

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the Transport Administration Act 1988, the Passenger Transport Act 1990 and the State Owned Corporations Act 1989 as follows:

- (a) to change Rail Corporation New South Wales (RailCorp) and Sydney Ferries from State owned corporations to statutory corporations having management structures and accountabilities similar to the State Transit Authority,
- (b) to require RailCorp to enter into rail services contracts with the Director-General of the Ministry of Transport (the Director-General) as to the rail services (including rail passenger services) provided by it,
- (c) to provide for new service contract provisions for regular ferry services (including ferry services operated by Sydney Ferries), while retaining the service contract provisions for existing regular ferry services,
- (d) to make other minor consequential amendments, including provisions of a savings and transitional nature.

The Bill also makes a consequential amendment to the Independent Pricing and Regulatory Tribunal Act 1992.

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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 that gives effect to the amendments to the Acts set out in Schedules 1–4.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments relating to constitution of RailCorp

Schedule 1.1 Transport Administration Act 1988 No 109

Schedule 1.1 [1] amends section 3 of the Transport Administration Act 1988 (the Transport Administration Act) to extend provisions contained in that Act that relate to transport authorities that are not State owned corporations to RailCorp.

Schedule 1.1 [3] amends section 4 of the Transport Administration Act to remove the provision that inserted RailCorp into the State Owned Corporations Act 1989 (the SOC Act) and to insert instead a provision declaring RailCorp to be a NSW Government Agency. This has the effect of making RailCorp a statutory body representing the Crown. Schedule 1.1 [2], [4] and [7] make consequential amendments.

Schedule 1.1 [5] amends section 10 of the Transport Administration Act to confer on RailCorp functions relating to land acquisition, engines and other plant and equipment, the making of contracts and arrangements for works and services and other matters and the appointment of agents. These functions reflect the functions conferred on the State Transit Authority and include functions that were formerly conferred on RailCorp under the SOC Act

Schedule 1.1 [6] inserts proposed section 11A into the Transport Administration Act to make RailCorp's power to sell, lease or otherwise dispose of land subject to Ministerial approval in certain circumstances, including any lease for a term exceeding 5 years. This reflects the restrictions currently imposed on the State

Transit Authority.

Schedule 1.1 [8] substitutes Division 4, and repeals Division 5, of Part 2 of the Transport Administration Act to substitute the existing management structure that is suitable for a State owned corporation with a new management structure that is suitable for a statutory corporation that is not such a corporation. The proposed Division:

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(a) constitutes a new RailCorp Board, consisting of the Chief Executive Officer and 4–7 members (proposed section 13) and confers on the Board the function of determining the policies of RailCorp (proposed section 14), and

(b) provides for the Governor to appoint a Chief Executive Officer of RailCorp who is to manage and control the affairs of RailCorp in accordance with the Board's policies (proposed sections 15 and 16), and

(c) enables the Minister to give written directions to the Board and requires the Board and the Chief Executive Officer to ensure that RailCorp complies with the directions, subject to a right to seek a review of directions (other than directions involving urgency or public safety) that may affect RailCorp financially or commercially (proposed section 17), and

(d) requires RailCorp to supply information to the Minister and to prepare corporate plans (which are to be submitted to the Minister for comment before being adopted) (proposed sections 17A and 17B), and

(e) enables RailCorp to exercise its functions through joint ventures and subsidiary corporations and to establish public subsidiary corporations and private subsidiary corporations, which were powers it could previously exercise as a State owned corporation (proposed sections 17C–17E), and

(f) enables RailCorp to delegate functions (proposed section 17F).

Schedule 1.1 [9] amends section 29 of the Transport Administration Act to remove the State Transit Authority's right to seek a review of Ministerial directions that may involve a significant financial loss to the Authority where the direction involves urgency or public safety and the Treasurer has been consulted. The amendment makes the provisions that will apply to RailCorp, the Authority and Sydney Ferries consistent.

Schedule 1.1 [10] amends section 56 of the Transport Administration Act to exclude RailCorp from provisions applicable to other transport authorities whose staff are employed in the Government Service.

Schedule 1.1 [11] inserts proposed Division 1A (proposed sections 58A–58C) into Part 7 of the Transport Administration Act. The proposed Division enables RailCorp to fix the salary, wages and conditions of its staff, retains existing appeal rights under the Transport Appeal Boards Act 1980 and excludes RailCorp staff from the Government Service.

Schedule 1.1 [12] inserts proposed Division 1 (proposed sections 69–71) into Part 8 of the Transport Administration Act. The proposed Division establishes the RailCorp Fund and provides for the payments that are to be made into and from the Fund.

