



Australian National Railways Commission Sale Act 1997

Act No. 96 of 1997 as amended

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taking into account amendments up to Act No. 74 of 2000

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to amend the *Australian National Railways Commission Act 1983*, to repeal certain Acts, and for other purposes

1 Short title [*see* Note 1]

This Act may be cited as the *Australian National Railways Commission Sale Act 1997*.

2 Commencement [*see* Note 1]

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 7 to 10 of Schedule 3 and items 8 and 9 of Schedule 4 commence on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the relevant Minister of South Australia has agreed to those items commencing.
- (3) Item 11 of Schedule 3 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the relevant Minister of Tasmania has agreed to that item commencing.
- (4) Item 2 of Schedule 4 commences on the day on which it receives the Royal Assent.
- (5) The remaining items of Schedule 3 and Schedule 4 commence on a day to be fixed by Proclamation. The day must not be earlier than the later of the day proclaimed for the purposes of subsection (2) and the day proclaimed for the purposes of subsection (3).

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Insertion of new Part VA in the Australian National Railways Commission Act 1983

1 After Part V

Insert:

Part VA—Transfer of assets of Commission

Division 1—Preliminary

67AA Purpose of Part

The purpose of this Part is to provide for the winding down of the operations of the Commission prior to the Commission being abolished by the repeal of this Act.

67AB Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a scheme under which assets of the Commission may be transferred to other persons.
- The Commission may be directed to sell or transfer any of its assets.
- The assets, contracts and liabilities of the Commission may be transferred by declaration.
- Commonwealth guaranteed liabilities may, however, only be transferred to the Commonwealth.

Section 67AC

- If assets, contracts or liabilities (other than Commonwealth guaranteed liabilities) of the Commission have been transferred to the Commonwealth, the assets, contracts or liabilities may be transferred by the Commonwealth to other persons.
- The Commission may be required to pay to the Commonwealth an amount equal to any consideration received for the sale or transfer of any of the Commission's assets or contracts.
- Certain transactions under this Part are exempt from stamp duty and similar taxes.
- The Commonwealth may take over obligations of the Commission.
- The Commission, the Commissioners, and certain other persons, may be required to assist the Commonwealth or the Commission in connection with the implementation of this Part.
- The Federal Court may grant injunctions relating to the enforcement of this Part.
- Provision is made for compensation for acquisition of property.

67AC Interpretation

In this Part, unless the contrary intention appears:

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

Commonwealth guaranteed liability means a liability, and any other related obligations, whose satisfaction or performance is guaranteed by the Commonwealth.

contract includes:

- (a) a deed; and
- (b) a deed poll.

Federal Court means the Federal Court of Australia.

instrument includes a document.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

obligation means any obligation whether actual, contingent or prospective.

Division 2—Transfer of assets, liabilities, rights and obligations of Commission

67AD Minister for Finance may direct Commission to sell or transfer assets

- (1) The Minister for Finance may, by written notice given to the Commission, direct the Commission to sell or transfer a specified asset of the Commission.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the Commission requirements that are ancillary or incidental to the sale or transfer, including (but not limited to) any of the following requirements:
 - (a) a requirement that the sale or transfer must be to a specified person;
 - (b) a requirement that the sale or transfer must be completed before a specified time;

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Part VA Transfer of assets of Commission

Division 2 Transfer of assets, liabilities, rights and obligations of Commission

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- (c) a requirement that the sale or transfer must be undertaken in a specified manner;
- (d) in the case of a sale—a requirement that the asset must be sold for a price that is within a specified range;
- (e) in the case of a sale—a requirement that the asset must be marketed, and that the sale must be undertaken, through a specified agent.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (3) The Commission must comply with the direction.
- (4) This section does not limit section 67AE or 67AF.

67AE Transfer of assets by declaration

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to an asset of the Commission:
 - (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
 - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commission were a reference to the person;
 - (c) a declaration that a specified person becomes the Commission's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Commission from transferring an asset to a person otherwise than under that subsection unless the transfer would be contrary to a declaration made under that subsection.

67AF Transfer of contractual rights and obligations by declaration

- (1) The Minister for Finance may, by writing, declare that the Commission's rights and obligations under a specified contract to which the Commission is a party:
 - (a) cease to be rights and obligations of the Commission at a specified time; and
 - (b) become rights and obligations of a specified person at that time.

