

NORTHERN TERRITORY OF AUSTRALIA
AUSTRALASIA RAILWAY CORPORATION BILL 1996

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to establish The AustralAsia Railway Corporation
and for related purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *AustralAsia Railway Corporation Act 1996*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

In this Act, unless the contrary intention appears -

"Corporation" means The AustralAsia Railway Corporation established by section 4;

"corridor" means the land comprising the route of the railway from Tarcoola in South Australia to Darwin in the Territory;

"Chairperson" means the Chairperson of the Corporation;

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"member" means a member of the Corporation and includes a person appointed under section 10 to act as a member, while the person is so acting;

"Project" means the construction of the Alice Springs to Darwin section of the Railway and the operation and maintenance of the Railway;

"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;

"South Australian Minister" means the Minister of State of South Australia having responsibilities for railways in that State.

PART 2 - THE AUSTRALASIA RAILWAY CORPORATION

4. ESTABLISHMENT OF CORPORATION

(1) There is established The AustralAsia Railway Corporation.

(2) The Corporation -

(a) is a body corporate with perpetual succession;

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the Corporation affixed to a document and are to assume that it was duly affixed.

(4) For the purposes of the *Remuneration (Statutory Bodies) Act*, the Corporation shall be deemed to have been established for a public purpose.

5. COMPOSITION OF CORPORATION

(1) The Corporation consists of -

(a) the Chief Executive Officer;

(b) 2 persons appointed by the Minister who, in the opinion of the Minister, are persons suitable to represent the interests of the Territory;

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(c) 2 persons appointed by the Minister nominated by the South Australian Minister who, in the opinion of the South Australian Minister, are persons suitable to represent the interests of South Australia; and

(d) where the Minister and the South Australian Minister agree, not more than 4 other persons appointed by the Minister.

(2) The exercise of a power or the performance of a function by the Corporation is not affected by reason only of there being a vacancy in the membership of the Corporation.

6. PERIOD OF APPOINTMENT

Subject to this Act, a member appointed under section 5 holds office for the period, not exceeding 5 years, specified in his or her appointment, but is eligible for re-appointment.

7. CHAIRPERSON

The Minister is to appoint a member (other than the Chief Executive Officer) to be the Chairperson of the Corporation.

8. RESIGNATION OF MEMBERS

A member may resign office by writing signed by him or her and delivered to the Minister.

9. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member (other than the Chief Executive Officer) for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member -

(a) is absent, except by leave of the Corporation, from 3 consecutive meetings of the Corporation; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister is to terminate the appointment of the member.

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(3) The Minister may only terminate the appointment of a member appointed on the recommendation of the South Australian Minister when the South Australian Minister requests that the member's appointment be terminated and the Minister must terminate the appointment on receiving the request.

10. ACTING APPOINTMENT

(1) Where a member is or is expected to be absent from duty, the Minister may appoint a person to act in the place of the member during the absence.

(2) The Minister may, at any time, terminate an appointment made under subsection (1).

(3) The Minister may only appoint a person to act in the place of a member appointed on the recommendation of the South Australian Minister on the recommendation of that Minister.

(4) The validity of a decision of the Corporation is not to be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person under subsection (1) had not arisen or that an appointment under that subsection had ceased to have effect.

11. DISCLOSURE OF INTEREST

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation otherwise than as a member of, and in common with the other members of, a corporation consisting of not less than 25 persons and of which he or she is not a director is, as soon as possible after the relevant facts have come to the member's knowledge, to disclose the nature of his or her interest at a meeting of the Corporation.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the Corporation and, unless the Corporation otherwise determines, the member -

(a) is not, while he or she has that interest, to take part after the disclosure in any deliberation or decision of; and

(b) is to be disregarded for the purpose of constituting a quorum of,

the Corporation in relation to the matter.

(3) For the purpose of making a determination under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not -

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- (a) to be present during the deliberations of the Corporation for the purpose of making the determination; or
- (b) to take part in the making by the Corporation of the determination.

12. MEETINGS OF CORPORATION

(1) The Chairperson is to call meetings of the Corporation as and when necessary for the exercise of its powers and the performance of its functions.

(2) The Minister may, at any time, direct the Chairperson to convene a meeting of the Corporation and the Chairperson is to convene a meeting in accordance with the direction.

(3) At a meeting of the Corporation -

(a) the Chairperson, if present, is to preside but in the absence of the Chairperson the members present are to elect one of their number to act as Chairperson and that person may exercise the powers and perform the functions of the Chairperson for the meeting;

(b) questions arising are to be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the Chairperson or member presiding at the meeting has, in addition to his or her deliberative vote, a casting vote; and

(c) subject to this Act, the Corporation is to determine the procedure to be followed at or in connection with the meeting.

