified in a notice referred to in section 38Y(1)(b).

S. 38ZB
inserted by
No. 25/2005
s. 5.

38ZB Draft decision on whether proposed access arrangement will be approved

- (1) The Commission must make a draft decision as to whether it proposes to approve the proposed access arrangement as an access arrangement.
- (2) The draft decision must—
 - (a) be consistent with—
 - (i) the account keeping rules; and
 - (ii) the ring fencing rules; and
 - (iii) the capacity use rules; and
 - (iv) the network management rules; and
 - (v) the negotiation guidelines; and
 - (vi) the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (vii) the principle of passenger priority; and
 - (b) set out the reasons of the Commission as to whether or not it proposes to approve the proposed access arrangement, including the reasons of the Commission taking into account the matters specified in section 38ZI(a) to (j); and

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- (c) if the Commission proposes not to approve the proposed access arrangement, specify—
- (i) any amendments (or the nature of amendments) that the Commission considers should be made to the proposed access arrangement for the Commission to approve it; and
 - (ii) any matters that the Commission considers should be addressed for the Commission to approve it.
- (3) Without limiting subsection (2)(c), the Commission may specify amendments to any price, or the methodology for the calculation of any price, set out in the proposed access arrangement in respect of every declared rail transport service to which the proposed access arrangement relates.
- (4) Any amendment to a price, or the methodology for the calculation of a price, specified by the Commission must—
- (a) be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (b) not result in a price in respect of a declared rail transport service or an equivalent declared rail transport service that is higher than the price included in the access provider's internal transfer terms.
- (5) As soon as practicable after making a draft decision, the Commission—
- (a) must give a copy of the draft decision to—
 - (i) the access provider who submitted the proposed access arrangement to which the decision relates; and
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s. 38ZC

- (ii) every person who made a submission or comment under section 38Z on or before the date specified in the notice referred to in section 38Y(1)(b); and
 - (b) may give a copy of the draft decision to a person who made a submission or comment after the date specified in the notice referred to in section 38Y(1)(b); and
 - (c) must publish the draft decision on its website and make it available for inspection at its offices; and
 - (d) must request, by notice in writing, the persons given a copy of the draft decision in accordance with paragraphs (a) and (b), to make a written submission or comment in relation to the draft decision on or before a date specified in the notice.
- (6) The date specified in a notice under subsection (5)(d) must not be a date that is less than 14 days after the date the draft decision is published and made available in accordance with subsection (5)(c).

S. 38ZC
inserted by
No. 25/2005
s. 5.

38ZC Access provider may submit revisions to proposed access arrangement

If, in a draft decision, the Commission proposes not to approve the proposed access arrangement, the access provider who submitted the proposed access arrangement may, within 14 days of being given a copy of the draft decision in accordance with section 38ZB(5)(a)(i), submit to the Commission revisions to the proposed access arrangement that—

- (a) incorporate or substantially incorporate—
 - (i) the amendments specified in the draft decision that the Commission considers should be made for it to approve the proposed access arrangement; or
 - (ii) amendments that reflect the nature of amendments specified in the draft decision that the Commission considers should be made for it to approve the proposed access arrangement; and
- (b) otherwise address the matters specified in the draft decision that the Commission considers should be addressed for it to approve the proposed access arrangement.

38ZD Submission and comments in relation to draft decision

S. 38ZD
inserted by
No. 25/2005
s. 5.

A person who receives a copy of a draft decision and notice in accordance with section 38ZB(5) may make a written submission or comment in relation to the draft decision on or before the date specified in the notice referred to in that subsection.

38ZE Consideration of submissions and comments on draft decision

S. 38ZE
inserted by
No. 25/2005
s. 5.

Before making a final decision, the Commission—

- (a) must consider any revisions to a proposed access arrangement made by an access provider in accordance with section 38ZC; and
- (b) must consider every written submission or comment it receives on or before the date specified in a notice referred to in section 38ZB(5)(d); and

- (c) may, but need not, consider a written submission or comment it receives after the date specified in a notice referred to in section 38ZB(5)(d).

S. 38ZF
inserted by
No. 25/2005
s. 5.

38ZF Final decision on proposed access arrangement

- (1) The Commission must make a final decision whether to approve a proposed access arrangement as an access arrangement.
- (2) The Commission must not make a final decision approving a proposed access arrangement as an access arrangement unless it is satisfied the proposed access arrangement—
 - (a) provides for the matters required by section 38X(1); and
 - (b) is consistent with—
 - (i) the account keeping rules; and
 - (ii) the ring fencing rules; and
 - (iii) the capacity use rules; and
 - (iv) the network management rules; and
 - (v) the negotiation guidelines; and
 - (vi) the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (vii) the principle of passenger priority.
- (3) In making a final decision in relation to a proposed access arrangement in respect of which the access provider has submitted revisions to the proposed access arrangement under section 38ZC, the Commission must also be satisfied that the revisions—

- (a) incorporate or substantially incorporate—
 - (i) the amendments specified in the draft decision that the Commission considers should be made for it to approve the proposed access arrangement; or
 - (ii) amendments that reflect the nature of amendments specified in the draft decision that the Commission considers should be made for it to approve the proposed access arrangement; and
 - (b) otherwise address the matters specified in the draft decision that the Commission considers should be addressed for it to approve the proposed access arrangement.
- (4) The Commission, in a final decision, must set out the reasons of the Commission as to whether or not it approves the proposed access arrangement, including the reasons of the Commission taking into account the matters specified in section 38ZI.

38ZG Time within Commission must make a final decision

A final decision must be made within 90 days of receipt of the proposed access arrangement for approval under section 38W.

S. 38ZG
inserted by
No. 25/2005
s. 5.

38ZH Giving and publishing a final decision

The Commission must, as soon as practicable after making a final decision—

- (a) give a copy of the final decision to the access provider and any person who made a submission or comment under section 38Z or 38ZD; and
- (b) publish the final decision on its website and make it available for inspection at its offices.

S. 38ZH
inserted by
No. 25/2005
s. 5.

s. 38ZI
inserted by
No. 25/2005
s. 5.

38ZI Matters to be taken into account in making a final decision

In making a final decision whether to approve a proposed access arrangement as an access arrangement under section 38ZF, the Commission must take into account—

- (a) whether the proposed access arrangement is consistent with the objectives referred to in section 38F; and
- (b) the access provider's legitimate business interests and investment in the rail network owned or operated by that access provider; and
- (c) the costs to the access provider of providing access, including any costs of extending the rail network owned or operated by that access provider but not including costs associated with losses arising from increased competition in upstream or downstream markets; and
- (d) the economic value to the access provider of any additional investment that an access seeker or the access provider has agreed to undertake; and
- (e) the interests of users; and
- (f) existing contractual obligations of the access provider and users of the rail network owned or operated by that access provider; and
- (g) the operational and technical requirements necessary for the safe and reliable operation of the rail network owned or operated by the access provider; and
- (h) the economically efficient operation of the rail network owned or operated by the access provider; and

- (i) the benefit to the public in having competitive markets; and
- (j) any other matter that the Commission considers relevant.

Note

The matters specified in paragraphs (b) to (i) are consistent with the matters specified in paragraph (i) of clause 6(4) of the Competition Principles Agreement made on 11 April 1995 between the Commonwealth and all of the States and Territories of the Commonwealth.

38ZJ Commission to make access arrangement in certain cases

S. 38ZJ
(Heading)
amended by
No. 9/2006
s. 156(1).

S. 38ZJ
inserted by
No. 25/2005
s. 5.

- (1) The Commission must make an access arrangement in relation to a declared rail transport service if—
 - (a) in a final decision the Commission does not approve a relevant proposed access arrangement in relation to that service; or
 - (b) an access provider does not submit a proposed access arrangement for approval under section 38W in relation to that service; or
 - (c) an access provider does not submit an application for the renewal of an access arrangement under section 38ZR in relation to that service.

- (2) In subsection (1)(a)—

relevant proposed access arrangement means the proposed access arrangement submitted by the access provider for approval under section 38W, or if the proposed access arrangement has been revised in accordance with section 38ZC, that revised proposed access arrangement.

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- (3) Without limiting subsection (1), the Commission may, in an access arrangement made under subsection (1), specify a price, or the methodology for the calculation of prices, in respect of every declared rail transport service to which the access arrangement relates.
- (4) A price, or the methodology for the calculation of a price, specified in an access arrangement made under subsection (1) must—
- (a) be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (b) not be, or result in, a price in respect of a declared rail transport service or an equivalent declared rail transport service that is higher than the price included in the access provider's internal transfer terms.
- (5) An access arrangement made in accordance with subsection (1) must be made—
- (a) in the case of an access arrangement made under subsection (1)(a), within 30 days of the final decision;
 - (b) in the case of an access arrangement made under subsection (1)(b), within 90 days of the day by which the proposed access arrangement should have been submitted for approval under section 38W;
 - (c) in the case of an access arrangement made under subsection (1)(c), within 90 days of the day by which an application for the renewal of an access arrangement should have been made in accordance with section 38ZR.
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- (6) Sections 38ZF to 38ZI apply to the making of an access arrangement made under subsection (1)—
- (a) with such alterations and modifications as are necessary; and
 - (b) as if that access arrangement were a proposed access arrangement submitted for approval under section 38W.

38ZK Deemed access arrangement if Commission fails to make a certain access arrangement

S. 38ZK
inserted by
No. 25/2005
s. 5.

If the Commission does not make an access arrangement as required by section 38ZJ(1)(a), the proposed access arrangement submitted by the access provider for approval under section 38W, or if the proposed access arrangement has been revised in accordance with section 38ZC, that revised proposed access arrangement, is deemed to have been approved by the Commission under section 38ZF.

38ZL Deemed access arrangements may be replaced in certain circumstances

S. 38ZL
inserted by
No. 25/2005
s. 5.

- (1) Subject to subsections (2) and (3), the Commission may make an access arrangement in relation to a declared rail transport service to which a deemed access arrangement relates.
- (2) Subject to subsection (3), the Commission must obtain the consent of the Minister before making an access arrangement under subsection (1).
- (3) The Commission must obtain the consent of the Minister and make the access arrangement within 6 months after the date a deemed access arrangement commences operation.

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- (4) Without limiting subsection (1), the Commission may, in an access arrangement made under this section, specify a price, or the methodology for the calculation of prices, in respect of every declared rail transport service to which the access arrangement relates.
- (5) A price, or the methodology for the calculation of a price, specified in an access arrangement made under this section must—
- (a) be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (b) not be, or result in, a price in respect of a declared rail transport service or an equivalent declared rail transport service that is higher than the price included in the access provider's internal transfer terms.
- (6) Sections 38ZF to 38ZI apply to the making of an access arrangement made under this section—
- (a) with such alterations and modifications as are necessary; and
 - (b) as if that access arrangement were a proposed access arrangement submitted for approval under section 38W.
- (7) On the commencement of an access arrangement made under this section the deemed access arrangement ceases to have effect.

Note

An access arrangement made under this section commences on the date it is made: See section 38ZM.

- (8) In this section—

deemed access arrangement means a proposed access arrangement deemed to be an access arrangement by operation of section 38ZK.

38ZM Period of operation of access arrangement

S. 38ZM
inserted by
No. 25/2005
s. 5.

- (1) An access arrangement commences operation on—
- (a) the date it is approved by the Commission in a final decision; or
 - (b) if the Commission makes an access arrangement under section 38ZJ or 38ZL, the date of the final decision made in respect of that arrangement; or
 - (c) if the Commission does not make an access arrangement as required by section 38ZJ and a proposed access arrangement is deemed to be an access arrangement by operation of section 38ZK, the date that is 120 days after the date on which that arrangement was submitted for approval under section 38W.
- (2) An access arrangement expires on the date specified in the final decision or in the access arrangement (as the case requires).

38ZN Effect of access arrangement approved under this Division or made by the Commission

S. 38ZN
inserted by
No. 25/2005
s. 5.

An access arrangement is binding on the access provider who provides, or is capable of providing, the declared rail transport service to which the access arrangement relates.

38ZO Variation of a binding access arrangement on the application of the access provider

S. 38ZO
inserted by
No. 25/2005
s. 5.

- (1) An access provider may apply to the Commission for a variation of a binding access arrangement.
- (2) An application for a variation must not relate to the date of expiry of a binding access arrangement.

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- (3) The proposed variation that is the subject of the application must be consistent with—
- (a) the account keeping rules; and
 - (b) the ring fencing rules; and
 - (c) the capacity use rules; and
 - (d) the network management rules; and
 - (e) the negotiation guidelines; and
 - (f) the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (g) the principle of passenger priority.
- (4) An application must—
- (a) be in writing; and
 - (b) include a description of the proposed variation; and
 - (c) state the reasons for the proposed variation.
- (5) Subject to this section, on receipt of an application for a variation of a binding access arrangement, the Commission may decide to vary that arrangement.
- (6) If the Commission considers that the variation that is the subject of the application is a material variation, sections 38Y to 38ZI apply to that variation—
- (a) with such alterations and modifications as are necessary; and
 - (b) as if—
 - (i) the proposed variation to be made were a proposed access arrangement submitted for approval under section 38W; and
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(ii) a decision under this section were a final decision.

(7) If the Commission decides to vary a binding access arrangement under this section, the variation takes effect, and is binding on the access provider, on and from the date of the decision.

38ZP Variation of a binding access arrangement by Commission

S. 38ZP
inserted by
No. 25/2005
s. 5.

- (1) Subject to this section, the Commission, on its own initiative, may vary a binding access arrangement.
- (2) A proposed variation must not relate to the date of expiry of a binding access arrangement.
- (3) A proposed variation must be consistent with—
 - (a) the account keeping rules; and
 - (b) the ring fencing rules; and
 - (c) the capacity use rules; and
 - (d) the network management rules; and
 - (e) the negotiation guidelines; and
 - (f) the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
 - (g) the principle of passenger priority.
- (4) On forming its intention to propose a variation to a binding access arrangement, the Commission must, without delay—
 - (a) notify, in writing, the access provider of its intention to do so; and
 - (b) give the access provider its reasons, in writing, for the proposed variation.

- (5) If the Commission considers that the variation that it is intending to make is a material variation, sections 38Y to 38ZI apply to that variation—
- (a) with such alterations and modifications as are necessary; and
 - (b) as if—
 - (i) the proposed variation to be made were a proposed access arrangement submitted for approval under section 38W; and
 - (ii) a decision under this section were a final decision.
- (6) If the Commission decides to vary a binding access arrangement under this section, the variation takes effect, and is binding on the access provider, on and from the date of the decision.

