

NORTHERN TERRITORY OF AUSTRALIA

AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) ACT

As in force at 15 December 2003

Table of provisions

| | | |
|------|---|----|
| 1 | Short title | 1 |
| 2 | Commencement | 1 |
| 3 | Sunset provision | 1 |
| 4 | Act binds Crown | 1 |
| 5 | Interpretation | 1 |
| 5A | Concession Deed: authorisation of implementation and enforcement..... | 3 |
| 5AA | Specific performance against Darwin Port Corporation etc. | 3 |
| 5C | Existing rights and interests in land modified..... | 3 |
| 6 | Applications relating to railway to be given priority | 4 |
| 7 | Fixed railway infrastructure..... | 4 |
| 8 | Development provisions for corridor | 4 |
| 8A | Lease of Darwin Port Corporation land to consortium not a subdivision..... | 6 |
| 9 | Building approvals for existing structures | 6 |
| 9A | Certain building and planning restrictions not to apply | 7 |
| 9B | Building controls not to apply to certain structures | 7 |
| 10 | Revocation of reservations of Crown land | 7 |
| 10A | Relief against forfeiture of leases | 7 |
| 10AA | Power of Crown Lands Minister to enter agreements about termination or forfeiture of leases | 12 |
| 10B | Certain provisions of <i>Law of Property Act</i> not to apply | 12 |
| 10C | Sub-letting of pastoral lease | 12 |
| 11 | Closure of roads | 13 |
| 11A | Temporary closure of roads..... | 14 |
| 11B | Modification of section 59 of <i>Control of Roads Act</i> for sleeper plants..... | 14 |
| 11C | Granting of rights over roads | 15 |
| 12 | Road crossings..... | 15 |
| 12A | Waterway crossings | 16 |
| 13 | Revocation of national parks, reserves etc..... | 17 |
| 14 | Easements in favour of PowerWater | 18 |
| 14A | Access easements in favour of private landholders..... | 19 |
| 14B | Variation of easements..... | 19 |
| 15 | Reservations from occupation under <i>Mining Act</i> | 20 |
| 16 | Authority to mine extractive minerals on reservation from occupation | 21 |
| 16A | Access to mining tenements etc. over corridor only with consent..... | 21 |
| 16B | Access to petroleum permit or licence area over corridor only with consent..... | 22 |

| | | |
|-----|---|----|
| 16C | Access not to interfere with railway | 24 |
| 16D | Entry on land not to interfere with railway | 24 |
| 17 | Authority to construct railway on mining tenements etc..... | 24 |
| 17A | Activities on mining tenement etc. not to interfere with railway..... | 24 |
| 17B | Activities on petroleum permit or licence area not to interfere with railway | 25 |
| 17C | Mineral royalties | 25 |
| 18 | Corridor need not be fenced..... | 25 |
| 18A | Places and objects to which <i>Heritage Conservation Act</i> applies | 25 |
| 18B | Amalgamation etc. of Authority Certificates..... | 26 |
| 19 | <i>Workmen's Liens Act</i> does not operate during construction | 27 |
| 19A | Acquisition on just terms..... | 27 |
| 19B | Proceedings involving Crown | 28 |
| 20 | Regulations..... | 29 |
| 21 | Protocols..... | 30 |

Schedule Reservations from occupation revoked

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 15 December 2003

AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) ACT

An Act to make provision in connection with the railway from Tarcoola to Darwin and for related purposes

1 Short title

This Act may be cited as the *AustralAsia Railway (Special Provisions) Act*.

2 Commencement

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Sunset provision

Where a regulation declares that section 6, 16 or 19 ceases to operate on and after a specified date, being a date not earlier than the date on which the regulation is notified in the *Gazette*, the section ceases to operate on and after that date.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Interpretation

(1) In this Act, unless the contrary intention appears:

additional land means land in relation to which section 8 of this Act is declared under section 8(7) to apply.

Concession Deed means the Concession Deed in respect of the construction, operation and maintenance of the railway entered into by South Australia, the Territory, the 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 the railway 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; and
- (c) a contractor or other person acting for or on behalf of the consortium or a member of the consortium in connection with the construction or operation of the railway or both.

Corporation means The AustralAsia Railway Corporation established by section 4 of the *AustralAsia Railway Corporation Act*.

corridor means the land leased by the Territory or another person to the Corporation for the construction, operation and maintenance of the railway from Tarcoola in South Australia to Darwin in the Territory.

fixed railway infrastructure, in relation to the railway, means:

- (a) railway track; or
- (b) buildings, installations or equipment for:
 - (i) the operation and use of railway track;
 - (ii) the embarkation and disembarkation of passengers; or
 - (iii) the loading and unloading of goods.

railway means the railway from Tarcoola to Darwin and associated facilities, plant and equipment, rolling stock and all other assets required for the operation of the railway and includes the rights to use the corridor.

road has the same meaning as in the *Control of Roads Act*.

survey plan means a plan of a land boundary survey approved by the Surveyor-General under section 49 of the *Licensed Surveyors Act*.

- (2) Subject to subsection (1), where a word used in a section of this Act is defined in an Act referred to in the section, the word has the same meaning in that section as it has in the Act so referred to.

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- (3) A section of this Act (which includes the definitions incorporated into the section under subsection (1)) that refers to another Act is incorporated into and is to be read as one with the other Act.

5A Concession Deed: authorisation of implementation and enforcement

- (1) The implementation of the Concession Deed is authorised.
- (2) Despite any Act or other law in force in the Territory to the contrary, an order for specific performance may be made and enforced against the Territory or the Corporation in respect of its obligations under the Concession Deed or any other agreement, contract, deed or other arrangement entered into for a purpose connected with the construction, operation or maintenance of the railway in the same circumstances and on the same conditions as an order for specific performance could be ordered and enforced against a subject of the Crown.
- (3) For the purposes of the law of the Territory, the conferral of rights on the consortium by the Concession Deed is not to be taken to be a grant of a monopoly.

5AA Specific performance against Darwin Port Corporation etc.

Despite any Act or other law in force in the Territory to the contrary, an order for specific performance may be made and enforced against the Darwin Port Corporation or the Territory in respect of its obligations under an agreement, contract, deed or other arrangement entered into for a purpose connected with the construction, operation or maintenance of the railway in the same circumstances and on the same conditions as an order for specific performance could be ordered and enforced against a subject of the Crown.