(4) At a meeting of the Corporation -

(a) one member appointed under section 5(1)(b) and one member appointed under section 5(1)(c) are to be present; and

(b) one more than half of the members then holding office constitute a quorum.

(5) The Corporation is to cause records of its meetings to be kept.

13. RESOLUTIONS OF CORPORATION

(1) A resolution of the Corporation, unless unanimous, is of no effect and cannot be implemented until 7 days after the date on which it is made.

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(2) Before the expiration of the period referred to in subsection (1), the Minister may and must, when requested by the South Australian Minister, instruct the Corporation not to take any action to implement the resolution.

(3) When instructed under subsection (2), the Corporation must not take any action to implement the resolution unless authorised the Minister.

(4) The Minister is not to authorise the Corporation under subsection (3) if the instruction under subsection (2) was given on the request of the South Australian Minister unless requested by the South Australian Minister.

(5) Where an instruction has been given, the Minister and the South Australian Minister are to attempt to agree on the course of action in respect of the resolution.

14. PROTECTION OF MEMBERS

Subject to section 31, no action or proceeding, civil or criminal, lies against the Chairperson or another member for or in respect of an act or thing done or omitted to be done in good faith by that person in his or her capacity as Chairperson or member.

15. DELEGATION BY CORPORATION

(1) The Corporation may, by instrument under its seal, delegate to a member, to a committee of the Corporation consisting of 2 or more members, or to an officer of the Corporation, any of its powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Corporation.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Corporation.

16. CHIEF EXECUTIVE OFFICER

(1) The Corporation is to appoint a person to be the Chief Executive Officer.

(2) A person may only be appointed the Chief Executive Officer on the recommendation of both the Minister and the South Australian Minister.

(3) The Corporation may terminate the appointment of the Chief Executive Officer but only on the recommendation of the Minister and the South Australian Minister.

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PART 3 - FUNCTIONS AND POWERS OF CORPORATION

17. FUNCTIONS OF CORPORATION

The functions of the Corporation are -

- (a) to obtain and hold secure title to the corridor;
- (b) to develop and manage the project brief inviting submissions from consortia to undertake the Project;
- (c) to advise and assist South Australia and the Territory on the implementation of the Commonwealth's contribution to the Project;
- (d) to nominate the successful consortium to undertake the Project;
- (e) to receive and distribute dividends to South Australia and the Territory enabling them to share in any profits in the Project;
- (f) to provide, by way of lease, sublease, licence, concession or other arrangements, secure rights of access to the corridor to enable the successful consortium to undertake the Project;
- (g) to co-ordinate and supervise the making of government grants to the successful consortium;
- (h) to evaluate submissions received on the Project and to make recommendations to South Australia and the Territory in respect of the submissions;
- (j) to approach government agencies to define the concessions and basis for agreement between South Australia, the Territory and the Commonwealth and the successful consortium;
- (k) to undertake all necessary environmental and planning processes, including all heritage and Aboriginal conservation clearances, as may be required for the Project to commence;
- (m) to facilitate rail access principles to the Railway for the successful consortium and to liaise in respect to access regimes for the national rail network;
- (n) to facilitate the determination of the terms of access to the Port of Darwin;

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- (p) to assist and determine the conditions of access to the Project through service roads and to assist in determining rights for extraction of construction materials and the royalty arrangements involved;
- (q) to monitor construction and operation of the Project to ensure it complies with minimum requirements, including heritage, Aboriginal and environmental issues;
- (r) to exercise residual powers that may be detailed in any lease, licence or concession agreement between the Corporation and the successful consortium during the ongoing operation of the Railway, including powers to order emergency access and to supervise reversionary arrangements at the end of the Project;
- (s) to facilitate opportunities for businesses in South Australia and the Territory to provide goods and services required for the Project; and
- (t) to give effect to this Act and any agreement between South Australia and the Territory relating to the Project, including the winding up and dissolution of the Corporation and the distribution of its assets.

18. POWERS OF CORPORATION

(1) Subject to this Act, the Corporation has all the powers of a natural person to do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions.

(2) Without limiting subsection (1), the Corporation may -

- (a) enter into contracts;
- (b) acquire, hold and dispose of real or personal property, rights, privileges, permits, licences and authorities;
- (c) form, or participate in the formation of, a corporation;
- (d) subscribe for or otherwise acquire, and dispose of, shares in, or debentures or other securities of, a corporation;
- (e) enter into a partnership or an arrangement for sharing of profits;
- (f) give guarantees and indemnities;

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- (g) improve real property owned by or under the control of the Corporation;
- (h) appoint receivers, agents and attorneys;
- (j) act as trustee;
- (k) act as agent;
- (m) receive grants of money from the Commonwealth, the Territory and South Australia;
- (n) borrow money, or raise money otherwise than by borrowing (including from outside of the Territory or Australia), in any manner that accords with sound current commercial practice;
- (p) lend money;
- (q) draw, make, accept, endorse and discount bills of exchange and promissory notes; and
- (r) pay dividends on capital at such rates and times as it determines.

