

Authorised Version No. 010
National Rail Corporation (Victoria) Act
1991

No. 76 of 1991

Authorised Version incorporating amendments as at
14 November 2012

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	1
3 Definitions	1
3A Transport Integration Act 2010	2
4 Act to bind Crown	2
PART 2—THE AGREEMENT	3
5 Approval of agreement	3
6 Agreement to be given effect by parties	3
PART 3—REFERRAL OF POWERS TO COMMONWEALTH	4
7 Holding of shares in Corporation engaging in intra-state rail services	4
PART 4—NATIONAL RAIL CORPORATION LTD	5
8 Corporation not agent of Crown	5
9–11 <i>Repealed</i>	5
12 Stamp duty and other charges	5
PART 5—GENERAL	6
13 Supreme Court—Limitation of jurisdiction	6
14 Regulations	6
PART 6—<i>Repealed</i>	6
15 <i>Repealed</i>	6

<i>Section</i>	<i>Page</i>
SCHEDULES	7
SCHEDULE 1—Agreement	7
SCHEDULE 2— <i>Repealed</i>	28
<hr/> <hr/>	
ENDNOTES	29
1. General Information	29
2. Table of Amendments	30
3. Explanatory Details	31

Authorised Version No. 010
National Rail Corporation (Victoria) Act
1991

No. 76 of 1991

Authorised Version incorporating amendments as at
14 November 2012

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to approve and give effect to the Agreement made on 30 July 1991 between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland and the State of Western Australia relating to the National Rail Corporation Limited.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

In this Act—

assets means any legal or equitable interest (whether present or future and whether vested or contingent) in personal property of any description, and includes securities, choses in action and documents;

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent);

National Rail Corporation (Victoria) Act 1991
No. 76 of 1991
Part 1—Preliminary

s. 3A

S. 3 def. of
PTC
repealed by
No. 54/2001
s. 42(1)(a).

S. 3 def. of
*rail freight
assets*
amended by
No. 54/2001
s. 42(1)(b).

* * * * *

rail freight assets means any assets of the State that are required or authorised to be transferred to, or acquired by, the Corporation under the Agreement;

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);

the Agreement means the Agreement, a copy of which is set out in Schedule 1 or, if that Agreement is varied in accordance with its provisions, that Agreement as so varied;

the Corporation means the National Rail Corporation Limited, a company incorporated under the Corporations Law of the Australian Capital Territory.

S. 3A
inserted by
No. 6/2010
s. 24(5)(Sch. 1
item 8) (as
amended by
No. 45/2010
s. 5).

3A Transport Integration Act 2010

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

4 Act to bind Crown

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—THE AGREEMENT

5 Approval of agreement

The Agreement, a copy of which is set out in Schedule 1, is approved.

6 Agreement to be given effect by parties

- (1) The parties to the Agreement, the Minister and the PTC—
 - (a) are authorised to do any thing which they are authorised to do by the Agreement; and
 - (b) are required to observe the provisions of the Agreement that are applicable to them.
- (2) Money required under the Agreement to be provided by the State will be provided from money appropriated from time to time by the Parliament for the purposes of this Act.

PART 3—REFERRAL OF POWERS TO COMMONWEALTH

7 Holding of shares in Corporation engaging in intra-state rail services

- (1) The matter of the Commonwealth holding shares, in accordance with the Agreement, in the Corporation, being a corporation that may engage in intra-state rail services in the State in accordance with the Agreement, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the date of commencement of this section and ending on the day fixed under subsection (2) as the day on which the reference terminates, but not longer.
- (2) The Governor in Council may, at any time, by proclamation published in the Government Gazette, fix a day as the day on which the reference under this section terminates.
- (3) In this section, a reference to holding shares includes a reference to acquiring, disposing of or dealing with shares.

PART 4—NATIONAL RAIL CORPORATION LTD

8 Corporation not agent of Crown

The Corporation is not, and does not represent, the Crown, and, without limiting the foregoing—

- (a) the Corporation is not an instrumentality or agency of the Crown; and
- (b) the Corporation is not a public authority for any purpose (e.g. the purposes of the Corporations Law); and¹
- (c) the obligations of the Corporation are not guaranteed by the State.

* * * * * **S. 9**
repealed by
No. 16/1998
s. 3.

* * * * * **S. 10**
repealed by
No. 54/2001
s. 42(2).

* * * * * **S. 11**
amended by
No. 85/1998
s. 24(Sch.
item 44),
repealed by
No. 16/1998
s. 4(1).

12 Stamp duty and other charges

A direction must not be made under section 10 unless the Minister is satisfied that arrangements have been made for the payment to the State of an amount of money in respect of stamp duty and other fees or charges that, but for this Act, would be payable in respect of the transfer of the rail freight assets by operation of this Act.

S. 12
amended by
No. 16/1998
s. 5.

s. 13

PART 5—GENERAL

13 Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary—

- (a) to prevent the bringing before the Supreme Court of an action of a kind referred to in section 10(4); and

S. 13(b)
repealed by
No. 16/1998
s. 6.

* * * * *

14 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Pt 6
(Heading and
s. 15)
repealed by
No. 16/1998
s. 7.