Schedule 1.1 [13] amends section 86 of the Transport Administration Act to enable the Minister to direct that RailCorp, or any other Authority within the meaning of that Act, is bound by a pricing policy approved by the Minister.

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Schedule 1.1 [14] amends section 88 of the Transport Administration Act to enable the Minister to direct that RailCorp, or any other Authority within the meaning of that Act, may issue free or concession travel passes even though such travel is not fully

subsidised by the Government.

Schedule 1.1 [15] amends section 107 of the Transport Administration Act to apply all of the miscellaneous provisions in Division 4 of Part 9 of that Act to RailCorp (currently the Division only partly applies). The effect of this is to apply additional provisions relating to seals, contracts and a provision that validates actions done by a transport authority in contravention of a Ministerial direction. Schedule 1.1 [16] makes a consequential amendment.

Schedule 1.1 [17] and [18] amend section 112 of the Transport Administration Act to extend to the Chief Executive Officer of RailCorp and members of the RailCorp Board protection from personal liability for matters done in good faith by them for the purposes of that Act or any other Act.

Schedule 1.1 [21] amends Schedule 1 to the Transport Administration Act to apply the provisions of that Schedule (which sets out provisions relating to the constitution and procedure of the State Transit Authority Board) to the RailCorp Board. Schedule 1.1 [19], [20] and [22] make consequential amendments.

Schedule 1.1 [23] amends Schedule 1 to the Transport Administration Act to update a reference to a repealed law.

Schedule 1.1 [24] amends Schedule 2 to the Transport Administration Act to make an amendment consequential on the amendment made by Schedule 1.1 [8].

Schedule 1.1 [25] amends Schedule 2 to the Transport Administration Act to apply the provisions of that Schedule (which sets out provisions relating to the Chief Executives of the State Transit Authority and the Roads and Traffic Authority) to the Chief Executive Officer of RailCorp.

Schedule 1.1 [26] amends Schedule 2 to the Transport Administration Act to update references to a repealed law.

Schedule 1.1 [30] amends Schedule 6 to the Transport Administration Act to enable the Minister for Transport to transfer, by order, members of staff of RailCorp or the Independent Transport Safety and Reliability Regulator to the Ministry of Transport.

Schedule 1.1 [27]–[29] and [31] make consequential amendments.

Schedule 1.1 [32] enables staff transferred to the Ministry of Transport to retain existing terms and conditions of employment (subject to regulations) and to count previous service with RailCorp or the Independent Transport Safety and Reliability Regulator as service with the Ministry of Transport.

Schedule 1.1 [33] amends Schedule 6 to the Transport Administration Act to provide that staff transferred to the Ministry of Transport are not entitled to any payment or benefit because of the transfer.

Schedule 1.1 [34] amends Schedule 7 to the Transport Administration Act to enable regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

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Schedule 1.1 [35] inserts an interpretation provision.

Schedule 1.1 [36] amends Schedule 7 to the Transport Administration Act to make the following savings and transitional provisions:

(a) to provide that RailCorp as constituted after the amendments made by the proposed Act is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as it was, before those amendments,

(b) to continue the appointment of the existing chief executive officer of RailCorp,

(c) to provide for the preparation by RailCorp of its first corporate plan under that Act and to provide for the continuation of its existing statement of corporate intent under the SOC Act as an interim measure.

Schedule 1.2 State Owned Corporations Act 1989 No 134

Schedule 1.2 amends Schedule 5 to the SOC Act to remove RailCorp from the list of State owned corporations under that Act.

Schedule 2 Amendments relating to rail passenger services

Schedule 2.1 Passenger Transport Act 1990 No 39

Schedule 2.1 [1] amends section 3 of the Passenger Transport Act 1990 (the Passenger Transport Act) to insert definitions of rail passenger service and rail services contract.

Schedule 2.1 [2] amends section 4 of the Passenger Transport Act to include the provision of rail services contracts in the objects of that Act.

Schedule 2.1 [3] makes an amendment consequential on the amendment made by Schedule 2.1 [4].

Schedule 2.1 [4] inserts Division 4 (proposed sections 28K and 28L) of Part 3 into the Passenger Transport Act. The proposed Division:

(a) provides that rail services (rail passenger services, bus services (other than regular passenger services), rail infrastructure owner functions, the provision of access and network control services) provided by RailCorp are to be subject to terms and conditions in a contract between RailCorp and the

Director-General. The contract term is to be for not more than 8 years and may be renewed from time to time (proposed section 28K), and

(b) requires the rail services contract to set out performance standards (proposed section 28L).

