

TASMANIA

RAIL COMPANY BILL 2009

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

RAIL COMPANY BILL 2009

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

A BILL FOR

An Act to provide for the establishment of a State-owned company under the Corporations Act for the purpose of acquiring, owning and operating a rail business in Tasmania, to provide for the sale of that company 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 *Rail Company Act 2009*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

THIS BILL IS COGNATE WITH THE EMU BAY RAILWAY (OPERATION AND ACQUISITION) BILL 2009 AND THE CONSOLIDATED FUND APPROPRIATION (SUPPLEMENTARY APPROPRIATION FOR 2009-2010) BILL 2009

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3. Purposes of Act

The purposes of this Act are to –

- (a) provide for the establishment and registration under the Corporations Act of a State-owned company to acquire, own and operate a rail business in Tasmania; and
- (b) provide for that company to act as the nominee of the Crown under the Business Sale Agreement; and
- (c) provide for the transfer to that company from the Crown, or to the Crown from that company, of rail infrastructure and related assets, liabilities and contracts; and
- (d) provide for the transfer to that company from the Crown of State Service employees and State Service officers; and
- (e) provide for the sale of that company, or part of that company, by the sale of the shares in the company or the assets of the company.

4. Interpretation

In this Act, unless the contrary intention appears –

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

“Board” means the Board of Directors of the Company;

“Business Sale Agreement” means the agreement, for the sale and purchase of rail infrastructure and related assets and rail businesses, entered into on 4 September 2009 –

(a) by 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) and PN Tas (Services) Pty Limited (ACN 078 906 519), together as the seller; and

(b) by the Crown, as the buyer;

“Company” means a company formed under section 5;

“constitution” means the constitution of the Company;

“contract” means –

(a) an agreement, arrangement, undertaking, lease, licence, warranty or other contract; or

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

“director” means a director of the Company;

“document” includes an instrument and part of a document;

“legal or other proceeding” includes arbitration proceedings and mediation proceedings;

“liability” includes any, or any part of any, liability, duty and obligation, whether actual, contingent or prospective;

“member”, in respect of the Company, means a member referred to in section 8;

“principal objectives” means the principal objectives of the Company specified in section 6;

“property” means –

- (a) any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property; and
- (b) money, documents and securities; and
- (c) shares in a subsidiary of the Company; and

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-
- (d) any other rights and property;

“rail business” means the business of –

- (a) 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; or
- (b) owning a railway in Tasmania; or
- (c) administering, managing, controlling, controlling access to, controlling operations on, maintaining or developing a railway 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
- (c) any other asset used, or that is intended for use or has been used, in connection with the operation of rail businesses in Tasmania; or

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- (d) any other asset purchased by the Crown or a nominee under the Business Sale Agreement;

“railway” includes the track of the railway, the land corridor along which the track of the railway is laid 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*;

“regulations” means regulations made under section 42;

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

“State tax” means any of the following if imposed by any Act or law of Tasmania:

- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;
- (c) a charge;

“subsidiary” has the same meaning as in the Corporations Act;

“transfer day” means the day on which a transfer notice, or the relevant part of a transfer notice, takes effect;

“transfer notice” means –

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(a) a notice made under subsection (2) or (3) of section 27, or both of those subsections; or

(b) a part of such a notice;

“transfer recipient”, in relation to a transfer notice or transfer day, means –

(a) the Company if the relevant transfer notice transfers any rail infrastructure and related assets, liabilities or contract to the Company; or

(b) the Crown if the relevant transfer notice transfers any rail infrastructure and related assets, liabilities or contract to the Crown;

“transferor”, in relation to a transfer notice or transfer day, means –

(a) the Crown if the relevant transfer notice transfers any rail infrastructure and related assets, liabilities or contract to the Company; or

(b) the Company if the relevant transfer notice transfers any rail infrastructure and related assets, liabilities or contract to the Crown;

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“transferred employee” means a person who becomes the employee of the Company on the transfer day by the operation of section 30(4).

PART 2 – COMPANY

Division 1 – Formation and status of Company

5. Formation of Company

- (1) The Minister may form, or participate in the formation of, a company limited by shares that is to be incorporated under the Corporations Act.
- (2) The purpose of the Company is to acquire, own and operate a rail business in Tasmania.

6. Principal objectives of Company

The principal objectives of the Company are –

- (a) to operate a rail business in Tasmania effectively and efficiently; and
- (b) to operate its activities in accordance with sound commercial practice; and
- (c) to maximise its sustainable return to its members.