(3) The Corporation is not to borrow or lend money except with the consent of both the Minister and the South Australian Minister.

(4) Where the Corporation is notified by the Minister that an action is considered by the Minister and the South Australian Minister as significant to the Project, the Corporation is not to exercise any of its powers in respect of the action except as provided by subsection (5).

(5) Where the Minister and the South Australian Minister agree on the action proposed to be taken by the Corporation, the Minister is to authorise the Corporation to exercise its powers in respect of the action and the Corporation may exercise its powers in accordance with the authorisation.

19. MINISTERIAL CONTROL

(1) The Corporation, in exercising its powers and performing its functions, is subject to the written lawful directions of the Minister.

(2) For the purposes of subsection (1), but without limiting the generality of the words "lawful directions", a direction is not lawful if complying with it would necessarily result in a breach by the Corporation of a legally enforceable contract or agreement or of a commercial undertaking.

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(3) Where a direction of the Minister requires the Corporation to take an action or disclose information (or to have a corporation over which it has the necessary control take an action or discloses information) that, in the opinion of the Corporation, for good commercial reasons, should not be taken or be disclosed, the Corporation is, in writing, to advise the Minister of its objection and the reasons for its objection.

(4) If after receiving the Corporation's objections the Minister, in writing, confirms his or her direction to the Corporation, the Minister is to give his or her reasons for so doing and the Corporation is to comply with the direction.

(5) The Minister is to cause a copy of each direction given by the Minister to the Corporation (and all objections and reasons under subsection (3) and confirmations and reasons under subsection (4)) to be tabled in the Legislative Assembly within 6 sitting days of the Assembly after it or they are given or made.

(6) Where the Minister or the South Australian Minister considers a direction under this section is appropriate or required, he or she must consult the other Minister and, if both agree, the Minister is to give the direction.

20. CERTAIN INFORMATION TO BE PROVIDED TO MINISTER

(1) Subject to subsection (2), the Corporation is to provide to the Minister, as soon as practicable after it receives them, copies of all notices, advice and accounts provided to the Corporation in its capacity as a shareholder of or investor in another corporation or trust.

(2) Where, in the opinion of the Corporation, a notice, advice or account received by it contains commercially sensitive information that ought not to be disclosed, it may advise the Minister of its receipt of the document and is not to provide a copy to the Minister unless directed to do so under section 19.

PART 4 - FINANCE OF CORPORATION

21. MONEYS OF CORPORATION

The moneys of the Corporation consist of -

- (a) moneys that are appropriated for its purposes;
- (b) dividends on shares owned by the Corporation;
- (c) interest on investments of moneys of the Corporation;
- (d) proceeds of the sale or other disposition of property and investments of the Corporation;

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- (e) moneys received as grants from the Commonwealth and South Australia; and
- (f) such other amounts as, from time to time, become available for the use of the Corporation under this or any other Act.

22. APPLICATION OF MONEYS

The moneys of the Corporation are to be applied only in payment or discharge of the expenses and other obligations (including the payment of dividends) of the Corporation, whether contractually incurred or imposed by or under a law in force in the Territory.

23. BANK ACCOUNTS

The Corporation is to open and maintain in the Territory an account or accounts with a bank or banks.

24. PROPER ACCOUNTS TO BE KEPT

The Corporation is to keep proper accounts and records of its transactions and affairs and is to do all things necessary to ensure that all payments out of the moneys of or held by the Corporation are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities.

25. BORROWINGS

(1) Without limiting the generality of section 18(2)(n), the Corporation may, under that section, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(2) A borrowing of money, or a raising of money otherwise than by borrowing, in pursuance of section 18(2)(n) may be made, in whole or in part, in a currency other than Australian currency.

(3) In this section, "securities" includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(4) A reference in this section to dealing with securities includes a reference to -

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;

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- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.
- (5) For the purposes of this section -
 - (a) the issue by the Corporation of an instrument acknowledging a debt in consideration of -
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

26. BORROWINGS OF CORPORATION, &c., NOT GUARANTEED BY TERRITORY OR SOUTH AUSTRALIA

Notwithstanding anything in this or any other Act or law in force in the Territory, the Corporation or any other person is not capable of entering into a contract or other arrangement whereby the Territory or South Australia or an authority of the Territory or South Australia guarantees borrowings, or the raising of money otherwise than by borrowing, of the Corporation or gives an indemnity relating to such borrowings or raising of money, neither -

- (a) is a person capable of accepting such a guarantee or indemnity or of lawfully accepting any payment or other benefit in pursuance of such a purported guarantee or indemnity; or
- (b) is such a guarantee or indemnity to arise or be implied by operation of law.

