

Emu Bay Railway (Operation and Acquisition) Bill 2009

Clause Notes

- Clause 1 Short title and citation.
- Clause 2 (1) The Act will commence on the date on which it receives Royal Assent except for clause 12 and Schedule 1 and clause 13 and Schedule 2 as provided.
- Clause 2 (2) Clause 12 and Schedule 1 and clause 13 and Schedule 2 dealing with consequential amendments and legislation to be repealed respectively will commence when completion of the Business Sale Agreement occurs.
- Clause 3 (1) This clause defines the meaning of certain words and expressions for the purposes of the Act which apart from the following are largely self explanatory.

“completion of the Business Sale Agreement”

In the Business Sale Agreement ‘completion’ means the completion of the sale and purchase of the Business (effectively PNT’s rail business). The completion date is 30 November 2009 or any other date agreed in writing by the Seller and the Buyer.

“Emu Bay Railway”

In the Business Sale Agreement “Handling Facilities” has the meaning given to it in the Burnie Lease and in this lease “the Handling Facilities” means “the Concentrates Store the Conveyor System and the Ship Loader as defined herein”.

“nominee”

Clause 31.1 of the Business Sale Agreement enables the buyer (the Crown) to appoint a nominee or nominees to complete the purchase of some or all of the Business (including some or all of the Assets) if a range of conditions spelt out in clause 31.1 are satisfied.

“rail infrastructure and related assets”

- (a) In the *Rail Infrastructure Act 2007* ‘rail infrastructure’ includes –
- (a) rail lines and fastenings; and
 - (b) crossing loops, sidings, switches and points; and
 - (c) sleepers and ballast; and
 - (d) drains and culverts; and
 - (e) bridges, cuttings, tunnels and embankments; and
 - (f) poles and pylons; and
 - (g) structures and supports; and
 - (h) overhead lines; and
 - (i) platforms and railway stations; and
 - (j) rail yards; and
 - (k) freight sheds, workshops and associated buildings; and
 - (l) electrical substations; and
 - (m) signs and signalling equipment; and
 - (n) train control and communication systems; and
 - (o) traffic control devices that are capable of being automatically activated by trains; and
 - (p) plant, machinery and other fixed equipment;
- (b) In the *Rail Safety Act 1997* rolling stock means a vehicle, whether or not self-propelled, that operates on or uses a railway track, but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track;

“railway”

In the *Rail Infrastructure Act 2007* a railway does not include the following -

1. Railways that are entirely within the precincts of and used only in connection with a factory, mine or quarry.
2. Railways that are entirely within the precincts of a transport, railway or other museum and, if operational, used only in connection with that museum.
3. Model railways.
4. Runways that are used only in connection with the operation of cranes or gantries.
5. Marine slipways.
6. Tourist tramways.

Clause 3 (2) A reference to the words 'ASIC Charge with a number' in this Act is taken to be a reference to a charge entered, with that number, in the register of Company Charges kept by ASIC under section 265 of the Corporations Act.

Section 265 of the *Corporations Act 2001* requires ASIC to keep a register to be known as the Australian Register of Company Charges.

Clause 4 (1) This clause defines the meaning of certain words and expressions for the purposes of section 4 of this Act to authorise PN Tas (Operations) Pty Ltd to operate a rail business on the Emu Bay Railway.

During the purchase process it has been discovered that PN may have been operating the Melba Line without proper lawful authority under the suite of historical Emu Bay Railway legislation. Crown Law has recommended that this anomaly be corrected by way of retrospective legislation. It appears that the oversight by PN was accidental but in any case this Part ensures the Crown will not be placed in a position where it is purchasing a

railway that has been operated without technical legal authority.