7. Constitution of Company

- (1) The constitution of the Company is to include the principal objectives of the Company.
- (2) The provisions of the constitution of the Company are to be consistent with this Act.

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8. Members of Company

- (1) The members of the Company are to be 2 persons of whom –
 - (a) one is the Minister; and
 - (b) one is the Treasurer.
- (2) If at any time the one person is both the Minister and the Treasurer, the members of the Company are 2 persons of whom –
 - (a) one is the Minister; and
 - (b) one is another Minister determined by the Minister to be a member of the Company.

9. Shares

- (1) Shares in the Company issued to its members are held by the members in trust for the Crown.
- (2) A member of the Company who holds shares in trust for the Crown is not to acquire shares in the Company for his or her own benefit.
- (3) Any shares acquired in the Company in contravention of subsection (2) are taken to be held in trust for the Crown but the Crown is not liable to meet the cost of that acquisition.

10. Consideration for further shares

The consideration for any further shares issued to the members of the Company after the commencement of this section is to be any one or more of the following as agreed between the Company and its members:

- (a) any money provided by Parliament for that purpose;
- (b) any rail infrastructure and related assets vested in the Company by the operation of section 27(7);
- (c) any other consideration as so agreed.

11. Status of Company

- (1) Unless this or any other Act expressly provides otherwise, the Company or a subsidiary of the Company –
 - (a) is not, and does not represent, the Crown; and
 - (b) is not exempt from any rates, tax, duty or other impost under any law merely because the Crown has beneficial ownership of shares in it.
- (2) The Crown is not liable for any liability or obligation of the Company or subsidiary of the Company unless the Treasurer gives a guarantee or indemnity under section 14 in relation to that liability or obligation.

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Division 2 – Financial affairs of Company and subsidiary

12. Audit

The Auditor-General is to act as the auditor for the Company and a subsidiary of the Company.

13. Borrowing

The Company, and a subsidiary of the Company, are not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

14. Guarantee or indemnity

- (1) On the written request of the Company or a subsidiary of the Company, the Treasurer, in writing, may guarantee, give an indemnity in relation to, or guarantee and give an indemnity in relation to –
 - (a) the repayment of any money lent or agreed to be lent to the Company or subsidiary; or
 - (b) the performance of an obligation undertaken by the Company or subsidiary or which the Company or subsidiary has agreed to undertake (whether that obligation is monetary or otherwise).
- (2) A guarantee or an indemnity –

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-
- (a) may include a guarantee of, or an indemnity relating to, any interest and other charges payable in respect of money lent or agreed to be lent or in respect of or arising from an obligation undertaken or agreed to be undertaken; and
 - (b) is subject to any conditions determined by the Treasurer and specified in the guarantee or indemnity.
- (3) The Treasurer is to make any payment required under or arising from a guarantee or indemnity out of money provided by Parliament for the purpose.
- (4) This section has effect regardless of whether the loan or obligation was undertaken, agreed to be undertaken or required to be repaid or performed in Tasmania or elsewhere.

15. Guarantee fees

- (1) Division 1 of Part 11 of the *Government Business Enterprises Act 1995* applies in relation to the Company and a subsidiary of the Company as if –
- (a) the Company were a Government Business Enterprise specified in Schedule 3 to that Act; and
 - (b) the subsidiary were a subsidiary within the meaning of that Act.

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(2) Any Treasurer's Instructions issued under the *Government Business Enterprises Act 1995* providing for guidelines in respect of –

- (a) the determination, calculation and payment of guarantee fees; or
- (b) any other matter relating to guarantee fees –

apply to the Company and a subsidiary of the Company as if both the Company and subsidiary were Government Business Enterprises under that Act.

16. Tax equivalents

(1) The provisions of Part 10 of the *Government Business Enterprises Act 1995* apply in relation to the Company and a subsidiary of the Company as if –

- (a) the Company were a Government Business Enterprise specified in Schedule 2 to that Act; and
- (b) the subsidiary were a subsidiary within the meaning of that Act.

(2) Any Treasurer's Instructions issued under the *Government Business Enterprises Act 1995* providing for guidelines in respect of –

- (a) the determination, calculation and payment of income tax equivalents; or

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- (b) any other matter relating to income tax equivalents –

apply to the Company and a subsidiary of the Company as if the Company were a Government Business Enterprise under that Act and the subsidiary were a subsidiary within the meaning of that Act.