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27. APPOINTMENT AND POWER OF AUDITOR

(1) In this section and section 32, "auditor" means -

- (a) a registered company auditor, within the meaning of the Corporations Law, (including a firm of auditors one of the partners of which is so registered) appointed by the Corporation with the consent of the Minister and the South Australian Minister; or
- (b) if the Minister directs under section 19(1), the Auditor-General.

(2) The requirements of this section are in addition to the requirements under section 31 but to the extent, if any, that the requirements of this section and under section 31 are not capable of standing together, the requirements of this section prevail.

(3) The Corporation is, not later than 7 days after 30 June in each year, to appoint an auditor for the Corporation and is, within 28 days after doing so, to notify the Minister of the name of the auditor.

(4) The auditor is to inspect, audit and report on the accounts and records of financial transactions of the Corporation and the records relating to assets of, or in the custody of, the Corporation and is to forthwith draw the attention of the Corporation, the Minister and the South Australian Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the auditor, is of sufficient importance to justify the auditor so doing.

(5) The auditor, or a person authorised by the auditor, is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or to the acquisition, receipt, custody or disposal of assets by it.

(6) The auditor, or a person authorised by the auditor, may make copies of or take extracts from any such accounts, records, documents or papers.

(7) The auditor, or a person authorised by the auditor, may require a person to furnish to him or her such information in the possession of the person or to which the person has access as the auditor or authorised person considers necessary for the purposes of the functions of the auditor under this Act, and the person is to comply with the requirement.

Penalty: \$2,000.

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(8) Where the Auditor-General is the auditor for the purposes of this Act, the Auditor-General is not to report on the affairs of the Corporation except as provided by or under this Act.

(9) In addition to the powers expressly given under this Act to the auditor, the auditor has such powers in relation to the audit of the accounts and records referred to in subsection (4) as a registered company auditor has in relation to a corporation under the Corporations Law and that Law, with the necessary changes, applies to the extent necessary to enforce those powers.

28. CORPORATION TO PAY TERRITORY TAXES, &c.

Nothing in this or any other Act relieves the Corporation from the liability to pay Territory taxes, rates and duties in respect of its business and activities that it would have if it were a corporation incorporated under the Corporations Law and in addition the Minister may, by notice in writing to the Corporation, require it to pay to the Consolidated Revenue Account, within the time and in respect of the period specified in the notice, such amount as the Minister considers would have been the liability of the Corporation to pay income tax under the *Income Tax Assessment Act 1936* of the Commonwealth had its income not been exempted from income tax by that Act.

PART 5 - MISCELLANEOUS

29. STAFF

(1) The Corporation may appoint such officers and engage such employees as it thinks necessary for the purposes of this Act.

(2) The terms and conditions of employment of persons appointed or engaged under subsection (1) are to be determined by the Corporation.

(3) The *Public Sector Employment and Management Act* does not apply to or in relation to the employment of officers or employees of the Corporation.

30. CONSULTANTS MAY BE ENGAGED

The Corporation may engage consultants and advisers.

31. APPLICATION OF CORPORATIONS LAW

(1) Subject to subsection (2) and section 27(9), except to the extent that the Corporations Law expressly binds the Crown, that Law does not apply to or in relation to the Corporation.

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(2) The accounting and reporting obligations imposed and standards required by the Corporations Law of or in relation to a public corporation incorporated under the Corporations Law apply to and in relation to the Corporation as if -

- (a) the Corporation were a public corporation so incorporated; and
- (b) the Territory were the shareholders of the corporation,

and the Corporations Law, with the necessary changes, applies to the extent necessary to enforce those standards.

32. ANNUAL REPORT

(1) In addition to the information required under section 31 to be included in the annual report of the Corporation, the report is to include a copy of all directions, objections, confirmations and reasons given under section 19 during the period to which the report relates.

(2) The Minister is to cause the report and financial statements of the Corporation, together with the report of the auditor, to be laid before the Legislative Assembly within 6 sitting days of the Assembly after they are received by the Minister.

33. ARBITRATION OF DISPUTES

(1) The Minister and the South Australian Minister are to use their best endeavours to ensure that agreement is reached in the exercise of their joint responsibilities under this Act.

(2) In the event of agreement not being reached, the matter in dispute is to be referred to arbitration under the *Commercial Arbitration Act* and that Act applies, with the necessary changes, as if this subsection were an arbitration agreement between the Minister and the South Australian Minister.

34. REGULATIONS

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.
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