

TASMANIA

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**EMU BAY RAILWAY (OPERATION AND  
ACQUISITION) BILL 2009**

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# **EMU BAY RAILWAY (OPERATION AND ACQUISITION) BILL 2009**

*(Brought in by the Minister for Infrastructure, the Honourable Graeme Lindsay Sturges)*

## **A BILL FOR**

**An Act to authorise the operation of a rail business on the Emu Bay Railway by PN Tas (Operations) Pty Limited, to ratify the Business Sale Agreement and to ratify or approve supplementary agreements, to vest in the Crown or its nominee certain interests in the Emu Bay Railway not acquired under the Business Sale Agreement, to amend the *Boundary Fences Act 1908* and the *Rail Infrastructure Act 2007*, to repeal certain Acts and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Emu Bay Railway (Operation and Acquisition) Act 2009*.

### **2. Commencement**

- (1) Except as provided in this section, the provisions of this Act commence on the day on which this Act receives the Royal Assent.

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**THIS BILL IS COGNATE WITH THE RAIL COMPANY BILL 2009 AND THE CONSOLIDATED FUND APPROPRIATION (SUPPLEMENTARY APPROPRIATION FOR 2009-2010) BILL 2009**

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- (2) Section 12 and Schedule 1 and section 13 and Schedule 2 commence at the time on the day on which completion of the Business Sale Agreement occurs.

### 3. Interpretation

- (1) In this Act, unless the contrary intention appears –

**“affected person”** means a person who, immediately before the completion of the Business Sale Agreement, owns or holds or is entitled to own or hold any estate in the subject railway, or part of the subject railway, pursuant to an Emu Bay security and, for the avoidance of doubt, includes (without limitation) –

- (a) a trustee for the purposes of a debenture scheme created by an Emu Bay security; and
- (b) a person claiming through such a trustee; and
- (c) the holder, or a person entitled to be the holder, of a debenture issued under a debenture scheme created by an Emu Bay security;

**“ASIC”** means the Australian Securities and Investments Commission established by the *Australian Securities and Investments Commission Act 1989* of the

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Commonwealth and continued by section 261 of the ASIC Act;

**“asset”** includes any, and any part of any, property, business, operation and right;

**“Business Sale Agreement”** means the agreement (as amended from time to time), for the sale and purchase of rail infrastructure and related assets and rail businesses, entered into on 4 September 2009 –

(a) by the PN group, as the seller;  
and

(b) by the Crown, as the buyer;

**“completion of the Business Sale Agreement”** means Completion within the meaning of the Business Sale Agreement;

**“Emu Bay Railway”** means –

(a) the railway in Tasmania known as the Emu Bay Railway, and also known as the Melba Line, extending from the port at Emu Bay in the City of Burnie to Melba Flats, including the Handling Facilities within the meaning of the Business Sale Agreement; and

(b) the railway known as the Hellyer Spur which runs from the Hellyer

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Mine site to the eastern boundary of the railway referred to in paragraph (a) at Moory Junction;

**“Emu Bay Railway Company”** means The Emu Bay Railway Company Limited (ACN 009 475 790);

**“Emu Bay security”** means –

- (a) ASIC Charge No. 245871; and
- (b) ASIC Charge No. 340579; and
- (c) the debenture scheme created by Indenture No. 11/955 registered in the Registry of Deeds (Hobart) and each mortgage, charge, encumbrance or other security granted under that scheme; and
- (d) the debenture scheme created by Indenture No. 16/9070 registered in the Registry of Deeds (Hobart) and each mortgage, charge, encumbrance or other security granted under that scheme; and
- (e) any other mortgage, charge, encumbrance or other security granted by the Emu Bay Railway Company, or any predecessor in title of that Company, that affects the subject railway, or a part of the subject railway, immediately before the completion of the Business Sale Agreement;

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**“estate”** includes any estate, interest, easement, right, title, claim, demand, charge, lien and encumbrance;

**“nominee”** means a nominee appointed by the Crown under clause 31.1 of the Business Sale Agreement to complete the purchase under that Agreement of some or all of the Business (including some or all of the Assets), within the meaning of that Agreement;

**“PN group”** means Pacific National Pty Ltd (ACN 098 060 550), Pacific National (Tasmania) Pty Limited (ACN 079 371 305), PN Tas (Operations) Pty Limited (ACN 078 295 468), formerly known as Tasrail Pty Limited, and PN Tas (Services) Pty Limited (ACN 078 906 519), together;

**“rail business”** means the business of rail haulage on a railway in Tasmania and associated services, including (without limitation) capital works, maintenance, storage, loading, train control and safety functions, carried on in Tasmania;

**“rail infrastructure and related assets”** means –

- (a) rail infrastructure within the meaning of the *Rail Infrastructure Act 2007*; or
- (b) rolling stock within the meaning of the *Rail Safety Act 1997*; or

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- (c) any other asset used, or that is intended for use or has been used, in connection with the operation of a rail business in Tasmania; or
- (d) any other asset purchased by the Crown or a nominee under the Business Sale Agreement;

