Transport Administration Amendment (Authority to Close Railway Lines) Bill 2016 (Proof)

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Business	Bill, First Reading, Second Reading, Motion

TRANSPORT ADMINISTRATION AMENDMENT (AUTHORITY TO CLOSE RAILWAY LINES) BILL 2016

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [11.36 a.m.]: I move:

That this bill be now read a second time.

The Transport Administration Amendment (Authority to Close Railway Lines) Bill 2016 is designed to support the development of major new infrastructure within the greater metropolitan region. The Government is currently undertaking an unprecedented program of infrastructure development. This investment includes the re-use and repurposing of disused transport assets to support modern transport infrastructure and solutions.

The bill amends section 99A of the Transport Administration Act 1988 to address the uncertainty around the re-use of railway lines within the greater metropolitan region where they are required for the purposes of a project declared to be State significant infrastructure. This includes State significant infrastructure. As such, the bill will facilitate the transport projects that the Government is undertaking that re-use and repurpose existing assets and infrastructure, such as extensions to the Sydney Light Rail network, and enable the delivery of better service and services to transport customers. To reiterate, this bill is concerned with enabling the development of infrastructure to support improved transport outcomes and is not about the closing of existing services.

Currently, section 99A of the Transport Administration Act 1988 places a limitation on a rail infrastructure owner carrying out activities that are classified as closing a railway line. According to section 99A, a railway line is closed if the land concerned is sold or otherwise disposed of, or the railway tracks and any other works concerned are removed. Such a closure of a railway line must be authorised by an Act of Parliament. The intent of section 99A appears clear: It is directed at ensuring that the significant rail transport links across the State are not lost at the whim of a rail infrastructure owner. This intent is preserved by the current amendment.

The terms of section 99A leave open, however, the question of precisely what is a "railway line" and, hence, what a rail infrastructure owner may do without authority of an Act of Parliament. This presents a challenge for the reuse of disused rail corridors and infrastructure for projects in the public interest. This bill is intended to address that uncertainty. The bill specifically authorises the formal closure of the goods line that once connected the main freight line at Lilyfield with the port at White Bay and Glebe Island. This line runs through the former Rozelle rail yard, which ceased operations more than 20 years ago. Despite the fact that the Rozelle rail yard has not been used for many years, serves no useful transport purpose and, indeed, is a neglected blot on the landscape, section 99A raises legal uncertainty around the reuse of that land for useful public purposes. The bill provides specific authorisation to close the goods line in the Rozelle rail yard.

The amendments proposed in the bill will remove any legal uncertainty about the actions of the rail infrastructure owner in allowing removal of disused goods line tracks and sidings to enable the construction of stabling and maintenance facilities to support the Sydney light rail network. The bill also includes amendment to section 99A to provide a mechanism which, while maintaining the current intent of section 99A and oversight of the proposed actions of a rail infrastructure owner, will allow such sensible reuse of rail corridors to proceed in the future. Within the limitations provided by the bill, the passage of the bill will allow this by enabling a ministerial order, made by the Minister administering the Act, to provide the legal authority for a rail infrastructure owner to facilitate such a development that may currently only be authorised by an Act of Parliament. The limitations in the bill provide that this mechanism is appropriately limited to State significant infrastructure projects and only with the greater metropolitan region.

The ministerial order is published in the *Government Gazette*, and takes effect on a future date determined by the Minister.

To enable the Minister to act quickly when required in the public interest, the bill does not provide a time frame for the publication of the order. It should be emphasised that orders will be issued only in connection with State significant infrastructure projects that are already subject to the extensive public consultation and assessment requirements of the Environmental Planning and Assessment Act 1979. The order will not take effect until the State significant infrastructure is approved under the Environmental Planning and Assessment Act. Through the State significant infrastructure process, the community and other stakeholders engaged in the planning of these projects are able to review environmental impact statements or reviews, and have the opportunity to make submissions on the proposals.

