



New South Wales

# Transport Administration Amendment (Rail Access) Bill 2001

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Transport Administration Act 1988* (***the 1988 Act***) so as:

- (a) to enable Rail Infrastructure Corporation to submit an access undertaking to the Australian Competition and Consumer Commission (the ***ACCC***) in connection with the provision of access to the NSW rail network under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth (***the 1974 Act***), and
- (b) to enable the Minister, with the concurrence of the Premier, to approve an access undertaking in connection with the provision of access to the NSW rail network under the 1988 Act, and

- (c) to require Rail Infrastructure Corporation to comply with the obligations imposed on it by an access undertaking referred to in paragraph (a) or (b) rather than with the obligations imposed on it by the NSW Rail Access Regime currently in force under the 1988 Act.

It is intended that an access undertaking is not to be prepared under the 1988 Act unless Rail Infrastructure Corporation is unable to obtain acceptance by the ACCC of an access undertaking under the 1974 Act.

## 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.

## Schedule 1 Amendments

Third party access to the NSW rail network is currently governed by a NSW Rail Access Regime established under section 19B. It is proposed that this regime be replaced by an access undertaking accepted by the ACCC under section 44ZZA of the *Trade Practices Act 1974* of the Commonwealth or, if such an undertaking is not in force, by an access undertaking approved by the Minister with the concurrence of the Premier under proposed Schedule 6AA.

### Submission of access undertaking to ACCC

**Schedule 1 [9]** amends section 19E so as to enable Rail Infrastructure Corporation to submit an undertaking to the ACCC in connection with the provision of access to the NSW rail network.

**Schedule 1 [10]** further amends section 19E so as to apply clauses 2, 3 and 4 of proposed Schedule 6AA to such an undertaking (see proposed section 19E (4A)) and to provide that such an undertaking is not to be given, and (once given) is not to be amended or withdrawn, except with the approval of the Minister given with the concurrence of the Premier (see proposed section 19E (4B)). **Schedule 1 [12]** makes a consequential amendment.

### **Approval of access undertaking by Minister**

**Schedule 1 [18]** inserts a new Schedule 6AA into the Act. The new Schedule sets out a procedure for the preparation by Rail Infrastructure Corporation, and approval by the Minister with the concurrence of the Premier, of an access undertaking to implement the Competition Principles Agreement in respect of third party access to the NSW rail network by specified persons.

**Proposed clause 1** enables Rail Infrastructure Corporation to prepare an access undertaking or a variation to an existing access undertaking. The process of preparing an undertaking will be required to involve public consultation, unless the proposed undertaking has already been the subject of public consultation as a result of its having been considered by the ACCC.

**Proposed clause 2** requires an access undertaking to make provision with respect to the application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* to disputes concerning third party access to the NSW rail network.

**Proposed clause 3** enables an access undertaking to permit intending access purchasers to enter into negotiations for third party access to the NSW rail network.

**Proposed clause 4** enables an access undertaking to confer or impose functions on the Independent Pricing and Regulatory Tribunal in connection with the undertaking.

**Proposed clause 5** requires an access undertaking or amendment to be submitted to the Minister for approval, and provides that approval is not to be given except with the concurrence of the Premier.

**Proposed clause 6** provides for the commencement of an access undertaking or amendment on Gazettal of the Minister's approval, or on a later date specified in the Gazettal notice, and requires Rail Infrastructure Corporation to publish the undertaking or amendment on its Internet site and to keep copies available at its offices for inspection and purchase.

**Proposed clause 7** provides that the commencement of an access undertaking or amendment does not affect existing access agreements.

**Proposed clause 8** preserves the operation of the *Rail Safety Act 1993*.

The proposed Schedule is brought into effect by **proposed section 19FC**, to be inserted by **Schedule 1 [14]**. **Schedule 1 [2]** makes a consequential amendment.

### **Compliance with RIC access undertaking**

**Schedule 1 [1]** amends section 3 (1) so as to insert a definition of *RIC access undertaking*. The definition will refer to an access undertaking accepted by the ACCC, or to an access undertaking approved by the Minister with the concurrence of the Premier under proposed Schedule 6AA, whichever is appropriate.

