

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**ALICE SPRINGS TO DARWIN RAILWAY (MISCELLANEOUS)
AMENDMENT ACT 2000**

No. 42 of 2000

[Assented to 13 July 2000]

An Act to amend the Alice Springs to Darwin Railway Act 1997 and to make related amendments to the Railways (Operations and Access) Act 1997.

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The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Alice Springs to Darwin Railway (Miscellaneous) Amendment Act 2000*.

(2) The *Alice Springs to Darwin Railway Act 1997* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Definitions

3. Section 3 of the principal Act is amended by striking out the definition of "**authorised project**" and substituting the following definitions:

"**authorised project**" means the project associated with the proposed railway between Alice Springs and Darwin, and the railway between Tarcoola and Alice Springs;

"**Concession Deed**" means the Concession Deed (and any associated or related documents) in respect of the construction, operation and maintenance of a railway as part of the authorised project entered into by the State, the Northern Territory, the AustralAsia Railway Corporation and the consortium, as amended and in force from time to time;

"**consortium**" means the person or group of persons responsible for constructing and operating a railway as part of the authorised project and includes—

- (a) if the consortium is a person—the successors and assignees of the person;
- (b) if the consortium is a group of persons—a member of the group and the successors and assignees of the group and of a member of the group;
- (c) a contractor or other person acting for or on behalf of the consortium or a member of the consortium in connection with the railway;.

Insertion of s. 5A

4. The following section is inserted after section 5 of the principal Act:

Implementation of Concession Deed

5A. (1) The implementation of the Concession Deed is authorised.

(2) For the purposes of the law of the State, the conferral of rights on the consortium by the Concession Deed is not to be taken to be a grant of a monopoly.

Amendment of s. 6—Extent of financial commitment

5. Section 6 of the principal Act is amended—

- (a) by inserting ", or a designated instrumentality," after "The Minister";

(b) by striking out paragraph (b) and substituting the following paragraph:

(b) —

- (i) to make a loan or loans in connection with the authorised project up to a total principal amount of \$25 million plus the amount of any GST or costs that may be payable in respect of the making of such a loan, with the arrangements for the payment of any interest or other amounts in connection with such a loan, and for the repayment of any principal, to be determined or approved by the Minister after consultation with the Treasurer and, despite paragraph (a), the Minister is authorised, if satisfied that it is necessary or desirable to do so in order to facilitate implementation of the authorised project, after consultation with the Treasurer, on behalf of the State, to forgive the repayment of the whole or any part of any principal, or the payment of any other amount, under or in connection with such a loan (even if the loan was made by a designated instrumentality); or
- (ii) in addition to paragraph (a), if the Minister is satisfied that it is necessary or desirable to do so in order to facilitate implementation of the authorised project, after consultation with the Treasurer, to make funds available in connection with the authorised project at times determined by the Minister up to a total amount of \$25 million plus the amount of any GST that may be payable in relation to the payment of those funds;;

(c) by inserting "or the Concession Deed" after "referred to in section 5";

(d) by inserting after its present contents (as amended and now to be designated as subsection (1)) the following subsections:

(2) The Minister, and any designated instrumentality, may act under subsection (1)—

(a) on terms and conditions determined by the Minister after consultation with the Treasurer; and

(b) without any further authorisation or conferral of power.

(3) In this section—

"designated instrumentality" means an instrumentality or agency of the Crown designated by the Treasurer for the purposes of this section.

Amendment of s. 9—Building and development work

6. Section 9 of the principal Act is amended—

- (a) by inserting "and all relevant consents, approvals, authorisations, certificates, reports and other things required by or under the *Development Act 1993* are to be taken to have been obtained or issued in respect of that work or the use of that work, and in respect of any building or structure associated with that work" after "at the time of the work";

(b) by inserting after its present contents (as amended and now to be designated as subsection (1)) the following subsections:

(2) A relevant authority under the *Development Act 1993* cannot, as a condition to approving an application for development approval under that Act with respect to work to be carried out on any part of the railway between Tarcoola and the Northern Territory border, require the upgrading of, or the performance of other work in relation to, another part of the railway.

(3) In subsection (2)—

"railway" includes railway track and other installations or equipment used or available for use in connection with the operation of a railway but does not include a building that falls within a classification under Part A3 of the *Building Code of Australia*.