Note: A right or obligation may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commission were a reference to a specified person.
- (3) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect after the Commission's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commission were a reference to the person.
- (4) The Minister for Finance may, by writing, declare that a specified person becomes the Commission's successor in law, in relation to the Commission's rights and obligations under a specified contract, immediately after the Commission's rights and obligations under the contract become rights and obligations of the person.
- (5) A declaration under this section has effect accordingly.
- (6) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (7) This section does not, by implication, limit section 67AE.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

Section 67AG

67AG Transfer of liabilities by declaration

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to a liability of the Commission other than a Commonwealth guaranteed liability:
 - (a) a declaration that a specified liability ceases to be a liability of the Commission and becomes a liability of a specified person at a specified time;
 - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commission were a reference to the person;
 - (c) a declaration that a specified person becomes the Commission's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

67AH Commonwealth guaranteed liabilities of the Commission

- (1) The Minister for Finance may, by written notice, declare that specified Commonwealth guaranteed liabilities of the Commission cease to be liabilities of the Commission and become liabilities of the Commonwealth on a specified day.
- (2) A declaration under subsection (1) has effect accordingly.
- (3) The Treasurer may authorise the payment of money to discharge the Commonwealth guaranteed liabilities that become liabilities of the Commonwealth, whether by ending those liabilities or otherwise.
- (4) The Consolidated Revenue Fund is appropriated for payments under this section.

67AJ Consideration

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

Division 3—Contracts

67AK Commission may enter into contracts

The Commission may, subject to sections 6AA and 67AL, subsection 55(3) and this Part, enter into contracts for the purposes of this Part.

67AL Minister for Finance may direct Commission to enter into contracts

- (1) The Minister for Finance may, by written notice given to the Commission, direct the Commission to enter into specified contracts.

Note: A contract may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the Commission requirements that are ancillary or incidental to the contract, including (but not limited to) either or both of the following requirements:
 - (a) a requirement that the contract must be with a specified person;
 - (b) a requirement that the contract must be entered into before a specified time.
- (3) The Commission must comply with the direction.

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Division 4—Transfers by the Commonwealth

67AM Transfer of assets

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to an asset that has vested in the Commonwealth under section 67AE:
 - (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
 - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
 - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Commonwealth from transferring an asset to a person otherwise than under that subsection.

67AN Transfer of contractual rights and obligations

- (1) This section applies to a contract where rights and obligations under the contract became rights and obligations of the Commonwealth under section 67AF.
- (2) The Minister for Finance may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
 - (a) cease to be rights and obligations of the Commonwealth at a specified time; and

Section 67AP

- (b) become rights and obligations of a specified person at that time.
- (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to a specified person.
- (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commonwealth were a reference to the person.
- (5) The Minister for Finance may, by writing, declare that a specified person becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the person.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (8) This section does not, by implication, limit section 67AM.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

67AP Transfer of liabilities

- (1) This section applies to a liability that became a liability of the Commonwealth under section 67AG.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of a specified person at a specified time;

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- (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
 - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

67AQ Consideration

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

Division 5—Proceeds of asset transfers to be paid to the Commonwealth

67AR Proceeds of asset transfers to be paid to the Commonwealth

- (1) The Minister for Finance may, by written notice given to the Commission, direct that, if the Commission receives any consideration in respect of:
 - (a) the sale or transfer by the Commission of a specified asset;
or
 - (b) the transfer of the Commission's rights and obligations under a specified contract;the Commission must pay to the Commonwealth a specified amount. The amount specified must not be more than the amount of the consideration.

Note: An asset or contract may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Commission must comply with the direction.
- (3) This section does not, by implication, limit section 57.

Division 6—Tax exemption

67AS Exemption from stamp duty and other taxes

- (1) Subject to subsection (2), stamp duty or other tax is not payable under a law of the Commonwealth, a State or a Territory in respect of:
 - (a) an exempt matter; or
 - (b) anything done (including a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (2) The Minister for Finance may, by written notice, declare that subsection (1) does not apply in respect of a specified exempt matter.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) In this section:

exempt matter means:

- (a) the sale or transfer by the Commission of an asset in accordance with a direction under section 67AD; or
- (b) an agreement relating to a sale or transfer covered by paragraph (a); or
- (c) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a sale or transfer covered by paragraph (a); or
- (d) a transfer under section 67AE, 67AF or 67AG; or
- (e) an agreement relating to a transfer covered by paragraph (d);
or

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- (f) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a transfer covered by paragraph (d); or
- (g) the entering into of a contract by the Commission under section 67AK or in accordance with a direction under section 67AL; or
- (h) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a contract covered by paragraph (g); or
- (i) a transfer under section 67AM, 67AN or 67AP; or
- (j) an agreement relating to a transfer covered by paragraph (i); or
- (k) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (i); or
- (l) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 67AE; or
- (m) an agreement relating to a sale or transfer covered by paragraph (l); or
- (n) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a sale or transfer covered by paragraph (l); or
- (o) the entering into of a contract by the Minister for Finance for the sale of shares referred to in section 67AZN; or
- (p) the receipt of money by the Minister for Finance, or by a person acting on behalf of the Minister for Finance, in respect of a contract covered by paragraph (o).