5C Existing rights and interests in land modified

- (1) Subject to sections 13(3), 14, 14A and 17A, a right or interest in or in relation to land forming part of the corridor that existed immediately before the commencement of this section is modified in the manner, and to the extent, necessary to enable the consortium to construct, operate and maintain the railway.
- (2) For the purposes of subsection (1), a right or interest in or in relation to land includes a right of access under section 179 of the *Mining Act*.
- (3) For the purposes of subsection (1), a right or interest does not include a right or interest granted to the Corporation or the consortium.

6 Applications relating to railway to be given priority

Each minister, statutory corporation, municipal council and community government council must ensure that:

- (a) in the case of a minister – the minister and officers in the departments administered by the minister; and
- (b) in the case of a statutory corporation, municipal council or community government council – the corporation or council and officers employed by it,

give priority to considering applications by the consortium in connection with the construction or operation of the railway or both.

7 Fixed railway infrastructure

Despite any other law of the Territory, fixed railway infrastructure does not merge with the land to which it is affixed and may be dealt with and disposed of as personal property.

8 Development provisions for corridor

- (1) The Planning Scheme under the *Planning Act* is to be taken to include development provisions applying to the corridor and additional land and, subject to this section, the *Planning Act* (except Part 6) applies accordingly.
- (2) The Planning Minister is the consent authority for the corridor and additional land.
- (3) The development provisions under subsection (1) allow the use and development of the corridor and additional land for the purposes of construction, operation and maintenance of the following without the consent of the consent authority:
 - (a) railway track;
 - (b) bridges, tunnels, earthworks and other structures to support railway track;
 - (c) drainage works;
 - (ca) turkeynest dams;
 - (cb) water extraction facilities;
 - (d) signalling and other communication systems;
 - (e) power lines;

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- (f) airstrips;
 - (g) construction camps but only during the construction of the railway;
 - (h) temporary office and residential accommodation but only during the construction of the railway.
- (4) The development provisions under subsection (1) allow any other use or development of the corridor or additional land only with the consent of the consent authority, including the construction, operation and maintenance of the following:
- (a) railway sleeper manufacturing plants;
 - (b) facilities for the embarkation and disembarkation of passengers;
 - (c) facilities for the loading and unloading or storage of goods;
 - (d) facilities for maintaining rolling stock;
 - (e) facilities for the control of trains;
 - (f) construction camps to which subsection (3)(g) does not apply;
 - (g) office and residential accommodation to which subsection (3)(h) does not apply.
- (5) Division 2 of Part 5 of the *Planning Act* does not apply in relation to a development application in respect of the corridor or additional land unless the Planning Minister determines that, in the circumstances of the particular application, it is appropriate for that Division to apply.
- (6) Despite any development provisions in force under the *Planning Act* immediately before the commencement of this section, the use, operation and maintenance of the railway (including fixed railway infrastructure and other buildings or structures in existence, and works being carried out, immediately before the commencement of this section) are to be taken to be existing uses of and works in relation to the corridor under Part 4 of the *Planning Act*.
- (7) The Planning Minister may, by notice in the *Gazette*, declare that this section applies in relation to land additional to the corridor that is specified in the notice.

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- (8) Neither a declaration under subsection (7) nor anything done in relation to land the subject of a declaration under subsection (7) creates, or has the effect of creating, a subdivision within the meaning of the *Planning Act*.
 - (9) The development provisions under subsection (1) prevail over any other development or other provision under the Planning Scheme or a provision of the *Planning Act*, whether the provision was in force before or after the commencement of this section.
 - (10) In this section, **Planning Minister** means the Minister for the time being administering the *Planning Act*.

8A Lease of Darwin Port Corporation land to consortium not a subdivision

Despite section 5 of the *Planning Act*, a lease granted by the Darwin Port Corporation to the consortium for the purposes of the railway is not a subdivision for the purposes of that Act.

9 Building approvals for existing structures

- (1) Fixed railway infrastructure and any other buildings or structures existing in the corridor immediately before the commencement of this section (**existing structures**) are to be taken to comply:
 - (a) in the case of existing structures in relation to which the former Building Act applies by virtue of section 170 of the current Building Act – with the requirements of the former Building Act; and
 - (b) in the case of existing structures in relation to which the current Building Act applies – with the requirements of the current Building Act,

and all relevant approvals, consents, permits, reports and other things required by or under the former Building Act or the current Building Act (as the case requires) are to be taken to have been issued or obtained in respect of those existing structures.

- (2) In subsection (1):

current Building Act means the *Building Act* as in force immediately before the commencement of this section.

former Building Act means the *Building Act* as in force immediately before 1 September 1993.

9A Certain building and planning restrictions not to apply

A provision of the *Planning Act* or *Building Act*, or of an instrument of a legislative or administrative character made under those Act, that relates to the siting of buildings, plot ratios or to buildings constructed across lot boundaries does not apply to the corridor or to additional land.

9B Building controls not to apply to certain structures

- (1) Despite section 6(2) of the *Building Act*, Parts 4 to 13 (inclusive) of that Act do not apply in relation to a structure referred to in section 8(3)(a) to (f) (inclusive) wherever in the Territory the structure is situated.
- (2) To avoid doubt, in accordance with section 6(2) of the *Building Act*, Parts 4 to 13 (inclusive) of that Act apply in relation to a structure referred to in section 8(3)(g) or (h) or 8(4)(a) to (g) (inclusive) that is situated in a part of the Territory in respect of which a declaration under section 6(2) of the *Building Act* is in force.

10 Revocation of reservations of Crown land

- (1) The Minister may, by notice in the Gazette, declare that any reservation under section 76 of the *Crown Lands Act* extending over any part of the land described in the notice (being land in or to be included in the corridor) is, to that extent, revoked.
- (2) A declaration under subsection (1) has effect according to its tenor and despite the provisions of the *Crown Lands Act* relating to the revocation of reservations.

10A Relief against forfeiture of leases

- (1) In relation to a registered lease:
 - (a) sections 136 to 140 (inclusive) of the *Law of Property Act 2000* (Act No. 1 of 2000) apply subject to the modifications that:
 - (i) may be made to, or that may apply in relation to, those provisions by virtue of this section; or
 - (ii) may be made by regulation; and
 - (b) the provisions of the *Crown Lands Act* relating to forfeiture of leases and Part VII of the *Commercial Tenancies Act* do not apply.