**“railway”** includes the track of the railway, the rail corridor of the railway and all of the attendant rail infrastructure and related assets but does not include the railways, or railways of a kind, specified in Part 2 of Schedule 1 to the *Rail Infrastructure Act 2007*;

**“remaining interest”** means any estate in the subject railway, or part of the subject railway, that is not purchased by the Crown or a nominee under the Business Sale Agreement but, immediately before completion of the Business Sale Agreement –

- (a) is owned or held by the Emu Bay Railway Company; or
- (b) is owned or held by an affected person, or which an affected person is entitled to own or hold, pursuant to an Emu Bay security;

**“right”** includes any right, power, privilege and immunity, whether actual, contingent or prospective;

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**“subject railway”** means that part of the Emu Bay Railway in relation to which the PN group is selling its estate under the Business Sale Agreement.

- (2) A reference in this Act to an ASIC Charge with a number is a reference to a charge entered, with that number, in the register kept by ASIC under section 265 of the Corporations Act.

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**PART 2 – AUTHORITY OF PN TAS (OPERATIONS)  
PTY LIMITED TO OPERATE RAIL BUSINESS ON  
EMU BAY RAILWAY**

**4. Authority of PN Tas (Operations) Pty Limited to  
operate rail business on Emu Bay Railway**

(1) In this section –

**“Agreement day”** means 4 September 2009,  
being the day on which the Business Sale  
Agreement was made;

**“Agreement period”** means the period  
commencing on the Agreement day and  
ending on the completion of the Business  
Sale Agreement;

**“Company”** means –

- (a) PN Tas (Operations) Pty Limited  
(ACN 078 295 468) which was  
formerly known as Tasrail Pty  
Limited; or
- (b) Pacific National Pty Ltd (ACN  
098 060 550); or
- (c) Pacific National (Tasmania) Pty  
Limited (ACN 079 371 305); or
- (d) PN Tas (Services) Pty Limited  
(ACN 078 906 519);

**“contract”** means –

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- (a) an agreement, arrangement, undertaking, lease, licence, warranty or other contract; or
  - (b) part of an agreement, arrangement, undertaking, lease, licence, warranty or other contract;

**“rail corridor”** means the rail corridor of the Emu Bay Railway or part of the Emu Bay Railway;

**“railway access contract”** means a contract between the Company and another person or the Crown in respect of the use of, or access to, the rail corridor.

(2) The Company –

- (a) is authorised on and after 1 April 1998 until completion of the Business Sale Agreement to operate a rail business on the Emu Bay Railway, whether or not that Company owns all, or any, of the Emu Bay Railway; and
- (b) is taken always to have been so authorised.

(3) Subsection (2) –

- (a) does not authorise the Company to operate a rail business on the Emu Bay Railway on and after 1 April 1998



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contract entered into before that  
day.

- (4) If a railway access contract that was in effect on the Agreement day would, but for this subsection, end during the Agreement period –
- (a) that railway access contract is taken to continue in effect until the completion of the Business Sale Agreement; and
  - (b) the owner or occupier of the rail corridor is entitled to require the Company to pay or provide the fee or other consideration payable under the railway access contract in respect of the Company's use of, or access to, the rail corridor during the Agreement period.
- (5) Nothing in subsection (3) or (4) authorises the owner or occupier of the rail corridor to prevent the use of, or access to, the rail corridor by the Company.

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**PART 3 – RATIFICATION OF BUSINESS SALE  
AGREEMENT**

**5. Ratification of Business Sale Agreement**

(1) In this section –

**“supplementary agreement”** means any contract that –

- (a) amends or otherwise relates to the Business Sale Agreement; and
  - (b) is entered into by the parties to the Business Sale Agreement.
- (2) The Business Sale Agreement, and all supplementary agreements entered into before the commencement of this section, are ratified.
- (3) The Minister, on behalf of the Crown, may enter into supplementary agreements.

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**PART 4 – VESTING OF REMAINING INTERESTS IN  
CROWN OR NOMINEE**

**6. Vesting of remaining interests in Crown or nominee**

(1) On completion of the Business Sale Agreement –

(a) if the Crown purchases the whole, or a part, of the subject railway, all remaining interests relating to that whole or part vest in the Crown; and

(b) if a nominee purchases the whole, or a part, of the subject railway, all remaining interests relating to that whole or part vest in the nominee –

without need for any further conveyance, transfer, assignment or assurance.

(2) On completion of the Business Sale Agreement, the subject railway is freed and discharged from –

(a) all Emu Bay securities; and

(b) all estates connected with or arising out of any Emu Bay security.

(3) The vesting in the Crown or nominee, by reason of subsection (1), of remaining interests does not extinguish any interest in the subject railway, or a part of the subject railway, that is not a remaining interest.