**Schedule 1 [7], [8] and [11]** amend sections 19D and 19E so as to require Rail Infrastructure Corporation to comply with the current RIC access undertaking rather than the NSW Rail Access Regime. Until such time as such an access undertaking comes into force, whether as a result of its being accepted by the ACCC or approved by the Minister with the concurrence of the Premier, the NSW Rail Access Regime is to be taken to be a RIC access undertaking (see proposed Schedule 7, to be amended by **Schedule 1 [20]**).

**Schedule 1 [13], [15], [16] and [17]** make consequential amendments.

### **Other amendments**

**Schedule 1 [6]** omits section 19B.

**Schedule 1 [5]** transfers to section 19A a provision of section 19B that allows the Minister to make orders directing that specified facilities be treated as rail infrastructure facilities. **Schedule 1 [3] and [4]** make consequential amendments. Existing orders under section 19B are to be taken to have been made under section 19A (see Schedule 7, to be amended by **Schedule 1 [20]**).

**Schedule 1 [19]** amends clause 2 of Schedule 7 so as to provide for the making of savings and transitional regulations.

**Schedule 1 [20]** inserts a new Part into Schedule 7. The new Part contains savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

# Transport Administration Amendment (Rail Access) Bill 2001

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Transport Administration Act 1988 No 109	2
Schedule 1 Amendments	3



New South Wales

# Transport Administration Amendment (Rail Access) Bill 2001

No. , 2001

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## A Bill for

An Act to amend the *Transport Administration Act 1988* with respect to third party access to the NSW rail network; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Transport Administration Amendment (Rail Access) Act 2001</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Transport Administration Act 1988 No 109</b>	8
The <i>Transport Administration Act 1988</i> is amended as set out in Schedule 1.	9 10

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<b>Schedule 1 Amendments</b>	1
(Section 3)	2
<b>[1] Section 3 Definitions</b>	3
Insert in appropriate order in section 3 (1):	4
<b><i>RIC access undertaking</i></b> means:	5
(a) if an undertaking referred to in section 19E (4) (c) is in force under section 44ZZA of the <i>Trade Practices Act 1974</i> of the Commonwealth, that undertaking, or	6 7 8
(b) in any other case, an access undertaking in force under Schedule 6AA.	9 10
<b>[2] Section 19A Definitions</b>	11
Omit “Schedule 6A” from section 19A (1).	12
Insert instead “Schedules 6A and 6AA”.	13
<b>[3] Section 19A (1), definition of “rail infrastructure facilities”</b>	14
Insert “, subject to subsection (3)” after “ <i>rail infrastructure facilities</i> ”.	15
<b>[4] Section 19A (1), definition of “rail infrastructure facilities”</b>	16
Omit “(subject to section 19B (2)),” from paragraph (a).	17
<b>[5] Section 19A (3)</b>	18
Insert after section 19A (2):	19
(3) The Minister may, by order in writing, direct that specified facilities that are vested in or owned by Rail Infrastructure Corporation are to be treated as rail infrastructure facilities for the purposes of this Act.	20 21 22 23
<b>[6] Section 19B Meaning of “NSW Rail Access Regime”</b>	24
Omit the section.	25