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- (2) Relief against forfeiture of a lease (whether under section 138 or 139 of the applied provisions or any other law of the Territory, including the common law and the law of equity) is not available if the lease is being terminated as a consequence of the lawful termination of the Concession Deed.
- (3) On an application for relief against forfeiture of a registered lease under section 138 of the applied provisions, subject to subsections (2) and (11), the Supreme Court must grant the relief unless the Court is satisfied:
- (a) that there has been a material breach of the lease;
 - (b) that written notice of the breach has been given to the lessee, any sublessee under a registered sublease and the holder of any registered security over the lease or any registered sublease requiring:
 - (i) in the case of a remediable breach, including a breach for non-payment of rent – the breach to be remedied;
 - (ii) in the case of a non-remediable breach – the payment of reasonable compensation; or
 - (iii) in the case of a breach which is partly remediable and partly non-remediable – the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation;
 - (c) that a reasonable period of time to comply with the requirements set out in the notice under paragraph (b) has been given;
 - (d) in the case of a breach which is remediable or partly remediable – that the breach has not been remedied and none of the lessee, any sublessee under a registered sublease or the holder of any registered security over the lease or any registered sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
 - (e) in the case of a breach which is non-remediable or partly non-remediable – that reasonable compensation has not been paid.
- (4) If a lessee under a registered lease is not entitled to relief under subsection (3), subject to subsection (2), the Supreme Court may grant the lessee relief in accordance with section 138(2) and (3) of the applied provisions.

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- (5) Section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to operate as if the section included a provision allowing a sublessee under a registered sublease or the holder of any registered security over a registered sublease to make application under that section in relation to the registered headlease (and such an application may be made even though the headlessee has not applied for relief under that section).
- (6) Section 139 of the applied provisions is to operate as if the section included a provision allowing the holder of any registered security over a registered sublease to make application under that section as if the holder of the security were a sublessee.
- (7) On an application in relation to a registered headlease under section 139 of the applied provisions by a sublessee under a registered sublease or the holder of any registered security over a registered sublease, the Supreme Court must, subject to subsections (8) and (11), grant the application unless:
- (a) the granting of the application would be inconsistent with a decision on an application under section 138 of the applied provisions;
 - (b) the Court is satisfied, in respect of any breach of the headlease, that the headlessee has not had a reasonable opportunity:
 - (i) to remedy the breach or to pay reasonable compensation or both; or
 - (ii) to apply for relief against forfeiture,taking into account:
 - (iii) sections 137 and 138 of the applied provisions and this section; and
 - (iv) the principle that the preservation of the headlease (and any registered sublease) by way of orders under section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to be preferred to the making of an order under section 139 of the applied provisions; or

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- (c) the Court is satisfied, in respect of any breach of the headlease that is attributable to any act, omission or default of the sublessee or the holder of any registered security over the sublease:
- (i) that written notice of the breach has been given to the sublessee and the holder of any registered security over the sublease requiring:
 - (A) in the case of a remediable breach, including a breach for non-payment of rent – the breach to be remedied;
 - (B) in the case of a non-remediable breach – the payment of reasonable compensation; or
 - (C) in the case of a breach which is partly remediable and partly non-remediable – the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation;
 - (ii) that a reasonable period of time to comply with the requirements set out in the notice under subparagraph (i) has been given;
 - (iii) in the case of a breach which is remediable or partly remediable – that the breach has not been remedied and neither the sublessee nor the holder of any registered security over the sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
 - (iv) in the case of a breach which is non-remediable or partly non-remediable – that reasonable compensation has not been paid.
- (8) Subsection (7) does not derogate from the operation of section 139(2) and (3) of the applied provisions.
- (9) If a sublessee under a registered sublease is not entitled to an order under subsection (7), subject to subsection (2), the Supreme Court may grant an order in accordance with section 139 of the applied provisions.

(10) If the Supreme Court makes an order under section 139(1)(d) of the applied provisions in respect of a registered lease, the lease granted to the sublessee by virtue of the order (***the new lease***) is to include a provision to the effect:

- (a) that despite any law to the contrary or any provisions as to the period of the new lease, the new lease will be automatically and simultaneously determined on the termination of the Concession Deed and without necessity of notice;
- (b) that if the new lease is determined in the manner contemplated by paragraph (a), the new lease and any interests derived or dependent on the new lease will be determined for all time; and
- (c) that, for the avoidance of doubt, it is expressly acknowledged and agreed by the parties to the new lease that, on the termination of the Concession Deed, the new lease is intended to and will expire by effluxion of time, despite any law.

(11) The Supreme Court must not make an order under section 138 or 139 of the applied provisions in relation to a registered headlease on the application of a sublessee under a registered sublease or the holder of any registered security over a registered sublease unless:

- (a) the headlessee; and
- (b) any sublessee under a registered sublease or holder of any registered security over a registered sublease who is not the applicant,

has had notice of the application and the Court has given each of those persons who is entitled to such notice a reasonable opportunity to be heard on the application.

(12) In this section, unless the contrary intention appears:

applied provisions means sections 136 to 140 (inclusive) of the *Law of Property Act 2000* (Act No. 1 of 2000) as modified and applied under this section.

lease means:

- (a) a lease over a part of the corridor and includes:
 - (i) a sublease over a part of the corridor; and

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- (ii) a lease over a part of the corridor granted by virtue of an order under section 139(1)(d) of the applied provisions;
or
 - (b) a lease over a part of the Port of Darwin granted for a purpose connected with the construction, operation or maintenance of the railway.

lessee includes:

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

10AA Power of Crown Lands Minister to enter agreements about termination or forfeiture of leases

- (1) Despite the provisions of the *Crown Lands Act* relating to the termination and forfeiture of leases, the Crown Lands Minister may in the name of the Territory enter into an agreement relating to the termination or forfeiture of a lease over a part of the corridor granted under that Act, including an agreement that is inconsistent with the provisions of the *Crown Lands Act* relating to the termination and forfeiture of leases.
- (2) In subsection (1), **Crown Lands Minister** means the Minister for the time being administering the *Crown Lands Act* (except section 79).

10B Certain provisions of Law of Property Act not to apply

Sections 134 and 141 of the *Law of Property Act* do not apply in relation to:

- (a) a sublease over a part of the corridor; or
- (b) a lease over a part of the Port of Darwin granted for a purpose connected with the construction, operation or maintenance of the railway.