* * * * *

SCHEDULES

SCHEDULE 1

s. 5

Agreement

"THIS AGREEMENT is made on 30th day of July 1991.

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA of the first part

THE STATE OF NEW SOUTH WALES of the second part

THE STATE OF VICTORIA of the third part

THE STATE OF QUEENSLAND of the fourth part and

THE STATE OF WESTERN AUSTRALIA of the fifth part

WHEREAS:

- A. To achieve micro-economic reform in the Australian rail industry, the Commonwealth, State and Territory Governments have agreed that a company should be established for the purpose of conducting, among other things, rail freight operations in Australia on a commercial basis in accordance with principles compatible with those set out in the Heads of Government Agreement on the National Rail Freight Corporation dated 31 October 1990.
- B. These principles are:
 - (a) that the Company will:
 - (i) operate on a strictly commercial basis, with a financially viable corporate plan, and be subject to the Trade Practices Act 1974 (Commonwealth);
 - (ii) have access (by ownership or other appropriate arrangements) to the assets, including track infrastructure, necessary to achieve commercial viability;
 - (iii) operate under labour arrangements incorporated in an enterprise award, which reflects best practice in productivity standards through efficient work and manning practices, determined by the technical capacity of its equipment and commercial considerations, with

cost efficiencies being, as a minimum, in line with those identified by the National Rail Freight Initiative Task Force in Attachment I to its Report of 21 March 1991;

- (iv) have the capacity to contract out activities where that is the most efficient approach;
- (v) provide access on a commercial basis to the NRC network and to terminal facilities for private and public sector operators;
- (vi) have the capacity to provide services to Governments, with the charging for such services being on a strictly commercial basis; and
- (vii) not be responsible, financially or in any other way, for redundancies that may arise in rail authorities resulting from its formation and transfer of functions and assets to it; and

(b) that during the Establishment Period the current financial position of the Commonwealth and State rail authorities' interstate rail freight operations will not deteriorate as a result of the Commonwealth and the States participating in the formation and operation of the Company.

C. The Company will be established and operated in accordance with the terms and conditions set out in this Agreement and its Memorandum and Articles of Association to give effect to the principles referred to in Recital B(a).

IT IS AGREED as follows:

PART I—INTERPRETATION

1. In this Agreement, except where a contrary intention appears or the context otherwise requires:

"asset" means any real or personal property of any description.

"Best Practice Industrial Agreements" means labour arrangements negotiated by the Company which reflect the most efficient work and manning practices, determined by the technical capacity of equipment and commercial considerations.

"Commonwealth" means the Commonwealth of Australia as a party to this Agreement.

"Company" means the National Rail Corporation Limited, a company to be incorporated in the Australian Capital Territory under the Corporations Law.

"Corporate Plan" means the corporate plan prepared in accordance with the Articles of Association of the Company.

"date of commencement of operations" means 31 January 1992, or such later date as is mutually agreed between the Relevant Ministers, other than the Ministers of the other States, being the common date from which all rail authorities of the Commonwealth and the States carry interstate rail freight on behalf of the Company.

"Establishment Period" means a five year period commencing on the date of commencement of operations.

"finally valued" means, in relation to the value of an asset or assets transferred (by way of ownership or long term lease) by the Commonwealth, the States, or their rail authorities to the Company, that the value of the asset or assets has been agreed or fixed by arbitration.

"interstate rail freight" means interstate rail freight carried on the NRC network.

"long term lease" means a lease which has a term of or in excess of 20 years.

"NRC network" means the rail network connecting the mainland State capital cities and Alice Springs as specified in the Corporate Plan.

"NRC Standard Costs" means those costs that the Company projects, with the objective of achieving as a minimum, the potential cost efficiencies identified by the National Rail Freight Initiative Task Force in Attachment I of its Report of 21 March 1991, that the Company would achieve by the end of the Transition Period, if the Company were from the date of commencement of operations to:

- (a) assume the management and operations of all the interstate rail freight functions set out in Schedule 2 from all rail authorities;

- (b) have in place Best Practice Industrial Agreements; and
- (c) undertake a capital works program in accordance with the Corporate Plan.

"other State and other States" means the State of Queensland.

"predominant use":

- (a) where used in relation to an asset which is a terminal, means the greatest use of the terminal under consideration taken for the period of 12 months prior to the date on which the matter is to be determined, having regard to the volume of freight handled at the terminal (measured in appropriate units of originating and terminating throughput).
- (b) where used in relation to track, means the greatest use of the section of track under consideration (as identified in the Corporate Plan) taken for the period of 12 months prior to the date on which the matter is to be determined, having regard to the volume of freight carried and the frequency of freight and passenger services.

"rail authorities" means the railway authorities of the Commonwealth, the States and, where used in connection with the other States, the railway authorities of those other States.