- Clause 4 (2)(a) Authorises the Company (Pacific National Pty Ltd and its subsidiaries) on and after 1 April 1998 (a date after which Tasrail Pty Ltd purchased the Emu Bay Railway Line (otherwise known as the Melba Line) from the Emu Bay Railway Company Limited) to operate a rail business on the Emu Bay Railway until completion of the Business Sale Agreement. (Pacific National Pty Ltd subsequently acquired all of the shares in Australian Transport Network Limited owners of Tasrail Pty Ltd in 2004).
- Clause 4 (2)(b) Provides for the Company to have always been authorised to operate a business on the Emu Bay Railway to ensure that there can be no doubt that the Company had legal authority to operate the railway.
- Clause 4 (3)(a) Specifies that the Company is not authorised by Subsection 4(2) to operate a rail business on the Emu Bay Railway after 1 April 1998 until the completion of the Business Sale Agreement without accreditation required by the *Rail Safety Act 1997*. The Company has been accredited for this purpose.
- Clause 4 (3)(b) Specifies that Subsection 4(2) does not invalidate or affect any railway access contract, being a contract pursuant to which the owner of any part of the Emu Bay Rail corridor allows the Company to operate the railway over that land, entered into by the Company on or after 1 April 1998 but before the completion of the Business Sale Agreement.
- Clause 4 (3)(c)(i) Specifies that Subsection 4(2) extinguishes any right of an owner or occupier of the Emu Bay rail corridor to receive a fee or any other consideration for the use of or access to that line by the Company on or after 4 September 2009 (the day the Business Sale Agreement was made) if the Company was not paying such fee or other consideration on 4 September 2009 in accordance with a railway access contract.

- Clause 4 (3)(c)(ii) Specifies that Subsection 4(2) extinguishes any right of an owner or occupier of the rail corridor to require the Company, after 4 September 2009, to pay a fee for its use of or access to the rail corridor before the 4 September 2009 except as provided by a rail access contract entered into before 4 September 2009.
- Clause 4 (4)(a) Specifies that if a railway access was in effect on the 4 September 2009 and otherwise would normally end during the Agreement period the contract continues in effect until completion of the Business Sale Agreement.
- Clause 4 (4)(b) Specifies that the owner or occupier of the rail corridor is entitled to require the Company to pay a fee or other consideration under the railway access contract during the period from 4 September 2009 to completion of the Business Sale Agreement.
- Clause 4 (5) Specifies that nothing in subsections 4(3) and 4(4) authorises the owner or occupier of the Emu Bay rail corridor to prevent its use or access to it.
- Clause 5 (1) Defines the meaning of “supplementary agreement” for the purposes of section 5 of this Act which is to ratify the Business Sale Agreement.
- Clause 5 (2) Ratifies the Business Sale Agreement and other supplementary agreements between the PN Group and the Crown.
- Clause 5 (3) Enables the Minister to enter into supplementary agreements.
- Clause 6 (1)(a) Specifies that on completion of the Business Sale Agreement if the Crown purchases the whole or part of the Emu Bay Railway all remaining interests vest in the Crown without the need for any other action.
- Clause 6 (1)(b) Specifies that on completion of the Business Sale Agreement if a nominee of the Crown purchases the whole or part of the Emu Bay Railway all remaining interests vest in the nominee without the need for any other action.

- Clause 6 (2)(a) Specifies that on completion of the Business Sale Agreement the Emu Bay Railway is freed and discharged from all “Emu Bay securities” which is defined.
- Clause 6 (2)(b) Specifies that on completion of the Business Sale Agreement the Emu Bay Railway is freed and discharged from all “estates” connected with or arising out of any Emu Bay security.
- Clause 6 (3) Specifies that the vesting in the Crown or its nominee of all remaining interests does not extinguish any other interest in the Emu Bay Railway that is not a “remaining interest”.
- Clause 7 (1) Provides for compensation to an “affected person” whose “remaining interest” has been vested in the Crown or a nominee by reason of section 6 of this Act.
- Clause 7 (2) An entitlement to compensation is extinguished if a claim for compensation is not lodged in writing with the Minister within the period of 6 months of the day following completion of the Business Sale Agreement.
- Clause 7 (3) Compensation is the amount agreed in writing between the “affected person” and the Minister.
- Clause 7 (4) Specifies the Minister before agreeing to an amount of compensation must obtain approval from the Valuer-General as to the amount.
- Clause 7 (5) Specifies that when determining whether to approve an amount of compensation the Valuer-General is to apply the same principles, with any necessary modification, that would apply in approving an amount for the purposes of section 40(8) of the *Land Acquisition Act 1993*.