17. Superannuation contributions

- (1) The Company, or a subsidiary of the Company, is not to establish a superannuation scheme but may make contributions to one or more superannuation schemes that comply with the law of the Commonwealth relating to superannuation.
- (2) A contribution by the Company or a subsidiary of the Company to a superannuation scheme in respect of any of its employees is not to exceed the rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.

18. Effect of *Financial Agreement Act 1994*

If, under section 5(1) of the *Financial Agreement Act 1994*, the Treasurer requires the Company or a subsidiary of the Company to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Company or subsidiary is to comply with that requirement.

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Division 3 – Duties of members, Board and Company

19. Directors of Company

- (1) The members of the Company are to ensure that it has a Board of Directors who have the experience and skills necessary to enable the Company to achieve its objectives.
- (2) The members of the Company are to appoint the Board in accordance with the constitution.

20. Members' statement of expectations

- (1) As soon as practicable after the day on which the Company is incorporated, the members are to provide the Board with a statement of expectations.
- (2) The statement of expectations is to specify –
 - (a) the strategic priorities of the Company;
and
 - (b) the policy expectations of the members for the performance of the Company and its subsidiaries.
- (3) The members may at any time at their own discretion, or on the application of the Board –
 - (a) amend the statement of expectations; or
 - (b) revoke the statement of expectations and substitute another statement of expectations.

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- (4) Before or while preparing a statement of expectations or an amendment to a statement of expectations, the members are to consult with the Board.

21. Corporate plan of Company

- (1) The Board is to prepare a corporate plan each financial year and submit it to the members.
- (2) The corporate plan is to be prepared in the context of the statement of expectations provided to the Board under section 20.
- (3) The Company is to comply with the corporate plan.

22. Accounts and report of Company

- (1) The Board is to provide the members with a copy of each of the following documents:
 - (a) the constitution of the Company, the constitution of each of the Company's subsidiaries and any amendments to any of those constitutions;
 - (b) the annual financial report, directors' report and auditor's report for the Company.
- (2) The Minister is to cause to be laid before each House of Parliament each copy provided to him

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or her under subsection (1) within 7 sitting-days after receiving it.

Division 4 – Non-commercial activities

23. Non-commercial activities

- (1) The members may direct the Company to do one or more of the following:
 - (a) to perform an activity that the members consider to be in the public interest but that may cause the Company to suffer financial detriment;
 - (b) to cease to perform such an activity;
 - (c) to cease to perform an activity that the Company is otherwise entitled to perform if the members consider that the activity is not in the public interest.
- (2) A direction is to be in writing provided to the Company.
- (3) The Company is to comply with a direction.
- (4) If the Company satisfies the members that it has, or will, suffer financial detriment as a result of complying with a direction, the Company is entitled to compensation or payment for compliance with the direction in the amount determined by the Treasurer.
- (5) A reference in this section to suffering financial detriment includes a reference to incurring net

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costs that are greater than would have been incurred if the Company had not complied with the direction.

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Part 3 – Acquisition and Operation of Rail Businesses in Tasmania

**PART 3 – ACQUISITION AND OPERATION OF RAIL
BUSINESSES IN TASMANIA**

24. Company to act as Crown nominee under Business Sale Agreement

- (1) If the Crown appoints the Company as its nominee under the Business Sale Agreement, the Company is to act as that nominee under that Agreement.
- (2) State tax is not payable in respect of the Business Sale Agreement or any document prepared to give effect to a purchase by the Company under the Business Sale Agreement.

25. Company may 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;

“authorised rail operator” means a subsidiary of the Company or another person authorised by the Company to operate a rail business on the Emu Bay Railway;

“Emu Bay Railway” means –

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

“railway access contract” means a contract entered into by the owner or occupier of the relevant rail corridor in respect of the use of, or access to, the relevant rail corridor;

“relevant rail corridor” means a part of the rail corridor of the Emu Bay Railway that is not owned by the Company, an authorised rail operator or the Crown.

- (2) The Company and an authorised rail operator are authorised to operate a rail business on a relevant rail corridor.
- (3) Subsection (2) operates to extinguish any right of an owner or occupier of the relevant rail corridor to require the Company or an authorised rail operator to pay or provide any fee or other consideration in respect of its use of, or access

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to, the rail corridor if PN Tas (Operations) Pty Limited (ACN 078 295 468) was not paying or providing such a fee or other consideration on the Agreement day in accordance with a railway access contract.