10C Sub-letting of pastoral lease

For the purposes of section 68(5) of the *Pastoral Land Act*, a purpose relating to the construction of the railway is a prescribed purpose.

11 Closure of roads

- (1) The Minister may, by notice in the *Gazette*, declare that a road extending over any part of the land described in the notice (being land in or to be included in the corridor) is, to that extent, permanently closed.
- (2) A declaration under subsection (1) has effect according to its tenor and despite the provisions of the *Control of Roads Act* or the *Local Government Act* relating to the closure of roads.
- (3) Despite anything to the contrary in the *Control of Roads Act*, after closure of a road or part of a road under this section, the land comprising the road or the part of a road that was closed forms part of the corridor.
- (4) Where a headlease is granted before a road or a part of a road intersecting the leasehold under the headlease is closed under this section:
 - (a) after closure of the road or the part of a road, the land comprising the road or the part of a road that was closed is to be taken to be part of that leasehold and part of the subleasehold of a sublease over that land; and
 - (b) the headlease, the sublease or the exercise of a right or performance of an obligation under the headlease or sublease is not invalid on the ground that the headlease was granted before the closure.

- (5) In subsection (4):

headlease means a lease over a part of the corridor granted by the Territory to the Corporation.

leasehold means the land under a headlease.

sublease means a sublease over the whole or any part of a leasehold.

subleasehold means the land under a sublease.

- (6) A declaration that:
 - (a) purports to close a road or a part of a road under subsection (1) but was published in the *Gazette* before 19 April 2000; and
 - (b) would, but for its publication before that date, be a declaration under subsection (1),

is to be taken to be a declaration under subsection (1) published on 19 April 2000.

11A Temporary closure of roads

- (1) This section applies despite anything in the *Control of Roads Act*.
- (2) Subject to this section, the consortium is entitled to temporarily close the whole or any part of a road for a purpose connected with the construction, operation or maintenance of the railway.
- (3) A right conferred on the consortium by subsection (2) is exercisable only with the consent of the Transport Minister under subsection (4).
- (4) The Transport Minister may in writing consent to the consortium exercising a right conferred on it by subsection (2) subject to such conditions as the Transport Minister thinks fit.
- (5) The conditions that may be imposed under subsection (4) include but are not limited to conditions about the following:
 - (a) the period of the temporary closure;
 - (b) public notification of the temporary closure, both prior to and during the temporary closure;
 - (c) the use of the road in an emergency situation during the temporary closure;
 - (d) the use of the road by persons other than the consortium during the temporary closure;
 - (e) the manner in which the road may be used by the consortium during the temporary closure, including to support plant, equipment and structures by affixing them to the road.
- (6) In this section:

road includes a bridge.

Transport Minister means the Minister for the time being administering the *Control of Roads Act* (except Part IV).

11B Modification of section 59 of *Control of Roads Act* for sleeper plants

Section 59 of the *Control of Roads Act* applies to a railway sleeper manufacturing plant erected or built on a road in accordance with a permission granted under that section as if subsection (5) had been

amended by omitting "6 months after the date the notice was given" and substituting 'the period determined by the Minister in accordance with the condition in the permission relating to when the permission is to be revoked'.

11C Granting of rights over roads

- (1) This section applies despite anything in the *Control of Roads Act*.
- (2) Subject to this section, the Transport Minister may grant to the consortium a right in respect the whole or any part of a road for a purpose connected with the construction, operation or maintenance of the railway.
- (3) The kinds of rights that may be granted under subsection (2) include but are not limited to a right to use the road to support a bridge or other structure.
- (4) A right granted under subsection (2) is subject to the conditions the Transport Minister thinks fit, including but not limited to a condition about the period during which the right may be exercised.
- (5) In this section:

road includes a bridge.

Transport Minister means the Minister for the time being administering the *Control of Roads Act* (except Part IV).

12 Road crossings

- (1) This section applies subject to the *Northern Territory Rail Safety Act* but despite any other law of the Territory.
- (2) Subject to this section, the consortium is entitled to construct, operate and maintain the railway across a road.
- (3) A right conferred on the consortium by subsection (2) is exercisable only with the consent of the Transport Minister under subsection (4).
- (4) The Transport Minister may in writing consent to the consortium exercising a right conferred on it by subsection (2) subject to such conditions as the Transport Minister thinks fit.
- (5) The conditions that may be imposed under subsection (4) include but are not limited to conditions about the following:
 - (a) the installation, operation and maintenance of safety devices in connection with the railway crossing;

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- (b) the construction, use and maintenance of the road at and on either side of the railway crossing.
- (6) If the consortium fails to comply with a condition to which any consent under subsection (4) is subject:
- (a) the Territory may take the action necessary to give effect to the condition; and
 - (b) the reasonable costs and expenses incurred by the Territory in taking that action are recoverable as a debt due to the Territory from the consortium.
- (7) In this section:

railway crossing, in relation to a road, means the point at which the railway crosses the road.

Transport Minister means the Minister for the time being administering the *Control of Roads Act* (except Part IV).

12A Waterway crossings

- (1) Subject to subsection (2), the right of the consortium to construct, operate and maintain the railway across a waterway does not include:
- (a) the right to prevent, restrict or interfere with the passage of vessels on the waterway;
 - (b) the right to divert or use water in the waterway; or
 - (c) the right to obstruct the flow of water in the waterway.
- (2) The consortium is only entitled to exercise a right specified in subsection (1)(a), (b) or (c) with the consent of the Water Minister.
- (3) The Water Minister may in writing consent to the consortium exercising a right specified in subsection (1)(a), (b) or (c) subject to such conditions as the Water Minister thinks fit.
- (4) The conditions that may be imposed under subsection (3) include but are not limited to conditions about the following:
- (a) the construction and use of a bridge across the waterway;
 - (b) the taking of water from the waterway.

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- (5) Section 188A of the *Marine Act* does not apply in respect of any thing done by the consortium under its right to construct, operate and maintain a railway across a waterway or under a right for which consent under this section is given.
 - (6) Any thing done by the consortium under its right to construct operate and maintain a railway across a waterway or under a right for which consent under this section is given is to be taken to be permitted under the *Water Act*.
 - (7) In this section:

Water Minister means the Minister for the time being administering the *Water Act*.

waterway has the same meaning as in the *Water Act* and includes:

- (a) the sea; and
- (b) the beds and banks of a waterway, including the seabed.