"Railways of Australia Agreement" means the interstate rail freight revenue sharing arrangements determined by the rules contained in Railways of Australia Commissioners Conference Minute 7248, as they stand at the date of commencement of operations.

"Relevant Ministers" means Ministers of the Commonwealth, the States and the other States having responsibility for administration of this Agreement.

"State" means the State of New South Wales, the State of Victoria, the State of Western Australia and the State of Queensland if it becomes a shareholder of the Company.

"States" means the State of New South Wales, the State of Victoria, the State of Western Australia and the State of Queensland if it becomes a shareholder of the Company.

"Transition Period" means the first three year period of the Establishment Period.

PART II—COMMENCEMENT OF OPERATION OF AGREEMENT

2. (1) Clause 3 and subclauses 4(1), (2), (3), (4) and (5) will come into operation when this Agreement has been executed by the Commonwealth, the States and the other States.
2. (2) The remainder of this Agreement will come into operation on the date on which the last of the legislation referred to in clause 3 (except the legislation referred to in subparagraph 3(1)(a)(i)) comes into force.

PART III—LEGISLATION

3. (1) The Commonwealth, the States and the other States will, in relation to the legislation referred to in paragraphs (a)(ii) and (iii), as soon as possible after the execution of this Agreement by all of them, and in relation to the legislation referred to in paragraph (a)(i), if the relevant State or other State proposes to give its approval in writing to the Company engaging in intra-State rail transport services in that State or other State, prior to giving that approval, take all practicable steps to seek the enactment of the following legislation:
 - (a) legislation by the respective Parliaments of the Commonwealth, the States and the other States to approve this Agreement and to make such provision as shall be necessary or appropriate on the part of those Parliaments respectively for the implementation of this Agreement, including:
 - (i) legislation by the States and the other States referring to the Commonwealth, under s. 51(xxxvii) of the Constitution, the matter of the Commonwealth holding shares in the Company when the Company engages in intra-State rail transport services in the States and in the other States;

-
- (ii) legislation by the Commonwealth, the States and the other States to provide for an additional means for the transfer or vesting in the Company of assets owned or leased by the Commonwealth, the States or the other States and their rail authorities, and for substituting the Company for the Commonwealth, the States, the other States and their rail authorities in contracts, in cases where the legislative transfer or vesting of assets, or contract substitution, has been agreed in accordance with this Agreement between the Commonwealth, the States, the other States and their rail authorities, respectively and the Company; and
 - (iii) legislation by the Commonwealth, the States and the other States authorising the making of regulations or by-laws that are necessary or convenient for carrying out or giving effect to this Agreement and to the legislation for the implementation of this Agreement.

**PART IV—INCORPORATION OF THE COMPANY AND
SHAREHOLDERS ARRANGEMENTS**

4. (1) (a) The Commonwealth, the States and the other States agree that the Company shall be incorporated as a public company limited by shares which shall be operated on a strictly commercial basis with a financially viable corporate plan, and have as a principal objective the carriage of interstate rail freight on a national network.
- (b) The Commonwealth will, as soon as practicable after this Agreement has been executed, arrange for the Company to be incorporated under the Corporations Law, with the name of "National Rail Corporation Limited" and with a Memorandum and Articles of Association substantially in the form set out in Schedule 1. Nothing in this Agreement shall be construed as limiting or restricting the amendment of the Memorandum and Articles of Association of the Company in accordance with their provisions and the Corporations Law.

-
4. (2) The Commonwealth will, itself and through trustees, subscribe to 500 ordinary and 500 B convertible shares in the Company and will, within 30 days of the date referred to in subclause 2(2), transfer to the States, at par value, out of these shares, the following number of shares:

New South Wales—140 ordinary shares and 125B convertible shares

Victoria—65 ordinary shares and 125B convertible shares

Western Australia—25 ordinary shares and 125B convertible shares

4. (3) The funds required for the establishment and functioning of the Company, until the date of commencement of operations, shall be provided out of the equity payment to be made by the Commonwealth pursuant to clause 6.

4. (4) The Commonwealth and the States agree that subject to subclause 4(6), until the end of the Establishment Period, there will be nine (9) Directors of the Company and the Commonwealth, as subscriber and member of the Company, and the States, as members of the Company, will exercise their appointment and voting rights in respect of the appointment of the first and subsequent Directors in such a way as to have during the Establishment Period:

- (a) three Directors nominated by the Commonwealth, one being the Chairperson of the Board of Directors and one, as a matter of Commonwealth policy, being a nominee of the Australian Council of Trade Unions, not being a member of a union directly associated with operations of the Company;
- (b) two Directors nominated by the State of New South Wales;
- (c) two Directors nominated by the State of Victoria; and
- (d) one Director nominated by the State of Western Australia,

holding office during the Establishment Period. The remaining Director, who will be the Managing Director, will be appointed by the Board of Directors in accordance with the Articles.