- (4) If on the Agreement day the owner or occupier of a relevant rail corridor, in accordance with a railway access contract, was entitled to receive a fee or other consideration in respect of the use of or access to the relevant rail corridor, that owner or occupier is entitled after that day to require the payment or provision of a reasonable fee or other reasonable consideration in respect of the use of, or access to, the relevant rail corridor by the Company or an authorised rail operator.
- (5) Nothing in subsection (3) or (4) authorises the owner or occupier of a relevant rail corridor to prevent the use of, or access, to the relevant rail corridor by the Company or an authorised rail operator.

26. Exemptions relating to operation of rail business, &c.

- (1) The regulations may exempt the Company, in relation to its operation of a rail business in Tasmania, from an Act, or a provision of an Act, that relates to railways or the ownership or operation of railways.
- (2) An exemption in the regulations prescribed under subsection (1) is subject to any prescribed conditions.

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- (3) A regulation referred to in subsection (1) may take effect on the day on which this Act commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

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Part 4 – Transfer of Rail Infrastructure and Related Assets, &c., and
Employees to or from Company

**PART 4 – TRANSFER OF RAIL INFRASTRUCTURE
AND RELATED ASSETS, &C., AND EMPLOYEES TO
OR FROM COMPANY**

**27. Transfer of rail infrastructure and related assets,
&c., to or from Company**

(1) In this section –

“specified” means specified in a transfer notice.

(2) The Minister, by notice published in the *Gazette*, may transfer to the Company such –

- (a) rail infrastructure and related assets owned by the Crown; and
- (b) liabilities of the Crown; and
- (c) contracts to which the Crown is a party, other than contracts of employment –

as are specified in the notice.

(3) The Minister, by notice published in the *Gazette*, may transfer to the Crown such –

- (a) rail infrastructure and related assets owned by the Company; and
- (b) liabilities of the Company; and
- (c) contracts to which the Company is a party, other than contracts of employment –

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as are specified in the notice.

- (4) A transfer notice under subsection (2) may be combined with a transfer notice under subsection (3).
- (5) A transfer notice may –
 - (a) specify conditions including, without limitation –
 - (i) conditions relating to the transfer of the rail infrastructure and related assets, liabilities and contracts; and
 - (ii) conditions relating to the payment of consideration, if any is payable; and
 - (b) provide for any matter that is incidental to the transfer of the rail infrastructure and related assets, liabilities and contracts.
- (6) A transfer notice takes effect on the specified day or days, whether that day is before, on or after the day on which the transfer notice is published in the *Gazette*.
- (7) On the transfer day –
 - (a) the specified rail infrastructure and related assets vest in the transfer recipient, in accordance with the transfer notice, without the need for any further conveyance, transfer, assignment or

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- assurance but subject to any conditions specified in the transfer notice; and
- (b) the specified liabilities become the liabilities of the transfer recipient, in accordance with the transfer notice, without the need for any further conveyance, transfer, assignment or assurance but subject to any conditions specified in the transfer notice; and
- (c) the transferor ceases to be a party to the specified contracts unless the transfer notice provides otherwise or except to the extent specified in the transfer notice.
- (8) On and after the transfer day –
- (a) a specified contract is taken to have been made by the transfer recipient; and
- (b) a reference to the transferor in a specified contract is taken to be or include, as appropriate, a reference to the transfer recipient.
- (9) Subsection (7)(c) and subsection (8) have effect despite any contrary provision in the specified contract.
- (10) The Minister may amend or revoke a transfer notice.
- (11) A transfer notice is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

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Employees to or from Company

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- (12) State tax is not payable in respect of any document prepared to give effect to a transfer notice.

28. Transitional provisions on transfer of rail infrastructure and related assets, &c.

- (1) In this section –

“transferring asset” means any rail infrastructure and related assets specified in a transfer notice;

“transferring contract” means a contract specified in a transfer notice;

“transferring liability” means a liability specified in a transfer notice.