13 Revocation of national parks, reserves etc.

- (1) The Minister may, by notice in the *Gazette*, declare that any declaration under the *Territory Parks and Wildlife Conservation Act* by virtue of which a park, reserve, wilderness zone, protected area or sanctuary extends over any part of the land described in the notice (being land in or to be included in the corridor) is, to that extent, revoked.
- (2) A declaration under subsection (1) has effect according to its tenor and despite the provisions of the *Territory Parks and Wildlife Conservation Act* relating to the revocation of declarations.
- (3) Where:
 - (a) immediately before a declaration under subsection (1) in relation to an area of land came into force, the area was part of a park, reserve, wilderness zone, protected area or sanctuary under the *Territory Parks and Wildlife Conservation Act* and was designated as a walking track; and
 - (b) the area is indicated on a survey plan for a part of the corridor as an access easement,

that area may continue to be used as a walking track but not so as to unreasonably interfere with the construction, operation or maintenance of the railway.

14 Easements in favour of PowerWater

- (1) This section applies in relation to an installation wholly or partially within the corridor that, immediately before the commencement of this section, was being operated by PowerWater for the purpose of generating or transmitting electricity or providing water or sewerage services, other than an installation on land over which there is registered under the *Land Title Act* an easement in gross or other interest in favour of PowerWater.
- (2) An easement in gross in favour of PowerWater is created over the land occupied by an installation to which this section applies and extends 10 metres in all directions from the installation.
- (2A) An easement created by subsection (2) is to be taken to be:
 - (a) a general service easement as described in Schedule 1 to the *Crown Lands Act*, and
 - (b) on and after the commencement of the *Law of Property Act 2000* – a general service easement as described in item 7 in Part B of Schedule 3 to the *Law of Property Act*,and PAWA has the use and benefit of the easement for the purposes specified in those schedules in relation to that description and has for itself and for its agents and employees all the powers described in those schedules in relation to that use.
- (3) If PowerWater lodges with the Registrar-General details of an easement created by subsection (2), the Registrar-General must record the easement on or the land register under the *Land Title Act*.
- (3A) An easement in gross or other interest in favour of PowerWater:
 - (a) whether over land wholly or partially within the corridor or over any other land;
 - (b) whether created by subsection (2) or otherwise; and
 - (c) whether registered under the *Land Title Act* or not,does not authorise PowerWater or its agents or employees to engage in an activity on the land that unreasonably interferes with the construction, operation or maintenance of the railway.
- (4) In this section:

PowerWater means the Power and Water Corporation established by section 4 of the *Power and Water Corporation Act*.

14A Access easements in favour of private landholders

- (1) Where an access easement, electricity supply easement or water supply easement indicated on a survey plan for a part of the corridor is granted in favour of an owner or occupier of land bordering the corridor, the owner or occupier has the rights and obligations in relation to the easement that are specified in the agreement under which the easement was granted but those rights and obligations are modified in the manner, and to the extent, necessary to enable the consortium to construct, operate and maintain the railway.
- (2) An easement referred to in subsection (1) is to be taken to have been created on it being indicated on the survey plan.
- (2A) The rights and obligations of an owner or occupier in relation to an easement created by subsection (2) are to be exercised or satisfied in a manner that complies with protocols made under section 21.
- (3) The Registrar-General must record interests indicated on the survey plan under subsection (1) in the land register within the meaning of the *Land Title Act*.
- (4) An electricity supply easement or water supply easement created by subsection (2) is to be taken to be:
 - (a) an electricity supply easement or water supply easement as described in Schedule 1 to the *Crown Lands Act*; and
 - (b) on and after the commencement of the *Law of Property Act 2000* – an electricity supply easement or water supply easement as described in item 4 or 2 in Part B of Schedule 3 to the *Law of Property Act*.

14B Variation of easements

- (1) An easement created by section 14A(2) may be varied by substituting another area for the area of the part of the corridor that is subject to the easement.
- (2) The easement must not be varied unless the Minister has consulted with the consortium about the variation.
- (3) For varying the easement:
 - (a) the Minister must lodge a survey plan on which the variation of the easement is indicated with the Registrar-General; and

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- (b) the Registrar-General must record the particulars of the varied interests indicated on the survey plan in the land register within the meaning of the *Land Title Act*.
 - (4) The variation takes effect on the Registrar-General recording the particulars in the land register.
 - (5) This section expires 12 months after the *AustralAsia Railway (Special Provisions) Amendment Act 2003* commences.

15 Reservations from occupation under *Mining Act*

- (1) The instruments in force under section 178 of the *Mining Act* and specified in the Schedule are to be taken to be revoked as if the requirements of that Act relating to revoking such reservations had been complied with.
- (2) Land that:
 - (a) is within 400 metres of either side of the centreline of the corridor;
 - (b) is between the boundary of the Town of Alice Springs and the boundary of the City of Darwin; and
 - (c) immediately before the commencement of this section, was not occupied under a exploration licence, exploration retention licence or mining tenement,

is to be taken to be reserved from occupation under section 178 of the *Mining Act* as if the requirements of that Act relating to reserving that land from occupation had been complied with.

- (3) Land that:
 - (a) is within 400 metres of either side of the centreline of the corridor;
 - (b) is between the boundary of the Town of Alice Springs and the boundary of the City of Darwin; and
 - (c) immediately before the commencement of this section, was occupied under an exploration licence, exploration retention licence or mining tenement,

is, upon ceasing to be occupied under the exploration licence, exploration retention licence or mining tenement, to be taken to be reserved from occupation under section 178 of the *Mining Act* as if the requirements of that Act relating to reserving that land from occupation had been complied with.

16 Authority to mine extractive minerals on reservation from occupation

- (1) The consortium is to be taken to be authorized under section 178(2) of the *Mining Act* to occupy and use the land reserved from occupation under section 15 of this Act for mining extractive minerals for the period and on the conditions that, subject to subsection (2), the Minister thinks fit and the *Mining Act* applies accordingly.
- (2) The period and conditions of, and the areas mined under, the authorization under subsection (1) are to be consistent with:
 - (a) the agreement between the Territory, native title parties and the Northern and Central Land Councils about mining extractive minerals on the land reserved from occupation that is dated 18 September 1998 and has been lodged with the National Native Title Tribunal; and
 - (b) the agreements (if any) between the consortium and the owner of any of the land reserved from occupation about mining extractive minerals on the land.
- (3) The *Mining Management Act* does not apply in relation to an area mined under the authorization under subsection (1).
- (4) Section 179 of the *Mining Act* applies to the consortium as if the right to occupy the land under the authorization under subsection (1) is, for the purposes of that section, a right to occupy land under a mining tenement and the consortium is the holder of a mining tenement.

