



New South Wales

Land and Property Information NSW (Authorised Transaction) Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to authorise and facilitate the grant of a concession (the *authorised concession*) to a private sector entity to provide the services currently provided by the Registrar-General in the exercise of the Registrar-General's titling and registry functions.

The Bill provides for the following for the purposes of the authorised concession:

- (a) the transfer to the private sector of assets, rights and liabilities of the State that are deployed in the exercise of the titling and registry functions of the Registrar-General (this is the *authorised asset transfer*),
- (b) the grant of the authorised concession to the private sector entity (the *authorised operator*) to which assets, rights and liabilities are transferred pursuant to the authorised asset transfer with a maximum term of 35 years (subject to provision for a further authorised concession in the event of early termination of the authorised concession),
- (c) the re-vesting of assets, rights and liabilities on termination of the authorised concession (this is *re-vesting on termination*),
- (d) arrangements for the transfer of public sector staff to employment by the new operator under the authorised concession,
- (e) step-in powers of the portfolio Minister to take control of the authorised operator's business if necessary to protect the integrity of the Register under the *Real Property Act 1900* and registers under the *Conveyancing Act 1919*,
- (f) amendments to the *Real Property Act 1900* and other Acts to facilitate and support the authorised concession,

(g) the payment of the proceeds of the transaction into the Restart NSW Fund.

Outline of provisions

Part 1 Preliminary

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 the date of assent to the proposed Act, except proposed Schedule 4 (amendments to the *Real Property Act 1900* and other Acts), which commences on a day or days to be appointed by proclamation.

Clause 3 contains definitions of key terms used in the proposed Act. (Schedule 1 contains other definitions.)

Part 2 The authorised transaction

Clause 4 authorises the authorised transaction, comprising the authorised asset transfer, the authorised concession and re-vesting on termination. The authorised concession is limited to a term of 35 years (but with provision for a further authorised concession in the event of early termination).

Clause 5 provides that the proceeds of the authorised transaction after certain authorised deductions are payable into the Restart NSW Fund.

Part 3 General functions for the purposes of the authorised transaction

Clause 6 provides that the authorised transaction is to be effected as directed by the Treasurer in any manner that the Treasurer considers appropriate.

Clause 7 provides that the Treasurer has overall responsibility for the authorised transaction and that the Treasurer and the portfolio Minister have all such functions as are necessary or convenient for the purposes of the authorised transaction. Some functions of the portfolio Minister are subject to a requirement for the approval of the Treasurer.

Clause 8 provides that the Registrar-General has all such functions as are necessary or convenient for the purposes of the authorised transaction, with power for the Treasurer and the portfolio Minister to give directions to or act on behalf of the Registrar-General in connection with the exercise of functions for the purposes of the authorised transaction.

Clause 9 provides for the establishment of companies as transaction companies for the purposes of the authorised transaction.

Clause 10 provides that a transaction company has all such functions as are necessary or convenient for the purposes of the authorised transaction. The clause also authorises the Treasurer to act for or on behalf of and in the name of a transaction company.

Clause 11 provides that a transaction company is subject to the direction and control of the Treasurer in the exercise of functions for the purposes of the authorised transaction while a public sector agency.

Part 4 Arrangements for transfer of assets and the authorised concession

Clause 12 authorises the Treasurer and the portfolio Minister to make vesting orders under proposed Schedule 2 for the purposes of the authorised asset transfer and re-vesting on termination.

Clause 13 provides for the arrangements that are to facilitate and support the authorised concession.

Clause 14 provides for the delegation of functions of the Registrar-General to facilitate the authorised concession.

Clause 15 provides that the Registrar-General is to retain liability for the purposes of proceedings for compensation under the *Real Property Act 1900*.

Clause 16 allows the arrangements for the authorised concession to include provision for penalising the authorised operator for a failure to comply with obligations under those arrangements.

Clause 17 provides for the portfolio Minister to give directions for the grant of any relevant authorisation under various laws to a person who becomes or is proposed to become the authorised operator.

Clause 18 authorises the establishment of a new authorised concession (a *re-tender concession*) if the existing authorised concession is terminated before its term expires. A re-tender concession can be for a term of up to 35 years.