- (2) On and after the transfer day, the following provisions apply unless the transfer notice provides otherwise:

(a) a reference to the transferor in a document in relation to a transferring asset, transferring liability or transferring contract is taken where appropriate to be or to include a reference to the transfer recipient;

(b) a legal proceeding that could have been instituted by or against the transferor immediately before the transfer day and that relates to a transferring asset, transferring liability or transferring contract may be instituted by or against

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- the transfer recipient but not by or against the transferor;
- (c) a legal proceeding instituted by or against the transferor that relates to a transferring asset, transferring liability or transferring contract and is pending immediately before the transfer day may be continued by or against the transfer recipient but not by or against the transferor;
 - (d) a document relating to a legal proceeding referred to in paragraph (c) served on or by the transferor before the transfer day is taken to have been served on or by the transfer recipient;
 - (e) a judgment or order of a court obtained by or against the transferor before the transfer day in relation to a transferring asset, transferring liability or transferring contract may be enforced by or against the transfer recipient but not by or against the transferor;
 - (f) a contract made by the transferor relating to a transferring asset, transferring liability or transferring contract but not performed or discharged before the transfer day is taken to have been made by the transferor or transfer recipient, as appropriate;
 - (g) any act done or omitted to be done in relation to a transferring asset,

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transferring liability or transferring contract by the transferor before the transfer day is taken, where appropriate, to have been done or omitted by the transfer recipient.

- (3) On the transfer day, the obligations of the transferor in relation to a transferring liability are discharged.
- (4) A transfer notice may limit the extent to which the provisions of subsections (2) and (3) apply.

29. Removing doubt relating to transfer

- (1) If there is any doubt –
 - (a) as to whether any rail infrastructure and related assets, liability or contract, or any part of any rail infrastructure and related assets, liability or contract, is transferred to the transfer recipient by the operation of section 27(7); or
 - (b) as to whether any contract or other document relates to any rail infrastructure and related assets, liability or contract that is transferred to the transfer recipient by the operation of section 27(7) –

the Minister is to determine the matter and is to provide written notice of that determination to the transfer recipient and, if the Minister

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considers it appropriate, a party to a contract that
is relevant to the determination of the matter.

- (2) The determination of the Minister under
subsection (1) is final and binding.

30. Transfer of employees

- (1) A transfer notice under section 27(2) may
specify the State Service employees and State
Service officers whose employment is to be
transferred to the Company.
- (2) Before the transfer day, the Minister is to give to
each State Service employee and State Service
officer who is to become a transferred employee
written notice that his or her employment is to be
transferred to the Company and the date, or
approximate date, on which that transfer will
take effect.
- (3) A State Service employee or State Service
officer may not be specified in a transfer notice
unless that person has agreed, in writing, to the
transfer of his or her employment to the
Company.
- (4) On the transfer day, each State Service employee
and State Service officer who is specified in a
transfer notice –
- (a) becomes an employee of the Company
and the Company becomes the employer
of that person; and

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Employees to or from Company

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- (b) ceases to be a State Service employee or State Service officer.
- (5) A transferred employee –
 - (a) is to be employed by the Company for not less than the same remuneration as he or she was receiving immediately before becoming a transferred employee; and
 - (b) except where an award, industrial agreement, any other law or the transfer notice otherwise provides, retains all accrued entitlements as if employment as an employee of the Company were a continuation of employment with the Crown; and
 - (c) is entitled to claim those entitlements against the Company; and
 - (d) except where the transfer notice provides otherwise, is not entitled to any compensation or other payment in respect of the change of employer or any change in his or her position description, title, role or duties that results from the change of employer.
- (6) Subject to subsection (8), a contract of employment that had effect in relation to a person immediately before the person became a transferred employee continues to have effect in relation to the person as a transferred employee and for that purpose –

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- (a) a reference in that contract to the Crown is taken where appropriate to be or to include a reference to the Company; and
 - (b) that contract is taken where appropriate to be or to include a reference to the Company.
- (7) The period of service with the Crown of a person who becomes a transferred employee is taken to be service with the Company.
- (8) Before, or as soon as practicable after, the employment of a person is transferred to the Company by the operation of subsection (4), the Company by written notice provided to the person may determine position description, title, role or duties for the position to be occupied, or occupied, by the person in the Company that is different from his or her position description, title, role or duties with the Crown.
- (9) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, industrial agreement or law after he or she becomes a transferred employee.

31. Superannuation for certain employees

- (1) The Company, or a subsidiary of the Company, may participate in the superannuation scheme provided by the *Retirement Benefits Act 1993* in respect of a transferred employee employed by the Company or subsidiary, if that transferred

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employee was subject to that superannuation scheme immediately before the transfer day.