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Schedule 2.1 [5] amends section 48 of the Passenger Transport Act to exclude RailCorp from being able to seek a review of a decision by the Director-General concerning a rail services contract (this is consistent with the situation applying in relation to regular bus services contracts).

Schedule 2.1 [6] amends section 53 of the Passenger Transport Act to enable the Director-General to enter into an information sharing agreement with the WorkCover Authority about rail passenger services.

Schedule 2.1 [7] amends Schedule 3 to the Passenger Transport Act to enable regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 2.1 [8] amends Schedule 3 to the Passenger Transport Act to insert an interpretation provision.

Schedule 2.1 [9] amends Schedule 3 to the Passenger Transport Act to provide that RailCorp is not required to comply with the requirements relating to rail services contracts until it enters into such a contract and provides that the provision ceases to have effect after 2 years or such later day as may be prescribed by the regulations.

Schedule 2.2 Transport Administration Act 1988 No 109

Schedule 2.2 [1] amends section 38 of the Transport Administration Act as a consequence of the amendment made by Schedule 2.1 [4].

Schedule 2.2 [2] amends section 40 of the Transport Administration Act to enable the Director-General to delegate his or her functions under the Passenger Transport Act.

Schedule 3 Amendments relating to constitution of Sydney Ferries

Schedule 3.1 Transport Administration Act 1988 No 109

Schedule 3.1 [1] amends section 3 of the Transport Administration Act to extend provisions contained in that Act that relate to transport authorities that are not State owned corporations to Sydney Ferries.

Schedule 3.1 [3] amends section 35A of the Transport Administration Act to remove the provision that inserted Sydney Ferries into the SOC Act and to insert instead a provision declaring Sydney Ferries to be a NSW Government Agency. This has the effect of making Sydney Ferries a statutory body representing the Crown. Schedule 3.1 [2], [4], [7], [12] and [13] make consequential amendments.

Schedule 3.1 [5] amends section 35E of the Transport Administration Act to confer on Sydney Ferries functions relating to land acquisition, engines and other plant and equipment, the making of contracts and arrangements for works and services and other matters and the appointment of agents. These functions reflect the functions conferred on the State Transit Authority and include functions that were formerly conferred on Sydney Ferries under the SOC Act.

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Schedule 3.1 [6] inserts proposed section 35EA into the Transport Administration Act to make Sydney Ferries' power to sell, lease or otherwise dispose of land subject to Ministerial approval in certain circumstances, including any lease for a term exceeding 5 years. This reflects the restrictions currently imposed on the State Transit Authority.

Schedule 3.1 [8] substitutes Division 4, and repeals Division 5, of Part 3A of the Transport Administration Act to substitute the existing management structure that is suitable for a State owned corporation with a new management structure that is suitable for a statutory corporation that is not such a corporation. The proposed Division:

(a) constitutes a new Sydney Ferries Board, consisting of the Chief Executive Officer and 4–7 members (proposed section 35H) and confers on the Board the function of determining the policies of Sydney Ferries (proposed section 35I), and

(b) provides for the Governor to appoint a Chief Executive Officer of Sydney Ferries who is to manage and control the affairs of Sydney Ferries in accordance with the Board's policies (proposed sections 35J and 35K), and

(c) enables the Minister to give written directions to the Board and requires the Board and the Chief Executive Officer to ensure that Sydney Ferries complies with the directions, subject to a right to seek a review of directions (other than directions involving urgency or public safety) that may affect Sydney Ferries financially or commercially (proposed section 35L), and

(d) requires Sydney Ferries to supply information to the Minister and to prepare corporate plans (which are to be submitted to the Minister for comment before being adopted) (proposed sections 35M and 35N), and

(e) enables Sydney Ferries to exercise its functions through joint ventures and subsidiary corporations and to establish public subsidiary corporations and private subsidiary corporations, which were powers it could previously exercise as a State owned corporation (proposed sections 35O–35Q), and

(f) enables Sydney Ferries to delegate functions (proposed section 35QA).

Schedule 3.1 [9] amends section 56 of the Transport Administration Act to exclude Sydney Ferries from provisions applicable to transport authorities whose staff are employed in the Government Service.

Schedule 3.1 [10] inserts proposed Division 3 (proposed sections 62–64) into Part 7 of the Transport Administration Act. The proposed Division enables Sydney Ferries to fix the salary, wages and conditions of its staff, retains existing appeal rights under the Transport Appeal Boards Act 1980 and excludes Sydney Ferries staff from the Government Service.