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<b>[7] Section 19D Objectives of RIC</b>	1
Omit “the NSW Rail Access Regime” from section 19D (2) (a).	2
Insert instead “the current RIC access undertaking”.	3
<b>[8] Section 19E Functions of RIC</b>	4
Omit “the NSW Rail Access Regime” from section 19E (2) (b).	5
Insert instead “the current RIC access undertaking”.	6
<b>[9] Section 19E (4) (c)</b>	7
Insert at the end of section 19E (4) (b):	8
, and	9
(c) give written undertakings from time to time to the	10
Australian Competition and Consumer Commission in	11
connection with the provision of access to the NSW rail	12
network under section 44ZZA of the <i>Trade Practices</i>	13
<i>Act 1974</i> of the Commonwealth.	14
<b>[10] Section 19E (4A) and (4B)</b>	15
Insert after section 19E (4):	16
(4A) Clauses 2, 3 and 4 of Schedule 6AA apply to an undertaking	17
referred to in subsection (4) (c) in the same way as they apply	18
to an access undertaking referred to in clause 1 of that	19
Schedule.	20
(4B) An undertaking referred to in subsection (4) (c) is not to be	21
given, and (once given) is not to be withdrawn or varied,	22
except with the approval of the Minister given with the	23
concurrence of the Premier.	24
<b>Note.</b> Section 44ZZA (7) of the <i>Trade Practices Act 1974</i> of the	25
Commonwealth further provides that an access undertaking cannot be	26
withdrawn or varied except with the consent of the Australian Competition	27
and Consumer Commission.	28
<b>[11] Section 19E (5)</b>	29
Omit “the NSW Rail Access Regime”.	30
Insert instead “the current RIC access undertaking”.	31

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<b>[12] Section 19E (7)</b>	1
Omit “subsection (5A)”. Insert instead “subsections (4B) and (5A)”.	2
<b>[13] Section 19FB Network control</b>	3
Omit “the NSW Rail Access Regime” from section 19FB (5) (b).	4
Insert instead “the current RIC access undertaking”.	5
<b>[14] Section 19FC</b>	6
Insert after section 19FB:	7
<b>19FC RIC access undertakings</b>	8
Schedule 6AA (RIC access undertakings) has effect.	9
<b>[15] Section 45C Functions of Council</b>	10
Omit “the NSW Rail Access Regime referred to in section 19B” from section 45C (2) (c).	11
Insert instead “the current RIC access undertaking”.	12
<b>[16] Schedule 6A Powers of RIC relating to rail infrastructure facilities and land</b>	13
Omit “the NSW Rail Access Regime” from clause 2 (3).	14
Insert instead “the current RIC access undertaking”.	15
<b>[17] Schedule 6A, clause 5 (3)</b>	16
Insert “or the current RIC access undertaking” after “the NSW Rail Access Regime”.	17
	18
	19
	20

<b>[18] Schedule 6AA</b>	1
Insert after Schedule 6A:	2
<b>Schedule 6AA</b>	3
<b>RIC access undertakings</b>	4
(Section 19FC)	
<b>1 Preparation of access undertaking</b>	5
(1) Rail Infrastructure Corporation may from time to time prepare:	6
(a) an access undertaking, or	7
(b) a variation of an existing access undertaking,	8
for the purpose of implementing the Competition Principles Agreement in respect of third party access to the NSW rail network by the national rail track corporation, by rail operators and by access purchasers.	9 10 11 12
(2) Before completing its preparation of an access undertaking or variation, Rail Infrastructure Corporation:	13 14
(a) must cause a copy of the proposed undertaking or variation to be made available for public inspection for at least 30 days, and	15 16 17
(b) must take into consideration any submissions made in relation to the proposed undertaking or variation during that period.	18 19 20
(3) Subclause (2) does not apply if the access undertaking or variation (or a substantially similar access undertaking or variation):	21 22 23
(a) has been submitted to the Australian Competition and Consumer Commission under section 44ZZA of the <i>Trade Practices Act 1974</i> of the Commonwealth, and	24 25 26
(b) has been withdrawn without having been accepted under that section, and	27 28
(c) prior to its being withdrawn, has been subject to a public consultation process under section 44ZZA (4) of that Act.	29 30 31

