

Serial 238

AustralAsia Railway (Special Provisions) Amendment Bill 2000

Mr Burke

**A BILL
for
AN ACT**

to amend the *AustralAsia Railway (Special Provisions) Act*



NORTHERN TERRITORY OF AUSTRALIA
AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) AMENDMENT ACT
2000

No. of 2000

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2000

AN ACT

to amend the *AustralAsia Railway (Special Provisions) Act*

[Assented to 2000]
[Second reading 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *AustralAsia Railway (Special Provisions) Amendment Act 2000*.

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. Principal Act

The *AustralAsia Railway (Special Provisions) Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 5 of the Principal Act is amended—

- (a) by inserting before the definition of "consortium" in subsection (1) the following:

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" '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;";

(b) by inserting after the definition of "consortium" in subsection (1) the following:

" 'Corporation' means The AustralAsia Railway Corporation established by section 4 of the *AustralAsia Railway Corporation Act*";";

(c) by omitting from the definition of "corridor" in subsection (1) "comprising the route of" and substituting "leased by the Corporation for the construction, operation and maintenance of";

(d) by omitting from the definition of "road" in subsection (1) "Act." And substituting "Act;"; and

(e) by adding at the end of subsection (1) the following:

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

5. New sections

The Principal Act is amended by inserting after section 5 the following:

"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 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.

"5B. Matters affecting title to corridor

"(1) The Pretended Titles Act (32 Hen. 8,c.9 of 1540) is, to the extent of its application in relation to the corridor, repealed.

"(2) Section 69(VI) of the *Real Property Act* does not apply in relation to the corridor.

"(3) Section 90 of the *Real Property Act* does not apply in relation to a right of way existing immediately before the grant of a lease over the corridor to the Corporation to the extent that the right of way is over any part of the corridor.

"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*."

6. Repeal and substitution

Sections 8 and 9 of the Principal Act are repealed and the following substituted:

"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 subsection (5), the *Planning Act* 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;
- (d) signalling and other communication systems;
- (e) power lines;
- (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.

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"(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) construction camps to which subsection (3)(g) does not apply;
- (f) 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.

"(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) In this section –

'Planning Minister' means the Minister for the time being administering the *Planning 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."

7. New section

The Principal Act is amended by inserting after section 12 the following:

"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;

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(b) the taking of water from the waterway.

"(5) 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."

8. Revocation of national parks, reserves etc.

Section 13 of the Principal Act is amended by adding at the end the following:

"(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."

9. Easements in favour of PAWA

Section 14 of the Principal Act is amended –

- (a) by inserting in subsection (1) "or the *Land Title Act*" after "Act";
- (b) by inserting after subsection (2) the following:

"(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.";

(c) by omitting from subsection (3) "the Register kept by the Registrar-General under the *Real Property Act*" and substituting "the Register under the *Real Property Act* or the land register under the *Land Title Act*"; and

(d) by inserting after subsection (3) the following:

"(3A) An easement in gross or other interest in favour of PAWA –

(a) whether over land wholly or partially within the corridor; and

(b) whether created by subsection (2) or registered under the *Real Property Act* or the *Land Title Act*,

does not authorise PAWA 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."

10. New section

The Principal Act is amended by inserting after section 14 the following:

"14A. Access easements in favour of private landholders

"Where an access 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 access easement that are specified in the agreement under which the access 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."

11. Reservations from occupation under *Mining Act*

Section 15 of the Principal Act is amended –

(a) by omitting subsection (1) and substituting the following:

"(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.";

(b) by omitting from subsection (2) all the words from and including "The land" to and including "Darwin," and substituting the following:

"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,"; and
- (c) by adding at the end the following:

"(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."

12. Authority to mine extractive minerals on reservation from occupation

Section 16 of the Principal Act is amended –

- (a) by omitting from subsection (1) "section 15(2)" and substituting "section 15"; and
- (b) by adding at the end the following:

"(3) The *Mine Management Act* does not apply in relation to an area mined under the authorization under subsection (1)."

13. New section

The Principal Act is amended by inserting after section 16 the following:

"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

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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
- (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*."

14. Authority to construct railway on mining tenements etc.

Section 17 of the Principal Act is amended –

- (a) by omitting "The consortium" and substituting "(1) The consortium";
- (b) by omitting "and the *Mining Act* applies accordingly" and substituting "and, subject to subsection (2), the *Mining Act* applies accordingly"; and
- (c) by adding at the end the following:

"(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."

15. New section

The Principal Act is amended by inserting after section 17 the following:

"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."

16. Repeal and substitution

Section 18 of the Principal Act is repealed and the following substituted:

"18. Corridor need not be fenced

"Subject to the *Northern Territory Rail Safety Act* but despite any Act or other law in force in the Territory, the consortium is not required to fence the corridor or maintain 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.

"(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;

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- (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."

17. New section

The Principal Act is amended by inserting after section 19 the following:

"19A. Acquisition on just terms

"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."

18. Repeal

Section 21 of the Principal Act is repealed.

19. New schedule

The Principal Act is amended by adding at the end the following:

"SCHEDULE

Section 15(1)

RESERVATIONS FROM OCCUPATION REVOKED

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."

ALTERATION TO SECTION HEADING

On the day on which the *AustralAsia Railway (Special Provisions) Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the heading to section 12 of the *AustralAsia Railway (Special Provisions) Act* is altered by omitting the whole heading and substituting "**Road crossings**".

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