



High Speed Rail Authority Act 2022

No. 81, 2022

**An Act to establish the High Speed Rail Authority,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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High Speed Rail Authority Act 2022

No. 81, 2022

An Act to establish the High Speed Rail Authority, and for related purposes

[Assented to 12 December 2022]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *High Speed Rail Authority Act 2022*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	12 June 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

There is to be a High Speed Rail Authority.

The Authority has functions in relation to the high speed rail network and the high speed rail corridor. The Authority also has functions in relation to a faster rail network and additional corridors for that network.

The Authority must perform its functions in accordance with directions given by the Minister.

There is to be a Board of the Authority and a Chief Executive Officer of the Authority.

The Authority can engage staff and consultants.

This Act also deals with miscellaneous matters, including reviewing the operation of the Act and the power to make rules.

4 Definitions

In this Act:

Authority means the High Speed Rail Authority.

Board means the Board of the Authority.

Board member means a member of the Board and includes the Chair.

CEO means the Chief Executive Officer of the Authority.

Chair means the Chair of the Board.

faster rail network means a network of railways in Australia that are not capable of supporting high speed trains.

high speed rail corridor means the area through which the high speed rail network will run.

high speed rail network means a network of railways that:

- (a) are capable, in whole or in part, of supporting high speed trains; and
- (b) connect:
 - (i) Sydney, Melbourne, Brisbane and Canberra; and
 - (ii) some regional centres on the east coast of Australia or in New South Wales, Victoria or Queensland.

high speed train means a vehicle that:

- (a) is designed to transport passengers or goods and operates on a railway (including a vehicle that does not have wheels); and
- (b) is capable of travelling at speeds exceeding 250 km/hr.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

Part 1 Preliminary

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rules means rules made under section 50.

5 Act binds the Crown

This Act binds the Crown in each of its capacities.

Part 2—High Speed Rail Authority

Division 1—Introduction

6 Simplified outline of this Part

There is to be a High Speed Rail Authority.

The Authority's main functions are the following:

- (a) developing policy and planning, consulting relevant parties, giving advice and recommendations and undertaking evaluations and research in relation to the high speed rail network, the high speed rail corridor, a faster rail network and additional rail corridors for a faster rail network;
- (b) constructing or extending a railway in a State for the high speed rail network or a faster rail network, with the State's consent;
- (c) constructing or extending a railway in a Territory for the high speed rail network or a faster rail network, with the Territory's consent.

The Minister can give general directions to the Authority about the performance of the Authority's functions.

Division 2—Establishment and functions

7 Establishment

- (1) The High Speed Rail Authority is established by this section.
- (2) The Authority:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Authority. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) The Authority's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

8 Functions

- (1) The Authority has the following functions:
 - (a) to:
 - (i) lead and coordinate policy development and planning; and
 - (ii) consult, liaise and negotiate with States and Territories and other relevant parties; and
 - (iii) provide advice and recommendations to the Minister and other relevant parties (including advice and recommendations on environmental matters and interconnectedness); and
 - (iv) undertake evaluations and research and gather information;

in relation to the high speed rail network, the high speed rail corridor, a faster rail network and additional rail corridors for a faster rail network;

- (b) if the Commonwealth obtains a State's consent, in accordance with paragraph 51(xxxiv) of the Constitution, to the construction or extension of a railway in the State for the high speed rail network or a faster rail network—to construct or extend the railway in the State for that network;
- (c) if the Commonwealth obtains a Territory's consent to the construction or extension of a railway in the Territory for the high speed rail network or a faster rail network—to construct or extend the railway in the Territory for that network;
- (d) any other functions conferred on the Authority by this Act or any other Commonwealth law;
- (e) any other functions that are prescribed by rules made for the purposes of this paragraph;
- (f) to do anything incidental to, or conducive to, the performance of the above functions.

Note: Planning by the Authority may include transport and land use planning.

- (2) Rules made for the purposes of paragraph (1)(e) must specify the legislative power or powers of the Parliament in respect of each function of the Authority that is prescribed.

9 Powers

- (1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Authority's powers include, but are not limited to, the power to enter into contracts and agreements.

