

First print



New South Wales

Transport Administration Amendment (Railway Services Authority Corporatisation) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to corporatise the Railway Services Authority. Under the amendments to the *Transport Administration Act 1988* made by the Bill, the Authority will become a statutory State owned corporation under the *State Owned Corporations Act 1989* with the corporate name of Rail Services Australia.

Rail Access Corporation and Freight Rail Corporation constituted under the *Transport Administration Act 1988* are also statutory State owned corporations.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Transport Administration Act 1988* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments of other Acts set out in Schedule 2.

Schedule 1 Amendment of Transport Administration Act 1988

Schedule 1 [8] inserts Division 3A into Part 2A of the Principal Act. The new Division establishes Rail Services Australia as a statutory State owned corporation and amends the *State Owned Corporations Act 1989* accordingly. The new Division also sets out the objectives and functions of Rail Services Australia. They are similar to the Railway Services Authority except that the principal objectives and functions of Rail Services Australia relate to the supply of goods and services to the rail industry generally (instead of the rail industry in New South Wales). In addition, the new Division makes it clear that Rail Services Australia may also supply goods and services to other industries (including for the purpose of the management or maintenance of any kind of infrastructure).

Schedule 1 [1]–[7] and [9]–[23] make consequential amendments. In particular, the amendments apply the special provisions of the Principal Act relating to the other Rail Corporations (that is, Rail Access Corporation and Freight Rail Corporation) to Rail Services Australia, including special provisions relating to:

- (a) restrictions on the sale of shares (section 19L of the Principal Act), and
- (b) the appointment and removal of the board of directors (section 19O of the Principal Act), and
- (c) the appointment and other provisions relating to the chief executive officer (section 19R of the Principal Act), and
- (d) the payment of dividends (section 19T of the Principal Act).

Schedule 1 [24] inserts provisions consequent on the enactment of the proposed Act, including:

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- (a) the dissolution of the Railway Services Authority, and
- (b) the transfer, by Ministerial order, of the assets, rights and liabilities of the Authority to Rail Services Australia, and
- (c) the automatic transfer of all staff of the Authority (other than the Chief Executive) to the service of Rail Services Australia on existing terms and conditions of employment, and
- (d) the preservation of pending staff appeals to a Transport Appeal Board.

Schedule 2 Consequential amendment of other Acts

The Schedule amends the following Acts consequentially:

Attachment of Wages Limitation Act 1957

Clean Air Act 1961

Clean Waters Act 1970

Electricity Supply Act 1995

First State Superannuation Act 1992

Public Authorities (Financial Arrangements) Act 1987

Public Finance and Audit Act 1983

Public Sector Executives Superannuation Act 1989

Public Sector Management Act 1988

Rail Safety Act 1993

State Authorities Non-contributory Superannuation Act 1987

State Authorities Superannuation Act 1987

Superannuation Act 1916

Transport Appeal Boards Act 1980

First print



New South Wales

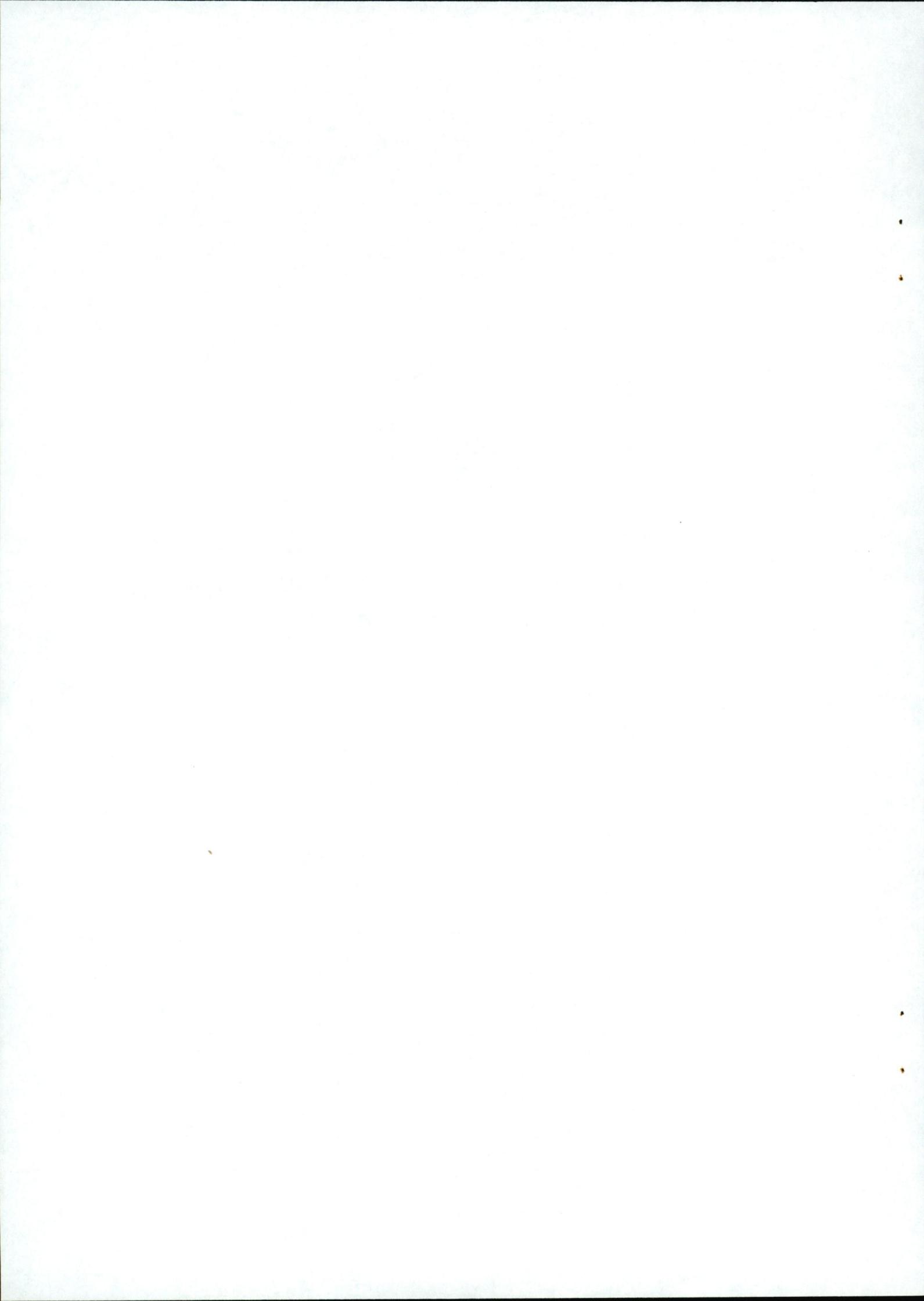
Transport Administration Amendment (Railway Services Authority Corporatisation) Bill 1998

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New South Wales

Transport Administration Amendment (Railway Services Authority Corporatisation) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Transport Administration Act 1988* to establish the Railway Services Authority as a statutory State owned corporation with the corporate name of Rail Services Australia; to make consequential amendments to other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

2 Commencement

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

3 Amendment of Transport Administration Act 1988 No 109

The *Transport Administration Act 1988* is amended as set out in Schedule 1.

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4 Consequential amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

**Schedule 1 Amendment of Transport
Administration Act 1988**

(Section 3)

[1] Long title

Omit “the Railway Services Authority”.
Insert instead “Rail Services Australia”.

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[2] Section 3 Definitions

Omit “the Railway Services Authority,” from the definition of
Authority in section 3 (1).

[3] Section 3 (1), definition of “Rail Corporation”

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Insert “, Rail Services Australia” after “Freight Rail Corporation”.

[4] Section 3 (1), definition of “Rail Services Australia”

Insert in alphabetical order:

Rail Services Australia (or *RSA*) means Rail Services
Australia constituted under this Act.

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[5] Section 3 (1), definition of “Railway Services Authority”

Omit the definition.

[6] Section 8A National Rail Corporation (Agreement) Act 1991

Omit “the Railway Services Authority”.
Insert instead “Rail Services Australia”.

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[7] Section 19C, note

Insert “and RSA” after “FRC”.

[8] Part 2A, Division 3A

Insert after Division 3 of Part 2A:

Division 3A Rail Services Australia

191A Establishment of RSA as statutory State owned corporation

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

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

191B Objectives of RSA

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

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19IC Functions of RSA

- (1) Rail Services Australia has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal function of Rail Services Australia is to supply goods and services to the rail industry. 5
- (3) Rail Services Australia may also supply goods and services to other industries (including for the purpose of the management or maintenance of any kind of infrastructure).
- (4) Rail Services Australia may: 10
- (a) provide facilities or services that are ancillary or incidental to its principal function, and
- (b) conduct any business (whether or not related to its principal function) that it considers will further its objectives. 15
- (5) This section does not limit the functions of Rail Services Australia apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.
- [9] Section 19Q Shareholders of Rail Corporations 20**
- Omit "both of the Rail Corporations".
Insert instead "both Rail Access Corporation and Freight Rail Corporation".
- [10] Part 2B Railway Services Authority (sections 19U–19AH) 25**
- Omit the Part.
- [11] Part 7, Division 1A Staff of Railway Services Authority (sections 59–59C)**
- Omit the Division.