S. 38ZQ
inserted by
No. 25/2005
s. 5.

38ZQ Substitution of access provider to a binding access arrangement

- (1) If before the expiry of a binding access arrangement—
- (a) the access provider will cease to own or operate the rail infrastructure used to provide, or that is capable of providing, a declared rail transport service to which a binding access arrangement relates; and
 - (b) another access provider (the *new access provider*) will own or operate that rail infrastructure—

the new access provider must apply to the Commission for the substitution of them as the access provider to whom the binding access arrangement applies.

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- (2) An application under subsection (1) must be—
- (a) made at least 21 days before the new access provider owns or operates the rail infrastructure referred to in subsection (1)(a); and
 - (b) in writing; and
 - (c) accompanied by evidence, to the reasonable satisfaction of the Commission, that the new access provider will own or operate the rail infrastructure referred to in subsection (1)(a) at any time before the expiry of the binding access arrangement.
- (3) On receipt of an application under subsection (1), the Commission may agree to the substitution of the new access provider as the person to whom the binding access arrangement applies.
- (4) A substitution takes effect on and from the day the Commission agrees to the substitution and the relevant binding access arrangement must varied accordingly.

38ZR Renewal of access arrangement

S. 38ZR
inserted by
No. 25/2005
s. 5.

- (1) An access provider must, not less than 90 days before the expiry of a binding access arrangement, apply to the Commission for the renewal of that access arrangement.

Note

Subsection (1) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (2) Subsection (1) does not apply if the access provider will not be, or be capable of, providing a declared rail transport service to which the binding access arrangement relates after that expiry.
- (3) An application must be in writing.
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- (4) Despite anything to the contrary in a binding access arrangement, or a final decision approving a binding access arrangement, on the making of an application under subsection (1) the binding access arrangement continues in force until the Commission approves or refuses to approve the renewal of the arrangement.
- (5) If following an application under subsection (1), the Commission approves the access arrangement, it must be taken to have been approved on the day the binding access arrangement was due to expire.
- (6) This Division applies to and in relation to—
 - (a) an application under this section for the renewal of an access arrangement; and
 - (b) the approval of such an application; and
 - (c) the access arrangement that is renewed—as if the application for renewal were a submission of a proposed access arrangement for approval under section 38W and the application has been made by a person other than the access provider.
- (7) To avoid doubt, an application for renewal of an access arrangement may include terms and conditions that differ from those contained in the binding access arrangement that is expiring.

S. 38ZS
inserted by
No. 25/2005
s. 5.

38ZS Appeals from Commission decisions under Division 3

- (1) Section 55 of the **Essential Services Commission Act 2001** applies to a relevant access arrangement decision as if the decision were a determination made under that Act.

(2) In this section—

relevant access arrangement decision means—

- (a) a final decision;
- (b) a final decision in respect of an access arrangement made under section 38ZJ(1) or 38ZL;
- (c) a decision under section 38ZO or section 38ZP;
- (d) a decision agreeing or disagreeing to the substitution of an access provider as a party to a binding access arrangement under section 38ZQ;
- (e) a final decision in respect of an application for the renewal of an access arrangement under section 38ZR.

Division 4—Interconnection of railways

Pt 2A Div. 4
(Heading and
ss 38R, 38RA)
amended by
Nos 47/1998
s. 10, 20/2002
ss 6, 7,
substituted as
Pt 2A Div. 4
(Heading and
s. 38ZT) by
No. 25/2005
s. 6.

38ZT Interconnection

S. 38ZT
inserted by
No. 25/2005
s. 6.

- (1) An access seeker who owns or operates a railway track or railway siding, or intends to own or operate a proposed railway track or railway siding, may, in writing, notify an access provider of its desire to connect that railway track or railway siding, or proposed railway track or railway siding, to the access provider's relevant railway track.

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- (2) Subject to this section, on receipt of a notification under subsection (1), the access provider must do all things reasonably necessary to enable the access seeker to connect the railway track or railway siding, or proposed railway track or railway siding, to the access provider's relevant railway track.
- (3) The access provider may refuse to connect a railway track or railway siding owned or operated by the access seeker, or a proposed railway track or railway siding, to its relevant railway track unless the access seeker, within the time specified (if any) in the negotiation guidelines—
- (a) provides evidence, to the reasonable satisfaction of the access provider, that the access seeker has obtained every relevant statutory approval for the construction of the connection; and
 - (b) by agreement, in writing, with the access provider agrees—
 - (i) to pay the access provider's reasonable costs to construct the connection; and
 - (ii) with any reasonable requirements of the access provider in relation to the construction of the connection.
- (4) If the access seeker and access provider cannot agree—
- (a) as to the terms and conditions for the connection, including the costs to be paid by the access seeker; or
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- (b) the nature or content of the construction requirements in relation to the construction of the connection—

either the access seeker or the access provider may, in accordance with the negotiation guidelines, apply to the Commission under Division 5 for a dispute resolution decision.

- (5) In this section—

relevant railway track means a railway track owned or operated by an access provider with which the access provider provides declared rail transport services;

relevant statutory approval means any requirement, licence, permission or consent required by or under an Act in relation to the construction of a connection to a railway track.

Division 5—Dispute resolution

Pt 2A Div. 5
(Heading and
ss 38ZU–
38ZZR)
inserted by
No. 25/2005
s. 6.

38ZU What is an access regime dispute?

S. 38ZU
inserted by
No. 25/2005
s. 6.

- (1) An access regime dispute is—
- (a) a dispute between an access provider and an access seeker where the access provider and access seeker are unable to agree as to the terms and conditions (including price) for the provision of a declared rail transport service to the access seeker;

- (b) a dispute between an access seeker and an access provider in relation to interconnection;
 - (c) a dispute between an access seeker and an access provider in relation to an extension to rail infrastructure used, or capable of being used, to provide a declared rail transport service.
- (2) In addition, if—
- (a) an access seeker reasonably believes that the access provider has not complied with—
 - (i) a binding access arrangement; or
 - (ii) the negotiation guidelines; or
 - (iii) the pricing principles; or
 - (iv) a provision of Division 6—and, as a result, the access seeker has not been provided a declared rail transport service by the access provider; or
 - (b) a user reasonably believes that the access provider, in providing a declared rail transport service to them, has not complied with—
 - (i) a binding access arrangement; or
 - (ii) the negotiation guidelines; or
 - (iii) the pricing principles; or
 - (iv) a provision of Division 6—that belief is to be taken to give rise to an access regime dispute.

S. 38ZV
inserted by
No. 25/2005
s. 6.

38ZV Notification of access regime dispute

- (1) An access provider, an access seeker or a user may notify the Commission, in writing, of an access regime dispute.

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- (2) On receiving a notification under subsection (1), the Commission must notify, in writing, of the access regime dispute—
- (a) the access provider, if an access seeker or a user notified the Commission of the access regime dispute under subsection (1);
 - (b) the access seeker or user (as the case requires), if the access provider notified the Commission of the access regime dispute under subsection (1).
- (3) The person notifying the Commission of an access regime dispute under subsection (1) and the persons notified by the Commission under subsection (2) are the parties to the access regime dispute.

38ZW Withdrawal of notice of access regime dispute

**S. 38ZW
inserted by
No. 25/2005
s. 6.**

- (1) The person who notified the Commission of an access regime dispute under section 38ZV(1) may withdraw that notification at any time before the Commission makes a dispute resolution decision in respect of that access regime dispute.
- (2) The notification must be withdrawn by notice in writing.
- (3) If the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

38ZX Commission must decide on access regime disputes

**S. 38ZX
inserted by
No. 25/2005
s. 6.**

- (1) Subject to this Division, on receipt of a notification under section 38ZV(1), the Commission must make a decision in respect of the access regime dispute.

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- (2) Without limiting subsection (1), a dispute resolution decision may—
- (a) address or deal with any matter relating to the provision of a declared rail transport service to an access seeker or user who is a party to the dispute, including the terms and conditions for, and price in respect of, the provision of that service;
 - (b) require an access provider to extend, or to permit the extension of, the rail infrastructure that is used to provide a declared rail transport service.
- (3) To avoid doubt, a dispute resolution decision need not require an access provider to provide a declared rail transport service to an access seeker.
- (4) Subject to subsection (5), a dispute resolution decision has effect—
- (a) on and from the day it is made; or
 - (b) if the decision states a day that on and from which it is to have effect, on and from that day.
- (5) A dispute resolution decision may have effect from the day on which an access seeker has requested, in accordance with an access arrangement, the access provider to provide to them a declared rail transport service.
- (6) A dispute resolution decision is binding on the parties to the access regime dispute to which the decision relates.
- (7) A copy of a dispute resolution decision must be given to the parties to the access regime dispute without delay.
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38ZY Time within which Commission must make dispute resolution decision

S. 38ZY
inserted by
No. 25/2005
s. 6.

The Commission must make a dispute resolution decision—

- (a) within 45 days of receipt of a notification under section 38ZV(1); or
- (b) by the date specified by the Minister under section 38ZZ.

38ZZ Minister may extend time within which Commission may make decision

S. 38ZZ
inserted by
No. 25/2005
s. 6.

- (1) The Commission may, at any time before the expiry of the period specified in section 38ZY(a), request, in writing, the Minister for an extension in the time within which it must make a dispute resolution decision.
- (2) On receipt of a request under subsection (1), the Minister may agree to the request.
- (3) If the Minister agrees to a request under this section, the Minister must specify the date by which the Commission must make the dispute resolution decision.
- (4) The date specified by the Minister must be a date within 6 months of the date on which the Commission received the notification under section 38ZV(1) in respect of the access regime dispute.

38ZZA Commission may decide not to make dispute resolution decision in certain cases

S. 38ZZA
inserted by
No. 25/2005
s. 6.

The Commission may at any time decide not to make a dispute resolution decision (without making such a decision) if the Commission considers that—

- (a) the notification under section 38ZV(1) was vexatious;

s. 38ZZB

- (b) the subject-matter of the access regime dispute is trivial, misconceived or lacking substance.

S. 38ZZB
inserted by
No. 25/2005
s. 6.

38ZZB Matters to be taken into account in making decision

In making a dispute resolution decision, the Commission—

- (a) must take into account—
 - (i) the objectives referred to in section 38F; and
 - (ii) the matters or things set out in section 38ZI(b) to (i); and
 - (iii) information given to it in accordance with Part 4 of the **Essential Services Commission Act 2001** where that information has been given to the Commission within the time specified in a written notice under section 37(2) of that Act; and
- (b) may take into account any other matter that it considers relevant.

S. 38ZZC
inserted by
No. 25/2005
s. 6.

38ZZC Decisions must not be inconsistent with principles and rules

The Commission must not make a dispute resolution decision that is inconsistent with—

- (a) the account keeping rules; and
- (b) the ring fencing rules; and
- (c) the capacity use rules; and
- (d) the network management rules; and

- (e) the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order; and
- (f) the principle of passenger priority.

38ZZD Decisions must not be inconsistent with an access arrangement

S. 38ZZD
inserted by
No. 25/2005
s. 6.

- (1) The Commission must not make a dispute resolution decision that is inconsistent with a binding access arrangement.
- (2) Without limiting subsection (1), the Commission must not make a dispute resolution decision in respect of an access regime dispute about the terms and conditions for the provision of a declared rail transport service that sets a price for that declared rail transport service or an equivalent declared rail transport service that is higher than the price included in the access provider's internal transfer terms.

38ZZE Decisions must not interfere with certain directions of the Safety Director

S. 38ZZE
(Heading)
amended by
No. 47/2006
s. 38.

The Commission must not, without the written consent of the Safety Director, make a dispute resolution decision that interferes with or has the effect of interfering with a direction of the Safety Director made under section 42 of the **Rail Safety Act 2006**.

S. 38ZZE
inserted by
No. 25/2005
s. 6,
amended by
No. 9/2006
s. 155.

38ZZF Certain decisions must not be made without prior consultation with Secretary and Director

S. 38ZZF
inserted by
No. 25/2005
s. 6.

- (1) The Commission must not make a relevant dispute resolution decision unless the Commission—
 - (a) has given a notice, in writing to the Secretary and Director at least 20 days before making the decision informing them that—

- (i) it has received notification of that dispute in accordance with section 38ZV(1); and
 - (ii) they may make submissions to it in relation to the dispute; and
 - (b) has considered any submission made by the Secretary or the Director.
- (2) In this section—

relevant dispute resolution decision means a dispute resolution decision that—

- (a) requires or directs an access provider to provide the declared rail transport service the subject of the access regime dispute;
- (b) requires an access provider to provide interconnection;
- (c) requires an access provider to extend, or permit the extension of, rail infrastructure owned or operated by the access provider to provide a declared rail transport service.

S. 38ZZG
inserted by
No. 25/2005
s. 6.

38ZZG Decisions in relation to extensions of rail infrastructure

The Commission must not make a decision requiring an access provider to extend, or to permit the extension of, the rail infrastructure that is used to provide a declared rail transport service—

- (a) unless it is satisfied that—
 - (i) the extension is technically and economically feasible and consistent with the safe and reliable operation of the relevant rail infrastructure; and

- (ii) the access provider's legitimate business interests in the rail infrastructure are protected; or
- (b) if to do so will require the access provider to bear some or all of the costs of extending that rail infrastructure or maintaining that extension.

38ZZH Hearings for the purposes of a dispute resolution decision

S. 38ZZH
inserted by
No. 25/2005
s. 6.

- (1) The Commission must conduct a hearing for the purposes of making a dispute resolution decision.
- (2) In any hearing for the purposes of making a dispute resolution decision, the Commission—
 - (a) is not bound by technicalities, legal forms or rules of evidence; and
 - (b) must act as speedily as a proper consideration of the access regime dispute allows, having regard to the need to carefully and quickly inquire into and investigate the access regime dispute and all matters affecting the merits, and fair settlement, of the access regime dispute; and
 - (c) may inform itself of any matter relevant to the access regime dispute in any way it thinks appropriate.
- (3) The Commission may decide the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to an access regime dispute, and may require that the cases be presented within those periods.
- (4) The Commission may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

s. 38ZZI

- (5) The Commission may decide that a hearing is to be conducted by—
- (a) telephone; or
 - (b) closed circuit television; or
 - (c) any other means of communication.

S. 38ZZI
inserted by
No. 25/2005
s. 6.

38ZZI Hearing to be in private

- (1) Subject to subsection (2), a hearing conducted for the purposes of making a dispute resolution decision is to be in private.
- (2) If the parties agree, a hearing or part of a hearing may be conducted in public.
- (3) The Commissioner of the Commission who is presiding at a hearing that is conducted in private may give written directions as to the persons who may be present.
- (4) In giving directions under subsection (3), the Commissioner presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

S. 38ZZJ
inserted by
No. 25/2005
s. 6.

38ZZJ Right to representation

In a hearing before the Commission under this Division, a party may—

- (a) appear in person; or
- (b) be represented by someone else if the Commission agrees.