Sch. 1

-
4. (5) The Commonwealth and the States agree that, until the end of the Establishment Period, they will as members of the Company, exercise their voting rights in respect of the removal of Directors so that a Director nominated by any of them will, at the request of the Commonwealth, in the case of a Director nominated by it, or of a State, in respect of a Director nominated by it, be removed.
4. (6) If any other State becomes a shareholder of the Company pursuant to subclauses 6(8) and 6(9), that State shall have a right from the date it becomes a shareholder to nominate and have appointed one Director of the Company, in addition to the Directors referred to in subclause 4(4), to hold office during the Establishment Period in accordance with the provisions of subclauses 4(4) and 4(5).
4. (7) The Commonwealth and the States agree that, after the Establishment Period, during such time as the Commonwealth and any of the States are the only shareholders of the Company, the Commonwealth and those States (as members of the Company) shall exercise their voting rights relating to the appointment and removal of Directors in such a way as to ensure that the Commonwealth and those States each will have the right to nominate at least one (1) Director, to have that Director appointed and to have that Director removed. The remainder of the Directors will be appointed in accordance with the Articles of Association of the Company.

**PART V—ESTABLISHMENT AND OPERATION OF THE
COMPANY**

5. (1) The Commonwealth and the States will, to the extent each in its capacity as a shareholder in the Company is able, procure the Company to:
- (a) negotiate Best Practice Industrial Agreements with the relevant unions leading to an enterprise award as envisaged by Recital B(a)(iii);
 - (b) before the commitment of any capital upgrading have in place best Practice Industrial Agreements which the Company advises provide a basis for commercial operations;
 - (c) commence and conduct national interstate rail freight operations;

-
- (d) conduct all marketing and determine pricing for interstate rail freight carried on by the Company;
 - (e) collect and retain all revenue generated by the carriage of interstate rail freight from the date of commencement of operations;
 - (f) take over progressively from the rail authorities of the Commonwealth and the States, in whole or in part, functions of the type listed in Schedule 2 and the management of the associated assets pursuant to the provisions of this Agreement and the agreements entered into pursuant to subclauses 5(3), 5(4) and 5(5); and
 - (g) give effect to this Agreement and to those obligations which by this Agreement are expressed to be obligations of the Company.
5. (2) The Commonwealth, the States and the other States will, and will cause their respective rail authorities to assist the Company, when requested by the Company, to undertake the matters set out in subclause 5(1), except, in the case of the other States, in relation to the matters set out in paragraph 5(1)(f).

Contracts for Services

5. (3) Prior to and during the Transition Period, at the request of the Company, the Commonwealth and the States shall, and shall cause their respective rail authorities to, enter into contracts with the Company for the provision of rail services to the Company, relating to interstate rail freight. Those contracts will make provision for the following during the Transition Period:
- (a) The price for services performed under the contracts shall be agreed on the basis that:
 - (i) the initial contract price, to apply for no longer than for the period of 12 months after the date of commencement of operations, will be set having regard to:
 - (A) the Company being able to meet its costs incurred in performing the functions assumed by it in whole or in part, during the period for which the initial contract price applies (being reasonable costs); and

(B) the revenue that the rail authority would have received under the Railways of Australia Agreement, had that agreement still applied.

and,

- (ii) thereafter the contract price will, on the basis that the Company has achieved Best Practice Industrial Agreements and is implementing its approved capital investment program, reduce progressively to NRC Standard Costs.
- (b) liquidated damages, in an amount or by a formula to be agreed between the parties to the contract, to be paid to the Company by the respective rail authorities, or by the Company to the respective rail authorities, in respect of a failure by a party to meet such performance standards as are specified in the contract;
- (c) the Company and the relevant rail authority are to maintain and make available to each other externally audited accounts of the costs of carrying out their respective obligations under any contract. The accounts shall be in the form specified from time to time by the auditors of the Company in accordance with generally accepted accounting practices. Such accounts shall be retained by the parties to a contract for at least a period of 12 months after the expiration of the contract. These accounts will only be used for the purpose of determining payments pursuant to clause 5.

Transfer of Functions

- 5. (4) (a) Subject to this Agreement, the Commonwealth and the States shall and shall cause their respective rail authorities to permit the Company to assume performance of the functions relating to interstate rail freight of the type listed in Schedule 2, in whole or in part, in accordance with a detailed list of specific functions and the timetable set out in the Corporate Plan and being no later than the end of the Transition Period.
- (b) When a function is assumed pursuant to subclause 5(4)(a) by the Company, an assessment will be made at that time by the Company of the initial full cost to the Company of performing that function determined having regard to any accounts kept pursuant to

subclause 5(3)(c) or in the absence of such accounts, such other accounts as may be relevant. Where that assessed cost exceeds NRC Standard Costs for that function:

- (i) the transferring rail authority and the Company will agree as to the rate and the time, which is not to exceed three years from the date of transfer, or the end of the Establishment Period, whichever shall first occur, at which, and within which the Company will be able to reduce costs in relation to that function to NRC Standard Costs, while meeting the Company's performance standards;
 - (ii) the Company and the Commonwealth, or the State concerned, will agree a schedule of payments, to be made by the Commonwealth or the State to the Company, during the period agreed to in subclause (i) above while the Company is in the process of achieving NRC Standard Costs in respect of the function in the time agreed. The schedule will be based on the difference between NRC Standard Costs to carry out the function and the actual costs measured on a comparable basis determined having regard to any accounts kept pursuant to subclause 5(3)(c) (or in the absence of such accounts, such other accounts as may be relevant), to the Commonwealth, the States or their rail authorities, as the case may be, of carrying out the function in the twelve month period prior to the transfer.
- (c) In the case of the State of Western Australia, if it is established by an independent expert to be appointed by the Company and approved by the State of Western Australia, as soon as practicable after the date of commencement of operations, that transfer of its interstate rail freight business to the Company would have a detrimental effect on the financial position of the rail authority of Western Australia, because of a reduction in revenues not matched by a commensurate reduction in costs, including fixed costs and overheads, then assessments shall be made by that expert of the extent in dollar terms, of that effect for each year of the Establishment Period, and of the maximum practicable rate at which the Western

Australian rail authority could reduce fixed costs and overheads as a consequence of the transfer of the functions and assets to the Company. The Company, the Commonwealth and the States must agree a schedule of annual payments to be made to the State of Western Australia by the Company within the Establishment Period, which provides compensation to the State of Western Australia based on these assessments.

- (d) Payments to be made by the rail authority of the State of Western Australia pursuant to subclause 5(4)(b), as well as payments received by the rail authority of the State of Western Australia pursuant to subclause 5(3), shall be taken into account in assessing the payments to be made to the State of Western Australia pursuant to subclause 5(4)(c), as well as any reductions in costs occasioned by the transfer of functions by the rail authority of the State of Western Australia, giving rise to payments by the State of Western Australia pursuant to subclause 5(4)(b).
- (e) Prior to any application of Part VII in relation to payments to be made to the State of Western Australia pursuant to subclause 5(4)(c), agreement as to payments to the State of Western Australia pursuant to that subclause shall, if necessary, be negotiated at Heads of Government level.

Access to and Transfer of Assets

5. (5) The Commonwealth and the States shall, or shall cause their rail authorities to transfer ownership of, or for as long as the Company continues to conduct national interstate rail freight operations, give leases of, or grant access to the Company, in relation to any asset, owned or controlled by the Commonwealth or the State or their rail authorities, and used by their rail authorities in connection with interstate rail freight. The Company, in its Corporate Plan, shall identify that a particular asset or class of assets is required by it. The Commonwealth and the States shall have a discretion whether to transfer ownership, give a lease or grant access to the Company in relation to any asset required by it. Transfer of ownership, lease or grant of access shall be given within a reasonable time following the request by the Company to make the asset available. The objective is that all transfers of ownership, leases or grants of access shall be completed before the end of the Transition Period. The following provisions shall apply:

-
- (a) In the case where the Company requires access to an asset the predominant use of which has not been for interstate rail freight, or of which the Company is not, and will not in the future, be the predominant user (eg. metropolitan track) as projected in the Corporate Plan, the Company will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State or its respective rail authority, as the case may be. Such contract will provide for the Company to pay to the rail authority in respect of such access, an amount that reflects the cost to the rail authority of providing access in the most efficient manner and that allows the Company to meet its service standards specified in the contract;
- (b) In the case where the Commonwealth or a State, or its rail authority, does not agree to transfer ownership, or enter into a long term lease of an asset, the predominant use of which has been for interstate rail freight, or of which the Company is or is to be, the predominant user as projected in the Corporate Plan, the Company will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its respective rail authority, as the case may be. Such contract will provide that the rail authority maintain the asset to NRC specified standards and for the Company to pay to the rail authority, in respect of such access, an amount no greater than the costs (based on NRC Standard Costs) that would be avoided by the rail authority if the Company were not to utilise the asset on the basis that the rail authority would for its own purposes maintain the asset to the standards specified in the contract.
- (c) In the case where the Company acquires ownership of, or a long term lease of, an asset to which a rail authority still requires access (eg for intrastate rail freight or passenger services), the rail authority will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its rail authority, as the case may be. Such contract will provide for the rail authority to pay to the Company, in respect of such access, an amount that reflects the cost to the Company of providing

access in the most efficient manner and that allows the rail authority to meet its service standards specified in the contract.

- (d) In the case where the Company does not nominate as an asset which it requires to be transferred to it, an asset the predominant use of which has been for interstate rail freight, but to which it requires access, access will be granted to the Company pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its rail authority, as the case may be. Such contract will provide for the Company to pay to the rail authority, in respect of such access, an amount that reflects the cost to the rail authority of providing access in the most efficient manner and that allows the Company to meet its service standards specified in the contract.