16A Access to mining tenements etc. over corridor only with consent

- (1) This section applies to the extent that the shortest practicable route between an exploration licence, exploration retention licence or mining tenement granted after the commencement of this section and a road, a railway line, the sea or a waterway is over a part of the corridor.
- (2) Where this section applies, section 179 of the *Mining Act* is to be read as if subsection (1) were repealed and the following substituted:

"(1) Where:

 - (a) by or under this Act, a person is given the right to occupy land under an exploration licence, exploration retention licence or mining tenement; and

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- (b) the shortest practicable route between the land and a road within the meaning of the *Control of Roads Act*, a railway line, the sea or a waterway is over a part of the corridor,

the person may apply to the Minister for a right of access to that land over the corridor.

"(1A) On receipt of an application under subsection (1), subject to subsection (1B), the Minister may:

- (a) grant the right of access subject to the conditions specified in the grant; or
- (b) refuse to grant the right of access.

"(1B) Before making a decision on an application under subsection (1A), the Minister must seek the views of the consortium about the application and, in making the decision, must take those views (if any) into account.

"(1C) A right of access over the corridor granted under subsection (1A) entitles the person granted the right and that person's employees and agents to a right of way over the corridor subject to the conditions of grant.

"(1D) A person granted a right of access over the corridor under subsection (1A) is entitled, subject to the conditions of grant:

- (a) to mark out the resultant right of way; and
- (b) to enter upon the corridor with machinery, equipment and workers to perform whatever work is reasonably necessary for the construction of that right of way."

(3) A reference in subsection (2) to the Minister is to be taken to be a reference to the Minister for the time being administering the *Mining Act*.

16B Access to petroleum permit or licence area over corridor only with consent

(1) This section applies to the extent that the shortest practicable route between an area the subject of a permit or licence that is granted under the *Petroleum Act* after the commencement of this section and a road, a railway line, the sea or a waterway is over a part of the corridor.

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- (2) Where this section applies, section 65 of the *Petroleum Act* is to be read as if subsection (1) were repealed and the following substituted:
- "(1) Where:
- (a) by or under this Act, a person is given the right to occupy land as a permittee or licensee; and
 - (b) the shortest practicable route between the land and a road within the meaning of the *Control of Roads Act*, a railway line, the sea or a waterway is over a part of the corridor,
- the person may apply to the Minister for a right of access to that land over the corridor.
- "(1A) On receipt of an application under subsection (1), subject to subsection (1B), the Minister may:
- (a) grant the right of access subject to the conditions specified in the grant; or
 - (b) refuse to grant the right of access.
- "(1B) Before making a decision on an application under subsection (1A), the Minister must seek the views of the consortium about the application and, in making the decision, must take those views (if any) into account.
- "(1C) A right of access over the corridor granted under subsection (1A) entitles the person granted the right and that person's employees and agents to a right of way over the corridor subject to the conditions of grant.
- "(1D) A person granted a right of access over the corridor under subsection (1A) is entitled, subject to the conditions of grant:
- (a) to mark out the resultant right of way; and
 - (b) to enter upon the corridor with machinery, equipment and workers to perform whatever work is reasonably necessary for the construction of that right of way."

(3) A reference in subsection (2) to the Minister is to be taken to be a reference to the Minister for the time being administering the *Petroleum Act*.

16C Access not to interfere with railway

If under this Act, the *Mining Act* or the *Petroleum Act*, a person has a right of access to, from or on land that is part of the corridor, the person may only exercise the right in a way that does not interfere with the construction, operation or maintenance of the railway.

16D Entry on land not to interfere with railway

If under the *Stock Routes and Travelling Stock Act* a person has a right to enter land that is part of the corridor, the person may only exercise the right in a way that does not interfere with the construction, operation or maintenance of the railway.

17 Authority to construct railway on mining tenements etc.

(1) The consortium is to be taken to be authorized under section 181(1) of the *Mining Act* to enter on:

- (a) any exploration retention licence area or mining tenement area existing immediately before the commencement of this section; or
- (b) any land in respect of which a notice under section 178(1) of the *Mining Act* was in force immediately before the commencement of this section,

for the purpose of constructing the railway on that area or land and, subject to subsection (2), the *Mining Act* applies accordingly.

(2) Compensation payable to the holder of an exploration retention licence or mining tenement under section 183 of the *Mining Act* for damage, injury or loss as a result of a person taking an action under an authorization granted by virtue of subsection (1) is payable by the Territory, other than compensation for damage, loss or injury as a result of:

- (a) contamination of the exploration retention licence area or mining tenement area by the activities of the consortium on the area; or
- (b) a breach of the consortium's duty of care as an occupier of the exploration retention licence area or mining tenement area,

which compensation is payable by the consortium.

17A Activities on mining tenement etc. not to interfere with railway

Despite anything to the contrary in the *Mining Act*, the grant or renewal of an exploration licence, exploration retention licence or

mining tenement (whether the grant or renewal was before or after the commencement of this section) does not authorise the holder of the exploration licence, exploration retention licence or mining tenement to engage in an activity on the exploration licence area, exploration retention licence area or mining tenement area that unreasonably interferes with the construction, operation or maintenance of the railway.

17B Activities on petroleum permit or licence area not to interfere with railway

Despite anything to the contrary in the *Petroleum Act*, the grant or renewal of a permit, retention licence or production licence (whether the grant or renewal was before or after the commencement of this section) does not authorise the holder of the permit, retention licence or production licence to engage in an activity on the permit area, retention licence area or production licence area that unreasonably interferes with the construction, operation or maintenance of the railway.

17C Mineral royalties

The consortium is not liable to pay royalty under the *Mineral Royalty Act* for extractive minerals recovered from land that the consortium is authorized, or to be taken to be authorized, to occupy and use under section 178(2) of the *Mining Act* and used for the purpose of constructing, operating or maintaining the railway.