[19] Schedule 4, clause 2 (1) (d) and (e)

Insert after clause 2 (1) (c):

- (d) an order under clause 66 of Schedule 7 transferring assets, rights or liabilities of the RSA or any RSA subsidiary corporation to Rail Services Australia, 5
- (e) an order under clause 67 of Schedule 7 transferring assets, rights or liabilities of RSA or any RSA subsidiary corporation to the Ministerial Holding Corporation or to any person on behalf of the State. 10

[20] Schedule 6 Transfer of certain SRA staff (other than certain Chief Executives)

Insert in alphabetical order in clause 1:

Rail Corporation includes, after the dissolution of the RSA, Rail Services Australia. 15

RSA means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*. 20

[21] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998. 25

[22] Schedule 7, Part 3, clause 47

Insert "(other than Rail Services Australia)" after "Rail Corporation" in the definition of *rail business*.

[23] Schedule 7, Part 3, clause 47

Insert the following definition in alphabetical order:

RSA means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*. 5

[24] Schedule 7, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998 10

63 Definitions

In this Part: 15

amending Act means the *Transport Administration Amendment (Railway Services Authority Corporatisation) Act 1998*.

former RSA officer means a person who was a member of the staff of the Railway Services Authority immediately before the dissolution of that Authority (other than the Chief Executive of that Authority). 20

Railway Services Authority means the Railway Services Authority as constituted under section 19U immediately before the repeal of that section by the amending Act. 25

64 Dissolution of Railway Services Authority

- (1) The Railway Services Authority is dissolved.
- (2) Any public subsidiary corporation of the Railway Services Authority (as referred to in section 19AE before its repeal by the amending Act) is dissolved. 30

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- (3) The assets, rights and liabilities (if any) of the Railway Services Authority or any such public subsidiary corporation of the Railway Services Authority immediately before its dissolution are transferred to the Ministerial Holding Corporation, if any such assets, rights or liabilities remain after the operation of any order under clause 66 or 67 that takes effect on or before its dissolution. 5
- (4) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to any transfer under this clause in the same way as it applies to a transfer by an order under clause 67. 10
- 65 Rail Services Australia to be same legal entity as Railway Services Authority**
- (1) On the dissolution of the Railway Services Authority, Rail Services Australia is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the Railway Services Authority. 15
- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 64, 66 or 67. 20
- 66 Transfer of Railway Services Authority assets, rights and liabilities**
- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of the Railway Services Authority or any subsidiary corporation of the Railway Services Authority, as are specified or referred to in the order, be transferred to Rail Services Australia. 25
- (2) Assets, rights or liabilities may not be transferred under this clause unless Rail Services Australia is a statutory State owned corporation. 30
- (3) Schedule 4 applies to an order under this clause.
- (4) For the purposes of this clause, the assets, rights and liabilities of the Railway Services Authority and of any

Schedule 1 Amendment of Transport Administration Act 1988

subsidiary corporation of the Railway Services Authority include:

- (a) any assets, rights or liabilities of the Railway Services Authority and of any subsidiary corporation of the Railway Services Authority that have vested in the Ministerial Holding Corporation under this Act, and 5
 - (b) any assets, rights or liabilities used by or attaching to the Railway Services Authority or any subsidiary corporation of the Railway Services Authority and belonging to the State or an authority of the State. 10
- (5) An order under this clause may be made on such terms and conditions as are specified in the order.
- (6) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the Railway Services Authority or of a subsidiary corporation of the Railway Services Authority. 15
- Note.** See section 19J for provisions relating to the transfer of assets, rights and liabilities of the SRA to the Rail Corporations (including RSA). 20

67 Transfer of other assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such other assets, rights or liabilities used by or attaching to the Railway Services Authority or to any subsidiary corporation of the Railway Services Authority as are specified or referred to in the order be transferred to the Ministerial Holding Corporation or to any other person on behalf of the State. 25
- (2) An order under this clause may be made on such terms and conditions as are specified in the order. 30
- (3) Schedule 4 (Transfer of assets, rights and liabilities of SRA and its subsidiaries) applies to an order under this clause.

68 Chief Executive of Railway Services Authority

- (1) The person who, immediately before the dissolution of the Railway Services Authority, held office as Chief Executive of the Railway Services Authority:
 - (a) ceases to hold that office, and 5
 - (b) is eligible (if otherwise qualified) to be appointed as the chief executive officer of Rail Services Australia.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3). 10
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q (4) of that Act. 15

69 Transfer of staff

- (1) All former RSA officers are transferred to Rail Services Australia and become employees of Rail Services Australia on the dissolution of the Railway Services Authority. 20
- (2) Except as otherwise provided by this Schedule and the regulations, the terms and conditions on which former RSA officers become employed on being transferred under this Schedule (including terms and conditions as to remuneration, allowances and duration of employment) are those on which they were employed by the Railway Services Authority immediately before its dissolution. 25
- (3) The terms and conditions of employment referred to in subclause (2) apply to new employees of Rail Services Australia in the same way as they apply to former RSA officers of the same class or classification who are transferred to Rail Services Australia. 30
- (4) The terms and conditions of employment referred to in subclause (2) may be varied but only by the means by which they could be varied immediately before the commencement of this clause. 35