Insertion of ss. 10 to 14

7. The following sections are inserted after section 9 of the principal Act:

Interests and rights in land modified

10. (1) An interest or right in or in relation to land forming any part of the rail corridor established between Tarcoola and the Northern Territory border (being an interest or right unrelated to the railway within that corridor or the operation of railway services) is modified in the manner, and to the extent, necessary to enable the consortium to construct, operate and maintain a railway within that corridor.

(2) For the purposes of subsection (1), an interest or right in or in relation to land includes any right of access under the *Mining Act 1971*, the *Opal Mining Act 1995*, or the *Petroleum Act 1940*.

Relief against forfeiture

11. (1) For the purposes of any lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory, but subject to this section—

- (a) sections 136 to 140 (inclusive) of the *Law of Property Act* of the Northern Territory (as in force from time to time) apply as part of the laws of South Australia, subject to such modifications that may be necessary for the purpose, or that may be made to, or that may apply in relation to, those provisions by virtue of this section, or by regulations made under this Act; and
- (b) sections 9 to 12 (inclusive) of the *Landlord and Tenant Act 1936* do not apply.

(2) Subsection (1) applies even if the *Law of Property Act* of the Northern Territory has not yet come into operation on the commencement of this section, or on the commencement of a relevant lease.

(3) On an application for relief against forfeiture of a lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 138 of the applied provisions, the court must grant the relief unless—

- (a) the lease is being terminated in conjunction with, or as a consequence of, the lawful termination of the Concession Deed; or
- (b) the court is satisfied—
 - (i) that a serious breach of the lease has occurred; and
 - (ii) that notice in writing of the breach has been given to the lessee, any sublessee, and the holder of any security over the lease or any sublease, requiring—
 - (A) in the case of a remediable breach (including a breach on account of the non-payment of rent)—the breach to be remedied;
 - (B) in the case of a non-remediable breach—the payment of reasonable compensation; and
 - (iii) that a reasonable period of time to remedy the breach or to pay reasonable compensation has been given; and
 - (iv) that the requirements of the notice have not been satisfied and, in the case of a remediable breach, none of the lessee, any sublessee or the holder of any security over the lease or any sublease is diligently pursuing the remedy of the breach; or
- (c) the court is satisfied that the lessee has persistently acted in breach of the lessee's obligations under the lease and that in the circumstances it is reasonable to refuse relief.

(4) Section 139 of the applied provisions is to operate as if the section included a provision allowing the holder of any security over a sublease to make application under subsection (1) of that section.

(5) On an application in relation to a lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 139 of the applied provisions by a sublessee or the holder of any security over a sublease, the court must, subject to subsection (6), grant the application if satisfied—

- (a) —
 - (i) that the lessor gave the lessee notice to remedy any breach or to pay reasonable compensation in accordance with the requirements set out in subsection (3)(b)(ii) of this section; and
 - (ii) that a reasonable period of time to remedy the breach or to pay reasonable compensation has been given; and

- (iii) that the requirements of the notice have not been satisfied and, in the case of a remediable breach, that the lessee is not diligently pursuing the remedy of the breach; and
 - (b) that any breach on the part of the lessee is not attributable (wholly or to a significant degree) to the acts, omissions or default of the sublessee or the holder of any security over the sublease; and
 - (c) that any sublessee in whose favour the application would be granted is unlikely to persistently breach any obligation that has been persistently breached by the lessee.
- (6) Subsection (5)—
- (a) operates subject to any decision on an application for relief against forfeiture under section 138 of the applied provisions (as modified by the operation of subsection (3) of this section); and
 - (b) does not apply if the court determines that it is reasonable to allow the lessee to remain in possession under the lease taking into account any action taken or undertakings given by the lessee, and such other matters as the court thinks just; and
 - (c) does not derogate from the operation of section 139(2) and (3) of the applied provisions.

(7) In this section, unless the contrary intention appears—

"**applied provisions**" means the provisions applied by subsection (1)(a);

"**lease**" includes a sublease;

"**lessee**" includes—

- (a) a sublessee;
- (b) the executors, administrators and assigns of a lessee.

Proceedings involving the Crown

12. (1) Subject to this section—

- (a) relevant proceedings may be brought and conducted by or against the South Australian Crown in a Northern Territory court; and
- (b) relevant proceedings may be brought and conducted by or against the Northern Territory Crown in a South Australian court.