S. 38ZZK
inserted by
No. 25/2005
s. 6.

38ZZK Particular powers of the Commission for the purposes of making a dispute resolution decision

- (1) The Commission may do any of the following things for the purpose of making a dispute resolution decision—
 - (a) give a direction in the course of, or for the purposes of, a hearing;

- (b) sit at any place;
 - (c) adjourn to any time and place;
 - (d) refer any matter to an expert and accept the expert's report as evidence;
 - (e) generally give all such directions, and do all such things, as are necessary or expedient for the speedy hearing and making of a dispute resolution decision.
- (2) A party to an access regime dispute must not do any act or thing in relation to the hearing of an access regime dispute that would be a contempt of court if the Commission were a court of record.

Note

Subsection (2) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (3) The Commission may give an oral or written direction to any party to an access regime dispute not to divulge or communicate to anyone else specified information that was given to the party in the course of an access regime dispute unless the party has the Commission's permission.
- (4) A party to an access regime dispute must comply with a direction under subsection (3).

Note

Subsection (4) is a penalty provision: See the definition of *penalty provision* in section 38A.

38ZZL Power to take evidence on oath or affirmation

S. 38ZZL
inserted by
No. 25/2005
s. 6.

- (1) The Commission may take evidence on oath or affirmation and for that purpose a Commissioner of the Commission may administer an oath or affirmation.
- (2) The power conferred under this section may be exercised only for the purposes of making a dispute resolution decision.

s. 38ZZM

S. 38ZZM
inserted by
No. 25/2005
s. 6.

38ZZM Commission may give directions in relation to negotiations

- (1) If the Commission considers that it would be likely to facilitate negotiations relating to an access regime dispute if a person who is or was a party to the access regime dispute were to be given a direction under this subsection, the Commission may, for the purposes of facilitating those negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations.
- (2) Without limiting subsection (1), the Commission may give a procedural direction to the parties to negotiate in good faith to settle an access regime dispute.
- (3) A person must not contravene a direction given under subsection (1).

Note

Subsection (3) is a penalty provision: See the definition of *penalty provision* in section 38A.

S. 38ZZN
inserted by
No. 25/2005
s. 6.

38ZZN Two or more access regime disputes may be decided together

- (1) The Commission may make a dispute resolution decision in respect of 2 or more access regime disputes in respect of which it has received notifications under section 38ZV(1) if the same access provider is a party to those access regime disputes.
- (2) The Commission may, for the purposes of subsection (1), disclose or give information in relation to one access regime dispute to a party of another access regime dispute if it considers it appropriate to do so.

- (3) Section 38 of the **Essential Services Commission Act 2001** applies to the information disclosed or given by the Commission under subsection (2) as if that information had been given to the Commission under section 37 of that Act.

38ZZO Commission may make interim decision

S. 38ZZO
inserted by
No. 25/2005
s. 6.

- (1) The Commission may make an interim decision in respect of an access regime dispute before making a dispute resolution decision in respect of that dispute.
- (2) The making of an interim decision does not relieve the Commission from its duty to make a dispute resolution decision.
- (3) Subject to this section, an interim decision has effect—
 - (a) on and from the date specified in the interim decision; and
 - (b) as if it were a dispute resolution decision.
- (4) In making an interim decision, the Commission may take into account any matter it considers relevant.
- (5) Subject to this section, unless sooner revoked, an interim decision is binding on the parties to the access regime dispute and remains in force until—
 - (a) the end of the period specified in the interim decision; or
 - (b) until a dispute resolution decision is made.
- (6) The Commission may revoke an interim decision.
- (7) If—
 - (a) an interim decision is in force in relation to an access regime dispute; and

- (b) the notification under section 38ZV(1) is withdrawn under section 38ZW—

the interim decision is taken to have been revoked when the withdrawal occurs.

- (8) If an interim decision is made, a copy of the decision must be given to the parties without delay.

S. 38ZZP
inserted by
No. 25/2005
s. 6.

38ZZP Variation or revocation of dispute resolution decisions

- (1) A party to an access regime dispute in respect of which the Commission has made a dispute resolution decision may apply to the Commission for the variation or revocation of that decision.
- (2) An application must—
- (a) be in writing; and
 - (b) state the reasons for the proposed variation or revocation (as the case requires); and
 - (c) in the case of an application for a variation include a description of the proposed variation.
- (3) On receipt of an application under subsection (1), the Commission must, without delay—
- (a) notify any other party bound by the dispute resolution decision of the application; and
 - (b) request submissions and comments from those other parties by a date specified by the Commission.
- (4) The date specified in a notice under subsection (3) must not be a date that is less than 21 days after the date a party is notified in accordance with that subsection.

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- (5) In making a decision whether to vary or revoke a dispute resolution decision as requested, the Commission—
- (a) must consider every submission or comment it receives on or before the date specified by it in accordance with subsection (3)(b); and
 - (b) may, but need not, consider a submission or comment it receives after the date specified by it in accordance with subsection (3)(b).
- (6) On receipt of an application under subsection (1), the Commission may, as the case requires, decide whether to vary or revoke the decision.
- (7) Sections 38ZW to 38ZZG and sections 38ZZN and 38ZZO apply to an application under this section—
- (a) with such alterations and modifications as are necessary; and
 - (b) as if—
 - (i) the application were a notification under section 38ZV(1); and
 - (ii) the decision under this section whether to vary or revoke the dispute resolution decision were a dispute resolution decision.

38ZZQ Appeals from decisions of the Commission under Division 5

S. 38ZZQ
inserted by
No. 25/2005
s. 6.

Section 55 of the **Essential Services Commission Act 2001** applies to—

- (a) a dispute resolution decision;
- (b) an interim decision under section 38ZZO;
- (c) a decision under section 38ZZP—

as if the decision were a determination made under that Act.

S. 38ZZR
inserted by
No. 25/2005
s. 6.

38ZZR Commission may recover its costs in certain cases

(1) In this section—

Commission's costs means the total amount of the costs and expenses of the Commission that—

- (a) are incurred or are likely to be incurred by the Commission in the exercise of powers for or in connection with the making of a relevant decision; or
- (b) are incurred by the Commission in the exercise of its powers for or in connection with the making of a dispute resolution decision after the notification of an access regime dispute under section 38ZV and before the withdrawal of that notification under section 38ZW;

relevant decision means a dispute resolution decision or a decision made under section 38ZZA or 38ZZP.

- (2) After making a relevant decision or on receipt of a notification under section 38ZW withdrawing a notification of an access regime dispute, the Commission may make any order as to the Commission's costs that it considers appropriate.
- (3) An order for costs under subsection (2) is binding on—
 - (a) the party to the access regime dispute to whom the order is directed; and
 - (b) if the access regime dispute is withdrawn under section 38ZW, a person who was a party to that dispute before it was withdrawn and to whom the order is directed.

- (4) An order for costs under subsection (2) is a debt due to the Commission.

Division 6—Access provider obligations

Pt 2A Div. 6
(Heading and
ss 38ZZS–
38ZZY)
inserted by
No. 25/2005
s. 6.

38ZZS Hindering or preventing access

S. 38ZZS
inserted by
No. 25/2005
s. 6.

An access provider must not engage in conduct for the purpose of or having the effect of hindering or preventing—

- (a) access by an access seeker to a declared rail transport service;
- (b) an access seeker from entering into an agreement for the provision of a declared rail transport service;
- (c) the provision of a declared rail transport service to which a person is entitled under an agreement or a dispute resolution decision;
- (d) interconnection.

Note: Section 38ZZS is a penalty provision: See the definition of "penalty provision" in section 38A.

38ZZT Compliance with access arrangement

S. 38ZZT
inserted by
No. 25/2005
s. 6.

An access provider must, in providing a declared rail transport service, comply with the terms and conditions of an access arrangement in relation to that service.

Note

Section 38ZZT is a penalty provision: See the definition of *penalty provision* in section 38A.

s. 38ZZU

S. 38ZZU
inserted by
No. 25/2005
s. 6.

38ZZU Compliance with account keeping rules

An access provider must, in accordance with the account keeping rules—

- (a) prepare, maintain and keep accounting records, accounts and other records required to be prepared, maintained and kept under those rules;

Note

Section 38ZZU(a) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (b) provide to the Commission accounting records, accounts and other records required to be prepared, maintained and kept under those rules.

Note

Section 38ZZU(b) is a penalty provision: See the definition of *penalty provision* in section 38A.

S. 38ZZV
inserted by
No. 25/2005
s. 6.

38ZZV Compliance with ring fencing rules

An access provider must comply with the ring fencing rules.

Note

Section 38ZZX is a penalty provision: See the definition of *penalty provision* in section 38A.

S. 38ZZW
inserted by
No. 25/2005
s. 6.

38ZZW Compliance with capacity use rules

An access provider must, in carrying out a relevant capacity allocation activity, carry out that activity in accordance with the capacity use rules.

Note

Section 38ZZW is a penalty provision: See the definition of *penalty provision* in section 38A.

38ZZX Compliance with network management rules

An access provider must, in carrying out a relevant network management activity, carry out that activity in accordance with the network management rules.

Note

Section 38ZZX is a penalty provision: See the definition of *penalty provision* in section 38A.

S. 38ZZX
inserted by
No. 25/2005
s. 6.

38ZZY Access provider obligation in relation to calculating prices for declared rail transport services

S. 38ZZY
inserted by
No. 25/2005
s. 6.

- (1) Subject to any binding access arrangement or dispute resolution decision, an access provider must not, in respect of declared rail transport services it will provide, calculate different prices for the provision of those services as between—
- (a) different access seekers; or
 - (b) an access seeker and itself; or
 - (c) an access seeker and a related body corporate of the access provider—

if the characteristics or nature of those services are the same.

Note

Subsection (1) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (2) In determining whether the characteristics or nature of declared rail transport services are the same, regard must be had to all relevant matters, including—
- (a) the location, duration and quality of the train path;
 - (b) the nature of the rolling stock;

- (c) the duration of any agreement for the provision of those declared rail transport services;
- (d) the arrival and departure times of trains.

Pt 2A Div. 7
(Heading and
ss 38ZZZ–
38ZZZB)
inserted by
No. 25/2005
s. 6.

Division 7—Confidential information

S. 38ZZZ
inserted by
No. 25/2005
s. 6.

38ZZZ Access provider confidential information obligations

- (1) An access provider must not use information given to them by an access seeker or a user in confidence other than solely for a relevant purpose.

Note

Subsection (1) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (2) In subsection (1)—

relevant purpose means the purpose of—

- (a) assessing and responding to a request by the access seeker for the provision of a declared rail transport service to the access seeker;
 - (b) providing a declared rail transport service to the user;
 - (c) assessing and responding to a request by the access seeker for interconnection.
- (3) Subsection (1) does not apply if the access provider has the written consent of the access seeker or the user to use the information given to them by the access seeker or the user for another purpose.

- (4) An access provider must not disclose information given to them by an access seeker or a user in confidence without the written consent of the access seeker or the user.

Note

Subsection (4) is a penalty provision: See the definition of *penalty provision* in section 38A.

38ZZZA Access seeker and user confidential information obligations

S. 38ZZZA
inserted by
No. 25/2005
s. 6.

- (1) An access seeker or a user must not use information given to them by an access provider in confidence other than solely for a relevant purpose.

Note

Subsection (1) is a penalty provision: See the definition of *penalty provision* in section 38A.

- (2) In subsection (1)—

relevant purpose means the purpose of—

- (a) seeking to be provided, or using, a declared rail transport service provided by the access provider; or
 - (b) interconnection.
- (3) Subsection (1) does not apply if the access seeker or user has the written consent of the access provider to use the information given to them by the access provider for another purpose.
- (4) An access seeker or a user must not disclose information given to them by an access provider in confidence without the written consent of the access provider.

Note

Subsection (4) is a penalty provision: See the definition of *penalty provision* in section 38A.

s. 38ZZZB

S. 38ZZZB
inserted by
No. 25/2005
s. 6.

38ZZZB Access provider system and business rules for the handling of confidential information

- (1) An access provider must, on the same day as it submits a proposed access arrangement under section 38W for approval, submit to the Commission for approval, a system and business rules for—
 - (a) the use or handling of information supplied to the access provider in confidence by an access seeker or a user, including the use or handling of that information by an officer, employee or agent of the access provider; and
 - (b) the disclosure of information supplied to the access provider in confidence by an access seeker or a user, including the disclosure of that information by an officer, employee or agent of the access provider.
- (2) The Commission's approval under subsection (1) may be subject to such conditions as the Commission considers appropriate.
- (3) On the approval by the Commission of a system and business rules under subsection (1)—
 - (a) the access provider, while the access provider provides or is capable of providing declared rail transport services, must at all times have in place and maintain that system and business rules; and
 - (b) that system and business rules must be consistent with the conditions of the approval (if any).

S. 38ZZZB
(3)(a)
amended by
No. 9/2006
s. 156(2).

Note

Subsection (3) is a penalty provision: See the definition of *penalty provision* in section 38A.

Division 8—Enforcement and other proceedings

Pt 2A Div. 8
(Heading and
ss 38ZZZC–
38ZZZI)
inserted by
No. 25/2005
s. 6.

38ZZZC Proceedings

S. 38ZZZC
inserted by
No. 25/2005
s. 6.

- (1) A person may not bring civil proceedings in respect of a matter arising under this Part, except in accordance with this Division.
- (2) The Commission may, in accordance with this Division, bring civil proceedings in respect of a penalty provision.
- (3) Nothing in this section affects the right of a person to bring civil proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on this Part.

38ZZZD Criminal proceedings do not lie

S. 38ZZZD
inserted by
No. 25/2005
s. 6.

- (1) Criminal proceedings do not lie against a person by reason only that the person—
 - (a) has contravened a provision of this Part;
 - (b) has attempted to contravene such a provision;
 - (c) has aided, abetted, counselled or procured a person to contravene such a provision;
 - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision;
 - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) has conspired with others to contravene such a provision.

(2) Subsection (1) does not apply in respect of a provision of this Part for an offence against which a penalty is prescribed by this Part.

S. 38ZZZE
inserted by
No. 25/2005
s. 6.

38ZZZE Proceedings for contraventions of penalty provisions

(1) The Commission may apply to the Supreme Court for an order under this Part in respect of a contravention by a person of a penalty provision or the doing by a person of any other thing mentioned in subsection (2).

(2) If the Court is satisfied that a person—

- (a) has contravened a penalty provision; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision—

the Court may order the person to pay a pecuniary penalty to the Minister in respect of each act or omission by the person to which this section applies as the Court determines to be appropriate, being an amount not exceeding \$1 000 000.

- (3) In determining the amount of the pecuniary penalty to be paid by the person, the Court may have regard to all relevant matters including—
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
 - (b) the circumstances in which the act or omission took place; and
 - (c) whether the person has previously been found by the Court in proceedings under this Division to have contravened a penalty provision.