18 Corridor need not be fenced

Subject to the *Northern Territory Rail Safety Act* but despite any Act or other law of the Territory, the consortium is not required:

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

18A Places and objects to which *Heritage Conservation Act* applies

- (1) Where a permit under section 29 of the *Heritage Conservation Act* is issued (whether before or after the commencement of this section) in respect of a place or object wholly or partially within the corridor or wholly or partially on additional land, the permit is to be taken to permit the consortium to take the same action subject to the same conditions in respect of so much of the place or object as is within the corridor or on the additional land as the person to whom the permit is issued.

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- (2) Despite anything in the *Heritage Conservation Act* to the contrary, the consortium is entitled to apply for a permit under section 29 of that Act in respect of so much of a place or object in respect of which an interim conservation order is in force, or is deemed under section 39 of that Act to be in force, as is within the corridor or on additional land.
 - (3) Where an approval under section 39K of the *Heritage Conservation Act* is granted (whether before or after the commencement of this section) in respect of a heritage place or heritage object wholly or partially within the corridor or wholly or partially on additional land, the approval is to be taken to authorise the consortium to take the same action subject to the same conditions in respect of so much of the place or object as is within the corridor or on the additional land as the person to whom the approval is granted.
 - (4) For the purposes of Part 6B of the *Heritage Conservation Act*, the Corporation is to be taken to be the owner of so much of a heritage place or heritage object as is within the corridor or on additional land.

18B Amalgamation etc. of Authority Certificates

- (1) Subject to this section, the Authority may revoke one or more existing certificates and instead may issue to the Corporation a single Authority Certificate as if the requirements of the *Northern Territory Aboriginal Sacred Sites Act* relating to revoking and issuing such certificates had been complied with and that Act applies in relation to the single certificate accordingly.
- (2) The Authority may only issue an Authority Certificate under subsection (1) if consultations with the custodians of sacred sites on or in the vicinity of the land over which the certificate is issued have taken place (whether before the existing certificate or certificates were issued or before the single certificate is issued).
- (3) An Authority Certificate issued under subsection (1):
 - (a) must be issued in respect of land over which the existing certificate or certificates were issued but need not be over all of that land and may include other land;
 - (b) may only authorise a use or work connected with the construction, operation or maintenance of the railway that is a use or work within a class of uses or work that was contemplated during the consultations referred to in subsection (2); and
 - (c) may set out conditions different from those set out in the existing certificate or certificates but only if the Authority thinks

those conditions accord with the custodians' wishes or, if an agreement has been reached between the custodians and the person to whom the existing certificate or certificates was issued or the Corporation, accords with that agreement.

- (4) The following certificates are to be taken to authorise the consortium to take the same action subject to the same conditions on the land the subject of the certificate as the Corporation:
- (a) an existing certificate until it is revoked under subsection (1) or otherwise;
 - (b) an Authority Certificate in force under subsection (1).
- (5) In this section **existing certificate** means an Authority Certificate under section 22 of the *Northern Territory Aboriginal Sacred Sites Act* in force immediately before the commencement of this section that authorises a use or work connected with the construction, operation or maintenance of the railway.
- (6) A certificate that:
- (a) purports to be an Authority Certificate issued by the Authority under this section but was issued before this section commenced; and
 - (b) would, but for it being issued before that commencement, have been issued in accordance with this section,

is to be taken to be an Authority Certificate issued under subsection (1) on the day on which this section commences.

19 Workmen's Liens Act does not operate during construction

The *Workmen's Liens Act* does not apply in respect of work done in connection with the construction of the railway.

19A Acquisition on just terms

- (1) If, but for this section, property is acquired under this Act otherwise than on just terms:
- (a) the person from whom the property is acquired is entitled to receive just compensation for the acquisition; and
 - (b) a court of competent jurisdiction may determine the amount of the compensation or make the orders necessary to ensure that the compensation is on just terms.
- (2) Compensation under subsection (1) is payable by the Territory.

19B Proceedings involving Crown

- (1) Subject to this section:
 - (a) relevant proceedings may be brought and conducted by or against the Territory Crown in a South Australian court; and
 - (b) relevant proceedings may be brought and conducted by or against the South Australian Crown in a Territory court.
- (2) For the purposes of bringing and conducting relevant proceedings by or against the South Australian Crown in a Territory court and for the purposes of determining the rights and liabilities of the South Australian Crown in those proceedings, the following Acts of South Australia apply as laws of the Territory:
 - (a) the *Alice Springs to Darwin Railway Act 1997*;
 - (b) the *Crown Proceedings Act 1992*;
 - (c) an Act prescribed by regulation for the purposes of this subsection.
- (3) An Act that applies as a law of the Territory under subsection (2) will be the Act as in force from time to time unless, in the case of the *Crown Proceeding Act 1992*, 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 *Acts Interpretation Act 1915* of South Australia applies as a law of the Territory in respect of the Acts referred to in subsection (2) and instruments under those Acts.
- (5) The *Interpretation Act* 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* with respect to relevant proceedings brought or conducted by or against the Territory Crown in a Territory court (including proceedings to which the South Australian Crown is also a party), that Act does not apply in respect of relevant proceedings brought or conducted by or against the South Australian Crown in a Territory court (including proceedings to which the Territory Crown is also a party) or for the purposes of determining the rights and liabilities of the South Australian Crown in any such relevant proceedings.
- (7) For the purposes of bringing relevant proceedings by or against the Territory in a South Australian court, the Legislative Assembly consents to the Parliament of South Australia applying the

AustralAsia Railway (Special Provisions) Act and the Crown Proceedings Act as laws of South Australia.

(8) The doctrine of executive necessity, to the extent (if any) that it applies in the Territory, does not apply to the Territory Crown in relation to its rights and obligation 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 regulation to be an instrumentality or agency of the Crown for the purposes of a particular reference to the Crown in this section.

relevant proceedings means civil proceedings arising out of or connected with the construction, operation or maintenance of the railway.

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

Territory Crown means the Crown in right of the Territory.

20 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In addition to the power to make regulations under subsection (1), the Administrator may make regulations:

- (a) 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 upon the construction of the railway; or
- (b) containing savings or transitional provisions connected with or consequential upon the enactment of this Act or an amendment or modification under paragraph (a).

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- (3) Regulations made under subsection (2) may be expressed to have taken effect on a day earlier than the day on which the regulations are made, other than a day earlier than the day on which this section commences.
 - (4) The Administrator may only make regulations under subsection (2) during the 12 months commencing on the day on which this section commences.