- (2) If under subsection (1) the Company or a subsidiary of the Company participates in the superannuation scheme provided by the *Retirement Benefits Act 1993* –
- (a) the Company or subsidiary is taken to be a prescribed authority for the purposes of that Act in respect of any of its employees who are subject to the scheme; and
 - (b) the Minister administering the *Retirement Benefits Act 1993* may, by written notice provided to the Company or subsidiary –
 - (i) require the Company or subsidiary to provide such information as is required for an actuarial review of any of its liabilities under that Act; and
 - (ii) give to the Company or subsidiary such other instructions relating to superannuation as he or she considers appropriate.
- (3) If the Company or a subsidiary of the Company is given a requirement or instruction under subsection (2), the Company or subsidiary is to comply with the requirement or instruction.

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32. Long service leave for certain employees

If immediately before the transfer day a transferred employee was an employee within the meaning of the *Long Service Leave (State Employees) Act 1994*, the transferred employee continues to be such an employee while employed by the Company or a subsidiary of the Company and, for that purpose, the Company or subsidiary is taken to be a prescribed authority within the meaning of that Act.

PART 5 – SALE OF COMPANY AND SUBSIDIARY

33. Sale of Company

- (1) While all the shares in the Company are held in trust for the Crown, the members, jointly, may do one or more of the following:
 - (a) sell their shares in the Company;
 - (b) direct the Company to sell its shares in a subsidiary of the Company;
 - (c) direct the Company to sell all or any of its assets;
 - (d) require the Company to direct a subsidiary of the Company to sell all or any of its assets.
- (2) A direction or requirement is to be in writing.
- (3) The Company, and a subsidiary of the Company, are to comply with a direction or requirement.

34. Direction to facilitate sale

- (1) The members may direct the Company, or require the Company to direct a subsidiary of the Company, to do one or more of the following to facilitate a sale under section 33:
 - (a) take the action specified in the notice;

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- (b) take all reasonable steps and actions to facilitate the sale.
- (2) A direction or requirement is to be in writing provided to the Company or the subsidiary of the Company.
- (3) The Company, and the subsidiary of the Company, are to comply with a direction or requirement.
- (4) The Board and the chief executive officer of the Company, and the board of directors and chief executive officer of the subsidiary of the Company, may do all things necessary or convenient to be done to enable compliance with a direction or requirement.

35. Superannuation for certain employees

If –

- (a) any employees of the Company or a subsidiary of the Company are subject to a superannuation scheme provided by the *Retirement Benefits Act 1993*; and
- (b) either –
 - (i) an agreement for the sale of shares in the Company or in a subsidiary of the Company has been made; or
 - (ii) an agreement for the sale of any assets of the Company or of a

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subsidiary of the Company has been made and provides for the purchaser under that agreement to employ an employee referred to in paragraph (a) –

the Minister administering the *Retirement Benefits Act 1993* is to make a declaration under regulation 3(3) of the *Retirement Benefits Regulations 2005* declaring the agreement for that sale to be a prescribed arrangement for the purposes of those regulations.

36. Long service leave for certain employees

(1) In this section –

“prescribed employee” means –

- (a) in the case of a sale of the shares in a Company or in a subsidiary of the Company, an employee of the Company or subsidiary to whom, immediately before the sale day, the *Long Service Leave (State Employees) Act 1994* applies; or
- (b) in the case of a sale of any asset of the Company or of a subsidiary of the Company, an employee of the Company or subsidiary to whom, immediately before the sale day, the *Long Service Leave (State Employees)*

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Act 1994 applies if the agreement for the sale of the assets provides for the purchaser under the agreement to become the employer of that employee;

“sale day” means –

- (a) the day on which the shares in the Company, or in the subsidiary of the Company, are acquired by the purchaser in the sale under section 33; or
 - (b) the day on which any assets of the Company, or of the subsidiary of the Company, vest in the purchaser of those assets under an agreement for their sale under section 33.
- (2) On the sale day, the *Long Service Leave (State Employees) Act 1994* ceases to apply to the Company and its prescribed employees or the subsidiary of the Company and its prescribed employees.
- (3) In calculating, on or after the sale day, the period of service an employee has completed with the Company or a subsidiary of the Company, for the purposes of calculating his or her entitlement to long service leave under any Act, award or agreement, the employee is taken to have completed, immediately before the sale day, a period of service with the Company, or the

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subsidiary, calculated in accordance with the following formula:

$$\text{Calculated service} = \frac{S \times P}{10}$$

where –

“Calculated service” is the period of service the employee is taken to have completed with the Company, or the subsidiary of the Company, immediately before the sale day;

“S” is the total period of service the employee has completed with the Company, or with the subsidiary and the Company, (including service the employee is taken to have completed with the Company) immediately before the sale day;

“P” is the period of service that would have been required to be completed by the employee to be entitled to long service leave under the relevant Act, award or agreement if the shares in the Company, or the subsidiary, had always been owned by the person who purchased them in the sale under section 33.

