



New South Wales

Transport Administration Amendment (Parramatta Rail Link) Bill 2000

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*:

- (a) to facilitate the construction of a railway from Parramatta to Chatswood (the *Parramatta Rail Link*) by:
 - (i) providing for the acquisition of certain land that is currently reserved as regional or national park, and
 - (ii) applying the *Public Works Act 1912* to the project as an authorised work under that Act, and
 - (iii) providing that building and subdivision work that is part of the project is not subject to certain provisions of the *Environmental Planning and Assessment Act 1979* that provide for the apportionment of liability and time limitations on commencement of actions for defective work, and

- (iv) providing that approvals under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link may be granted prior to determination by the Heritage Council under the *Heritage Act 1977* of applications concerning heritage items, and
- (b) to extend to all underground rail facilities the principle under the *Land Acquisition (Just Terms Compensation) Act 1991* that no compensation is payable under that Act for the acquisition of land to be used for a tunnel, and to make it clear that no compensation is payable for the use of those facilities, and
- (c) to protect underground rail facilities (including but not limited to the proposed Parramatta Rail Link tunnels and facilities) by enacting provisions for an entitlement to compensation for damage, a right of support, an implied protective covenant and removal of interference.

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

Schedule 1 [3] inserts a new Division 6 into Part 9 of the Principal Act. The new Division contains the following special provisions for the Parramatta Rail Link:

- (a) Proposed section 122 contains definitions.
- (b) Proposed section 123 makes it clear that the new Division does not affect the operation of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link.
- (c) Proposed section 124 authorises the acquisition of certain regional park and national park land for the purposes of the Parramatta Rail Link and provides for the revocation of the land's reservation as a regional park or national park when it is acquired. The land affected is shown on a plan tabled in the Legislative Assembly when this Bill is introduced.

Explanatory note

- (d) Proposed section 125 provides that the Parramatta Rail Link is an authorised work for the purposes of the *Public Works Act 1912* and the SRA, RAC and the Director-General of the Department of Transport (the *rail authorities*) are the Constructing Authorities for the project. The proposed section makes it clear that the *Public Works Act 1912* applies to the project before the land to be used for the construction of the project is acquired. The proposed section also makes it clear that the power of the rail authorities to enter land and exercise functions as a Constructing Authority extends to the regional park and national park land to which proposed section 124 applies, subject to compliance with provisions of the *National Parks and Wildlife Act 1974* concerning protection of relics, Aboriginal places and fauna.
- (e) Proposed section 126 exempts building work and subdivision work that is part of the Parramatta Rail Link from sections 109ZJ and 109ZK of the *Environmental Planning and Assessment Act 1979*. Section 109ZJ requires the apportionment of responsibility among the defendants in an action for defective building work or subdivision work and section 109ZK imposes an absolute 10 year time limit on when such an action can be commenced. The proposed section allows the parties to the Parramatta Rail Link project to deal with the issue of liability for defective work by agreement (including guarantees) unaffected by sections 109ZJ and 109ZK.
- (f) Proposed section 127 exempts approval under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the Parramatta Rail Link from provisions of the *Heritage Act 1977* that would operate to delay the giving of approval pending determination by the Heritage Council of applications concerning heritage items. The proposed section allows the approvals process under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* to proceed independently of the required heritage item approvals but does not remove the need for those approvals.

Schedule 1 [2] and [4] insert a new Schedule 6B into the Principal Act containing the following provisions with respect to underground rail facilities (including, but not limited to, the proposed Parramatta Rail Link tunnels and facilities):

- (a) Proposed clause 1 contains definitions.
- (b) Proposed clause 2 provides that no compensation is payable under the *Land Acquisition (Just Terms Compensation) Act 1991* for the compulsory acquisition of land for the purpose of underground rail facilities in certain circumstances. This extends an existing provision of that Act that is currently limited to tunnels. The proposed clause also makes it clear that when no compensation is payable for the construction of underground rail facilities, no

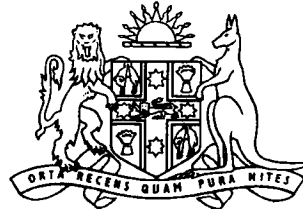
Explanatory note

compensation is payable for the use of those facilities either. The proposed clause extends to existing underground rail facilities, not just new facilities.