38ZZZF Pecuniary penalties to be paid into the Consolidated Fund

S. 38ZZZF
inserted by
No. 25/2005
s. 6.

Every pecuniary penalty received by the Minister must be paid into the Consolidated Fund.

38ZZZG Injunctions

S. 38ZZZG
inserted by
No. 25/2005
s. 6.

- (1) If, on an application by the Commission, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
- (a) a contravention of a penalty provision; or
 - (b) attempting to contravene a penalty provision—
- the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) If an application for an injunction under subsection (1) has been made the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).

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- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
 - (4) The Court may rescind or vary an injunction granted under subsection (1) or (2).
 - (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.
 - (6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing.
 - (7) The Court shall not, in any application to the Court for the grant of an injunction under this section, require the Commission or any other person to give any undertakings as to damages as a condition of granting an interim injunction.

S. 38ZZZH
inserted by
No. 25/2005
s. 6.

38ZZZH Declaratory relief

- (1) The Supreme Court, on an application by the Commission may, by order, declare whether or not the person to which the application relates has contravened a penalty provision.

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- (2) If the order declares the person to have contravened a penalty provision, the order may include one or more of the following—
- (a) a requirement that the person cease, within a specified period, the act, activity or practice constituting the contravention;
 - (b) a requirement that the person take such action, or adopt such practice, as the Court requires for remedying the contravention or preventing a recurrence of the contravention.

38ZZZI Enforcement of dispute resolution decisions

S. 38ZZZI
inserted by
No. 25/2005
s. 6.

- (1) If the Supreme Court is satisfied, on the application of a party to an access regime dispute in respect of which the Commission has made a dispute resolution decision, that another party to that access regime dispute engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of the dispute resolution decision, the Court may make all or any of the following orders—
- (a) an order granting an injunction on such terms as the Court thinks appropriate—
 - (i) restraining the other party from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;
 - (b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;
 - (c) any other order that the Court thinks appropriate.
- (2) If the Supreme Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring

a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

- (3) A reference in this section to a person involved in the contravention is a reference to a person who has—
- (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
 - (d) conspired with others to effect the contravention.

Pt 2A Div. 9
(Heading and
s. 38ZZZJ)
inserted by
No. 25/2005
s. 6,
repealed by
No. 15/2008
s. 27.

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PART 3—TRANSFER OF PROPERTY AND STAFF

Pt 3
(Heading)
amended by
No. 104/1997
s. 16(1).

Division 1—Definitions

Pt 3 Div. 1
(Heading)
inserted by
No. 104/1997
s. 16(2).

39 Definitions

(1) In this Part—

former PTC instrument means an instrument
(including a legislative instrument other than
this Act) or an oral agreement subsisting
immediately before the relevant date—

- (a) to which the PTC was a party; or
- (b) that was given to, or in favour of, the
PTC; or
- (c) that refers to the PTC; or
- (d) under which—
 - (i) money is, or may become, payable
to the PTC; or
 - (ii) other property is to be, or may
become liable to be, transferred to
or by the PTC;

former PTC property means property, rights or
liabilities of the PTC that, under Division 2,
have vested in, or become liabilities of, a rail
corporation or another person;

S. 39(1) def. of
*former PTC
property*
amended by
No. 104/1997
ss 14(1),
17(1)(b).

former rail corporation instrument means an instrument (including a legislative instrument other than this Act) or an oral agreement subsisting immediately before the relevant date—

- (a) to which a rail corporation was a party; or
- (b) that was given to, or in favour of, a rail corporation; or
- (c) that refers to a rail corporation; or
- (d) under which—
 - (i) money is, or may become, payable to a rail corporation; or
 - (ii) other property is to be, or may become liable to be, transferred to or by a rail corporation;

S. 39(1) def. of *former rail corporation property* amended by No. 104/1997 s. 17(1)(b).

former rail corporation property means property, rights or liabilities of a rail corporation that, under Division 2, have vested in, or become liabilities of, another person;

S. 39(1) def. of *new employer* inserted by No. 104/1997 s. 17(1)(a), substituted by No. 98/1998 s. 13(1)(a).

new employer—

- (a) in relation to a transferred PTC employee, means the rail corporation by which, by virtue of section 58, the transferred PTC employee is regarded as being employed with effect from the relevant date;
- (b) in relation to a transferred RC employee, means the relevant person by which, by virtue of section 59B, the transferred RC employee is regarded as being employed with effect from the relevant date;

PTC means Public Transport Corporation established under Part II of the **Transport Act 1983**;

RC means a rail corporation which is nominated by the Minister under section 59A(1);

S. 39(1) def. of **RC** inserted by No. 98/1998 s. 13(1)(c).

relevant date—

S. 39(1) def. of **relevant date** substituted by No. 104/1997 s. 17(1)(c), amended by No. 98/1998 s. 13(1)(b).

- (a) in relation to an allocation statement under section 40 or 41 or property, rights or liabilities allocated under such a statement, means the date fixed by the Minister under subsection (2) for the purposes of that statement;
- (b) in relation to a document referred to in section 57(1), means the date fixed by the Minister under subsection (2A) for the purposes of that document;
- (c) in relation to a document referred to in section 59A(1), means the date fixed by the Minister under subsection (2A) for the purposes of that document;

relevant person means a rail corporation, the State, a statutory authority or a body corporate all the shares in which are held by, or on behalf of, the State or a statutory authority;

S. 39(1) def. of **relevant person** inserted by No. 98/1998 s. 13(1)(c).

transferee means a person to whom property is allocated under an allocation statement under section 40 or 41;

transferor means the PTC or rail corporation from which property is transferred under an allocation statement under section 40 or 41;

Rail Corporations Act 1996
No. 79 of 1996
Part 3—Transfer of Property and Staff

s. 39

S. 39(1) def. of
transferred
PTC
employee
inserted by
No. 104/1997
s. 17(1)(a).

transferred PTC employee means a person who, by virtue of section 58, is regarded as being employed by a new employer with effect from the relevant date;

S. 39(1) def. of
transferred
RC employee
inserted by
No. 98/1998
s. 13(1)(c).

transferred RC employee means a person who, by virtue of section 59B, is regarded as being employed by a new employer with effect from the relevant date.

(2) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of an allocation statement under section 40 or 41.

S. 39(2A)
inserted by
No. 104/1997
s. 17(2),
amended by
No. 98/1998
s. 13(2).

(2A) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of a document referred to in section 57(1) or 59A(1).

S. 39(2B)
inserted by
No. 104/1997
s. 17(2).

(2B) Despite anything to the contrary in this or any other Act or in any rule of law, a building or other improvement of any kind on land may be transferred to a person in accordance with Division 2 irrespective of whether the land—

- (a) is being, has been or is to be transferred to that person; or
- (b) is being, has been or is to be transferred to a different person.

S. 39(2C)
inserted by
No. 104/1997
s. 17(2).

(2C) Despite anything to the contrary in this or any other Act or in any rule of law, land may be transferred to a person in accordance with Division 2 irrespective of whether a building or other improvement of any kind on the land—

- (a) is being, has been or is to be transferred to that person; or

(b) is being, has been or is to be transferred to a different person.

(2D) For the purpose of subsections (2B) and (2C), a building or other improvement situated on land must be taken to be personal property that is not affixed, within the meaning of any law relating to real property, to the land.

S. 39(2D)
inserted by
No. 104/1997
s. 17(2).

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S. 39(3)
repealed by
No. 104/1997
s. 15.

Division 2—Property

Pt 3 Div. 2
(Heading)
inserted by
No. 104/1997
s. 16(3).

40 Minister may direct transfer of PTC property to rail corporation or person

- (1) The Minister may give a direction in writing to the PTC directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to a rail corporation or another person or other persons nominated by the Minister.
- (2) A direction under subsection (1) may include directions as to the method of valuation to be used by the PTC for the purposes of determining the value of property, rights and liabilities to be transferred.
- (3) Within 45 days after receiving a direction under subsection (1), the PTC must give to the Minister a statement containing the information required by the Minister relating to the property, rights and liabilities of the PTC to which the direction relates, as at the date specified by the Minister for the purposes of this section.

S. 40(1)
amended by
No. 104/1997
s. 14(2).

S. 40(4)(a)
amended by
No. 104/1997
s. 14(3).

(4) A statement under this section—

- (a) must give the value of the property, rights and liabilities of the PTC to be transferred; and
- (b) must allocate the property, rights and liabilities of the PTC shown in the statement in accordance with the directions of the Minister; and
- (c) must be signed by the Administrator of the PTC.

S. 40(4)(c)
amended by
No. 47/1998
s. 14(1).

(5) If a statement under this section is approved by the Minister—

- (a) the Minister must sign the statement; and
- (b) the statement is an allocation statement for the purposes of this Division.

S. 40(5)(b)
amended by
No. 104/1997
s. 16(4).

- (6) The Minister may at any time direct the PTC to amend a statement given to him or her under this section as specified in the direction.
- (7) An allocation statement under this section may be amended by writing signed by the Minister.
- (8) An amendment under subsection (7) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement.
- (9) In this section, *statement* and *allocation statement* include a statement or allocation statement amended in accordance with this section.

41 Minister may direct transfer of rail corporation property to other rail corporations or persons

- (1) The Minister may give a direction in writing to a rail corporation directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to another rail corporation or a person or persons nominated by the Minister.
- (2) A direction under subsection (1) may include directions as to the method of valuation to be used by the rail corporation for the purposes of determining the value of property, rights and liabilities to be transferred.
- (3) Within 45 days after receiving a direction under subsection (1), the rail corporation must give to the Minister a statement containing the information required by the Minister relating to the property, rights and liabilities of the rail corporation to which the direction relates, as at the date specified by the Minister for the purposes of this section.
- (4) A statement under this section—
 - (a) may give the value of the property, rights and liabilities of the rail corporation to be transferred; and
 - (b) must allocate the property, rights and liabilities of the rail corporation shown in the statement in accordance with the directions of the Minister; and
 - (c) must be signed by the chief executive officer of the rail corporation.

S. 41(1)
amended by
No. 45/1999
s. 9(1).

S. 41(4)(a)
amended by
Nos 104/1997
s. 14(4),
45/1999
s. 9(2).

s. 41

S. 41(5)(b)
amended by
No. 104/1997
s. 16(4).

- (5) If a statement under this section is approved by the Minister—
- (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Division.

S. 41(7A)
inserted by
No. 45/1999
s. 9(3).

- (6) The Minister may at any time direct a rail corporation to amend a statement given to him or her under this section as specified in the direction.
- (7) An allocation statement under this section may be amended by writing signed by the Minister.
- (7A) A direction under subsection (6) or an amendment under subsection (7) in relation to an allocation statement that would affect a person nominated by the Minister under subsection (1) must not be given or made unless the transferor and the transferee are, or are wholly owned by, the State or a statutory authority or have consented in writing to the direction or amendment.
- (8) An amendment under subsection (7) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement.
- (9) In this section, **statement** and **allocation statement** include a statement or allocation statement amended in accordance with this section.

42 Property transferred in accordance with direction

On the relevant date—

- (a) all property and rights of the PTC, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 40, vest in a rail corporation or other person or persons in accordance with the statement; S. 42(a)
amended by
No. 104/1997
s. 14(5).
- (b) all liabilities of the PTC, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 40, become liabilities of a rail corporation or other person or persons in accordance with the statement; S. 42(b)
amended by
No. 104/1997
s. 14(5).
- (c) all property and rights of a rail corporation, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 41, vest in a person or persons in accordance with the statement;
- (d) all liabilities of a rail corporation, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 41, become liabilities of a person or persons in accordance with the statement.

43 Allocation of property etc. subject to encumbrances

S. 43
amended by
No. 104/1997
s. 16(4).

Unless an allocation statement under this Division otherwise provides, where, under this Division—

- (a) property and rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with a direction under section 40 or 41—

- (c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (d) the rights to which the transferor was entitled in respect of those liabilities immediately before they ceased to be liabilities of the transferor vest in the transferee.

44 Payments in respect of financial obligations

(1) If—

- (a) an Order has been made under section 36D(1) or 36E(1) of the **Treasury Corporation of Victoria Act 1992** relating to financial obligations of a rail corporation; and
- (b) responsibility for those financial obligations has become the responsibility of a transferee under an allocation statement under section 41—

then—

- (c) the transferee must pay to the Treasury Corporation of Victoria such amounts, and at such times, as the rail corporation would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the transferee agree; and
- (d) the Corporation must pay to the transferee such amounts, and at such times, as the rail corporation would have been entitled to receive in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the transferee otherwise agree.

- (2) An amount payable under subsection (1) may be recovered in a court of competent jurisdiction as a debt due to the Treasury Corporation of Victoria or the transferee, as the case requires.

45 Certificate of Administrator or CEO

- (1) A certificate signed by the Administrator of the PTC or the chief executive officer of a rail corporation that is a transferor certifying that property, rights or liabilities of the transferor specified in the certificate have been allocated under an allocation statement in accordance with section 40 or 41 (as the case may be) is, unless revoked under subsection (2), conclusive evidence—

S. 45(1)
amended by
No. 47/1998
s. 14(2).

- (a) that the property, rights or liabilities have been so allocated; and
- (b) that the property, rights or liabilities vested in, or become the property, rights or liabilities of, the transferee on the relevant date.

- (2) If the Minister so directs the Administrator or chief executive officer in writing, the Administrator or chief executive officer must revoke a certificate given under subsection (1) by issuing another certificate in place of the first certificate.

S. 45(2)
amended by
No. 47/1998
s. 14(3).

- (3) The Administrator or chief executive officer of a transferor—

S. 45(3)
amended by
No. 47/1998
s. 14(3).

- (a) must keep a register of certificates issued under this section; and
- (b) must make the register reasonably available for inspection by a transferee or other interested person.

S. 46
substituted by
No. 45/1999
s. 10.

46 Value of transferred property

- (1) If the relevant allocation statement gives the value of property, rights or liabilities of the transferor that are allocated to the transferee, the value to the transferee of the property, rights or liabilities is the value so given.
- (2) If an agreement for the sale of the business or assets of a rail corporation ascribes a value to property, rights or liabilities allocated under an allocation statement, that value is deemed to be consideration paid to, or received by, the rail corporation.

47 Substitution of party to agreement

Where, under an allocation statement, the rights and liabilities of a transferor under an agreement are allocated to a transferee in accordance with a direction under section 40 or 41—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and
- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

48 Former PTC and rail corporation instruments

- (1) Each former PTC instrument relating to former PTC property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the PTC were a reference to the transferee.

- (2) Each former rail corporation instrument relating to former rail corporation property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the rail corporation were a reference to the transferee.