37. Proceeds of sale of Company

The proceeds of a sale referred to in section 33(1) are to be paid into the Consolidated Fund.

PART 6 – MISCELLANEOUS

38. Protection for acts done under this Act

Any thing done or omitted in good faith that is done or omitted under, or authorised by, this Act does not, except as otherwise expressly provided by or under this Act or as provided or agreed by the person doing or omitting the thing –

- (a) terminate a contract, other instrument or obligation; or
- (b) give rise to a right to terminate a contract, other instrument or obligation by fulfilling a condition or in any other manner; or
- (c) release a surety or other obligee wholly or in part from an obligation; or
- (d) give rise to any right or remedy by a party to a contract or other instrument; or
- (e) constitute a breach of a contract or other instrument; or
- (f) constitute a civil or criminal wrong; or
- (g) constitute a breach of confidence.

39. Displacement of Corporations legislation

To the extent that a provision of this Act is incapable of concurrent operation with the

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Corporations Act, that provision is declared to be a displacement provision for the purposes of section 5G of the Corporations Act.

40. Non-application of certain Acts

- (1) Entering into and giving effect to a contract, or a contract of a class, approved under subsection (2) is authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Policy Reform (Tasmania) Act 1996*.
- (2) The Minister, by order published in the *Gazette*, may approve for the purposes of this section a contract, or a class of contracts, that relates to a sale under section 33.
- (3) An order under subsection (2) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

41. Delegation by Minister

The Minister, in writing, may delegate to any person any of his or her powers or functions under this Act, other than this power of delegation.

42. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may –
- (a) provide, or provide for, a process for the resolution of a dispute as to what is a reasonable fee or other reasonable consideration for the purposes of section 25(4); and
 - (b) provide for such a process by reference to another Act or in any other manner; and
 - (c) authorise the Valuer-General, or another person specified in the regulations, to determine such a dispute; and
 - (d) provide that the determination of such a dispute in accordance with the process provided in, or provided for by, the regulations is binding on the parties to the dispute; and
 - (e) provide for arrangements for employees affected by a transfer of employment by virtue of this Act or a sale under section 33; and
 - (f) provide for the deregistration of the Company or a subsidiary of the Company under the Corporations Act.
- (3) 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.

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- (4) 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.
- (5) The regulations may authorise any matter to be from time to time approved, determined, applied or regulated by the Minister or the Treasurer.
- (6) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for savings or transitional matters consequent on –
 - (i) a sale under section 33; or
 - (ii) a transfer of any rail infrastructure and related assets, liabilities and contracts to a transfer recipient under a transfer notice.
- (7) Regulations made under subsection (6) may –
 - (a) include, without limitation, provisions providing for the transfer of employees

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to a transfer recipient and for related matters; and

- (b) provide for any of the savings or transitional matters to take effect when this Act 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.

43. 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.

44. Repeals

- (1) In this section –

“prescribed legislation” means this Act and the regulations.

- (2) The prescribed legislation is repealed and rescinded –

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- (a) if the shares in the Company are sold under section 33, on the day on which those shares in the Company are acquired by the purchaser in the sale; or
 - (b) if the Company has been deregistered, on the day fixed by proclamation under subsection (3).
- (3) On the recommendation of the Minister, the Governor, by proclamation, may repeal and rescind the prescribed legislation.

45. Consequential amendments

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

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 45

Tasmanian Public Finance Corporation Act 1985

1. The definition of “participating authority” in section 3(1) is amended as follows:
 - (a) by omitting from paragraph (d) “*Water and Sewerage Corporations Act 2008*,” and substituting “*Water and Sewerage Corporations Act 2008*; or”;
 - (b) by inserting the following paragraph after paragraph (d):
 - (e) a company formed under section 5 of the *Rail Company Act 2009* while all the shares in that company are held in trust for the Crown, or a subsidiary of that company while all the shares in that subsidiary are held by that company;