- (c) Proposed clause 3 makes a person who causes destruction, damage or interference to an underground rail facility liable to pay compensation to the rail authority that owns it.
- (d) Proposed clause 4 creates a right of support for underground rail facilities owned by a rail authority. A person has a duty of care in negligence not to do anything or omit to do anything that removes the support provided to underground rail facilities by supporting land.
- (e) Proposed clause 5 subjects land above, under or adjacent to an underground rail facility owned by a rail authority to an implied covenant, in favour of the rail authority, for the protection of the underground rail facility.
- (f) Proposed clause 6 authorises a rail authority to require removal of any structure or object placed in contact with or near an underground rail facility that interferes with the operation of the underground rail facility and to compensate the rail authority for loss or damage suffered by the rail authority as a result.
- (g) Proposed clause 7 makes it clear that the proposed Schedule does not limit or otherwise affect any other provision of the Act in its application to underground rail facilities.

Schedule 1 [1] makes a consequential amendment.

First print



New South Wales

Transport Administration Amendment (Parramatta Rail Link) Bill 2000

Contents

	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 (Parramatta Rail Link) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Transport Administration Act 1988* in connection with the Parramatta Rail Link and to make further provision with respect to underground rail facilities; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Transport Administration Amendment (Parramatta Rail Link) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Transport Administration Act 1988 No 109	8
The <i>Transport Administration Act 1988</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

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(Section 3)

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[1] Section 3 Definitions

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Insert “(or *SRA*)” before “means” in the definition of *State Rail Authority* in section 3 (1).

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[2] Section 97

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Insert after section 96:

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97 Special provisions for underground rail facilities

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Schedule 6B has effect.

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[3] Part 9, Division 6

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Insert after Division 5 of Part 9:

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Division 6 Special provisions for Parramatta Rail Link

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122 Definitions

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In this Division:

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land includes an interest in land.

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Parramatta Rail Link means a railway from Parramatta to Chatswood commencing generally in the vicinity of the Main Western Railway line west of Parramatta Station and proceeding via Parramatta, Camellia, Carlingford, Epping, the vicinity of Macquarie University, the vicinity of Delhi Road, North Ryde, and the vicinity of the University of Technology Ku-ring-gai Campus to Chatswood, including works, structures and facilities associated with or incidental to the railway.

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rail authority means the SRA, RAC or the Director-General.

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123 EPA Act not affected

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Nothing in this Division limits or otherwise affects the operation of the *Environmental Planning and Assessment Act 1979* (except as provided by section 126).

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124	Acquisition of national park and regional park land	1
	(1) In this section:	2
	<i>Project park land</i> means land shown as Project park land on sheets 1–6 of the plan marked “Parramatta Rail Link Project Park Land” and presented to the speaker of the Legislative Assembly (by or on behalf of the Member of the Assembly who introduced the Bill for the <i>Transport Administration Amendment (Parramatta Rail Link) Act 2000</i>) when the Bill was introduced into the Legislative Assembly, a copy of which is also lodged in the office of each rail authority.	3 4 5 6 7 8 9 10
	(2) Any power that a rail authority has under this Act to acquire land by agreement or by compulsory process in accordance with the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> extends to authorise the acquisition of the whole or any part of the Project park land for the purposes of or in connection with the Parramatta Rail Link.	11 12 13 14 15 16
	(3) Nothing in the <i>National Parks and Wildlife Act 1974</i> (in particular sections 37, 40, 47Z and 47ZB) or the regulations under that Act prevents a rail authority from acquiring by agreement or by compulsory process in accordance with the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> the whole or any part of the Project park land for the purposes of or in connection with the Parramatta Rail Link.	17 18 19 20 21 22 23
	(4) Section 29 (2) of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> does not apply to any such acquisition of Project park land.	24 25 26
	(5) When any land that is Project park land vests in a rail authority pursuant to its acquisition as provided by this section, the reservation of the land as a national park or regional park under the <i>National Parks and Wildlife Act 1974</i> is revoked. This subsection does not limit the operation of section 20 (1) of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> in respect of such an acquisition of land.	27 28 29 30 31 32 33
125	Application of Public Works Act to the Parramatta Rail Link	34
	(1) The Parramatta Rail Link is an authorised work for the purposes of the <i>Public Works Act 1912</i> , and the rail authorities are for the purposes of that Act Constructing Authorities in relation to the Parramatta Rail Link.	35 36 37 38