49 Proceedings

S. 49
amended by
No. 45/1999
s. 11.

Unless an allocation statement otherwise provides, if, immediately before the relevant date, proceedings relating to former PTC property or former rail corporation property (including arbitration proceedings) to which a transferor was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights in the proceedings as the transferor had.

50 Interests in land

S. 50
amended by
No. 104/1997
s. 16(4).

Without prejudice to the generality of this Division and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former PTC property or former rail corporation property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the transferor had.

51 Easements

S. 51(1)
amended by
No. 104/1997
s. 16(4).

- (1) If a rail corporation acquires any right in the nature of an easement (whether as a result of an allocation under this Division or otherwise), that right must be taken to be an easement even though there is no land vested in the rail corporation which is benefited or capable of being benefited by that right.

S. 51(2)
amended by
No. 104/1997
s. 16(4).

- (2) If a transferee other than a rail corporation acquires any right in the nature of an easement as a result of an allocation under this Division, that right must be taken to be an easement even though there is no land vested in the transferee which is benefited or capable of being benefited by that right.
- (3) A transferee may, subject to and in accordance with any agreement entered into with another transferee, exercise such rights in respect of easements to which the other transferee is entitled as are reasonably necessary to enable the first-mentioned transferee to carry out its functions in a manner similar to the manner in which the transferor carried out corresponding functions before the relevant date.
- (4) A transferee must pay such reasonable charges for the exercise of rights under subsection (3) in respect of easements to which another transferee is entitled as are determined by the other transferee and agreed by the first-mentioned transferee or, if there is no agreement, as are determined by the Minister.

52 Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the Administrator or chief executive officer of the transferor of former PTC property or former rail corporation property, must make any amendments in the Register that are necessary because of the operation of this Division.

S. 52(1)
amended by
Nos 104/1997
s. 16(4),
47/1998
s. 14(3).

* * * * *

S. 52(2)(3)
amended by
No. 104/1997
s. 16(4),
repealed by
No. 85/1998
s. 24(Sch.
item 49.2).²

53 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Division or in respect of any act or transaction connected with or necessary to be done by reason of this Division, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with—

S. 53
amended by
No. 104/1997
s. 16(4).

- (a) the transfer of property, rights or liabilities of the PTC or a rail corporation; or
- (b) a lease entered into in accordance with a direction under section 56.

S. 53(b)
amended by
No. 104/1997
s. 14(6).

54 Evidence

S. 54(1)
amended by
No. 104/1997
s. 16(4).

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to former PTC property or former rail corporation property if this Division had not been enacted is admissible for or against the interests of the transferee.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of the PTC or a rail corporation and to entries made in those books of account before the relevant date, whether or not they relate to former PTC property or former rail corporation property (as the case may be).

55 Validity of things done under this Division

S. 55
amended by
No. 104/1997
s. 16(4).

Nothing effected or to be effected by this Division or done or suffered under this Division—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligor wholly or in part from any obligation.

S. 55(g)
amended by
No. 54/2001
s. 29.

56 Minister may direct PTC or rail corporation to lease land to rail corporation or person

The Minister, after consultation with the Minister administering Part II of the **Transport Act 1983**, may in writing direct a rail corporation to lease any land vested in it to a rail corporation or other person specified in the direction, on the terms and conditions specified in the direction.

S. 56
amended by
Nos 104/1997
s. 14(7)(a)(b),
54/2001 s. 30.

Division 3—Staff

Pt 3 Div. 3
(Heading and
ss 57–59)
inserted by
No. 104/1997
s. 18.

57 List of PTC staff

S. 57
inserted by
No. 104/1997
s. 18.

- (1) Before the relevant date, the PTC must prepare and submit to the Minister a document signed by the Administrator of the PTC listing officers and employees of the PTC and specifying, in respect of each such officer or employee, the rail

S. 57(1)
amended by
No. 47/1998
s. 14(1).

corporation by which he or she is to be regarded as having been employed by virtue of section 58 with effect from the relevant date.

S. 57(2)
amended by
No. 47/1998
s. 14(1).

- (2) The document may be amended by instrument signed by the Administrator of the PTC and given to the Minister and the amendment is to be regarded as having effect, or having had effect, from the relevant date.
- (3) Nothing in this section prevents a person listed in the document as an officer or employee of the PTC from resigning or being dismissed at any time before the relevant date in accordance with the terms and conditions of his or her appointment or employment.

S. 58
inserted by
No. 104/1997
s. 18.

58 Transfer of PTC staff

- (1) A person listed as an officer or employee of the PTC in a document under section 57 who was such an officer or employee immediately before the relevant date is to be regarded as—
 - (a) having been employed by the new employer with effect from the relevant date; and
 - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the relevant date, as an officer or employee of the PTC; and
 - (c) having accrued an entitlement to benefits, in connection with that employment by the new employer, that is equivalent to the entitlement that the person had accrued, as an officer or employee of the PTC, immediately before the relevant date.

- (2) The service of a transferred PTC employee as an employee of the new employer is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the relevant date, as an officer or employee of the PTC.
- (3) A transferred PTC employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the PTC because of this Act.
- (4) A certificate purporting to be signed by the Administrator of the PTC certifying that a person named in the certificate was with effect from the relevant date employed, by virtue of this section, by a rail corporation named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

S. 58(4)
amended by
No. 47/1998
s. 14(1).

59 Future terms and conditions of transferred employees

S. 59
inserted by
No. 104/1997
s. 18.

- (1) Nothing in section 58 prevents—
 - (a) any of the terms and conditions of employment of a transferred PTC employee from being altered by or under any law, award or agreement with effect from any time after the relevant date; or
 - (b) a transferred PTC employee from transferring to the employment of another rail corporation at any time within 6 months after the relevant date on terms and conditions agreed to by the employee and that other rail corporation; or
 - (c) a transferred PTC employee from resigning or being dismissed at any time after the relevant date in accordance with the then existing terms and conditions of his or her employment by the new employer.

- (2) The service of a transferred PTC employee as an employee of another rail corporation to which he or she transfers as mentioned in subsection (1)(b) is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the relevant date, as an officer or employee of the PTC and with his or her service on or after that date as an employee of the other rail corporation mentioned in subsection (1)(b).
- (3) A transferred PTC employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a rail corporation, being a payment or benefit in respect of a period of service as an officer or employee of the PTC, if he or she has received a payment or other benefit in respect of that period by reason of having ceased to be an employee of another rail corporation.

S. 59A
inserted by
No. 98/1998
s. 14.

59A List of RC staff

- (1) Before the relevant date, a rail corporation nominated by the Minister for this purpose must prepare and submit to the Minister a document signed by the chief executive of the RC listing officers and employees of the RC and specifying, in respect of each such officer or employee, the relevant person by which he or she is to be regarded as having been employed by virtue of section 59B with effect from the relevant date.
- (2) The document may be amended by instrument signed by the chief executive of the RC and given to the Minister and the amendment is to be regarded as having effect, or having had effect, from the relevant date.

-
- (3) Nothing in this section prevents a person listed in the document as an officer or employee of the RC from resigning or being dismissed at any time before the relevant date in accordance with the terms and conditions of his or her appointment or employment.

59B Transfer of RC staff

**S. 59B
inserted by
No. 98/1998
s. 14.**

- (1) A person listed as an officer or employee of the RC in a document under section 59A who was such an officer or employee immediately before the relevant date is to be regarded as—
- (a) having been employed by the new employer with effect from the relevant date; and
 - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the relevant date, as an officer or employee of the RC; and
 - (c) having accrued an entitlement to benefits, in connection with that employment by the new employer, that is equivalent to the entitlement that the person had accrued, as an officer or employee of the RC, immediately before the relevant date.
- (2) The service of a transferred RC employee as an employee of the new employer is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the relevant date, as an officer or employee of the RC.
- (3) A transferred RC employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the RC because of this Act.

- (4) A certificate purporting to be signed by the chief executive of the RC certifying that a person named in the certificate was with effect from the relevant date employed, by virtue of this section, by the person named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

S. 59C
inserted by
No. 98/1998
s. 14.

59C Future terms and conditions of transferred employees

- (1) Nothing in section 59B prevents—
- (a) any of the terms and conditions of employment of a transferred RC employee from being altered by or under any law, award or agreement with effect from any time after the relevant date; or
 - (b) a transferred RC employee from transferring to the employment of another relevant person at any time within 6 months after the relevant date on terms and conditions agreed to by the employee and that other relevant person; or
 - (c) a transferred RC employee from resigning or being dismissed at any time after the relevant date in accordance with the then existing terms and conditions of his or her employment by the new employer.
- (2) The service of a transferred RC employee as an employee of another relevant person to which he or she transfers as mentioned in subsection (1)(b) is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the relevant date, as an officer or employee of the RC and with his or her service on or after that date as an employee of the other relevant person mentioned in subsection (1)(b).

-
- (3) A transferred RC employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a relevant person, being a payment or benefit in respect of a period of service as an officer or employee of the RC, if he or she has received a payment or other benefit in respect of that period by reason of having ceased to be an employee of another relevant person.
-

Pt 4
(Heading and
ss 57–59)
substituted as
Pt 4
(Heading
and s. 60) by
No. 104/1997
s. 27,
amended by
Nos 104/1997
ss 28–30,
47/1998
ss 11, 12,
substituted as
Pt 4
(Heading and
ss 60–80) by
No. 98/1998
s. 15.

S. 60
(Heading)
inserted by
No. 69/2007
s. 69.

S. 60
substituted by
No. 98/1998
s. 15.

S. 60(1)
substituted by
No. 95/2005
s. 10(1).

PART 4—RAIL AND TRAM OPERATORS

Division 1—Certain powers

60 Person to whom this section applies may require clearance of trees

- (1) This section applies if any tree or wood in the vicinity of a railway track operated or maintained by a person to whom this section applies poses a risk to the safety of anyone on, or using, the railway track.

Examples

The following trees pose a risk to the safety of a person using a railway track—

- (a) a tree that obstructs a view of a signal box from a portion of the track;
- (b) a tree near the middle of a curve of the track that restricts the view of the track of anyone entering the curve;
- (c) a tree whose roots are underneath the track.

-
- (1A) The person may, by written notice, require the owner or occupier of any land on which the tree or wood is situated to fell and remove the tree or wood.
- (2) Notice under subsection (1A) may be served on an owner or occupier—
- (a) personally; or
 - (b) by sending it by post to the owner or occupier at that person's usual or last known residential or business address; or
 - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
 - (d) in a manner prescribed by any other Act or law for service on a person or class of person of the same type as the owner or occupier; or
 - (e) if the identity or address of the owner or occupier is not known—
 - (i) by displaying it on the land; and
 - (ii) by publishing a copy of it and a description of the land in a newspaper circulating generally in Victoria.
- (3) In exercising a power under subsection (1A), a person to which this section applies—
- (a) must act reasonably; and
 - (b) must comply with any directions given by the Director in relation to the exercise of that power.
- (4) If the owner or occupier of the land does not comply with the notice within the time specified in the notice, the person which caused the notice to be served may—
-

S. 60(1A)
inserted by
No. 95/2005
s. 10(1).

S. 60(2)
amended by
No. 95/2005
s. 10(2).

S. 60(3)
amended by
No. 95/2005
s. 10(2).

(a) enter the land at any reasonable time and carry out the work specified in the notice; and

(b) recover the cost of carrying out the work from the owner or occupier as a debt.

(5) A person to which this section applies may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.

S. 60(5A)
inserted by
No. 95/2005
s. 10(3).

(5A) Any person acting under subsection (1A) or (4) may fell or remove any tree or wood that is the subject of a notice under subsection (1A) without the need to obtain a permit under any relevant planning scheme under the **Planning and Environment Act 1987**, despite anything to the contrary in or under that Act.

(6) This section applies to—

S. 60(6)(a)
repealed by
No. 63/1999
s. 9(3)(a).

* * * *

(b) Rail Track;

S. 60(6)(c)
amended by
No. 63/1999
ss 3(3)(a),
4(3)(a),
repealed by
No. 63/1999
s. 9(3)(b).

* * * *

(d) train operators;

(e) a person specified in an Order under subsection (7), subject to any terms and conditions specified in that Order.

- (7) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure owned by Rail Track or the Crown.

S. 60(7)
amended by
No. 30/2000
s. 39(3).

60A Relevant rail operator to whom this section applies may clear trees without obtaining permit

S. 60A
inserted by
No. 69/2007
s. 70.

- (1) This section applies if any tree or wood—
- (a) is on land owned or occupied by a relevant rail operator; and
 - (b) is in the vicinity of a railway track operated or maintained by a relevant rail operator; and
 - (c) poses a risk to the safety of anyone on, or using, the railway track.

Example

The following trees pose a risk to the safety of a person using a railway track—

- (a) a tree that obstructs a view of a signal box from a portion of the track;
 - (b) a tree near the middle of a curve of the track that restricts the view of the track of anyone entering the curve;
 - (c) a tree whose roots are underneath the track.
- (2) A relevant rail operator may fell and remove the tree or wood without the need to obtain a permit under any relevant planning scheme under the **Planning and Environment Act 1987**, despite anything to the contrary in or under that Act.
- (3) In this section—
- relevant rail operator*** means a person specified in section 60(6).

s. 61

S. 61
substituted by
No. 98/1998
s. 15.

61 No obligation to fence

- (1) Despite any Act or rule of law to the contrary, a person to which this section applies—
 - (a) is not required to fence or contribute to the fencing of any portion of a railway or tramway; and
 - (b) is not liable for any damage that may be caused by reason of any railway or tramway not being fenced in or fenced off.
- (2) A person to which this section applies may, but is not obliged to, erect and maintain such fences in connection with a railway or tramway as it thinks proper.
- (3) This section applies to—

S. 61(3)(a)
repealed by
No. 63/1999
s. 9(3)(c).

* * * *

S. 61(3)(b)
repealed by
No. 63/1999
s. 7(3)(a).

* * * *

- (c) Rail Track;
- (d) V/Line Passenger Corporation;

S. 61(3)(d)
amended by
No. 63/1999
ss 3(3)(b),
4(3)(b),
repealed by
No. 63/1999
s. 9(3)(d),
new s. 61(3)(d)
inserted by
No. 34/2003
s. 15(b).

Rail Corporations Act 1996
No. 79 of 1996
Part 4—Rail and Tram Operators

s. 61

*	*	*	*	*
*	*	*	*	*

S. 61(3)(e)
amended by
No. 63/1999
ss 5(3)(a),
6(3)(a),
repealed by
No. 63/1999
s. 9(3)(e).

S. 61(3)(ea)
inserted by
No. 45/1999
s. 12(1),
amended by
No. 95/2005
s. 9(2)(e),
repealed by
No. 26/2009
s. 7(5).

- (f) train operators;
- (g) tram operators;
- (h) a person specified in an Order under subsection (4), subject to any terms and conditions specified in that Order.
- (4) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—
 - (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
 - (b) is a party to a lease with Rail Track, the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track, or the Crown.