I said earlier that the purpose of this measure is to support the State's growth and development. I should add that it is also designed to provide a mechanism to resolve the current uncertainty about the application of section 99A in particular cases, consistent with the intent of the section. While the intent of section 99A appears clear, the terms of the section leave open important questions about what constitutes a "railway line" and the extent to which works involving tracks or other rail assets may be undertaken without risking offending the terms of the section and therefore requiring an Act of Parliament.

It was hoped that the uncertainty about the practical application of section 99A in such cases may have been clarified by the court in the litigation that followed the Government's decision to truncate the Newcastle branch line at Wickham. That has not happened. The litigation has highlighted that determining what actions a rail infrastructure owner may take without requiring authority of an Act of Parliament may involve a difficult matter of degree in the particular circumstances of each case. While the Government parties have been successful in obtaining a decision in their favour in the Court of Appeal in relation to the Newcastle truncation, legal proceedings are continuing and it would not be appropriate to comment further on the specifics of that matter. Suffice to say, the ongoing lack of certainty as to whether legal authority of Parliament is required in any particular case risks causing delay and additional cost, and casts a shadow over many of the State's most important transport and infrastructure projects.

I make it plain that the bill's principal reform—the ability of the Minister to authorise actions of a rail infrastructure owner—is carefully calibrated, and the circumstances in which the Minister can exercise this new discretion are strictly limited. First, the Minister can only issue a ministerial order to authorise a rail infrastructure owner to close a railway line if it is required for the purposes of, or in connection with, a State significant infrastructure project. The bill defines this as State significant infrastructure within the meaning of the Environmental Planning and Assessment Act 1979 and it includes critical State infrastructure. The State Environmental Planning Policy (State and Regional Development) 2011 lists the types of development and the specific projects that meet these criteria. Secondly, the operation of the proposed ministerial power will be limited to the greater metropolitan region—the urban and suburban areas of Greater Sydney, Greater Newcastle, the Central Coast, Wollongong and the Illawarra. Rural railway lines are not affected by the bill. The closure of a railway line outside of the greater metropolitan region will still require an Act of Parliament.

The amendments proposed in the bill will not lead to a reduction in transport services. On the contrary, they will facilitate a major expansion of transport and infrastructure services through projects such as the Sydney CBD and South East Light Rail, the Western Sydney Light Rail and WestConnex. The major transport projects that will benefit from this reform involve the closure of disused goods lines or the reuse of heavy rail infrastructure for infrastructure such as stabling and maintenance facilities to support light rail services. These projects include Sydney Light Rail, Western Sydney Light Rail and WestConnex Stage 3.

It should also be understood that the current law is not intended to protect rail services from suspension—more than 3,000 kilometres of non-operational lines in New South Wales currently demonstrate that. Nor does the current law oblige a rail infrastructure owner to maintain a rail line once services have been withdrawn. It is not surprising that most of the thousands of kilometres of these suspended lines are in a poor state of repair and could not be used for rail services now or in the future without the substantial investment required for them to be completely rebuilt.

The focus of this measure is, however, firmly on the State's urban areas. The clear purpose of the reform is to ensure that major transport improvements and infrastructure projects can proceed without requiring a special Act of Parliament, merely because the project involves the removal or re-purposing of a length of rail track. In the case of the Sydney CBD and South East Light Rail and WestConnex, the rail lines that need to be closed are derelict goods lines or sidings. This is the case at Rozelle where the rusting tracks that once served the old Rozelle rail yard will be removed to allow the construction of stabling and maintenance facilities for the Sydney light rail network. In the longer term, the removal of old goods sidings will facilitate the construction of WestConnex Stage 3.

In the case of Western Sydney Light Rail, there are plans to convert some heavy rail tracks to light rail operation. Although this does not involve a rail closure from a common-sense perspective, section 99A may give rise to legal uncertainty about actions required in undertaking works for these projects with consequent risks of delay and additional cost for no public benefit. The Court of Appeal's judgment in the Newcastle Rail Line case, although favourable to the Government, has not removed uncertainty about the application of section 99A in such uncontroversial circumstances. This is the uncertainly we want to remove because it places vital infrastructure at risk while serving little useful public purpose.