<p>(2) Part 3 and sections 86, 87 and 91 (b) of the <i>Public Works Act 1912</i> do not apply in respect of works constructed for the purposes of the Parramatta Rail Link.</p> <p>(3) Any power of a rail authority to enter land and exercise functions as a Constructing Authority under the <i>Public Works Act 1912</i> in respect of the Parramatta Rail Link, extends to Project park land (as defined in section 124) but must be exercised subject to Parts 6 (Relics and Aboriginal places) and 7 (Fauna) of the <i>National Parks and Wildlife Act 1974</i>.</p> <p>126 Sections 109ZJ & 109ZK EPA Act not to apply</p> <p>(1) Sections 109ZJ and 109ZK of the <i>Environmental Planning and Assessment Act 1979</i> do not apply to a building action or subdivision action that concerns building work or subdivision work carried out for or in connection with the Parramatta Rail Link.</p> <p>(2) Expressions used in this section have the meanings given by section 109ZI of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>127 Order of approval under Heritage Act</p> <p>Sections 67 and 68 of the <i>Heritage Act 1977</i> do not apply in respect of an approval under Division 4 of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of the Parramatta Rail Link.</p> <p>[4] Schedule 6B</p> <p>Insert after Schedule 6A:</p> <p>Schedule 6B Special provisions for underground rail facilities</p> <p style="text-align: right;">(Section 97)</p> <p>1 Interpretation</p> <p>(1) In this Schedule:</p> <p style="padding-left: 40px;"><i>rail authority</i> means the SRA, RAC or the Director-General.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p>
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<i>rail infrastructure facilities</i> has the same meaning as in Part 2A.	1 2
<i>underground rail facilities</i> means:	3
(a) rail infrastructure facilities that are located under the surface of land, and	4 5
(b) structures and facilities for or associated with the provision of railway services (such as railway stations, platforms, access ways and vents), being structures and facilities that are located under the surface of land.	6 7 8 9
(2) For the purposes of this Schedule, an underground rail facility is taken to be owned by a rail authority if the facility is on land owned or occupied by the rail authority (even if the facility is in fact owned by another person).	10 11 12 13
(3) This Schedule extends to underground rail facilities in existence on the commencement of this Schedule.	14 15
2 No compensation for acquisition of land for underground rail facilities	16 17
(1) If land under the surface is compulsorily acquired under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> for the purpose of underground rail facilities, compensation is not payable under that Act unless:	18 19 20 21
(a) the surface of the overlying soil is disturbed, or	22
(b) the support of that surface is destroyed or injuriously affected by the construction of those facilities, or	23 24
(c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.	25 26 27
(2) Section 62 (2) of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> does not apply to the compulsory acquisition of land under that Act for the purpose of underground rail facilities.	28 29 30 31
(3) Expressions used in this clause have the same meaning as in the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .	32 33