S. 61(4)(b)
amended by
No. 54/2001
s. 31.

62 Power to break up roads, etc.

S. 62
substituted by
No. 98/1998
s. 15.

S. 62(1)
amended by
No. 12/2004
s. 174(1).

- (1) Subject to the **Road Management Act 2004**, a person to which this section applies—
 - (a) may open and break up, and divert traffic from, any road on or adjacent to which there is rail infrastructure or tram infrastructure that is operated or maintained by that person; and
 - (b) may take possession of, and use, the whole or any portion of such a road.
- (2) In exercising a power under subsection (1), a person to which this section applies—
 - (a) must act reasonably; and
 - (b) must comply with any directions given by the Director in relation to the exercise of that power.

S. 62(2A)
inserted by
No. 12/2004
s. 174(2).

- (2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.

S. 62(2B)
inserted by
No. 12/2004
s. 174(2).

- (2B) A direction has no effect to the extent of any inconsistency under subsection (2A).
- (3) A person to which this section applies may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.

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No. 79 of 1996
Part 4—Rail and Tram Operators

s. 62

(4) This section applies to—

*	*	*	*	*	S. 62(4)(a) repealed by No. 63/1999 s. 9(3)(f).
*	*	*	*	*	S. 62(4)(b) repealed by No. 63/1999 s. 7(3)(b).
 (c) Rail Track;					
(d) V/Line Passenger Corporation;					
					S. 62(4)(d) amended by No. 63/1999 ss 3(3)(c), 4(3)(c), repealed by No. 63/1999 s. 9(3)(g), new s. 62(4)(d) inserted by No. 34/2003 s. 15(b).
*	*	*	*	*	S. 62(4)(e) amended by No. 63/1999 ss 5(3)(b), 6(3)(b), repealed by No. 63/1999 s. 9(3)(h).
*	*	*	*	*	S. 62(4)(ea) inserted by No. 45/1999 s. 12(2), amended by No. 95/2005 s. 9(2)(e), repealed by No. 26/2009 s. 7(5).

(f) train operators;

(g) tram operators;

(h) a person specified in an Order under subsection (5), subject to any terms and conditions specified in that Order.

(5) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—

- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
- (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown.

S. 62(5)(b)
amended by
No. 30/2000
s. 39(4).

S. 63
substituted by
No. 98/1998
s. 15.

63 Power to install stopping places, etc.

- (1) Subject to the **Road Management Act 2004**, a person to which this section applies may install, remove or re-locate stopping places and associated facilities for passenger services on any road on or adjacent to which there is tram infrastructure that is operated or maintained by that person.
- (2) In exercising a power under subsection (1), a person to which this section applies—
 - (a) must act reasonably; and
 - (b) must comply with any directions given by the Director in relation to the exercise of that power.

S. 63(1)
amended by
No. 12/2004
s. 174(3).

S. 63(2A)
inserted by
No. 12/2004
s. 174(4).

- (2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.

(2B) A direction has no effect to the extent of any inconsistency under subsection (2A).

S. 63(2B)
inserted by
No. 12/2004
s. 174(4).

(3) A person to which this section applies may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.

(4) This section applies to—

(a) Rail Track;

* * * * *

S. 63(4)(b)
amended by
No. 63/1999
ss 5(3)(c),
6(3)(c),
repealed by
No. 63/1999
s. 9(3)(i).

(c) tram operators;

(d) a person specified in an Order under subsection (5), subject to any terms and conditions specified in that Order.

(5) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—

(a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or

(b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any tram infrastructure owned by Rail Track or the Crown.

S. 63(5)(b)
amended by
No. 30/2000
s. 39(5).

s. 64

64 Level crossings

S. 64
inserted by
No. 98/1998
s. 15.

(1) Despite anything to the contrary in any other Act or law, a person to which this section applies—

S. 64(1)(a)
amended by
No. 54/2001
s. 32.

- (a) may use level crossings connecting parts of the rail infrastructure or tram infrastructure to which an agreement, lease or licence relating to, or connected with, a service provided by that person applies (being an agreement, lease or licence between that person and Rail Track or that person and the Crown) subject to and in accordance with that agreement, lease or licence; and
- (b) may close the level crossing to road traffic while the railway track or tramway track is in use, subject to and in accordance with that agreement, lease or licence.

(2) This section applies to—

S. 64(2)(a)
repealed by
No. 63/1999
s. 9(3)(j).

* * * *

S. 64(2)(b)
repealed by
No. 63/1999
s. 7(3)(c).

* * * *

(c) Rail Track;

S. 64(2)(d)
amended by
No. 63/1999
ss 3(3)(d),
4(3)(d),
repealed by
No. 63/1999
s. 9(3)(k),
new s. 64(2)(d)
inserted by
No. 34/2003
s. 15(b).

(d) V/Line Passenger Corporation;

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s. 64

* * * * *

S. 64(2)(e)
amended by
No. 63/1999
ss 5(3)(d),
6(3)(d),
repealed by
No. 63/1999
s. 9(3)(l).

- (f) train operators;
 - (g) tram operators;
 - (h) a person specified in an Order under subsection (3), subject to any terms and conditions specified in that Order;
 - (i) a person authorised, in accordance with the agreement, lease or licence referred to in subsection (1), by a person referred to in paragraph (c), (d), (f), (g) or (h) to exercise a power conferred on the authorising person by this section, subject to any terms and conditions specified in the authorisation.
- (3) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—
- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
 - (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown.

S. 64(2)(i)
amended by
Nos 63/1999
ss 7(3)(d),
9(3)(m)–(o),
34/2003
s. 15(c).

S. 64(3)(b)
amended by
No. 30/2000
s. 39(6).

s. 65

65 Tram infrastructure

S. 65
inserted by
No. 98/1998
s. 15.

S. 65(1)
amended by
No. 54/2001
s. 33.

- (1) Despite anything to the contrary in any other Act or law, a person to which this section applies may use tram infrastructure to which an agreement, lease or licence relating to, or connected with, a passenger service provided by that person applies (being an agreement, lease or licence between that person and Rail Track or that person and the Crown) subject to and in accordance with that agreement, lease or licence.

- (2) This section applies to—

* * * * *

S. 65(2)(a)
amended by
No. 63/1999
ss 5(3)(e),
6(3)(e),
repealed by
No. 63/1999
s. 9(3)(p).

- (b) tram operators;

- (c) a person specified in an Order under subsection (3), subject to any terms and conditions specified in that Order;

S. 65(2)(d)
amended by
No. 63/1999
s. 9(3)(q).

- (d) a person authorised, in accordance with the agreement, lease or licence referred to in subsection (1), by a person referred to in paragraph (b) or (c) to exercise a power conferred on the authorising person by this section, subject to any terms and conditions specified in the authorisation.

- (3) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—

- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
- (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any tram infrastructure owned by Rail Track or the Crown.

S. 65(3)(b)
amended by
No. 30/2000
s. 39(7).

66 Overhead power supply

S. 66
inserted by
No. 98/1998
s. 15.

- (1) Subject to the **Road Management Act 2004**, a person to which this section applies may install, remove or relocate rail infrastructure or tram infrastructure consisting of structures comprising or supporting overhead electrical power supply systems situated on or over, or partly on or over, property of the Roads Corporation or the municipal council.
- (2) In exercising a power under subsection (1), a person to which this section applies—
 - (a) must act reasonably; and
 - (b) must comply with any directions given by the Director in relation to the exercise of that power.
- (2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.
- (2B) A direction has no effect to the extent of any inconsistency under subsection (2A).

S. 66(1)
amended by
No. 12/2004
s. 174(5)(a)(b).

S. 66(2A)
inserted by
No. 12/2004
s. 174(6).

S. 66(2B)
inserted by
No. 12/2004
s. 174(6).

- (3) A person to which this section applies may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.

- (4) This section applies to—

S. 66(4)(a)
amended by
No. 63/1999
ss 3(3)(e),
4(3)(e),
repealed by
No. 63/1999
s. 9(3)(r).

* * * *

S. 66(4)(b)
amended by
No. 63/1999
ss 5(3)(f),
6(3)(f),
repealed by
No. 63/1999
s. 9(3)(s).

* * * *

- (c) train operators;
(d) tram operators;
(e) a person specified in an Order under subsection (5), subject to any terms and conditions specified in that Order.
- (5) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—
- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or

- (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown.

S. 66(5)(b)
amended by
No. 30/2000
s. 39(8).

67 Power to stop traffic

S. 67
inserted by
No. 98/1998
s. 15.

- (1) Subject to the **Road Management Act 2004**, a person to which this section applies, subject to the agreement, lease or licence relating to, or connected with, its provision of a service or to a lease of rail infrastructure or tram infrastructure (being an agreement, lease or licence between that person and Rail Track or that person and the Crown)—

S. 67(1)
amended by
Nos 54/2001
s. 34(a),
12/2004
s. 174(7)(a).

- (a) may stop traffic in circumstances where it is reasonably necessary to do so;

S. 67(1)(a)
amended by
No. 12/2004
s. 174(7)(b).

- (b) in an emergency, may stop traffic.

- (2) In exercising a power under subsection (1), a person to which this section applies—

- (a) must act reasonably; and
(b) must comply with any directions given by the Director in relation to the exercise of that power.

- (2A) A direction given by the Director under this section must not be inconsistent with the **Road Management Act 2004**.

S. 67(2A)
inserted by
No. 12/2004
s. 174(8).

- (2B) A direction has no effect to the extent of any inconsistency under subsection (2A).

S. 67(2B)
inserted by
No. 12/2004
s. 174(8).

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s. 67

(3) This section applies to—

S. 67(3)(a)
repealed by
No. 63/1999
s. 9(3)(t).

* * * *

S. 67(3)(b)
repealed by
No. 63/1999
s. 7(3)(e).

* * * *

(c) Rail Track;

(d) V/Line Passenger Corporation;

S. 67(3)(d)
amended by
No. 63/1999
ss 3(3)(f),
4(3)(f),
repealed by
No. 63/1999
s. 9(3)(u),
new s. 67(3)(d)
inserted by
No. 34/2003
s. 15(b).

* * * *

S. 67(3)(e)
amended by
No. 63/1999
ss 5(3)(g),
6(3)(g),
repealed by
No. 63/1999
s. 9(3)(v).

(f) train operators;

(g) tram operators;

(h) a person specified in an Order under subsection (4), subject to any terms and conditions specified in that Order;

S. 67(3)(i)
amended by
Nos 63/1999
ss 7(3)(f),
9(3)(w)–(y),
34/2003
s. 15(c).

(i) a person authorised, in accordance with the agreement, lease or licence referred to in subsection (1), by a person referred to in paragraph (c), (d), (f), (g) or (h) to exercise a power conferred on the authorising person by this section, subject to any terms and conditions specified in the authorisation.

- (4) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—
- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
 - (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown.

S. 67(4)(b)
amended by
No. 54/2001
s. 34(b).

Division 2—Provisions applying to certain agreements

68 Civil penalty provisions

S. 68
inserted by
No. 98/1998
s. 15.

- (1) In this section—

agreement, lease or licence means—

- (a) an agreement, lease or licence relating to, or connected with, a passenger service or public transport service entered into by the Secretary or the Director acting on behalf of the Crown and a person to whom this section applies;
- (b) an agreement, lease or licence entered into by the Secretary, a statutory body, the Director or any other person acting on behalf of the Crown and a person to whom this section applies under which—

S. 68(1)
amended by
No. 49/2004
s. 21(1),
substituted by
No. 26/2009
s. 10(1).

- (i) works are to be carried out which the Secretary, statutory body, Director or other person acting on behalf of the Crown considers on reasonable grounds may affect public transport operations or public transport infrastructure; or
- (ii) a person is authorised to occupy land necessary for, or otherwise associated with, public transport operations or public transport infrastructure;

civil penalty provision means a provision in an agreement, lease or licence which is expressed to be a civil penalty provision for the purposes of this Act.

- (2) Despite anything to the contrary in any Act or law, a person who breaches a civil penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the agreement, lease or licence as the penalty for breach of that provision.

- (3) This section applies to—

- (a) a train operator;
- (b) a tram operator;

- (ba) a person who is a party to a contract with the Secretary or the Director acting on behalf of the Crown (whether entered into before or after the commencement of section 21(2) of the **Transport Legislation (Miscellaneous Amendments) Act 2004**) for the provision by that person of a public transport service;

- (c) a person specified in an Order under subsection (4) or (5), subject to any terms and conditions specified in that Order.

S. 68(3)(ba)
inserted by
No. 49/2004
s. 21(2).

S. 68(3)(c)
amended by
No. 26/2009
s. 10(2).

(4) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—

(a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or

(b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown.

S. 68(4)(b)
amended by
No. 30/2000
s. 39(9).

(5) Without derogating from subsection (4), the Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order in respect of the agreement, lease or licence specified in the Order.

S. 68(5)
inserted by
No. 26/2009
s. 10(3).

69 Validity of certain provisions

(1) A provision in an agreement between the Director acting on behalf of the Crown and a person to which this section applies relating to, or connected with, a passenger service under which the Director may require the sale, transfer or assignment to the State or another person (including a provision relating to the exercise of the Director's powers under Division 3) of property in which the person to which this section applies has an interest is not invalid by reason only of any mortgage, charge or other interest by way of security held by the State in respect of the property or any part of the property.

S. 69
inserted by
No. 98/1998
s. 15.

- (2) A provision in a mortgage, charge or other interest by way of security over property given by a person to which this section applies securing, or purporting to secure, payment to the State of an amount that is, or may become, due or payable by the person to the State is not invalid by reason only that the property includes an amount that is, or may become, due and payable by the State.
- (3) This section applies to—
- (a) train operators;
 - (b) tram operators;
 - (c) a person specified in an Order under subsection (4), subject to any terms and conditions specified in that Order;
 - (d) a person specified in an agreement referred to in subsection (1) as a person to whom this section applies.
- (4) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—
- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
 - (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown; or

S. 69(3)(d)
inserted by
No. 45/1999
s. 13(1).

S. 69(4)(b)
amended by
Nos 45/1999
s. 13(2)(3),
30/2000
s. 39(10),
95/2005
s. 9(2)(e),
26/2009
s. 7(6).

(c) is the owner of, or has an interest in, rolling stock used by a person who is a party to a contract or lease referred to in paragraph (a) or (b); or

S. 69(4)(c)
inserted by
No. 45/1999
s. 13(3).

(d) provides services to a person who is a party to a contract or lease referred to in paragraph (a) or (b).