Schedule 1 Amendment of Transport Administration Act 1988

- (5) Clauses 4, 6, 7, 8 and 10 of Schedule 6 extend to Rail Services Australia and its staff as follows:
- (a) a reference to a Rail Corporation includes a reference to Rail Services Australia,
- (b) a reference to former SRA staff includes a reference to former RSA officers, 5
- (c) a reference to a transfer of former SRA staff by an order under that Schedule includes a reference to a transfer of former RSA officers under this Schedule. 10
- (6) A former RSA officer is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Railway Services Authority.
- (7) A former RSA officer is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service. 15

70 Timetable for first statement of corporate intent

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of Rail Services Australia may be extended by the voting shareholders of Rail Services Australia. 20

71 Saving of Rail Safety Act 1993

Nothing in the amending Act affects the operation of the *Rail Safety Act 1993*. 25

72 Pending appeals to Transport Appeal Boards

- (1) A Transport Appeal Board is to hear and determine any appeal lodged by a former RSA officer under the *Transport Appeal Boards Act 1980* before the dissolution of the Railway Services Authority. 30

- (2) Except as provided by subclause (3), a decision of the Transport Appeal Board is final and conclusive and binding on Rail Services Australia.
- (3) Section 24 of the *Transport Appeal Boards Act 1980* applies with respect to the decision of a Transport Appeal Board on such an appeal as if references in that section to the SRA were references to Rail Services Australia.

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Schedule 2 Consequential amendment of other Acts

(Section 4)

- 2.1 Attachment of Wages Limitation Act 1957 No 28**
- Schedule** 5
- Omit "Railway Services Authority of New South Wales".
- 2.2 Clean Air Act 1961 No 69**
- [1] Section 5 Definitions**
- Omit "Railway Services Authority," from the definition of *Statutory body* in section 5 (1). 10
- [2] Schedule 1 Prescribed uses, equipment and plant**
- Omit "or the Railway Services Authority" from clause 2.
- 2.3 Clean Waters Act 1970 No 78**
- Section 5 Definitions**
- Omit "the Railway Services Authority," from the definition of *statutory authority*. 15
- 2.4 Electricity Supply Act 1995 No 94**
- [1] Section 106 Regulations**
- Omit ", the Railway Services Authority" from section 106 (2A).
- [2] Dictionary, definition of "rail network electricity system"** 20
- Omit ", the Railway Services Authority".

2.5 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit "Railway Services Authority" from Part 1.
Insert instead "Rail Services Australia".

2.6 Public Authorities (Financial Arrangements) Act 1987 No 33 5

Schedule 1 Authorities

Omit "Railway Services Authority."
Insert instead "Rail Services Australia".

2.7 Public Finance and Audit Act 1983 No 152 10

Schedule 2 Statutory bodies

Omit "Railway Services Authority of New South Wales".

2.8 Public Sector Executives Superannuation Act 1989 No 106 15

Schedule 1 Additional employers

Omit "Railway Services Authority".
Insert instead "Rail Services Australia".

2.9 Public Sector Management Act 1988 No 33

[1] Schedule 3 Declared Authorities

Omit "Railway Services Authority of New South Wales". 20

[2] Schedule 3A Chief executive positions

Omit "Chief Executive of the Railway Services Authority" from Part 3.

Schedule 2 Consequential amendment of other Acts

[3] Schedule 3B Senior executive positions

Omit all the matter relating to the Railway Services Authority in Part 1.

2.10 Rail Safety Act 1993 No 50

Section 9 Act binds Crown

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Omit "the Railway Services Authority" from section 9 (2).
Insert instead "Rail Services Australia".

2.11 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

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Omit "Railway Services Authority" from Part 1.
Insert instead "Rail Services Australia".

2.12 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

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Omit "Railway Services Authority" from Part 1.
Insert instead "Rail Services Australia".

2.13 Superannuation Act 1916 No 28

Schedule 3 List of employers

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Omit "Railway Services Authority" from Part 1.
Insert instead "Rail Services Australia".

2.14 Transport Appeal Boards Act 1980 No 104

[1] Long title

Omit "the Railway Services Authority,".

[2] Section 4 Definitions

Omit "the Railway Services Authority," from the definition of *Authority* in section 4 (1).

[3] Section 24 Appeal against a Board's decision in certain cases

Omit section 24 (1) (f).

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[4] Sections 30 and 31

Omit "the Railway Services Authority," wherever occurring from sections 30 (1) and (3) and 31 (1).

[5] Section 31 (2)

Omit "Railway Services Authority, the".

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[6] Schedule 1 Members of a Board

Omit "the Railway Services Authority," wherever occurring from clause 4 (1).