Part 5 Arrangements for transfer of staff

Clause 19 defines a *relevant employee* as a public sector employee engaged in the exercise of titling and registry functions and a person who was so employed immediately before their employment was transferred under the proposed Part to the employment of another public sector agency.

Clause 20 provides for the transfer of a relevant employee to the employment of another public sector agency (with or without the consent of the employee).

Clause 21 provides for the transfer of a relevant employee to the employment of a private sector entity (with or without the consent of the employee) with an employment guarantee period for permanent and temporary employees.

Clause 22 provides for the continuity of the employment entitlements of employees transferred under the proposed Part.

Clause 23 provides that a transfer under the proposed Part has effect despite any other law, contract or instrument under a law, does not constitute a retrenchment, redundancy or termination of employment and does not give rise to an entitlement to compensation.

Clause 24 provides that a provision of the proposed Part has no effect to the extent of any inconsistency with Commonwealth workplace relations laws.

Part 6 Emergency step-in powers

Clause 25 contains definitions.

Clause 26 authorises the portfolio Minister to issue an Administration Order for the land titles business of the authorised operator to avert a threat or likely threat to the integrity of the Register under the *Real Property Act 1900*.

Clause 27 provides that an Administration Order authorises the portfolio Minister to take control of the land titles business of the authorised operator for the purpose of ensuring the integrity of the Register and provides for the appointment of an Administrator to operate the business.

Clause 28 deals with the powers of the Administrator under an Administration Order.

Clause 29 requires the authorised operator to co-operate with the portfolio Minister and the Administrator including by providing all reasonable assistance, complying with reasonable directions, facilitating access to land and providing information.

Clause 30 deals with the payment of the costs of administration and entitlement to the revenues of the business while under administration.

Clause 31 protects the Administrator and others from personal liability arising from acts and omissions in good faith in the course of an administration.

Clause 32 deals with the procedure for the making and revocation of an Administration Order.

Part 7 Operation of other laws

Clause 33 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised transaction unless the Treasurer otherwise directs and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised transaction.

Clause 34 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and certain other State legislation.

Clause 35 declares certain provisions of the proposed Act to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act.

Clause 36 provides that requiring the use of an Electronic Lodgment Network is conduct that is authorised for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.

Clause 37 provides that the *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction, agreement or other arrangement entered into for the purposes of the authorised transaction.

Clause 38 provides for the application of the *State Records Act 1998* to the authorised operator as if the authorised operator were a public office under that Act.

Clause 39 deems the authorised operator to be a public sector agency for the purposes of the *Privacy and Personal Information Protection Act 1998* and authorises the Registrar-General and the authorised operator to disclose information to the other for certain purposes.

Clause 40 authorises the release of information by the Auditor-General for the purposes of an authorised transaction.

Clause 41 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of an authorised transaction. (That section requires certain documents to be attached to a contract for the sale of land and deems the contract to include certain terms, conditions and warranties.)

Clause 42 provides that the revenues of the authorised operator are received and held on its own account and are not public money.

Clause 43 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 44 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Part 8 Miscellaneous

Clause 45 provides for the delegation of the functions of the Treasurer and the portfolio Minister under the proposed Act.

Clause 46 provides for the proposed Act to bind the State and all other Australian jurisdictions.

Clause 47 provides for the operation of the proposed Act outside the State.

Clause 48 provides for the construction of the proposed Act so as not to exceed the legislative power of the State.

Clause 49 provides for when orders take effect and for evidence of and presumptions about orders.

Clause 50 provides for how documents are to be given or served for the purposes of the proposed Act.

Clause 51 provides for how proceedings for offences are to be taken and dealt with.

Clause 52 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Vesting of assets, rights and liabilities

Schedule 2 provides for the operation and effect of vesting orders made by the Treasurer or the portfolio Minister for the purposes of the authorised transaction. Vesting orders operate to vest assets, rights and liabilities in the transferee specified in the order. A vesting order can also vary the terms of an instrument or contract.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains a savings and transitional regulation-making power.

Schedule 4 Amendment of Acts

Schedule 4 makes amendments to the Acts specified in the Schedule that are consequential on, or necessary or convenient for facilitating, the authorised transaction.