The reform proposed by this bill is directed at resolving this legal uncertainty by providing a mechanism for authorising the actions of rail infrastructure owners while still maintaining appropriate oversight and is entirely consistent with the intent of the section. If the current section 99A once had a useful function in urban areas, it has outlived it. The policy that only Parliament can authorise the closure of a railway line was expressly included in the Transport Administration Act 1988.

The earliest reference we could find to closure of railway lines was in the Government Railways Act of 1858, which provided that the Commissioner for Railways could not make a regulation authorising "the closing of the Railway". The restriction on the closure of railway lines made sense in the nineteenth and early twentieth centuries when the focus was on developing the State's rail infrastructure and when rail lines provided the only reliable transport links between communities in New South Wales. This was the era before sealed roads and when alternative transport options—light rail, buses, cars, trucks and aeroplanes—were not available.

In the twenty-first century section 99A has become an unnecessary brake on the modernisation and expansion of transport services. Many of Sydney's key urban renewal areas, such as Redfern-Waterloo, the Bays Precinct and the Camellia industrial area contain disused rail infrastructure. Because there may be uncertainty in any particular case as to whether these disused former goods lines and rusting sidings might be regarded by a court as a "railway line" the reuse of these areas could require a special Act of Parliament to formally "close" rail tracks that have not carried trains for decades. This is clearly absurd.

Alternatively, if the Government were to proceed with State significant infrastructure within the greater metropolitan area without special legislation there is a risk that some interest group opposed to the project could exploit the uncertainty as to the application of section 99A to challenge and delay the project as part of a broader campaign. It is clear that this is not what section 99A is intended to address. It is also clear that section 99A is not a section concerned with preserving rail services and nor will this amendment alter this. What this bill ensures is that an appropriate mechanism is available to provide both oversight of the actions of a rail infrastructure owner and to resolve legal uncertainty over actions that may amount to the closure of a rail line where that closure is for the purpose of a State significant infrastructure project in the greater metropolitan region.

I now turn to the details of the bill. Schedule 1 sets out the amendments to the Transport Administration Act. Item [2] provides that the Minister can, by order published in the *Government Gazette*, authorise a rail infrastructure owner to close a railway line on land within the greater metropolitan region. Item [2] also provides that the Minister may only make such an order if satisfied that the closure is required for the purposes of, or in connection with, State significant infrastructure, within the meaning of the Environmental Planning and Assessment Act 1979. The bill expressly provides that an order does not take effect until the carrying out of the State significant infrastructure is approved under part 5.1 of that Act.

Item [3] defines "Greater Metropolitan Region" as the region bounded by the coastal waters of the State and by, but not including, the local government areas of City of Shoalhaven, Wingecarribee, Upper Lachlan Shire, Oberon, City of Lithgow, Singleton, Dungog and Great Lakes. Item [4] specifically provides that a rail infrastructure owner is authorised to close the whole or any part of the railway line that runs from Balmain Road, Lilyfield, to Victoria Road, Rozelle.

In conclusion, I return to the key benefits of the bill. In proposing this reform, the Government's intention is to facilitate urban transport and urban infrastructure projects that are currently subject to uncertainty due to the lack of clarity about the application of the current law. The Minister's power to make an order will be restricted to the greater metropolitan region. Rural and regional branch lines will not be affected and their closure will continue to require an Act of Parliament. An order authorising a rail infrastructure owner to close a rail line can only be given if the closure is required for the purposes of, or in connection with, State significant infrastructure projects, as defined by planning law. The current section 99A has become an impediment to improving our transport system.

At a time when the Government has embarked upon an unprecedented program of major transport improvements, this provision has created risk and uncertainly, and is obstructing the State's development without, in the circumstances addressed by the bill, any countervailing public benefit. The bill before the House will replace the current cumbersome and archaic legislative regime with flexible and balanced arrangements that are appropriate to the twenty-first century and to our State's place in the global economy. I commend the bill to the House.

Debate adjourned on motion by the Hon. Greg Donnelly and set down as an order of the day for a future day.