21 Protocols

- (1) The Minister and the Minister responsible for the administration of the *Northern Territory Rail Safety Act* may jointly, by notice in the *Gazette*, make protocols setting out procedures, requirements and other matters to facilitate rail safety in connection with the railway.
- (1A) Before making a protocol, the Ministers must consult with the consortium, and any other persons the Ministers consider have relevant interests or expertise, about the protocol.
- (2) A person must comply with a protocol.
Penalty: 50 penalty units.
- (3) If, in complying with a protocol, a person contravenes or fails to comply with the *Northern Territory Rail Safety Act* or an instrument of a legislative or administrative character made under that Act, the person is not criminally liable under that Act for the act done or omitted to be done in complying with the protocol.

Schedule Reservations from occupation revoked

section 15(1)

Reservation From Occupation No. 1372 dated 1 September 1997 and published in *Gazette* No. S35 on 9 September 1997.

Reservation From Occupation No. 1380 dated 1 September 1997 and published in *Gazette* No. S35 on 9 September 1997.

Reservation From Occupation No. 1381 dated 1 September 1997 and published in *Gazette* No. S35 on 9 September 1997.

Reservation From Occupation No. 1382 dated 1 September 1997 and published in *Gazette* No. S35 on 9 September 1997.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****AustralAsia Railway (Special Provisions) Act 1999 (Act No. 65, 1999)***

Assent date 14 December 1999
 Commenced ss 5, 10, 11 and 13: 19 April 2000 (Gaz S16, 19 April 2000);
 s 8: 10 October 2000 (Gaz S54, 10 October 2000);
 s 15: 4 December 2000 (Gaz S59, 4 December 2000);
 s 20: 14 December 2000 (Gaz S60, 14 December 2000);
 rem: 23 March 2001 (Gaz S11, 22 March 2001)

AustralAsia Railway (Special Provisions) Amendment Act 2000 (Act No. 37, 2000)

Assent date 13 July 2000
 Commenced s 6: 29 September 2000; s 8: 10 October 2000 (Gaz S50,
 29 September 2000); rem: 4 December 2000 (Gaz S59,
 4 December 2000)

AustralAsia Railway (Special Provisions) Amendment Act (No. 2) 2000 (Act No. 54, 2000)

Assent date 14 November 2000
 Commenced s 10: 19 April 2000; s 17: 1 December 2000;
 rem: 4 December 2000 (s 2, s 2 *AustralAsia Railway (Special Provisions) Act 1999* (Act No. 65, 1999), Gaz S16,
 19 April 2000, Gaz S54, 10 October 2000, Gaz S59,
 4 December 2000, Gaz S60, 14 December 2000, Gaz S11,
 22 March 2001, s 2 *AustralAsia Railway (Special Provisions) Amendment Act 2000* (Act No. 37, 2000), Gaz S50,
 29 September 2000, Gaz S59, 4 December 2000, s 2 *Land Title (Consequential Amendments) Act 2000* (Act No. 45,
 2000), s 2 *Land Title Act 2000* (Act No. 2, 2000) and Gaz
 G38, 27 September 2000, p 2)

AustralAsia Railway (Special Provisions) Regulations 2000 (SL No. 61, 2000)

Notified 10 January 2001
 Commenced 14 February 2001 (Gaz G6, 14 February 2001, p 3)

Mining Management (Consequential Amendments) Act 2001 (Act No. 42, 2001)

Assent date 19 July 2001
 Commenced 1 January 2002 (s 2, s 2 *Mining Management Act 2001* (Act No. 43, 2001) and Gaz G46, 21 November 2001, p 2)

AustralAsia Railway (Special Provisions) Amendment Act 2003 (Act No. 58, 2003)

Assent date 15 December 2003
 Commenced 15 December 2003

3 LIST OF AMENDMENTS

| | |
|--------------|---|
| s 5 | amd No. 37, 2000, s 4; No. 54, 2000, s 4 |
| s 5A | ins No. 37, 2000, s 5 amd No. 54, 2000, s 5 |
| s 5AA | ins No. 54, 2000, s 6 |
| s 5B | ins No. 37, 2000, s 5 rep SL No. 61, 2000, r 5 |
| s 5C | ins No. 37, 2000, s 5 |
| s 8 | sub No. 37, 2000, s 6 amd No. 54, 2000, s 7 |
| s 8A | ins No. 37, 2000, s 6 |
| s 9 | sub No. 37, 2000, s 6 |
| s 9A | ins No. 37, 2000, s 6 |
| s 9B | ins No. 54, 2000, s 8 |
| s 10A | ins No. 37, 2000, s 7 sub No. 54, 2000, s 9; SL No. 61, 2000, r 6 |
| s 10AA | ins SL No. 61, 2000, r 6 |
| s 10B | ins No. 37, 2000, s 7 rep No. 54, 2000, s 9 ins by SL No. 61, 2000, r 6 |
| s 10C | ins No. 37, 2000, s 7 |
| s 11 | amd No. 54, 2000, s 10 |
| s 11A | ins No. 37, 2000, s 8 |
| ss 11B – 11C | ins No. 54, 2000, s 11 |
| s 12A | ins No. 37, 2000, s 9 |
| s 13 | amd No. 37, 2000, s 10 |
| s 14 | amd No. 37, 2000, s 11; No. 54, 2000, s 12; SL No. 61, 2000, r 7; No. 58, 2003, s 3 |
| s 14A | ins No. 37, 2000, s 12 amd No. 54, 2000, s 13; SL No. 61, 2000, r 8; No. 58, 2003, s 4 |
| s 14B | ins No. 58, 2003, s 5 |
| s 15 | amd No. 37, 2000, s 13 |
| s 16 | amd No. 37, 2000, s 14; No. 42, 2001, s 5 |
| ss 16A – 16D | ins No. 37, 2000, s 15 |
| s 17 | amd No. 37, 2000, s 16 |
| ss 17A – 17C | ins No. 37, 2000, s 17 |
| s 18 | sub No. 37, 2000, s 18 |
| s 18A | ins No. 37, 2000, s 18 |
| s 18B | ins No. 37, 2000, s 18 amd No. 54, 2000, s 14 |
| s 19A | ins No. 37, 2000, s 19 amd No. 54, 2000, s 15 |
| s 19B | ins No. 37, 2000, s 19 amd No. 54, 2000, s 16 |
| s 21 | rep No. 37, 2000, s 20 ins No. 58, 2003, s 6 |
| sch | ins No. 37, 2000, s 21 |