

# National Rail Corporation (Victoria) Bill

## EXPLANATORY MEMORANDUM

*Clause 1* sets out the purpose of the Act.

*Clause 2* provides for the Act to come into operation on a day or days to be proclaimed.

*Clause 3* sets out definitions for the purposes of the Act.

*Clause 4* provides that the Act binds the Crown.

*Clause 5* approves the Agreement which is reproduced in Schedule 1 of the Act.

*Clause 6*

*Sub-clause (1)* provides that the parties to the agreement, the Minister and the Public Transport Corporation (PTC) are authorised to do anything which they are authorised to do by the Agreement and are required to observe the provisions of the Agreement that are applicable to them.

*Sub-clause (2)* provides that money required under the Agreement to be provided by the State (for example, see clause 6 (1) (a) (iii) of the Agreement) will be provided from money appropriated from time to time by the Parliament for the purposes of the Act.

*Clause 7*

*Sub-clause (1)* enables the National Rail Corporation (NRC) to engage in intra-state rail services in Victoria in accordance with the Agreement and therefore overcomes impediments arising out of the Commonwealth being a shareholder in the NRC and the bar to the NRC engaging in such services due to the application of the Federal Constitution. Accordingly, power is referred to the Commonwealth for this purpose.

*Sub-clause (2)* provides that the reference of power under sub-clause (1) terminates on a day fixed by proclamation of the Governor in Council published in the Government Gazette.

*Sub-clause (3)* provides that for the purposes of the clause, a reference to holding shares includes a reference to acquiring, disposing of or dealing with shares.

*Clause 8* provides that the National Rail Corporation is not, and does not represent, the Crown, nor is it a public authority for any purpose. The obligations of the NRC are also not guaranteed by the State.

*Clause 9* provides that the National Rail Corporation must not carry on or engage in intra-state rail services in Victoria unless it is in accordance with the approval in writing of the Minister.

*Clause 10* provides for the transfer of rail freight assets to the National Rail Corporation.

*Sub-clause (1)* enables the Minister with the agreement of the Treasurer and the approval of the NRC to direct in writing that any part of the rail freight assets of the State or of the PTC can be transferred to the NRC for the consideration specified in the direction.

*Sub-clause (2)* provides that the consideration for the transfer of rail freight assets is (subject to the direction under sub-clause (1)) the issue to the State of shares in the Corporation in accordance with the Agreement.

*Sub-clause (3)* sets out the consequential provisions which have effect on the making of a direction under sub-clause (1) subject to the terms of that direction. The sub-clause provides that the rail freight assets vest in the NRC and that any rights and liabilities of the State or the PTC relating to the assets become those of the NRC. Further, any actions, claims etc against or in relation to the State or the PTC in respect of rail freight assets either pending or existing immediately before the making of the direction become actions, claims etc against or in relation to the NRC and may be pursued or completed. Also, any action or omission in relation to rail freight assets before the direction in respect of the State or the PTC is taken to be an action or omission by the NRC.

*Sub-clause (4)* states that the operation of the clause does not give rise to any cause of action against the State, the Minister, the PTC or any other person.

*Sub-clause (5)* provides that the clause does not limit any other method of transfer of rail freight assets of the State or the PTC to the Corporation such as a lease or licence.

*Clause 11* provides the mechanism for the possible transfer of the whole or part of the South Dynon and North Dynon freight terminals with land at Somerton which may be required by the National Rail Corporation. The extent of the land to be transferred (if any) and its valuation may be the subject of negotiations with the NRC at a later date.

*Sub-clause (1)* enables the making and publication of an order in council approving the description of land for transfer by survey plan. It limits the lands able to be transferred to those listed in Schedule 2.

*Sub-clause (2)* provides that a survey plan must be signed by the Surveyor-General and in the case of specified plans, must indicate which land in the plan is to be transferred to the NRC and which land is to be retained by the PTC.

*Sub-clause (3)* provides for the transfer (by vesting and Crown grant) of land in a plan, of survey approved under sub-section (1) by order in council. It also removes a caveat from a title to land within the North Dynon terminal and removes easements and a covenant from a further title at North Dynon. The closure of a former road, Fletcher Street, which is an undefined parcel of land within North Dynon, is also provided for.

*Sub-clause (4)* provides that a Crown grant to the NRC or the PTC is subject to any terms, conditions, etc that the governor in Council determines.

*Sub-clause (5)* provides for exemptions in the circumstances described in that sub-clause from the operation of the **Subdivision Act 1988** and from section 9AA of the **Sale of Land Act 1962**.

*Sub-clause (6)* provides that no compensation is payable by the Crown, the PTC or the NRC in respect of anything done under or arising out of the operation of this clause.

*Sub-clause (7)* states that the Registrar-General must make all entries on relevant records and on any memorial which is necessary due to the operation of this clause.

*Sub-clause (8)* provides that the Registrar of Titles must make amendments to the Register due to the operation of this clause.

*Sub-clause (9)* allows for title records to be amended as provided in sub-clauses (7) and (8) whether or not those records are in a computerised form.

*Clause 12* provides that a direction is not to be made under clause 10 and that a declaration must not be made under clause 11 unless the Minister is satisfied that arrangements have been made for payment to the State of stamp duty and other fees and charges in respect of the transfer of rail freight assets or land pursuant to the Act.

*Clause 13* is intended to alter or vary section 85 of the **Constitution Act 1975** to the extent stated.

*Clause 14* is a regulation making power.

*Clause 15* makes consequential amendments to the **Transport Act 1983**.