Division 7—Commonwealth takeover of contractual rights and obligations and other liabilities

67AT Commonwealth takeover of certain contractual rights and obligations and other liabilities of the Commission

- (1) This section applies to a contractual right or obligation or other liability of the Commission other than a liability to which section 67AU applies.

- (2) The Minister for Finance may, on the Commonwealth's behalf, enter into an agreement to take over a contractual right or obligation or other liability to which this section applies.

67AU Commonwealth takeover of certain liabilities of the Commission

- (1) This section applies to a liability of the Commission under a borrowing transaction.
- (2) The Treasurer may, on the Commonwealth's behalf, enter into an agreement to take over a liability to which this section applies.
- (3) For the purposes of this section, a *borrowing transaction* is:
- (a) a loan; or
 - (b) any other transaction that gives rise to a borrowing.
- (4) For the purposes of this section, borrowing includes borrowing, or otherwise raising money, by dealing in securities.
- (5) For the purposes of this section, the obtaining of credit is taken to be a borrowing of an amount equal to the value of the credit obtained.

67AV Authorisation of payments

If the Treasurer enters into an agreement under subsection 67AU(2), the Treasurer may authorise the payment of money to discharge the Commonwealth's obligations under the agreement, whether by terminating those obligations or otherwise.

67AW Appropriation

A payment under section 67AV is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

67AX Application of the *Loans Securities Act 1919*

Sections 5A, 5B, 5C and 5D (other than paragraphs (1)(c) and (2)(c)) of the *Loans Securities Act 1919* apply in relation to a

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Section 67AY

liability that is taken over by the Commonwealth under section 67AU as if that liability were a borrowing of money outside Australia:

- (a) that the Treasurer was authorised to make on behalf of the Commonwealth; and
- (b) that the Treasurer made accordingly.

Division 8—Commission and others to assist the implementation of this Part

67AY Implementation of this Part

A reference in this Division to the *implementation of this Part* includes a reference to the formulation of the policies and approaches to be adopted by the Minister for Finance for the purposes of this Part.

67AZ Assistance given by Commission and Commissioners in connection with the implementation of this Part

- (1) The Commission may, on the Commission's own initiative, assist the Commonwealth in connection with the implementation of this Part.
- (2) A Commissioner may, on his or her own initiative, assist the Commonwealth or the Commission in connection with the implementation of this Part.
- (3) The Commission must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (4) A Commissioner must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Commission in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.

- (5) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4) or the making of a request under subsection (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under a rule of common law or equity (other than a rule of administrative law).

67AZA Giving of assistance—ancillary provisions

- (1) The assistance mentioned in subsection 67AZ(1), (2), (3) or (4) may take the form of:
- (a) the giving of information; or
 - (b) the giving of financial assistance; or
 - (c) the giving of a financial benefit to a related party; or
 - (d) the provision, by a Commissioner or by employees of the Commission, of facilities, information and other assistance in connection with the conduct of:
 - (i) a due diligence procedure or a similar process; or
 - (ii) a market briefing or a similar process; or
 - (e) the entering into of an agreement with the Commonwealth or the Commission.
- (2) Subsection (1) does not, by implication, limit the forms in which assistance may be given.
- (3) Section 67AZ does not, by implication, limit:
- (a) the executive power of the Commonwealth to enter into an agreement; or
 - (b) the power of the Commission to enter into an agreement; or
 - (c) the capacity of the Commission or a Commissioner to enter into an agreement with the Commonwealth; or
 - (d) the capacity of a Commissioner to enter into an agreement with the Commission.
- (4) Section 67AZ extends to the giving of assistance outside Australia, whether or not in a foreign country.