Other States—Access to and Transfer of Assets and Contracts of Service

5. (6) (a) The other States shall, or shall cause their rail authorities to transfer ownership of, or for as long as the Company continues to conduct national interstate rail freight operations, give leases of, or grant access to the Company, in relation to any asset, owned or controlled by the other States or their rail authorities, and used by their rail authorities in connection with interstate rail freight. The Company, in its Corporate Plan, shall identify that a particular asset or class of assets is required by it. The other State in question shall have a discretion whether to transfer ownership, give a lease or grant access to the Company in relation to any asset required by it. Transfer of ownership, lease or grant of access shall be given within a reasonable time following the request by the Company to make the asset available. The objective is that all transfers of ownership, leases or grants of access shall be completed before the end of the Transition Period. The transfers of ownership, leases and the grants of access shall be on such commercial terms and conditions as are agreed between the Company and the other State in question.

-
- (b) Until all the transfers of ownership, leases or grants of access pursuant to subclause 5(6)(a) are completed, the other States shall, and shall cause their respective rail authorities to, enter into contracts with the Company for the provision of rail services to the Company, relating to interstate rail freight. Those contracts will make provision for the following:

The price for services performed under the contracts shall be agreed on the basis that:

- (i) the initial contract price, to apply for no longer than for the period of 12 months after the date of commencement of operations, will be set having regard to:
- (A) the Company being able to meet its costs incurred in performing the functions, identified in Schedule 2, assumed by it in whole or in part during the period for which the initial contract price applies (being reasonable costs); and
 - (B) the revenue that the rail authority would have received under the Railways of Australia Agreement, had that agreement still applied.

and

- (ii) thereafter the contract price will be at commercial rates agreed between the Company and the other State in question or its rail authority.

PART VI—FUNDING

6. (1) (a) The Commonwealth and the States will contribute the following equity funds to the establishment, capital and operation of the Company:
- (i) the Commonwealth—\$295·8 million.
 - (ii) the State of New South Wales—\$75·6 million.
 - (iii) the State of Victoria—\$35·1 million.
 - (iv) the State of Western Australia—\$8·0 million.

National Rail Corporation (Victoria) Act 1991
No. 76 of 1991

Sch. 1

-
- (b) The Commonwealth and the States shall, prior to the date of commencement of operations, make an application to the Company for the issue of A convertible shares equal to the amounts set out in subclause 6(1)(a).
- (c) The Company shall issue to the Commonwealth and the States respectively, the A convertible shares referred to in subclause 6(1)(b).
- (d) Payments by the Commonwealth and the States respectively of funds to be contributed pursuant to subclause 6(1)(a), and any calls on the A convertible shares, shall be made from time to time in accordance with Schedule 4.
6. (2) (a) During the Establishment Period, the Commonwealth and the States will contribute any additional equity funding requirements of the Company provided for, both as to amounts and times of payment, in the Corporate Plan according to the following percentages:
- | | |
|-------------------|-------|
| Commonwealth | 54.3% |
| New South Wales | 27.7% |
| Victoria | 13.1% |
| Western Australia | 4.9% |
- (b) The Commonwealth and the States shall, during the Establishment Period, make application to the Company for the issue of A convertible shares calculated in accordance with subclause 6(2)(a).
- (c) The Company shall issue to the Commonwealth and the States respectively, the A convertible shares referred to in subclause 6(2)(b).
6. (3) For the purposes only of determining the numbers of A convertible shares to be issued pursuant to subclause 6(7), the value of an interest in the assets transferred (by way of ownership or long terms lease) will be agreed bilaterally by the Company and the Commonwealth or by the Company and the relevant State, on the following basis:
- (a) for an interest in track or terminal, and major associated assets, the valuation will be agreed prior to the end of the Establishment Period and will take into account the condition of the asset at the time of

-
- transfer and the net amount expected to be recovered from its continued use, assessed as at the end of the Establishment Period. The cost, adjusted in accordance with subclause 6(5), of any improvements to such assets funded by the Company prior to the valuation of such assets, whether by capital upgrade or maintenance, will be deducted from the value of the asset.
- (b) for an interest in any other asset:
- (i) valuation at market value, assessed at the time of transfer, if an established market exists for that type of asset; or
 - (ii) if no such established market exists, then on an asset valuation methodology appropriate to the type of asset involved, assessed at the time of transfer.
6. (4) In valuing interests in assets transferred (by way of ownership of long term lease), the valuation methodology adopted will be applied uniformly to value the interests in assets of the same type transferred by the Commonwealth, the States and their rail authorities to the Company.
6. (5) For the purpose of determining the number of A convertible shares for issue to the Commonwealth and the States, or the number of ordinary shares to issue as bonus shares, the monetary value of assets transferred assessed in accordance with subclauses 6(3) and 6(4), and moneys contributed in accordance with subclause 6(1), will be adjusted immediately prior to the end of the Establishment Period (or, in the case of assets finally valued after the Establishment Period, as soon as practicable after the assets are finally valued) to constant prices by indexing those monetary values by the All Groups Consumer Price Index Number published by the Australian Statistician. The period of indexation will commence from the latest published index number before the date of the transfer of assets or payment of moneys to the latest published index number before the end of the Establishment Period.
6. (6) The Commonwealth and the States shall, prior to the end of the Establishment Period, make an application to the Company for the issue of:
- (a) A convertible shares equal to the value, as assessed in accordance with subclauses 6(3), 6(4) and 6(5), of the assets transferred (by way of ownership or long term