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(4) In this clause, <i>Competition Principles Agreement</i> means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.	1 2 3 4
<b>2 Access undertaking to apply Part 4A of IPART Act 1992</b>	5
(1) An access undertaking must make provision with respect to the application of Part 4A of the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> to a dispute with respect to third party access to the NSW rail network:	6 7 8 9
(a) by the national rail track corporation, or	10
(b) by persons in their capacities as rail operators or access purchasers.	11 12
(2) In any arbitration of such a dispute, the arbitrator:	13
(a) must give effect to the access undertaking, and	14
(b) must take into account (in addition to the matters referred to in section 24B (3) of the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> ) the desirability of ensuring priority and certainty of access for passenger services.	15 16 17 18 19
<b>3 Access undertaking may make provision for intending access purchasers</b>	20 21
(1) An access undertaking may make provision for persons:	22
(a) who intend to be access purchasers, and	23
(b) who, in the opinion of Rail Infrastructure Corporation, have the capacity to secure and properly manage the services of a rail operator,	24 25 26
to enter into negotiations in respect of third party access to the NSW rail network.	27 28
(2) Such a person may be provided with access under an undertaking even if the person is not an access purchaser, on the condition that the person becomes an access purchaser prior to the operation or movement of rolling stock pursuant to such access.	29 30 31 32 33

<b>4</b>	<b>Access undertaking may confer or impose functions on IPART</b>	1
	An access undertaking may confer or impose functions on the Independent Pricing and Regulatory Tribunal in connection with the undertaking.	2 3 4
<b>5</b>	<b>Access undertaking to be submitted for Minister's approval</b>	5
(1)	An access undertaking or variation prepared under this Schedule must be submitted for the Minister's approval, together with:	6 7 8
(a)	a summary of the submissions made in relation to the proposed undertaking or variation, whether under clause 1 of this Schedule or under section 44ZZA of the <i>Trade Practices Act 1974</i> of the Commonwealth, and	9 10 11 12
(b)	Rail Infrastructure Corporation's comments on those submissions.	13 14
(2)	When considering the access undertaking or variation, the Minister is to take into consideration all of the public benefits arising from the undertaking or variation (including those that do not have a direct commercial value).	15 16 17 18
(3)	An approval under this clause is not to be given except with the concurrence of the Premier.	19 20
<b>6</b>	<b>Commencement of access undertaking or variation</b>	21
(1)	An access undertaking or variation takes effect:	22
(a)	on the day on which notice of the Minister's approval of the undertaking or variation is published in the <i>Gazette</i> , or	23 24 25
(b)	on such later day as may be specified in the notice.	26
(2)	As soon as practicable after the relevant notice is published in the <i>Gazette</i> , Rail Infrastructure Corporation must ensure that:	27 28
(a)	the terms of the access undertaking or variation are published on its website on the Internet, and	29 30
(b)	copies of the access undertaking or variation are made available for inspection and purchase at each of its offices.	31 32 33

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<b>7 Existing access agreements unaffected</b>	1
The commencement of an access undertaking or variation under this Schedule does not affect any access agreements in relation to the NSW rail network that have been entered into between Rail Infrastructure Corporation and any other person before that commencement.	2 3 4 5 6
<b>8 Rail Safety Act 1993 unaffected</b>	7
Nothing in this Schedule affects the operation of the <i>Rail Safety Act 1993</i> .	8 9
<b>9 Definition</b>	10
In this Schedule, <i>national rail track corporation</i> means:	11
(a) subject to paragraph (b), Australian Rail Track Corporation Limited (ACN 081 455 754), or	12 13
(b) if some other corporation is prescribed by the regulations for the purposes of this definition (being a corporation established under an agreement between the Commonwealth, the Territories and the States with respect to the provision of interstate access to Australian rail networks), that other corporation.	14 15 16 17 18 19
<b>[19] Schedule 7 Savings, transitional and other provisions</b>	20
Insert at the end of clause 2 (1):	21
<i>Transport Administration Amendment (Rail Access) Act 2001</i>	22
<b>[20] Schedule 7, new Part</b>	23
Insert at the end of Schedule 7, with appropriate Part and clause numbers:	24
<b>Part Provisions consequent on enactment of Transport Administration Amendment (Rail Access) Act 2001</b>	25 26 27
<b>Definition</b>	28
In this Part, <i>the 2001 amending Act</i> means the <i>Transport Administration Amendment (Rail Access) Act 2001</i> .	29 30

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**NSW Rail Access Regime**

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

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

**Directions under former section 19B**

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