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67AZB Use of information by the Commonwealth or the Commission

- (1) This section applies to information obtained under section 67AZ.
- (2) The Commonwealth, the Commission, or an associated person, may use the information for a purpose in connection with the implementation of this Part.
- (3) The Commonwealth, the Commission, or an associated person, may disclose the information for a purpose in connection with the implementation of this Part.
- (4) To avoid doubt, the use or disclosure of information as mentioned in subsection (2) or (3) does not result in a contravention of, or give rise to a liability or remedy under a rule of common law or equity (other than a rule of administrative law).
- (5) In this section:

associated person means:

- (a) a Minister; or
- (b) an individual who holds an office under, or is employed by, the Commonwealth; or
- (c) an officer or employee within the meaning of the *Public Service Act 1922*; or
- (d) a person who performs services for or on behalf of the Commonwealth in connection with the implementation of this Part; or
- (e) a Commissioner; or
- (f) an officer or employee of the Commission; or
- (g) a person who performs services for or on behalf of the Commission in connection with the implementation of this Part.

67AZC Agreements relating to the protection of information

- (1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with a person relating to the protection of information:
 - (a) that is obtained under section 67AZ; and

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- (b) the publication of which might be expected to prejudice substantially a person's commercial interests.
- (2) An agreement under subsection (1) may be enforced as if it were a contract.
- (3) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.
- (4) The Commission may enter into an agreement with a person relating to the protection of information:
 - (a) that is obtained under section 67AZ; and
 - (b) the publication of which might be expected to prejudice substantially a person's commercial interests.
- (5) An agreement under subsection (4) may be enforced as if it were a contract.
- (6) Subsection (4) does not, by implication, limit the power of the Commission to enter into agreements.

Division 9—Injunctions

67AZD Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Part, the Federal Court may, on the application of the Minister for Finance, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (2) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is, or would be, a contravention of this Part;

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the Federal Court may, on the application of the Minister for Finance, grant an injunction requiring the person to do that act or thing.

67AZE Interim injunctions

Grant of interim injunction

- (1) If an application is made to the court for an injunction under section 67AZD, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The court is not to require an applicant for an injunction under section 67AZD, as a condition of granting an interim injunction, to give any undertakings as to damages.

67AZF Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this Division.

67AZG Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent

Section 67AZH

danger of substantial damage to any person if the person engages in conduct of that kind.

Performance injunctions

- (2) The power of the court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

67AZH Other powers of the court unaffected

The powers conferred on the court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Division 10—Miscellaneous

67AZJ Transfers of Commission land may be registered

- (1) This section applies if:
- (a) any right, title or interest in particular land vests in a person under section 67AE or 67AM; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister for Finance, or a person authorised by the Minister for Finance, in writing, for the purposes of this section; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and

Section 67AZK

- (iii) states that the right, title or interest has become vested in the person under section 67AE or 67AM, as the case requires.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.

67AZK This Part does not modify registers kept by land registration officials

This Part, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

67AZL *Lands Acquisition Act 1989* does not apply to this Part

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

67AZM Certificates in relation to assets other than land

- (1) This section applies if:
 - (a) an asset other than land vests in a specified transferee under section 67AE or 67AM; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister for Finance, or a person authorised by the Minister for Finance, in writing, for the purposes of this section; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the specified transferee under section 67AE or 67AM, as the case requires.

Section 67AZN

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of section 67AE or 67AM.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.
- (4) In this section:

assets official means the person or authority who, under a law of the Commonwealth, a State or a Territory, has responsibility for keeping a register in relation to assets of the kind concerned.

67AZN Minister may sell shares in sale company

To avoid doubt, if the Commonwealth owns shares in a company that is established for purposes related to the purposes of this Part, the Minister for Finance may, on behalf of the Commonwealth, enter into contracts to sell the shares.

67AZP Legislative Instruments Act does not apply to this Part

To avoid doubt, an instrument made under this Part is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

67AZQ Operation of Australian Land Transport Development Act 1988

For the purpose of paragraph 32(1)(n) of the *Australian Land Transport Development Act 1988*, where the Commission disposes of an asset under this Part, the Commission is taken to have paid to the Commonwealth an amount equal to the greater of the proceeds of the sale or disposal and the market value of the asset.