Schedule 3.1 [11] inserts proposed Division 3A (proposed sections 80D–80F) into Part 8 of the Transport Administration Act. The proposed Division establishes the

Sydney Ferries Fund and provides for the payments that are to be made into and from the Fund.

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Schedule 3.1 [14] amends section 107 of the Transport Administration Act to apply all of the miscellaneous provisions in Division 4 of Part 9 of that Act to Sydney Ferries (currently the Division only partly applies). The effect of this is to apply additional provisions relating to seals, contracts and a provision that validates actions done by a transport authority in contravention of a Ministerial direction. Schedule 3.1 [15] makes a consequential amendment.

Schedule 3.1 [16] and [17] amend section 112 of the Transport Administration Act to extend to the Chief Executive Officer of Sydney Ferries and members of the Sydney Ferries Board protection from personal liability for matters done in good faith by them for the purposes of that Act or any other Act.

Schedule 3.1 [19] amends Schedule 1 to the Transport Administration Act to apply the provisions of that Schedule (which sets out provisions relating to the constitution and procedure of the State Transit Authority Board) to the Sydney Ferries Board.

Schedule 3.1 [18] and [20] make consequential amendments.

Schedule 3.1 [21] amends Schedule 2 to the Transport Administration Act to make an amendment consequential on the amendment made by Schedule 2.1 [8].

Schedule 3.1 [22] amends Schedule 2 to the Transport Administration Act to apply the provisions of that Schedule (which sets out provisions relating to the Chief Executives of the State Transit Authority and the Roads and Traffic Authority) to the Chief Executive Officer of Sydney Ferries.

Schedule 3.1 [23] amends Schedule 7 to the Transport Administration Act to make the following savings and transitional provisions:

(a) to provide that Sydney Ferries as constituted after the amendments made by the proposed Act is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as it was, before those amendments,

(b) to continue the appointment of the chief executive officer of Sydney Ferries,

(c) to provide for the preparation by Sydney Ferries of its first corporate plan under that Act and to provide for the continuation of its existing statement of corporate intent under the SOC Act as an interim measure.

Schedule 3.2 State Owned Corporations Act 1989 No 134

Schedule 3.2 amends Schedule 5 to the SOC Act to remove Sydney Ferries from the list of State owned corporations under that Act.

Schedule 4 Amendments relating to ferry passenger services

Schedule 4.1 Passenger Transport Act 1990 No 39

Schedule 4.1 [1] amends section 3 of the Passenger Transport Act to insert a definition of ferry service contract.

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Schedule 4.1 [2] inserts proposed Division 1A (proposed sections 16AA–16AE) of Part 3 of the Passenger Transport Act. The proposed Division replaces the existing service contract regime for regular ferry services. The proposed Division:

(a) provides additional provisions for contracts relating to regular passenger services provided by ferry (ferry service contracts), including that the contract term is to be for not more than 8 years and may be renewed from time to time (proposed sections 16AB and 16AC), and

(b) extends the provision precluding contracts that create competing services to

preclude such contracts under proposed Division 1A, if they affect existing contracts (proposed section 16AB), and

(c) requires a ferry service contract to set out performance standards (proposed section 16AD), and

(d) enables the contract to provide (as an essential term) that ferry fares are not to exceed the maximum fare determined from time to time by the Independent Pricing and Regulatory Tribunal and provides for such determinations.

(proposed section 16AE). If such a provision is included in the contract, the provisions enabling Sydney Ferries to make orders about fares under the Transport Administration Act do not apply.

Schedule 4.1 [3] makes an amendment consequential on the amendment made by Schedule 4.1 [2].

Schedule 4.1 [4] substitutes section 16A of the Passenger Transport Act to prohibit new contracts from being entered into under the current service contract provisions relating to ferries. Contracts may be renewed under those provisions.

Schedule 4.1 [5] amends section 48 of the Passenger Transport Act to exclude ferry operators from being able to seek a review of a decision by the Director-General concerning a ferry service contract (this is consistent with the situation applying in relation to regular bus service contracts).

Schedule 4.1 [6] amends Schedule 3 to the Passenger Transport Act to provide that Sydney Ferries is not required to comply with the new requirements relating to ferry service contracts until it enters into such a contract and provides that the provision ceases to have effect after 2 years or such later day as may be prescribed by the regulations.

Schedule 4.2 Independent Pricing and Regulatory Tribunal Act 1992

No 39

Schedule 4.2 makes an amendment to Schedule 1 to the Independent Pricing and Regulatory Tribunal Act 1992 consequent on the amendment made by Schedule 4.1 [2].