S. 69(4)(d)
inserted by
No. 45/1999
s. 13(3).

Division 3—Certain operating assets

70 Assets of certain operators

S. 70
inserted by
No. 98/1998
s. 15.

(1) If a provision of an agreement between the Director acting on behalf of the Crown and a person to which this section applies (*the operator*) provides for the transfer of relevant assets of the operator to the State or any other person at the end of the term of the agreement or in specified circumstances, being a provision that, under the agreement, is expressed to be a transfer provision for the purposes of this Division, the Director may give to the Minister, at a time, or within a period, determined under the agreement, a statement or statements approved by the Minister relating to the relevant assets.

(2) This section applies to—

(a) train operators;

(b) tram operators;

(c) a person specified in an Order under subsection (3), subject to any terms and conditions specified in that Order;

(d) a person specified in an agreement referred to in subsection (1) as a person to whom this section applies.

S. 70(2)(d)
inserted by
No. 45/1999
s. 13(4).

(3) The Governor in Council, by Order published in the Government Gazette, may declare that this section applies, on and from a date specified in the

Order and subject to any terms and conditions specified in the Order, to a person specified in the Order that—

- (a) is a party to a contract with the Secretary or the Director acting on behalf of the Crown for the provision by that person of a passenger service; or
- (b) is a party to a lease with Rail Track or the Secretary or the Director acting on behalf of the Crown in relation to any rail infrastructure or tram infrastructure owned by Rail Track or the Crown; or
- (c) is the owner of, or has an interest in, rolling stock used by a person who is a party to a contract or lease referred to in paragraph (a) or (b); or
- (d) provides services to a person who is a party to a contract or lease referred to in paragraph (a) or (b).

S. 70(3)(b)
amended by
Nos 45/1999
s. 13(5)(6),
30/2000
s. 39(11),
95/2005
s. 9(2)(e),
26/2009
s. 7(6).

S. 70(3)(c)
inserted by
No. 45/1999
s. 13(6).

S. 70(3)(d)
inserted by
No. 45/1999
s. 13(6).

S. 71
inserted by
No. 98/1998
s. 15.

71 Allocation statement

- (1) A statement under section 70—
 - (a) must allocate the relevant assets to or between the State and such persons as the Minister nominates in writing; and
 - (b) must be signed by the Director.
- (2) If a statement under this section is approved by the Minister—
 - (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Division.

- (3) The Minister may at any time direct the Director to amend a statement given under this section as specified in the direction.
- (4) An allocation statement under this section may be amended in writing signed by the Minister.
- (5) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of an allocation statement under this section.
- (6) In this section, *statement* and *allocation statement* include a statement or allocation statement amended in accordance with this section.

72 Assets transferred in accordance with statement

On the relevant date, the relevant assets that are allocated under an allocation statement under section 71 vest in the State or another person in accordance with the statement.

S. 72
inserted by
No. 98/1998
s. 15.

73 Allocation of assets subject to encumbrances

Unless an allocation statement under section 71 otherwise provides, where, under this Division relevant assets vest in a transferee under section 72, the relevant assets so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting.

S. 73
inserted by
No. 98/1998
s. 15.

74 Certificate of Director

- (1) A certificate signed by the Director certifying that assets of the transferor specified in the certificate have been allocated under an allocation statement in accordance with section 71 is, unless revoked under subsection (2), conclusive evidence that the assets—
 - (a) have been so allocated; and
 - (b) vested in the transferee on the relevant date.

S. 74
inserted by
No. 98/1998
s. 15.

- (2) If the Minister so directs the Director in writing, the Director must revoke a certificate given under subsection (1) by issuing another certificate in place of the first certificate.
- (3) The Director—
 - (a) must keep a register of certificates issued under this section; and
 - (b) must make the register reasonably available for inspection by a transferee or other interested person.

S. 75
inserted by
No. 98/1998
s. 15.

75 Consideration for transferred property

The consideration payable to the transferor by the State or a transferee on behalf of the State in respect of relevant assets that are allocated under an allocation statement is the amount determined in accordance with the agreement referred to in section 70.

S. 76
inserted by
No. 98/1998
s. 15.

76 Former transferor instruments and agreements

- (1) Each former transferor instrument relating to former relevant assets continues to have effect according to its tenor on and after the relevant date in relation to those assets as if a reference in the instrument to the transferor were a reference to the transferee.
- (2) Where, under an allocation statement, a transferor's interest in an agreement vests in a transferee under section 72—
 - (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and
 - (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

77 Proceedings

Unless an allocation statement otherwise provides, if, immediately before the relevant date, proceedings relating to former relevant assets (including arbitration proceedings) to which a transferor was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights in the proceedings as the transferor had.

S. 77
inserted by
No. 98/1998
s. 15.

78 Taxes

Stamp duty and any other tax chargeable under an Act is payable in respect of the vesting of relevant assets under this Division as if the vesting were effected by an instrument.

S. 78
inserted by
No. 98/1998
s. 15.

79 Evidence

Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to former relevant assets if this Division had not been enacted is admissible for or against the interests of the transferee.

S. 79
inserted by
No. 98/1998
s. 15.

80 Validity of things done under this Division

Nothing effected or to be effected by this Division or done or suffered under this Division—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment,

S. 80
inserted by
No. 98/1998
s. 15.

- transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant asset; or
 - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be regarded as frustrating any contract; or
 - (g) releases any surety or other obligee wholly or in part from any obligation.

Pt 5
(Heading and
ss 81–102)
inserted by
No. 98/1998
s. 15,
amended by
Nos 45/1999
s. 14, 44/2001
s. 3(Sch.
items 97.2-
97.16),
54/2001 s. 35,
62/2001
s. 89(1)(c)
(o)–(q),
repealed by
No. 49/2004
s. 22.

* * * * *

PART 6—GENERAL

Pt 6
(Heading and
ss 103–106)
inserted by
No. 98/1998
s. 15.

103 Delegation

S. 103
inserted by
No. 98/1998
s. 15.

The Minister may, by instrument, delegate to—

- (a) the Secretary; or
- (b) the Secretary to the Department of Treasury and Finance; or
- (c) the Director; or
- (d) an executive within the meaning of the **Public Administration Act 2004** employed in the Department—

S. 103(d)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 172.1).

any of his or her powers under this Act other than this power of delegation.

104 Freedom of Information Act 1982

S. 104
inserted by
No. 98/1998
s. 15.

- (1) The **Freedom of Information Act 1982** does not apply to a document to the extent to which the document discloses information about—
 - (a) the identity of any person expressing an interest in purchasing, or making an offer to purchase—
 - (i) any property of V/Line Freight, V/Line Passenger Corporation, Met Train 1, Met Train 2, Met Tram 1 or Met Tram 2; or
 - (ii) any shares in a relevant body corporate or any property or rights of a relevant body corporate; or
 - (b) the terms of any expression of interest or offer referred to in paragraph (a).

(2) In this section—

relevant body corporate means a train operator or a tram operator.

S. 104(2)
def. of
V/Line
Passenger
Corporation
inserted by
No. 34/2003
s. 15(d).

V/Line Passenger Corporation means both—

- (a) V/Line Passenger Corporation as established under Division 2E of Part 2 before that Division was repealed; and
- (b) V/Line Passenger Corporation as established under Division 2A of Part 2.

S. 105
inserted by
No. 98/1998
s. 15,
amended by
No. 44/2001
s. 3(Sch.
item 97.17)
(ILA s. 39B(1)).

105 Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 100(5) to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 100(5), as that section applies in respect of a determination of ORG under Part 5 as amended by the **Corporations (Consequential Amendments) Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 38ZZZC to alter or vary section 85 of the **Constitution Act 1975**.

S. 105(2)
inserted by
No. 44/2001
s. 3(Sch.
item 97.17).

S. 105(3)
inserted by
No. 25/2005
s. 7.

106 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 106
inserted by
No. 98/1998
s. 15,
amended by
No. 25/2005
s. 8 (ILA
s. 39B(1)).

Rail Corporations Act 1996
No. 79 of 1996
Part 6—General

s. 106

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- (2) Regulations made under this Act—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance.
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S. 106(2)
inserted by
No. 25/2005
s. 8.

Pt 7
(Heading and
ss 107, 108)
inserted by
No. 98/1998
s. 15.

PART 7—TRANSITIONAL

S. 106A
inserted by
No. 98/1998
s. 16.

106A Privatisation of V/Line Freight

On the commencement of section 4 of the **Rail Corporations (Amendment) Act 1997**—

- (a) V/Line Freight is abolished;
- (b) all directors of V/Line Freight go out of office;
- (c) the chief executive officer of V/Line Freight goes out of office;
- (d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of V/Line Freight.

S. 107
inserted by
No. 98/1998
s. 15.

107 Orders under repealed sections

An Order in force under Part 4 immediately before the commencement of section 15 of the **Rail Corporations (Further Amendment) Act 1998** has effect—

- (a) in the case of an Order under section 60A, as if it were an Order under section 60 as amended by that Act;
- (b) in the case of an Order under section 61, as if it were an Order under section 61 as amended by that Act;
- (c) in the case of an Order under section 62, as if it were an Order under section 62 as amended by that Act;
- (d) in the case of an Order under section 63, as if it were an Order under section 63 as amended by that Act.

108 Repeals consequential on new Part 4

Sections 7A, 7B, 7C, 12, 13, 13A, 13B, 18E, 18F, 18K, 18L, 18Q, 18R, 18S, 18X, 18Y, 18Z, 18ZE and 18ZF are **repealed**.

S. 108
inserted by
No. 98/1998
s. 15.

109 Abolition of Met Train 1

On the commencement of section 3(1) of the **Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999**—

- (a) Met Train 1 is abolished;
- (b) all directors of Met Train 1 go out of office;
- (c) the chief executive officer of Met Train 1 goes out of office;
- (d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of Met Train 1.

S. 109
inserted by
No. 63/1999
s. 8.

110 Abolition of Met Train 2

On the commencement of section 4(1) of the **Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999**—

- (a) Met Train 2 is abolished;
- (b) all directors of Met Train 2 go out of office;
- (c) the chief executive officer of Met Train 2 goes out of office;
- (d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of Met Train 2.

S. 110
inserted by
No. 63/1999
s. 8.

s. 111

S. 111
inserted by
No. 63/1999
s. 8.

111 Abolition of Met Tram 1

On the commencement of section 5(1) of the **Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999**—

- (a) Met Tram 1 is abolished;
- (b) all directors of Met Tram 1 go out of office;
- (c) the chief executive officer of Met Tram 1 goes out of office;
- (d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of Met Tram 1.

S. 112
inserted by
No. 63/1999
s. 8.

112 Abolition of Met Tram 2

On the commencement of section 6(1) of the **Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999**—

- (a) Met Tram 2 is abolished;
- (b) all directors of Met Tram 2 go out of office;
- (c) the chief executive officer of Met Tram 2 goes out of office;
- (d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of Met Tram 2.

S. 113
inserted by
No. 63/1999
s. 8.

113 Abolition of V/Line Passenger Corporation

On the commencement of section 7(1) of the **Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999**—

- (a) V/Line Passenger Corporation is abolished;
- (b) all directors of V/Line Passenger Corporation go out of office;
- (c) the chief executive officer of V/Line Passenger Corporation goes out of office;

(d) the Public Transport Corporation established under Part II of the **Transport Act 1983** becomes the successor in law of V/Line Passenger Corporation.

114 Order relating to no obligation to fence

Despite the commencement of section 31 of the **Transport (Further Amendment) Act 2001**, an Order of the Governor in Council in force under section 61(4) immediately before that commencement continues in force subject to any terms and conditions specified in the Order.

S. 114
inserted by
No. 54/2001
s. 36.

115 Order relating to power to stop of traffic

Despite the commencement of section 33 of the **Transport (Further Amendment) Act 2001**, an Order of the Governor in Council in force under section 65(3) immediately before that commencement continues in force subject to any terms and conditions specified in the Order.

S. 115
inserted by
No. 54/2001
s. 36.

116 Meaning of *relevant date* in sections 117 and 118

In sections 117 and 118 *relevant date* means the date of commencement of section 11 of the **Transport Legislation (Further Miscellaneous Amendments) Act 2005**.

S. 116
inserted by
No. 95/2005
s. 11.

117 Transitional provision concerning change of name of Station

Any reference to Spencer Street Station in any Act, subordinate instrument, agreement or other document as far as it relates to any period after the relevant date is to be treated as a reference to Southern Cross Station, unless the contrary intention appears.

S. 117
inserted by
No. 95/2005
s. 11.

S. 118
inserted by
No. 95/2005
s. 11.

**118 Transitional and savings provisions concerning
change of name of Authority**

- (1) For all relevant legal purposes, the Southern Cross Station Authority is to be taken to be the same body as the Spencer Street Station Authority was before the relevant date, in spite of the change of its name, and no matter or thing is to be affected because of that change.
- (2) Any reference to the Spencer Street Station Authority in any Act, subordinate instrument, agreement or other document as far as it relates to any period after the relevant date is to be treated as a reference to the Southern Cross Station Authority, unless the contrary intention appears.

PART 8—SOUTHERN CROSS STATION AUTHORITY

Pt 8
(Heading and
ss 119–124
inserted by
No. 26/2009
s. 8.

119 Definitions

S. 119
inserted by
No. 26/2009
s. 8.

In this Division—

appointed day means the day on which section 6 of the **Transport Legislation General Amendments Act 2009** comes into operation;

Southern Cross Station Authority means the Authority established under section 18ZG;

transferred employee means an officer or employee listed under section 121.

120 Southern Cross Station Authority abolished

S. 120
inserted by
No. 26/2009
s. 8.

(1) On the appointed day—

- (a) the Southern Cross Station Authority is abolished and the directors and the chief executive officer cease to hold their offices under this Act;
- (b) all rights, property and assets that, immediately before the appointed day were vested in the Southern Cross Station Authority, vest in the Secretary, on behalf of the Crown;
- (c) all debts, liabilities and obligations of the Southern Cross Station Authority existing immediately before the appointed day, become debts, liabilities and obligations of the Secretary, on behalf of the Crown;

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- (d) the Secretary, on behalf of the Crown, is substituted as a party to any proceedings pending in any court or tribunal to which the Southern Cross Station Authority was a party immediately before the appointed day;
 - (e) the Secretary, on behalf of the Crown, is substituted as a party to any arrangement or contract entered into by or on behalf of the Southern Cross Station Authority and in force immediately before the appointed day;
 - (f) any reference to the Southern Cross Station Authority in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the appointed day, and if not inconsistent with the context or subject-matter, must be construed as a reference to the Secretary, on behalf of the Crown.
- (2) Nothing effected under subsection (1) or done or suffered under subsection (1)—
- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong;
 - (b) is to be regarded as placing any person in breach of, or as constituting a default under any Act (other than the **Charter of Human Rights and Responsibilities**) or other law or obligation or any provision in any agreement or understanding, including, but not limited to, any provision or obligation prohibiting or restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information;
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- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation;
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability;
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable;
- (f) is to be regarded as frustrating any contract;
- (g) releases any surety or other obligor wholly or in part from any obligation.