Section 67AZR

67AZR Minister may enter into certain agreements with States

- (1) The Minister may, by written notice, enter into one or more agreements on behalf of the Commonwealth, with South Australia that:
 - (a) terminates or varies the agreements contained in any of the following Acts:
 - (i) *Port Augusta to Whyalla Railway Agreement Act 1970*;
 - (ii) *Tarcoola to Alice Springs Railway Act 1974*;
 - (iii) *Railways Agreement (South Australia) Act 1975*;
 - (iv) *Railway Agreement (Adelaide to Crystal Brook Railway) Act 1980*; or
 - (b) provides for the transfer to South Australia of the whole or any part of land owned by the Commission or the Commonwealth that is located in South Australia and that is used for purposes related to railways; or
 - (c) provides for matters that are incidental to transfers covered by paragraph (b); or
 - (d) provides for matters that are incidental to the purposes of this Part; or
 - (e) authorises the performance and observance by the Commonwealth and by the Commission of the new agreements.
 - (2) The Minister may, by written notice, enter into one or more agreements on behalf of the Commonwealth, with Tasmania that:
 - (a) terminates or varies the agreement contained in the *Railways (Tasmania) Act 1975*; or
 - (b) provides for the transfer to Tasmania of the whole or any part of land owned by the Commission or the Commonwealth that is located in Tasmania that is used for purposes related to railways; or
 - (c) provides for matters that are incidental to transfers covered by paragraph (b); or
 - (d) provides for matters that are incidental to the purposes of this Part; or
 - (e) authorises the performance and observance by the Commonwealth and by the Commission of the new agreements.
-

Section 67AZS

- (3) A notice by the Minister under subsection (1) or (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

67AZS Compensation—constitutional safety net

- (1) If:
- (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

- (4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

67AZT Transfer of pending proceedings

- (1) This section applies if, as a result of a declaration made by the Minister for Finance under this Act, a person (the successor) becomes the successor in law of another person (the original person) at a particular time in relation to a particular asset, liability, right, benefit or obligation.

Section 67AZU

- (2) If any proceedings to which the original person was a party:
- (a) were pending in any court or tribunal immediately before that time; and
 - (b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;
- then, unless the Minister for Finance otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

67AZU Operation of this Part does not place a person in breach of contract etc.

To avoid doubt, the operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of, or constituting a default under, any Act or other law or any provision in an agreement, arrangement or understanding including, but not limited to, any contractual provision prohibiting, restricting or regulating:
 - (i) the assignment or transfer of any asset, liability, right or obligation; or
 - (ii) the disclosure of any information; or
- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under a declaration made under this Part; or
- (e) fulfilling any condition which:
 - (i) allows a person to terminate any agreement or obligation; or
 - (ii) modifies the operation or effect of any agreement; or
 - (iii) requires any money to be paid before its stated maturity.

67AZV Delegation

- (1) The Minister for Finance may, by writing, delegate to:
- (a) the Secretary to the Department of Finance; or
-

Section 67AZW

- (b) the Chief Executive of the Office of Asset Sales; or
- (c) a person holding or performing the duties of a Senior Executive Service office (whether or not in the Department of Finance);

all or any of the functions and powers conferred on the Minister for Finance by this Part.

- (2) In this section:

Senior Executive Service office has the same meaning as in the *Public Service Act 1922*.

67AZW Commonwealth records

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983* or the record is covered by a determination under section 29 of that Act.

67AZX This Part does not authorise the imposition of taxation

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

Schedule 2—Other amendments of the Australian National Railways Commission Act 1983

1 At the end of Part I

Add:

3A Crown to be bound

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

3B Extra-territorial operation

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

2 At the end of section 5

Add:

; and (g) any other functions required to be carried out by the Commission in order for Part VA to be given effect to.

Note: Part VA deals with transfers of assets of the Commission for the purpose of winding down the Commission.

3 At the end of section 6

Add:

- (3) Subsections (1) and (2) have effect subject to section 6AA (which deals with directions to the Commission).

4 After section 6

Insert:

6AA Ministerial directions

- (1) The Minister may, by written notice given to the Commission, give directions to the Commission about the performance of the Commission's functions or the exercise of the Commission's powers.
 - (2) A direction under subsection (1) may be given for the purposes of winding down the various activities of the Commission and, in particular, a direction may:
 - (a) require the Commission to:
 - (i) cease to perform a specified function; or
 - (ii) cease to exercise a specified power; or
 - (b) impose restrictions or conditions on:
 - (i) the performance by the Commission of a specified function; or
 - (ii) the exercise by the Commission of a specified power.
- Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.
- (3) A direction under subsection (1) may make provision for or in relation to a matter by conferring a power of the Commission on the Minister.
 - (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
 - (5) The Commission must comply with a direction under subsection (1).
 - (6) A copy of a direction under subsection (1) is to be published in the *Gazette* within 14 days after the giving of the direction.

5 Subsection 18(1)

Omit "subsections 19(3) and 55(3)", substitute "section 6AA, subsection 55(3) and Part VA".

Section 6AA

6 Section 19

Repeal the section.