10 Authority does not have privileges and immunities of the Crown

The Authority does not have the privileges and immunities of the Crown in right of the Commonwealth.

Division 3—Minister may give directions to the Authority

11 General directions

- (1) The Minister may, by legislative instrument, give written directions to the Authority about the performance of its functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Authority must comply with a direction under subsection (1).

Part 3—Board of the Authority

Division 1—Introduction

12 Simplified outline of this Part

There is to be a Board of the Authority.

The Board's main functions are:

- (a) to decide, within the scope of any directions given to the Authority, the strategies and policies to be followed by the Authority; and
- (b) to ensure the proper, efficient and effective performance of the Authority's functions.

The Minister appoints Board members, including the Chair.

The Board is to hold meetings, as necessary, for the performance of its functions.

Division 2—Establishment and functions of the Board

13 Establishment of the Board

The Board of the High Speed Rail Authority is established by this section.

14 Functions of the Board

- (1) The functions of the Board are:
 - (a) to decide, within the scope of any directions given to the Authority under section 11, the strategies and policies to be followed by the Authority; and
 - (b) to ensure the proper, efficient and effective performance of the Authority's functions; and
 - (c) any other functions conferred on the Board by this Act.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Division 3—Board members

15 Membership

The Board consists of the following members:

- (a) a Chair;
- (b) 4 other members.

16 Appointment

- (1) Board members are to be appointed by the Minister by written instrument.

Note: Board members may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The Chair may be appointed on a full-time or part-time basis.
- (3) Other Board members are to be appointed on a part-time basis.
- (4) A person must not be appointed as a Board Member unless the Minister is satisfied that:
 - (a) the person has appropriate qualifications, knowledge, skills or experience; and
 - (b) the selection of the person for the appointment is the result of a process that:
 - (i) was merit-based; and
 - (ii) included public advertising of the position.
- (5) Paragraph (4)(b) does not prevent the Minister:
 - (a) taking affirmative action in relation to the appointment of women to positions; or
 - (b) taking into consideration appropriate representation among the States, Territories and local government areas in relation to appointments to positions.
- (6) Paragraph (4)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as a Board Member under a previous appointment under subsection (1).

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17 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

18 Acting appointments

- (1) The Minister may, by written instrument, appoint a Board member to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as a Board member (other than the Chair):
 - (a) during a vacancy in the office of a Board member (other than the Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Board member (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

19 Terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

20 Remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that
-

remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is prescribed by the rules.

- (2) A Board member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

21 Leave of absence

Chair

- (1) If the Chair is appointed on a full-time basis:
 - (a) the Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal; and
 - (b) the Minister may grant the Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (2) If the Chair is appointed on a part-time basis, the Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

Other Board members

- (3) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.
- (4) The Chair must notify the Minister if the Chair grants another Board member leave of absence for a period that exceeds 6 months.

22 Other paid work

- (1) If the Chair is appointed on a full-time basis, the Chair must not engage in paid work outside the duties of the Chair's office without the Minister's approval.

Section 22A

- (2) A Board member who is appointed on a part-time basis must not engage in any paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the member's duties.

22A Disclosure of interests

- (1) A disclosure by a Board Member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Board member is taken not to have complied with section 29 of that Act if the Board member does not comply with subsection (1) of this section.

23 Resignation

- (1) A Board member may resign the Board member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

24 Termination of appointment

The Minister may terminate the appointment of a Board member:

- (a) for misbehaviour; or
- (b) if the Board member is unable to perform the duties of the member's office because of physical or mental incapacity; or
- (c) if the Board member:
- (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Board member's creditors; or

- (iv) makes an assignment of the Board member's remuneration for the benefit of the Board member's creditors; or
- (d) for a Chair appointed on a full-time basis—if:
 - (i) the Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (ii) the Chair engages, except with the Minister's approval, in paid work outside the duties of the Chair's office (see subsection 22(1)); or
- (e) for a Board member appointed on a part-time basis—if:
 - (i) the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (ii) the Board member engages in paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the Board member's duties (see subsection 22(2)).