121 List of staff to be transferred

The Secretary must list in writing the officers and employees of the Southern Cross Station Authority employed by the Southern Cross Station Authority immediately before the appointed day who are to be employed under Part 3 of the **Public Administration Act 2004**.

S. 121
inserted by
No. 26/2009
s. 8.

122 Transferred employees

- (1) A transferred employee is to be regarded as—
 - (a) having been employed under Part 3 of the **Public Administration Act 2004**, with effect from the appointed day;
 - (b) having been so employed on the same terms and conditions as those that applied to the person immediately before the appointed day as an officer or employee of the Southern Cross Station Authority;

S. 122
inserted by
No. 26/2009
s. 8.

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- (c) having accrued an entitlement to benefits in connection with that employment under Part 3 of the **Public Administration Act 2004** that is equivalent to the entitlement that the person had accrued, as an officer or employee of the Southern Cross Station Authority, immediately before the appointed day.
- (2) The service of a transferred employee as an employee under Part 3 of the **Public Administration Act 2004** is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the appointed day, as an officer or employee of the Southern Cross Station Authority.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the Southern Cross Station Authority because of the operation of this Division.
- (4) A certificate purporting to be signed by the Secretary certifying that a person named in the certificate was, with effect from the appointed day, employed, by virtue of this section, under Part 3 of the **Public Administration Act 2004**, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (5) The superannuation entitlements of any person who is a transferred employee are to be taken not to be affected by that person becoming a transferred employee.

- (6) Nothing in this section prevents—
- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the appointed day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the appointed day in accordance with the then existing terms and conditions of his or her employment under Part 3 of the **Public Administration Act 2004**.

123 Interests in land

S. 123
inserted by
No. 26/2009
s. 8.

- (1) Without prejudice to the generality of this Division and despite anything to the contrary in any other Act or law if, immediately before the appointed day, the Southern Cross Station Authority is, in relation to former Southern Cross Station Authority property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after the appointed day—
 - (a) the Secretary is to be taken to be the registered proprietor of that interest in land; and
 - (b) the Secretary has the same rights and remedies in respect of that interest as the Southern Cross Station Authority had.
- (2) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the Southern Cross Station Authority as the transferor of former Southern Cross Station Authority property, must make any amendments in the Register that are necessary because of the operation of this Division.

s. 124

S. 124
inserted by
No. 26/2009
s. 8.

124 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of the Southern Cross Station Authority.

SCHEDULE 1

Section 19

PROVISIONS APPLYING TO RAIL CORPORATIONS

1 Board of directors

- (1) Each rail corporation must have a board of directors consisting of not less than 3, and not more than 5, directors appointed in accordance with this Schedule.
- (2) The board of directors of a rail corporation—
 - (a) is responsible for the management of the affairs of the rail corporation; and
 - (b) may exercise the powers of the rail corporation.

2 Constitution of board

The board of a rail corporation consists of—

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) subject to clause 1, such number of other directors as are appointed by the Governor in Council in accordance with this Schedule.

3 Appointment of directors

- (1) The chairperson, deputy chairperson and other directors of a rail corporation shall be appointed by the Governor in Council.

Sch. 1

Sch. 1 cl. 3(2)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 172.2),
80/2006
s. 26(Sch.
item 92).

- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director of a rail corporation in respect of the office of director.

4 Terms and conditions of appointment

A director of a rail corporation holds office, subject to this Act—

- (a) for such term, not exceeding 3 years as is specified in the instrument of appointment, but is eligible for re-appointment; and
- (b) on such terms and conditions as are determined by the Minister.

5 Acting appointment

- (1) When—

- (a) the office of chairperson of the board of a rail corporation is vacant; or
- (b) the chairperson is absent from Victoria or is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office—

the deputy chairperson of the board must act as chairperson.

- (2) While the deputy chairperson is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.

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- (3) The Minister may appoint a director of a rail corporation to act as deputy chairperson—
 - (a) during a vacancy in the office of deputy chairperson; or
 - (b) during any period, or during all periods, when the deputy chairperson is acting as chairperson or is unable, for any reason, to attend meetings of the board.
 - (4) The Minister may appoint a person to act as a director (other than the chairperson or deputy chairperson) of a rail corporation—
 - (a) during a vacancy in the office of a director; or
 - (b) during any period, or during all periods, when a director is acting as deputy chairperson or is unable, for any reason, to attend meetings of the board.

6 Chief executive officer and other staff

- (1) The board of a rail corporation, with the approval of the Minister, may appoint a person as the chief executive officer of the rail corporation.
- (2) The chief executive officer holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the Minister and specified in the instrument of appointment.
- (3) The chief executive officer may be a director of the rail corporation but may not be the chairperson.
- (4) The board of a rail corporation may employ such other officers and employees as are necessary for the performance of its functions.

7 Vacancies, resignations, removal from office

- (1) The office of a director of a rail corporation becomes vacant if the director—
 - (a) without the board's approval, fails to attend 3 consecutive meetings of the board; or
 - (b) 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
 - (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A director may resign by writing delivered to the Minister.
- (3) The Governor in Council may remove a director, or all directors, from office.
- (4) If a director—
 - (a) is convicted of an offence relating to his or her duties as a director; or
 - (b) fails, without reasonable excuse, to comply with clause 11—

the director must be removed from office by the Governor in Council.

8 Validity of acts or decisions

- (1) An act or decision of the board of a rail corporation is not invalid merely because of—
 - (a) a defect or irregularity in, or in connection with, the appointment of a director; or
 - (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.

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- (2) Anything done by or in relation to a person purporting to act as chairperson, deputy chairperson or as a director is not invalid merely because—
- (a) there was a defect or irregularity in relation to the acting appointment; or
 - (b) the occasion for the person to act had not arisen or had ceased.

9 Proceedings of board

- (1) Subject to subclause (2), meetings of the board of a rail corporation shall be held at such times and places as the board determines.
- (2) The chairperson may at any time convene a meeting, but must do so when requested by a director to do so.
- (3) A majority of the directors of the board for the time being constitutes a quorum of the board.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The board must ensure that accurate minutes are kept of its meetings.
- (6) The board may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication that does not require the physical presence of each member in the same place.
- (7) Subject to this Act, the board may regulate its own proceedings.

10 Resolutions without meetings

- (1) If the directors for the time being of a rail corporation (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director to sign signs the document.
- (2) If a resolution is, under subclause (1), deemed to have been passed at a meeting of the board, each director must be advised as soon as practicable and given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, are deemed to constitute one document.
- (4) In subclause (1), *director*, in relation to a resolution, does not include a director who, because of clause 11, is not permitted to take part in the making of the resolution.

11 Disclosure of interests

- (1) If—
 - (a) a director of a rail corporation has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board; and

Sch. 1 cl. 11
amended by
No. 104/1997
s. 26.

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- (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter—
- the director, as soon as practicable after becoming aware of the relevant facts, must disclose the nature of the interest at a meeting of the board.
- (2) A disclosure under subclause (1) must be recorded in the minutes of the meeting and, unless the Minister or the board otherwise determines, the director—
- (a) must not be present during any deliberation of the board in relation to the matter; and
- (b) must not take part in any decision of the board in relation to the matter.
- (3) For the purpose of the making of a determination of the board under subclause (2) in relation to a director who has made a disclosure under subclause (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—
- (a) must not be present during any deliberation of the board in relation to the matter; and
- (b) must not take part in any decision of the board in relation to the matter.
- (4) Subclauses (1) and (2) do not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
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Sch. 1

- (5) Subclauses (1) and (2) do not apply in relation to a matter relating to an existing or proposed contract of insurance or instrument of indemnity merely because the contract or instrument insures or indemnifies, or would insure or indemnify, a director against a liability (other than a liability referred to in section 26) incurred by the director as an officer of the rail corporation.

Sch. 2
inserted by
No. 45/1999
s. 15,
amended by
No. 95/2005
s. 9(2)(f),
repealed by
No. 26/2009
s. 7(7).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 October 1996

Legislative Council: 3 December 1996

The long title for the Bill for this Act was "to establish V/Line Freight and Victorian Rail Track, to amend the **Borrowing and Investment Powers Act 1987**, the **Transport Act 1983** and the **Treasury Corporation of Victoria Act 1992** and for other purposes."

The **Rail Corporations Act 1996** was assented to on 17 December 1996 and came into operation as follows:

Part 1 (sections 1–3) on 17 December 1996: section 2 (1); rest of Act (*except* Part 2 Division 2) on 1 March 1997; Part 2 Division 2 (sections 8–18) on 1 April 1997: Special Gazette (No. 11) 28 January 1997 page 1.

2. Table of Amendments

This Version incorporates amendments made to the **Rail Corporations Act 1996** by Acts and subordinate instruments.

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: Ss 3, 5, 14–24, 26 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1; ss 6–13, 25, 27–30 on 11.6.98: Government Gazette 11.6.98 p. 1314; s. 4 on 1.7.99: Government Gazette 1.7.99 p. 1521
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Rail Corporations (Amendment) Act 1998, No. 47/1998 (as amended by No. 98/1998)

Assent Date: 26.5.98
Commencement Date: Ss 4–9, 11, 12 on 11.6.98: Government Gazette 11.6.98 p. 1314; s. 13 never proclaimed, repealed by s. 41(b) of No. 98/1998; s. 10 on 29.4.99: Government Gazette 29.4.99 p. 967; s. 14 on 23.12.99: Government Gazette 23.12.99 p. 2764
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 49) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Rail Corporations (Further Amendment) Act 1998, No. 98/1998

Assent Date: 24.11.98
Commencement Date: Ss 4–15 on 29.4.99: Government Gazette 29.4.99 p. 967; s. 16 on 1.7.99: Government Gazette 1.7.99 p. 1521
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Rail Corporations and Transport Acts (Amendment) Act 1999, No. 45/1999

Assent Date: 8.6.99
Commencement Date: Ss 3–5, 8–11, 13, 14 on 24.8.99: Government Gazette 19.8.99 p. 1901; ss 6, 7, 12, 15 on 1.7.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

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Rail Corporations and Transport Acts (Miscellaneous Amendments) Act 1999, No. 63/1999

Assent Date: 21.12.99
Commencement Date: Ss 3–6, 8, 9(2)(3) on 23.12.99: Government Gazette 23.12.99 p. 2764; s. 7 on 1.1.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport (Amendment) Act 2000, No. 30/2000

Assent Date: 30.5.00
Commencement Date: S. 39 on 31.5.00: s. 2
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport (Miscellaneous Amendments) Act 2000, No. 65/2000

Assent Date: 8.11.00
Commencement Date: 9.11.00: s. 2
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 97) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport (Further Amendment) Act 2001, No. 54/2001

Assent Date: 2.10.01
Commencement Date: Ss 28–36 on 30.6.03: s. 2(5)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Essential Services Commission Act 2001, No. 62/2001

Assent Date: 23.10.01
Commencement Date: Ss 89, 90 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Rail Corporations (Amendment) Act 2002, No. 20/2002

Assent Date: 21.5.02
Commencement Date: 22.5.02: s. 2
Current State: All of Act in operation

Transport (Miscellaneous Amendments) Act 2003, No. 34/2003

Assent Date: 27.5.03
Commencement Date: Ss 17, 18 on 28.5.03: s. 2(1); ss 14, 15 on 15.7.03: Special Gazette (No. 138) 15.7.03 p. 1
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Grain Handling and Storage (Amendment) Act 2003, No. 73/2003

Assent Date: 21.10.03
Commencement Date: S. 19 on 22.10.03: s. 2
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

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Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: S. 174 on 1.1.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation (Miscellaneous Amendments) Act 2004, No. 49/2004

Assent Date: 16.6.04
Commencement Date: Ss 20–22 on 17.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 172) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation (Amendment) Act 2004, No. 110/2004

Assent Date: 21.12.04
Commencement Date: S. 19 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation (Further Amendment) Act 2005, No. 25/2005

Assent Date: 31.5.05
Commencement Date: Ss 3, 4, 6–8 on 31.5.05: s. 2(1); s. 5 on 1.1.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation (Further Miscellaneous Amendments) Act 2005, No. 95/2005

Assent Date: 29.11.05
Commencement Date: S. 10 on 30.11.05: s. 2(1); ss 9, 11 on 13.12.05: Special Gazette (No. 254) 13.12.05 p. 1
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Rail Safety Act 2006, No. 9/2006

Assent Date: 4.4.06
Commencement Date: S. 156(1) on 1.1.06: s. 2(3); s. 156(2) on 5.4.06: s. 2(2); ss 150–155 on 1.8.06: Special Gazette (No. 181) 25.7.06 p. 1
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 34) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

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Transport Legislation (Further Amendment) Act 2006, No. 47/2006

Assent Date: 25.7.06
Commencement Date: S. 37 on 26.7.06: s. 2(1); s. 38 on 1.8.06: s. 2(2); s. 32 on 30.10.06: Government Gazette 28.9.06 p. 2048
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 92) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation Amendment Act 2007, No. 69/2007

Assent Date: 11.12.07
Commencement Date: Ss 69, 70 on 12.12.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Essential Services Commission Amendment Act 2008, No. 15/2008

Assent Date: 23.4.08
Commencement Date: S. 27 on 1.7.08: Government Gazette 26.6.08 p. 1388
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

Transport Legislation General Amendments Act 2009, No. 26/2009

Assent Date: 17.6.09
Commencement Date: Ss 6–10 on 31.7.09: Special Gazette (No. 259) 28.7.09 p. 1
Current State: This information relates only to the provision/s amending the **Rail Corporations Act 1996**

3. Explanatory Details

¹ S. 38Q: Section 10 of the **Rail Corporations (Amendment) Act 1998**, No. 47/1998 initially included section 38Q in the proposed new Part 2A of the **Rail Corporations Act 1996**. However, section 41(a) of the **Rail Corporations (Further Amendment) Act 1998**, No. 98/1998 amended section 10 of the **Rail Corporations (Amendment) Act 1998** by repealing section 38Q. Section 41(a) of the **Rail Corporations (Further Amendment) Act 1998** came into operation on 24 November 1998. Section 10 of the **Rail Corporations (Amendment) Act 1998** came into operation on 29 April 1999.

² S. 52(3) (*repealed*): The amendment proposed by section 14(3) of the **Rail Corporations (Amendment) Act 1998**, No. 47/1998 is not included in this publication because of the earlier repeal of section 52(3) by section 24 (Schedule item 49.2) of the **Transfer of Land (Single Register) Act 1998**, No. 85/1998.