7 Section 20

Repeal the section.

8 Subsection 21(1)

After “this section”, insert “, section 6AA”.

9 Subsection 21(1)

Omit “, 19(3)”.

10 Subsections 24(1) and (2)

Repeal the subsections, substitute:

- (1) The Commission consists of the following Commissioners:
 - (a) the Chairman of the Commission;
 - (a) the Deputy Chairman of the Commission;
 - (b) the Managing Director of the Commission;
 - (c) such number of other Commissioners as the Minister appoints.
- (2) The Commissioners (other than the Managing Director) are to be appointed by the Minister by written instrument. The appointment takes effect from the day specified in the instrument.
- (2A) The Commissioners (other than the Managing Director) hold office during the Minister’s pleasure.

11 Section 25

Repeal the section.

12 Section 32

Repeal the section.

13 Subsection 34(6)

Omit “4 Commissioners constitute a quorum”, substitute “a quorum is constituted by half of the Commissioners”.

14 Section 36C

Repeal the section, substitute:

36C Managing Director may be full-time or part-time

The Managing Director may hold office on either a part-time or a full-time basis.

15 Section 54

Repeal the section.

16 Subsection 55(3)

Omit “subsection 19(3)”, substitute “section 6AA and Part VA”.

17 Sections 57, 57A and 58

Repeal the sections, substitute:

57 Payment of amounts to the Commonwealth

- (1) The Minister for Finance may give the Commission a written direction requiring the Commission to pay a specified amount to the Commonwealth before a specified time.
- (2) The Commission must comply with a direction under subsection (1).

18 Subsection 62(1)

Omit “The Commission”, substitute “Subject to subsections (3) and (4), the Commission”.

19 At the end of section 62

Add:

- (3) The Minister for Finance may give the Commission a written direction requiring the Commission not to enter into a loan.
- (4) The Commission must comply with a direction under subsection (3).

Section 74A

20 Subsection 63(1)

Omit “incurred by it under section 62”, substitute:

incurred by it:

- (a) under a borrowing made under section 62; or
- (b) under any other contract, arrangement, agreement or obligation.

21 Subsection 63(2)

After “under section 62”, insert “or under any other contract, arrangement, agreement or obligation”.

22 Section 74

After “contrary,”, insert “other than a law that specifically relates to the safety in the operation of railways,”.

23 After section 74

Insert:

74A Operation of certain State and Territory laws

- (1) The Commission, in operating railways, is subject to any law of a State or Territory that specifically relates to the safety in the operation of railways.
- (2) Subject to subsection (3), a person who operates a railway that was previously operated by the Commission is, in operating the railway, subject to all laws of a State or Territory that relate to the operation of railways.
- (3) The Minister may, by written notice published in the *Gazette*, declare that specified laws of a State or Territory that relate to the operation of railways do not apply to a specified person who operates a railway that was previously operated by the Commission.
- (4) A declaration under subsection (3) must specify the period during which it has effect. The period must end no later than 6 months after the Commission ceases to operate the railway concerned.
- (5) A declaration made under subsection (3) has effect accordingly.

Schedule 3—Repeal of the Australian National Railways Commission Act 1983 and other Acts

Australian National Railways Commission Act 1983

1 The whole of the Act

Repeal the Act.

2 Definitions

In this Schedule:

repeal day means the day on which this item commences.

residual assets means:

- (a) any legal or equitable estates or interests in real or personal property, including contingent or prospective ones; and
- (b) any rights, privileges and immunities including contingent or prospective ones;

of the Commission immediately before the repeal day.

residual instruments means instruments that are in force immediately before the repeal day:

- (a) to which the Commission is a party; or
- (b) that were given to, by or in favour of the Commission; or
- (c) in which a reference is made to the Commission; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Commission.

residual liability means liabilities and duties of the Commission, including contingent and prospective ones, immediately before the repeal day.

Schedule 3 Repeal of the Australian National Railways Commission Act 1983 and other Acts

Part VA Transfer of assets of Commission

Division 10 Miscellaneous

Section 74A

3 Residual assets and liabilities to become Commonwealth assets and liabilities

- (1) By force of this item, all the residual assets of the Commission cease to be assets of the Commission and become assets of the Commonwealth on the repeal day.
- (2) By force of this item, all residual liabilities of the Commission cease to be liabilities of the Commission and become liabilities of the Commonwealth on the repeal day.
- (3) A residual instrument continues to have effect on and after the repeal day as if a reference in the instrument to the Commission were a reference to the Commonwealth.

