

NORTHERN TERRITORY OF AUSTRALIA
AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) ACT 1999

No. 65 of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. 65 of 1999

AN ACT

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

[Assented to 14 December 1999]
[Second reading 24 November 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *AustralAsia Railway (Special Provisions) Act 1999*.

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 –

"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;

"corridor" means the land comprising the route 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*.

(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.

(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.

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. Control plan for corridor

(1) There is to be taken to be in force under Part 4 of the *Planning Act* a control plan, called the AustralAsia Railway Corridor Control Plan 1999, that applies to the corridor.

(2) The Planning Minister is the consent authority for the control plan.

(3) The control plan permits the construction, operation and maintenance of the following:

- (a) railway track;
- (b) bridges, tunnels, earthworks and other structures to support railway track;
- (c) drainage works;
- (d) signalling and other communication systems;
- (e) power lines.

(4) The control plan does not permit any other use or development without the consent of the consent authority, including the construction, operation and maintenance of the following:

- (a) facilities for the embarkation and disembarkation of passengers;

- (b) facilities for the loading and unloading or storage of goods;
- (c) facilities for maintaining rolling stock;
- (d) office and residential accommodation.

(5) Subject to subsection (6), the *Planning Act* applies in relation to the control plan under subsection (1) as if the control plan had been made under Part 4 of that Act.

(6) Section 50 of the *Planning Act* does not apply in relation to a development application in relation to the corridor unless the Planning Minister determines that, in the circumstances of the particular application, it is appropriate for the section to apply.

(7) Despite any control plan or control plan amendment 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 in existence, and works being carried out, immediately before the commencement of this section) are to be taken to be an existing non-conforming use of the corridor under Part 6 of the *Planning Act*.

(8) In this section, "Planning Minister" means the Minister for the time being administering the *Planning Act*.

9. Building approvals for existing fixed railway infrastructure

Fixed railway infrastructure existing immediately before the commencement of this section is to be taken to comply with the requirements of the *Building Act* as in force immediately before the commencement and all relevant approvals, consents, permits, reports and other things required by or under that Act are to be taken to have been issued or obtained in respect of that infrastructure.

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.

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.

12. Railway 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;
- (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).

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.

14. Easements in favour of PAWA

(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 PAWA 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 *Real Property Act* an easement in gross or other interest in favour of PAWA.

(2) An easement in gross in favour of PAWA is created over the land occupied by an installation to which this section applies and extends 10 metres in all directions from the installation.

(3) If PAWA lodges with the Registrar-General details of an easement created by subsection (2), the Registrar-General must record the easement on the Register kept by the Registrar-General under the *Real Property Act*.

(4) In this section, "PAWA" means the Power and Water Authority established by section 4 of the *Power and Water Authority Act*.

15. Reservations of land from occupation under *Mining Act*

(1) Any instrument under section 178 of the *Mining Act* by virtue of which a reservation of land from occupation extends over any part of the corridor is to be taken to be revoked as if the requirements of that Act relating to revoking such reservations had been complied with.

(2) The land that is –

- (a) within 400 metres of either side of the centreline of the corridor; and
- (b) between the boundary of the Town of Alice Springs and the boundary of the City of Darwin,

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.

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(2) 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.

17. Authority to construct railway on mining tenements etc.

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 the *Mining Act* applies accordingly.

18. Fences along corridor

(1) Despite section 6 of the *Fences Act*, neither the owner of the corridor nor the owner of adjoining land is liable to join in or contribute to the construction of a fence to divide the corridor from the adjoining land if immediately before the commencement of this section there was no fence separating the corridor from that land.

(2) Nothing in subsection (1) is to be taken to affect the liability (whether under the *Fences Act* or an agreement) of the owner of the corridor or the owner of adjoining land to contribute to the cost of repairing or replacing a fence dividing the corridor from the adjoining land if the fence –

- (a) existed immediately before the commencement of this section; or
- (b) was constructed by the Territory (whether before or after the commencement of this section) under an agreement for the acquisition of land for the corridor.

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.

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).

(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. Amendment of *AustralAsia Railway Corporation Act*

(1) The *AustralAsia Railway Corporation Act* is in this section referred to as the Principal Act.

(2) Section 17 of the Principal Act is amended by inserting after paragraph (p) the following:

"(pa) to co-ordinate consideration of applications in connection with the construction or operation of the railway or both;"

(3) Section 28A of the Principal Act is repealed and the following substituted:

"28A. Extent of Territory's financial commitment

"(1) The Minister is authorised, on behalf of the Territory, to make available at times determined by the Minister funds up to a total of \$165 million for all or any of the following purposes:

- (a) the performance of certain works in connection with the Project;
- (b) the giving by the Territory of a guarantee in respect of a debt incurred by the successful consortium in connection with the Project;
- (c) the provision by the Territory of a loan to the successful consortium in connection with the Project.

"(2) The limit on the funds that may be made available under subsection (1) does not apply to funds for any of the following purposes:

- (a) the payment of the costs of acquiring land for the Project and any compensation paid in relation to that land;
- (b) the payment of the costs and expenses associated with the administration of the Corporation and the Project;
- (c) the payment of interest and costs that may be payable in respect of the debt or the giving of the guarantee referred to in subsection (1)(b);
- (d) the giving by the Territory of a guarantee in connection with the performance by the Corporation of its obligations under a contract entered into by the Corporation in connection with the Project;
- (e) the payment of costs and expenses of a non-capital nature not referred to in paragraph (a), (b), (c) or (d);
- (f) the payment of any other costs and expenses that may be prescribed by regulation for the purposes of this subsection.

"(3) The amount required for the purposes of subsection (1) is to be provided from the public moneys of the Territory."

(4) The Principal Act is amended by inserting after Part 4A the following:

"PART 4B – CIVIL PENALTIES

"28B. Civil penalties may be payable by successful consortium

"(1) An agreement to which the Corporation and the successful consortium are parties may provide that, if the successful consortium is in breach of an obligation under the agreement, the successful consortium is required to pay to the Corporation by way of a civil penalty for the breach the amount determined in accordance with the agreement.

"(2) The agreement may also provide that the amount of such a civil penalty is to increase over the period during which the breach of the obligation continues by a further amount determined in accordance with the agreement.

"(3) A civil penalty provided for in accordance with this section is a debt due to the Corporation by the successful consortium –

- (a) despite that neither the Corporation nor any other person (whether a party to the agreement or not) suffered damage as a result of the breach; and
 - (b) despite that the amount of the civil penalty is unrelated to the extent of any damage that the Corporation or any other person (whether a party to the agreement or not) may have suffered as a result of the breach."
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