National Rail Corporation (Victoria) Act 1991
No. 76 of 1991

Sch. 1

- lease) respectively by the Commonwealth and the States and their rail authorities; and
- (b) A convertible or ordinary shares, in accordance with subclause 6(7), equal to the value of the difference between the moneys contributed by the Commonwealth and the States in accordance with subclause 6(1) and the adjusted value thereof assessed in accordance with subclause 6(5).
6. (7) The Company shall issue to the Commonwealth and the States respectively the A convertible or ordinary shares referred to in subclause 6(6), provided that the shares referred to in subclause 6(6)(b) shall only be issued as bonus shares when there are sufficient profits or reserves out of which the shares can be so issued and shall be issued as ordinary shares if, at the time of issue, all the A convertible shares have been converted into ordinary shares or A convertible cumulative reference shares. The Commonwealth and the States shall, before the end of the Establishment Period, pass the necessary special resolution for the A convertible or ordinary shares, referred to in subclause 6(6)(b), to be issued as bonus shares in priority to the rights of any other shareholder.
6. (8) If, during, the first three years of the Establishment Period, any of the other States notifies the Commonwealth, the States and the Company that it wishes to contribute a minimum of \$5 million in cash for shares in the Company, the Commonwealth and the States shall, as members, pass a unanimous resolution for the issue of the shares to the other State and for the issue of additional shares to the Commonwealth and the States in accordance with the relevant provisions of the Table in Schedule 3 under the following conditions:
- (a) the Commonwealth, the States and the other State, upon making an application for shares, shall be each issued with the number of ordinary and B convertible shares at par value set out in Schedule 3. In addition to the B convertible shares, the other State shall, upon payment in full of the moneys contributed by it, be issued with A convertible shares at par value for the remainder of the moneys contributed by it; and

-
- (b) the other State shall be obliged to contribute such proportion of the additional equity funding requirements of the Company pursuant to subclause 6(2)(a), as is determined by the Company and agreed between the Commonwealth, the States and the other State prior to the date of the passing of the unanimous resolution to issue shares pursuant to this subclause. The percentages as then agreed shall, from the date the other State becomes a shareholder, be the percentages at which the Commonwealth, the States and the other State have to contribute to additional equity funding requirements and will replace the percentages set out in subclause 6(2)(a);
6. (9) If, during the last two years of the Establishment Period, any of the other States notifies the Commonwealth, the States and the Company that it wishes to purchase shares in the Company, the Commonwealth and the States, as members, may pass a unanimous resolution for the issue of such shares (if any) to the other State, subject to such terms and conditions, as they determine, and are agreed to by the other State.
6. (10) After the Establishment Period, if any of the other States notifies the Company and all the shareholders of the Company that it wishes to purchase shares in the Company, the other State shall have the right to purchase shares in the Company on the same terms and conditions as shares are offered for sale to third parties.
6. (11) The Commonwealth and the States shall, at the end of the Establishment Period, pass a special resolution to convert all the A convertible shares to ordinary or A convertible cumulative preference shares, or if at the time all the assets transferred (by way of ownership or long term lease) by the Commonwealth and the States and their rail authorities to the Company have not been finally valued, as soon as practicable after the final valuation is completed.

PART VII—RESOLUTION OF DISPUTES

7. Except for a dispute or difference as to any obligation imposed under Part III, any dispute or difference whatsoever arising in connection with this Agreement shall first be the subject of conciliation by a conciliator agreed between the parties to the dispute or difference, unless one of the parties to the dispute or difference objects to conciliation. In the event that the dispute or difference has not been resolved within twenty-eight (28) days (or such other period as is

agreed to in writing between the parties to the dispute or difference) after the appointment of a conciliator by the parties to the dispute or difference, or the parties to the dispute or difference cannot agree to referring the dispute or difference for conciliation, the dispute or difference shall be submitted to arbitration in accordance with and subject to the Arbitration Rules of the United Nations Commission on International Trade Law in force at the date of first notification of the dispute or difference. A dispute or difference will include, without limiting the generality thereof, a dispute or difference as to:

- (a) the identification of any asset within any class of assets identified in the Corporate Plan;
- (b) the value of the interest in any asset to be transferred or leased or otherwise made available to the Company;
- (c) the terms and conditions of a service contract to be entered into pursuant to subclauses 5(3) and 5(6);
- (d) the schedule of payments to be made by the Commonwealth or a State pursuant to subclause 5(4)(b);
- (e) the schedule of payments which may be made by the Company pursuant to subclause 5(4)(c); or
- (f) the charges and terms and conditions for access to assets pursuant to subclauses 5(5)(a), (b), (c) and (d) and subclause 5(6)(a).