4 Provisions continue to apply

In spite of the repeal of the *Australian National Railways Commission Act 1983* by this Schedule, that Act continues to apply in relation to residual assets and residual liabilities as if those residual assets and residual liabilities were assets and liabilities transferred to the Commonwealth under section 67AE or 67AG of that Act.

4A Registration of transfers after repeal

Despite the repeal of the *Australian National Railways Commission Act 1983* by this Schedule, section 67AZJ of that Act continues to apply, in relation to any right, title or interest in land that vested in a person under section 67AE or 67AM of that Act before its repeal, as if the repeal had not happened.

5 Pending proceedings

If, immediately before the repeal day, proceedings to which the Commission was a party are pending in a court, then, on and after the repeal day, the Commonwealth is substituted for the Commission in the proceedings and has the same rights and obligations as the Commission would have had in the proceedings.

Seat of Government Railway Act 1928

6 The whole of the Act

Repeal the Act.

Port Augusta to Whyalla Railway Act 1970

7 The whole of the Act

Repeal the Act.

Tarcoola to Alice Springs Railway Act 1974

8 The whole of the Act

Repeal the Act.

Railways Agreement (South Australia) Act 1975

9 The whole of the Act

Repeal the Act.

***Railway Agreement (Adelaide to Crystal Brook Railway) Act
1980***

10 The whole of the Act

Repeal the Act.

Railways (Tasmania) Act 1975

11 The whole of the Act

Repeal the Act.

Schedule 4—Amendment of other Acts

Administrative Decisions (Judicial Review) Act 1977

1 Paragraph (k) of Schedule 2

Omit “Australian National Railways Commission”.

Commonwealth Borrowing Levy Act 1987

2 Schedule

Omit “6. Australian National Railways Commission”.

Freedom of Information Act 1982

3 Part I of Schedule 2

Omit “Australian National Railways Commission”.

Legislative Instruments Act 1997

4 Schedule 2

Omit “*Australian National Railways Commission Act 1983*”.

5 Schedule 3

Omit “Australian National Railways Commission”.

Long Service Leave (Commonwealth Employees) Act 1976

6 Subsection 10(5)

Repeal the subsection.

National Crime Authority Act 1984

7 Schedule 2

Omit “Australian National Railways Commission”.

Northern Territory Acceptance Act 1910

8 Paragraphs 14(g) and (h)

Repeal the paragraphs.

9 Transitional—agreement

After the commencement of this item, the *Northern Territory Acceptance Act 1910* applies as if paragraphs (1)(g) and (h) of the Agreement set out in the Schedule to that Act were omitted.

National Rail Corporation Agreement Act 1992

10 Section 3 (definition of *Commonwealth rail freight agreement*)

Omit “, the Australian National Railways Commission, or any other”, substitute “or any”.

11 Section 3 (paragraph (b) of the definition of *eligible party*)

Repeal the paragraph.

12 Section 3 (paragraph (c) of the definition of *eligible party*)

Omit “other”.

13 Subsection 9(5)

Omit “the Australian National Railways Commission, or of any other”, substitute “or any”.

14 Subsection 9(5)

Omit “that Commission or”, substitute “that”.

15 Subsection 14(3)

Omit “the Australian National Railways Commission or any other”, substitute “any”.

Occupational Health and Safety (Commonwealth Employment) Act 1991

16 Schedule

Omit “Australian National Railways Commission”.

Safety, Rehabilitation and Compensation Act 1988

**17 Subsection 128A(4) (paragraph (j) of the definition of
prescribed Commonwealth authority)**

Repeal the paragraph.

Telecommunications Act 1997

18 Subsection 47(2)

Repeal the subsection.

19 Subsection 47(6)

Repeal the subsection.

20 Subsection 92(2)

Repeal the subsection.

Schedule 5—Miscellaneous provisions

Part 1—Certain assets not to be fixtures

1 Certain assets not to be fixtures

- (1) The Minister for Finance may, by written notice, declare that specified assets that are affixed to land and that are disposed of by the Commission or by the Commonwealth under Part VA of the *Australian National Railways Commission Act 1983* are taken, for all purposes, to be separate assets being chattels personal and not fixtures.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

- (2) The declaration has effect accordingly.

Part 2—Access to railways for defence-related purposes etc.