Section 40(8) of the *Land Acquisition Act 1993* stipulates that an acquiring authority must obtain the approval of the Valuer-General before notifying a claimant that it admits or rejects the amount of compensation claimed; or offering the claimant an amount of compensation in satisfaction of a claim.

- Clause 7 (6)(a) Provides that if the “affected person” and the Minister cannot agree on the amount of compensation the claim is to be determined as if it were a disputed claim under the *Land Acquisition Act 1993* and for that purpose a reference in that Act is taken to be a reference to rail infrastructure and related assets, as appropriate, including any estates in rail infrastructure and related assets.
- Clause 7 (6)(b) Provides that if the “affected person” and the Minister cannot agree on the amount of compensation the claim is to be determined as if it were a disputed claim under the *Land Acquisition Act 1993* and for that purpose this section in this Act is taken to be a notice of acquisition within the *Land Acquisition Act 1993*, validly gazetted on the day after the completion of the Business Sale Agreement.
- Clause 7 (6)(c) Provides that the Crown is the acquiring authority for the purposes of this section.
- Clause 7 (7) Provides that no compensation is payable to the Emu Bay Railway Company for vesting in the Crown or a nominee, by reason of section 6, of its remaining interest in the Emu Bay Railway.
- Clause 8 (1)(a) Specifies that within one month of the day after the completion of the Business Sale Agreement the Minister is to advertise for the lodgement of claims for compensation by affected persons at least twice in newspapers circulating in Tasmania, Australia and the United Kingdom.
- Clause 8 (1)(b) Specifies that within one month of the day after the 30 November 2009 the Minister is to notify in writing each “affected person” known to the Minister of their right to compensation under the Act.
- Clause 8 (2) Specifies the details to be provided in each advertisement and notice required under subsection 8(1).

- Clause 9 Provides that a caveat, relating to a remaining interest, registered under the *Land Titles Act 1980* in respect of the Emu Bay Railway, or any part of it, lapses immediately before completion of the Business Sale Agreement despite any contrary provision of that Act.
- Clause 10 (1) Enables the Governor to make regulations for the purposes of this Act.
- Clause 10 (2) Enables regulations to be applied differently depending on the factors specified in the regulations.
- Clause 10 (3) Enables the regulations to provide that a contravention of any of the regulations is an offence and provides for the imposition of a fine not exceeding 50 penalty points, and in the case of a continuing offence a further fine not exceeding 10 penalty points for each day the offence continues.
- Clause 10 (4) Enables regulations to authorise any matter to be from time to time determined, applied, approved or regulated by the Minister or the Secretary of the Department.
- Clause 10 (5) Enables the regulations to contain savings or transitional provisions.
- Clause 11 Assigns administration of this Act to the Minister for Infrastructure and specifies the department responsible to the Minister for the administration of this Act is the Department of Infrastructure, Energy and Resources.
- Clause 12 States that the legislation specified in Schedule 1, namely the *Boundary Fences Act 1908* and the *Rail Infrastructure Act 2007* are amended as specified.
- Clause 13 Provides that the legislation specified in Schedule 2, namely the six Acts known collectively as the Emu Bay Railway Acts, are repealed.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Boundary Fences Act 1908

Inserts a new section 7A into this Act, after section 7, specifying that subject to the *Rail Infrastructure Act 2007* and 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.

Rail Infrastructure Act 2007

Inserts two new items into Part 1 of Schedule 1 in the *Rail Infrastructure Act 2007* which adds the 'Melba Line' and the Hellyer Spur line to the Rail Network.

SCHEDULE 2 – LEGISLATION REPEALED

Lists the Acts to be repealed pursuant to section 13.