PART VIII—VARIATION OF AGREEMENT

- 8. (1) The provisions of this Agreement, which do not relate to or affect any of the other States may be varied, as between the Commonwealth and the States, by an agreement in writing between the Relevant Ministers of the Commonwealth and States.
- 8. (2) Any provisions of this Agreement, which affect any of the other States, may be varied as between the Commonwealth, the States and the other State or other States affected, by an agreement between the Relevant Ministers of the Commonwealth, the States and the other State or States affected.

-
8. (3) A copy of an agreement, or copies of documents which constitute an agreement under subclause 8(1), shall be tabled in the Commonwealth and State Parliaments within 15 sitting days from the date on which the agreement is made and shall, if not disallowed by any Parliament within 15 sitting days of being so tabled, take effect at the expiration of 15 sitting days of the Parliament in which the agreement or documents are last tabled.
8. (4) A copy of an agreement, or copies of documents which constitute an agreement under subclause 8(2), shall be tabled in the Commonwealth and the State Parliaments and the Parliament of the other State or States within 15 days from the date on which the agreement is made and shall, if not disallowed by any Parliament within 15 sitting days of being so tabled, take effect at the expiration of 15 sitting days of the Parliament in which the agreement or documents are last tabled.

PART IX—MISCELLANEOUS

9. (1) The Relevant Ministers may, from time to time, do all things, or enter into agreements or arrangements for giving effect to the provisions of this Agreement.
9. (2) During the Establishment Period, the Commonwealth and the States, as members of the Company, shall not mortgage or otherwise encumber their shares.
9. (3) The obligations of a party hereunder, or in any agreement contemplated by this Agreement shall not be subject to that party holding or continuing to hold shares in the Company.

PART X—WINDING UP OF A COMPANY

10. If the Company is wound up within eight years of the date of commencement of operations, the Commonwealth, the States and the other States will, to the extent permitted by law, have the first option to acquire by distribution or purchase, assets of the Company which they or their rail authorities have respectively transferred to the Company.

National Rail Corporation (Victoria) Act 1991
No. 76 of 1991

Sch. 1

IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties respectively as at the day and year above written.

Signed by the Honourable Robert James Lee Hawke, Prime Minister of the Commonwealth of Australia in the presence of: } ROBERT JAMES HAWKE

ROGER BEALE

Signed by the Honourable Nicholas Frank Greiner, Premier of the State of New South Wales in the presence of: } NICK GREINER

ROGER BEALE

Signed by the Honourable Joan Elizabeth Kirner, Premier of the State of Victoria in the presence of: } JOAN E. KIRNER

ROGER BEALE

Signed by the Honourable Wayne Goss, Premier of the State of Queensland in the presence of: } WAYNE GOSS

ROGER BEALE

Signed by the Honourable Carmen Lawrence, Premier of the State of Western Australia in the presence of: } CARMEN LAWRENCE"

ROGER BEALE

* * * * *

Sch. 2
repealed by
No. 16/1998
s. 4(2).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 30 October 1991

Legislative Council: 20 November 1991

The long title for the Bill for this Act was "A Bill to approve and give effect to an agreement between the Commonwealth, New South Wales, Victoria, Queensland and Western Australia relating to the National Rail Corporation Limited, to amend the **Transport Act 1983** and for other purposes."

Constitution Act 1975:

Section 85(5) statement—

Legislative Assembly: 30 October 1991

Legislative Council: 20 November 1991

Absolute majorities—

Legislative Assembly: 14 November 1991

Legislative Council: 21 November 1991

The **National Rail Corporation (Victoria) Act 1991** was assented to on 3 December 1991 and the whole of the Act, except section 11, came into operation on 1 January 1992: Government Gazette 18 December 1991 page 3488. Section 11 was repealed unproclaimed by section 4(1) of the **Transport Acts (Amendment) Act 1998**, No. 16/1998.

National Rail Corporation (Victoria) Act 1991
No. 76 of 1991

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **National Rail Corporation (Victoria) Act 1991** by Acts and subordinate instruments.

Transport Acts (Amendment) Act 1998, No. 16/1998

Assent Date: 28.4.98
Commencement Date: Ss 3–7 on 4.3.99: Government Gazette 4.3.99 p. 536
Current State: This information relates only to the provision/s amending the **National Rail Corporation (Victoria) Act 1991**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 44) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **National Rail Corporation (Victoria) Act 1991**

Transport (Further Amendment) Act 2001, No. 54/2001

Assent Date: 2.10.01
Commencement Date: S. 42 on 30.6.03: s. 2(5)
Current State: This information relates only to the provision/s amending the **National Rail Corporation (Victoria) Act 1991**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: S. 24(5)(Sch. 1 item 8) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **National Rail Corporation (Victoria) Act 1991**

3. Explanatory Details

¹ S. 8(b): See regulation 5 of the Corporations (Ancillary Provisions) Regulations 2011, S.R. No. 34/2011.