(2) For the purposes of bringing or conducting relevant proceedings by or against the Northern Territory Crown in a South Australian court, and for the purposes of determining the rights and liabilities of the Northern Territory Crown in any such proceedings, the following Acts of the Northern Territory apply as laws of South Australia:

- (a) the *AustralAsia Railway (Special Provisions) Act*;
- (b) the *Crown Proceedings Act*;
- (c) any other Act prescribed by the regulations for the purposes of this subsection.

(3) An Act that applies as a law of South Australia under subsection (2) will be the Act as in force from time to time unless, in the case of the *Crown Proceedings Act*, the consortium, as part of bringing or conducting relevant proceedings, elects to apply that Act in force immediately before the commencement of this section (and then that election will have effect accordingly).

(4) Subject to subsection (3), the Interpretation Act of the Northern Territory, as in force from time to time, applies as a law of South Australia in respect of the Acts referred to in subsection (2) and instruments under those Acts.

(5) The *Acts Interpretation Act 1915* does not apply in respect of the Acts referred to in subsection (2) or instruments under those Acts.

(6) Without affecting the application of the *Crown Proceedings Act 1992* with respect to proceedings brought or conducted by or against the South Australian Crown (including proceedings to which the Northern Territory Crown is also a party), that Act does not apply in respect of relevant proceedings brought or conducted by or against the Northern Territory Crown in a South Australian court (including proceedings to which the South Australian Crown is also a party), or for the purposes of determining the rights and liabilities of the Northern Territory Crown in any such proceedings.

(7) For the purposes of bringing relevant proceedings by or against the South Australian Crown in a Northern Territory court, the Parliament of the State consents to the Legislative Assembly of the Northern Territory applying the *Alice Springs to Darwin Railway Act 1997* and the *Crown Proceedings Act 1992* as laws of the Northern Territory.

(8) The doctrine of executive necessity, to the extent (if any) that it applies in the State of South Australia, does not apply to the South Australia Crown in relation to its rights and obligations under the Concession Deed.

(9) In this section—

"Crown" includes—

- (a) a Minister, instrumentality or agency of the Crown;
- (b) a body or person declared by the regulations to be an instrumentality or agency of the Crown for the purposes of a particular reference to the Crown in this section;

"Northern Territory Crown" means the Crown in right of the Northern Territory;

"relevant proceedings" means civil proceedings arising out of, or otherwise connected with, the authorised project;

"South Australian Crown" means the Crown in right of South Australia.

Remission from taxes, etc.

13. (1) The Treasurer may, by notice published in the *Gazette*, exempt from a tax, duty or other impost, to the extent specified in the notice—

- (a) transactions related to the authorised project; or
- (b) instruments that arise from, are connected with or consequential on a transaction related to the authorised project.

(2) The Treasurer may, by notice published in the *Gazette*, for the purposes of the authorised project, confer exemptions from specified statutory provisions related to the imposition or administration of a tax, duty or impost.

(3) An exemption under subsection (1) or (2) will have effect according to its terms.

(4) The Treasurer may, by further notice published in the *Gazette*, vary or revoke an exemption under subsection (1) or (2).

Regulations

14. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) In addition to the power to make regulations under subsection (1), the Governor may make regulations amending, or modifying the operation of, this Act (other than this section), or any other Act, in relation to any matter arising from, connected with or consequential on any aspect of the authorised project.

(3) A provision of a regulation made under subsection (2) may, if the regulation so provides, take effect on a day earlier than the day on which the regulation is made, other than a day earlier than the day on which this section commences.

(4) The Governor may only make regulations under subsection (2) during the 12 months commencing on the day on which this section commences.

Amendment of Railways (Operations and Access) Act 1997

8. The *Railways (Operations and Access) Act 1997* is amended—

(a) by inserting after subsection (2) of section 7 the following subsection:

(3) The access regime does not (and cannot) apply to the railway to which the *AustralAsia Railway (Third Party Access) Act 1999* applies (and accordingly no proclamation can be made under this section in relation to the railway to which that Act applies).;

(b) by striking out section 15 and substituting the following section:

Rail corridor need not be fenced

15. Despite any other law, an operator is not required—

- (a) to fence a rail corridor or to replace, maintain or repair a fence in relation to a rail corridor; or
- (b) to contribute to or to join in the construction, replacement, maintenance or repair of a fence in relation to a rail corridor.