2 Access to railways for defence-related purposes and for emergency or disaster relief

- (1) The Minister may, by written notice given to a person who manages or controls a railway previously managed or controlled by the Commission:
 - (a) require that access be given to specified kinds of railway services for specified kinds of defence-related purposes; or
 - (b) require that priority of access be given to specified kinds of railway services for specified kinds of defence-related purposes.
- (2) The manner in which that access, or priority of access, is to be given is to be set out in the notice.
- (3) Subject to item 3, the terms and conditions on which that access, or priority of access, is to be given are to be set out in the notice.
- (4) A person must comply with a notice given to it under subitem (1).
- (5) A contravention of subitem (4) is not an offence. However, a contravention of subitem (4) is a ground for obtaining an injunction.
- (6) In addition to other methods of giving a notice, a notice under subitem (1) may be given by facsimile transmission.
- (7) In addition to its effect apart from this subitem, this item has the effect it would have if each reference to a person who manages or controls a railway previously managed or controlled by the Commission were, by express provision, confined to such a person that is a constitutional corporation.
- (8) In this item:

Commission means the Australian National Railways Commission.

railway service means a service provided in the course of conducting or managing a railway, and includes the use of facilities that are used for those purposes.

defence-related purpose means a purpose related to any of the following:

- (a) the defence of Australia;
- (b) the operation of the Australian Defence Force in connection with the defence of Australia;
- (c) the transport of the armed forces of a foreign country in connection with the defence of Australia;
- (d) the operation of the Australian Defence Force in connection with international humanitarian aid or United Nations peace-keeping operations;
- (e) the management of an emergency or a disaster (whether natural or otherwise), where that management involves the Australian Defence Force.

3 Compensation for access to railways for defence-related purposes and for emergency or disaster relief

Designated agency in relation to a notice

- (1) A notice under subitem 2(1) must specify a Commonwealth agency as the designated agency in relation to the notice.
- (2) If a notice under subitem 2(1) relates to either of the following purposes:
 - (a) the defence of Australia;
 - (b) the operation of the Australian Defence Force in connection with the defence of Australia;the notice must specify the Department of Defence as the designated agency in relation to the notice.
- (3) If a notice under subitem 2(1) relates to the management of an emergency or a disaster (whether natural or otherwise), the notice may specify:
 - (a) the Department of Defence; or
 - (b) any other Commonwealth agency that is involved in the management of the emergency or disaster;as the designated agency in relation to the notice.

Section 74A

Liability for loss or damage

- (4) If a notice under subitem 2(1) is given to a person and that person, or another person contracted, licensed or otherwise acting for that person in the operation of the railway, suffers loss or damage in consequence of the giving of access, or the giving of priority of access, in accordance with the notice the Commonwealth is liable to pay to the person who suffers the loss or damage an amount equal to the loss or damage.
- (5) If:
- (a) the person who suffers the loss or damage; and
 - (b) the head of the designated agency in relation to the notice (on behalf of the Commonwealth);
- do not agree on the amount of loss or damage mentioned in subitem (4), the person may recover the amount of the loss or damage by action against the Commonwealth in a court of competent jurisdiction.
- (6) In determining the amount of any loss or damage mentioned in subitem (4), regard must be had to anything done in mitigation of the loss or damage (including any remedial work).
- (7) A payment under subitem (4) or (5) is to be made out of amounts appropriated by the Parliament for the purposes of the designated agency in relation to the notice.

Compensation—constitutional safety-net

- (8) If:
- (a) apart from this item, the operation of item 2 would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (9) If the Commonwealth and the person do not agree on the amount of the compensation mentioned in subitem (8), the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Section 70 of the Defence Act 1903

- (10) This item has effect despite anything in section 70 of the *Defence Act 1903*.

Definitions

- (11) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Commonwealth agency means:

- (a) a Department; or
- (b) an agency or instrumentality of the Commonwealth.

designated agency, in relation to a notice, means the Commonwealth agency specified in the notice as the designated agency in relation to the notice.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

Table of Acts**Notes to the *Australian National Railways Commission Sale Act 1997*****Note 1**

The *Australian National Railways Commission Sale Act 1997* as shown in this compilation comprises Act No. 96, 1997 amended as indicated in the Tables below.

Table of Acts**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian National Railways Commission Sale Act 1997</i>	96, 1997	30 June 1997	Schedule 3 (items 1–11) and Schedule 4 (items 1, 3–20): 1 November 2000 (see s. 2(2), (3) and (5) and <i>Gazette</i> 2000, No. S562) Remainder: Royal Assent	
<i>Transport Legislation Amendment Act 2000</i>	74, 2000		Schedule 2 (items 2, 3): 28 June 2000	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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Schedule 3.....	am. No. 74, 2000
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