(4) This clause extends to the acquisition of land for the purpose of underground rail facilities before the commencement of this clause, but not so as to affect any payment or award of compensation made before that commencement.	1 2 3 4
3 Compensation for damage to underground rail facilities	5
(1) A person who, without the consent of a rail authority, carries out any activity that causes destruction of, damage to or interference with any underground rail facility owned by the rail authority is liable to compensate the rail authority for all loss or damage suffered by the rail authority as a result.	6 7 8 9 10
(2) It is a defence in an action for compensation under this clause if the defendant establishes that the defendant did not know and could not reasonably be expected to have known that the destruction, damage or interference concerned would result from the carrying out of the activity concerned.	11 12 13 14 15
(3) A rail authority is not entitled to compensation under both this clause and another provision of this Act for the same destruction, damage or interference.	16 17 18
(4) A reference in this clause to a person who carries out an activity extends to any person:	19 20
(a) who caused the carrying out of the activity, or	21
(b) under whose order or direction the activity was carried out, or	22 23
(c) who aided, assisted, counselled or procured the carrying out of the activity.	24 25
(5) A rail authority may proceed against a person for recovery of loss or compensation for damage under this clause whether or not the rail authority has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.	26 27 28 29 30 31
4 Right of support for underground rail facilities	32
(1) There is declared to be a right of support for an underground rail facility owned by a rail authority and a duty of care is declared to exist in relation to that right of support for the purposes of the common law of negligence.	33 34 35 36

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- (2) Accordingly, a person has a duty of care not to do anything on or in relation to land (the **supporting land**) that removes the support provided by the supporting land to any underground rail facility owned by a rail authority. 1
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- (3) For the purposes of this clause, **supporting land** includes the natural surface of the land, the subsoil of the land, any water beneath the land, and any part of the land that has been reclaimed. 5
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- (4) The duty of care under this clause does not extend to any support that is provided by a building or structure on the supporting land except to the extent that the supporting building or structure concerned has replaced the support that the supporting land in its natural or reclaimed state provided to the underground rail facilities. 9
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- (5) A reference in this clause to the removal of the support provided by supporting land includes a reference to any reduction of that support. 15
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- (6) This clause does not apply in relation to anything done or omitted to be done before the commencement of this clause. 18
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- 5 Implied covenant for protection of underground rail facilities** 20
- (1) Land above, under or adjacent to an underground rail facility owned by a rail authority is taken to be the subject of a covenant in favour of the rail authority pursuant to which the owner from time to time of that land must ensure that: 21
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- (a) the underground rail facility is not wilfully or negligently destroyed, damaged or interfered with, and 25
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- (b) no structure or object is placed in contact with or near the underground rail facility in a manner that interferes with the operation of the facility, and 27
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- (c) land is not excavated to expose the underground rail facility without the consent of the rail authority. 30
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- (2) A lease, including a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1987*, is taken to include a term requiring the lessee of land referred to in subclause (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subclause on the owner who has leased the land to the lessee. 32
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(3) A covenant under this clause is enforceable as a duly created covenant.	1 2
(4) It is a defence to proceedings by a rail authority in respect of a covenant under this clause that the owner or, in a case to which subclause (2) applies, the lessee could not reasonably have prevented action taken by any person that would (had it been capable of prevention by the owner or lessee) have resulted in a breach of covenant under this clause by the owner or lessee.	3 4 5 6 7 8
6 Removal of things interfering with underground rail facilities	9
(1) A person who places a structure or object in contact with or near an underground rail facility owned by a rail authority in a manner that interferes with the operation of the facility, must, on receiving a written notice from the rail authority requiring the removal of the structure or object:	10 11 12 13 14
(a) remove the structure or object within the period specified in the notice, and	15 16
(b) compensate the rail authority for all loss or damage suffered by the rail authority as a result of the placement of the structure or object in contact with or near the facility.	17 18 19 20
(2) If a person fails to comply with a notice under this clause within the period specified in the notice or within any extension of that period allowed by the rail authority in writing, the rail authority may remove the structure or object and recover from the person the cost of the removal together with compensation for all loss or damage referred to in subclause (1).	21 22 23 24 25 26 27
7 Other provisions not affected	28
Nothing in this Schedule limits or otherwise affects the operation of any other provision of this Act in relation to underground rail facilities.	29 30 31