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**7. Entitlement to compensation for vesting of remaining interest**

- (1) An affected person is entitled to compensation for the vesting in the Crown or a nominee, by reason of section 6, of his or her remaining interest.
- (2) An affected person's entitlement to compensation under subsection (1) is extinguished at the end of the period of 6 months commencing on the day after completion of the Business Sale Agreement occurs if the affected person does not lodge a claim for compensation, in writing, with the Minister within that period.
- (3) Compensation is the amount agreed, in writing, between the affected person and the Minister.
- (4) Before agreeing an amount of compensation, the Minister must obtain the approval of the Valuer-General to that amount.
- (5) In determining whether to approve an amount of compensation, the Valuer-General is to apply the same principles, with any necessary modification, as he or she would apply in approving an amount of compensation for the purposes of section 40(8) of the *Land Acquisition Act 1993*.
- (6) If the affected person and the Minister cannot agree on the amount of compensation, the claim for compensation is to be determined as if it were a disputed claim for compensation under

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the *Land Acquisition Act 1993* and, for that purpose –

- (a) a reference in that Act to land is taken to be or include, as appropriate, a reference to rail infrastructure and related assets, including any estates in rail infrastructure and related assets; and
  - (b) this section is taken to be a notice of acquisition, within the meaning of that Act, validly gazetted on the day after the day on which completion of the Business Sale Agreement occurs; and
  - (c) the Crown is the acquiring authority.
- (7) No compensation is payable to the Emu Bay Railway Company for the vesting in the Crown or a nominee, by reason of section 6, of its remaining interest.

**8. Notices inviting lodgement of compensation claim**

- (1) Within one month after the day on which the completion of the Business Sale Agreement occurs, the Minister is to –
  - (a) advertise for the lodgement of claims for compensation by affected persons –
    - (i) at least twice in a newspaper published and circulating generally in Tasmania; and

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- (ii) at least twice in a newspaper circulating generally in Australia; and
    - (iii) at least once in a newspaper circulating generally in the United Kingdom; and
  - (b) notify, in writing, each person who may be an affected person, and who is known to the Minister, of his or her right to compensation under this Act.
- (2) Each advertisement and notice under subsection (1) is to –
- (a) specify that a claim for compensation is to be –
    - (i) in writing; and
    - (ii) lodged with the Minister at the address stated; and
  - (b) specify the day by which a claim for compensation is to be lodged, being the last day of the period of 6 months referred to in section 7(2); and
  - (c) specify that, if a claim for compensation is not lodged by the day so specified, the entitlement to compensation is extinguished; and
  - (d) specify that the amount of compensation –

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- (i) is to be determined by agreement between the affected person and the Minister; or
  - (ii) if no such agreement can be reached, is to be determined as a disputed claim for compensation under the *Land Acquisition Act 1993*.

## **PART 5 – MISCELLANEOUS**

### **9. Lapsing of caveat**

A caveat, relating to a remaining interest, registered under the *Land Titles Act 1980* in respect of the subject railway, or any part of the subject railway, lapses immediately before completion of the Business Sale Agreement despite any contrary provision of that Act.

### **10. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

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- (4) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Minister or the Secretary of the Department.
- (5) The regulations may –
- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation or consequent on the operation of section 6 or 9; and
  - (b) provide for any of those savings or transitional matters to take effect on the day this section commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**11. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

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Part 5 – Miscellaneous

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**12. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

**13. Legislation repealed**

The legislation specified in Schedule 2 is repealed.

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 12

***Boundary Fences Act 1908***

1. After section 7, the following section is inserted in Part I:

**7A. Act not to apply to rail corridors**

- (1) In this section –

**“Rail Infrastructure Manager”** has the same meaning as in the *Rail Infrastructure Act 2007*;

**“Rail Infrastructure Owner”** has the same meaning as in the *Rail Infrastructure Act 2007*;

**“rail network”** has the same meaning as in the *Rail Infrastructure Act 2007*.

- (2) Except as provided by or under the *Rail Infrastructure Act 2007* or the *Rail Safety Act 1997*, neither a Rail Infrastructure Owner nor a Rail Infrastructure Manager is liable to make any contribution towards the erection or repair of any dividing fence between any part of the rail network and the land of any occupier of land adjoining that part of the rail network.

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***Rail Infrastructure Act 2007***

- 1.** Schedule 1 is amended by inserting after item 7 in Part 1 the following items:
  - 8.** The “Melba Line” also known as the “Emu Bay Railway” (being the railway running from the port at the City of Burnie on Emu Bay to Melba Flats).
  - 9.** The line known as the “Hellyer Spur” (being the railway running from the Hellyer Mine site to the eastern boundary of the Melba Line at Moory Junction).

**SCHEDULE 2 – LEGISLATION REPEALED**

Section 13

*Van Diemen's Land Company's Waratah and Zeehan Railway  
Act 1895 (59 Vict.—Private)*

*Van Diemen's Land Company's Waratah and Zeehan Railway  
Act 1896 (60 Vict.—Private)*

*Burnie to Waratah Railway Act 1939 (No. 54 of 1939)*

*Van Diemen's Land Company's Waratah and Zeehan Railway  
Act 1948 (No. 7 of 1948)*

*Emu Bay Railway Act 1965 (No. 17 of 1965)*

*Emu Bay Railway Act 1976 (No. 91 of 1976)*