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

Division 4—Meetings of the Board

25 Convening meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene at least 4 meetings each calendar year; and
 - (c) must convene a meeting within 30 days after receiving a written request to do so from:
 - (i) 3 or more other members; or
 - (ii) the Minister.
- (3) Paragraph (2)(b) does not apply in relation to the calendar year in which this Act commences.

26 Presiding at meetings

- (1) The Chair must preside at all meetings at which the Chair is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

27 Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
 - (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;
-

the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

28 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

29 Conduct of meetings

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

30 Minutes

The Board must keep minutes of its meetings.

31 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and

Part 3 Board of the Authority

Division 4 Meetings of the Board

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- (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Chief Executive Officer, staff and consultants

Division 1—Introduction

32 Simplified outline of this Part

There is to be a Chief Executive Officer of the Authority.

The CEO is responsible for the day-to-day administration of the Authority.

The staff of the Authority are employed under the *Public Service Act 1999* and the Authority can also engage consultants.

Division 2—Chief Executive Officer

33 Chief Executive Officer

There is to be a Chief Executive Officer of the High Speed Rail Authority.

34 Functions of the CEO

- (1) The CEO is responsible for the day-to-day administration of the Authority.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's duties.
- (3) The CEO is to act in accordance with policies and strategies determined by the Board.

35 CEO to act in accordance with directions of Board

- (1) The Board may give written directions to the CEO, not inconsistent with any direction given to the Authority under section 11, about the performance of the CEO's duties.
- (2) The CEO must comply with a direction under subsection (1).
- (3) Subsection (2) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Authority.
- (4) A direction under subsection (1) is not a legislative instrument.

36 Appointment

- (1) The CEO is to be appointed by the Board by written instrument after consultation with the Minister.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO is to be appointed on a full-time basis.
- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The CEO must not be a Board member.
- (5) A person must not be appointed as the CEO unless the Board is satisfied that:
 - (a) the person has appropriate qualifications, knowledge, skills or experience; and
 - (b) the selection of the person for the appointment is the result of a process that:
 - (i) was merit-based; and
 - (ii) included public advertising of the position.
- (6) Paragraph (5)(b) does not prevent the Board:
 - (a) taking affirmative action in relation to the appointment of women to the position; or
 - (b) taking into consideration appropriate representation among the States, Territories and local government areas in relation to an appointment to the position.
- (7) Paragraph (5)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the CEO under a previous appointment under subsection (1).

37 Acting appointment

The Board may, by written instrument and after consultation with the Minister, appoint a person (other than a Board member) to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

38 Terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

39 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

40 Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to the CEO leave for a period that exceeds one month.

41 Other paid work

The CEO must not engage in paid work outside the duties of the CEO's office without the Chair's approval.

42 Disclosure of interests

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

43 Resignation

- (1) The CEO may resign the CEO's appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.
- (3) If the CEO resigns under this section, the Chair must notify the Minister of the resignation.

44 Termination of appointment

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity; or
 - (c) if the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or

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- (d) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (e) if the CEO engages, except with the Chair's approval, in paid work outside the duties of the CEO's office (see section 41); or
 - (f) if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (2) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

Division 3—Staff and consultants

45 Staff

- (1) The staff of the Authority must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

46 Consultants

The Authority may engage consultants to assist in the performance of its functions.

Part 5—Miscellaneous

47 Simplified outline of this Part

This Part deals with miscellaneous matters, including additional requirements for the Authority's corporate plan, reviewing the operation of the Act and the power to make rules.

48 Corporate plan

In preparing or varying a corporate plan under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the Board must consult with:

- (a) the Minister; and
- (b) such of the following as it considers appropriate:
 - (i) government, commercial, industrial, consumer and other relevant bodies and organisations;
 - (ii) investors in infrastructure and owners of infrastructure.

49 Review of this Act

- (1) At least once every 10 years, the Minister must cause a review of the operation of this Act and the rules to be undertaken.
- (2) The persons undertaking the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

50 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:

- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 8 September 2022
Senate on 21 November 2022]*

(80/22)
