Tourist and Heritage Railways Bill 2010

Introduction Print

EXPLANATORY MEMORANDUM

General

The Tourist and Heritage Railways Bill 2010 (the Bill) provides for the sustainability of tourist and heritage railway operations in Victoria. The Bill does this by giving operators greater certainty about their interests in rail assets and land, and by enabling improved cooperation between the tourist and heritage railway sector and the State.

The Bill operates within and furthers the new policy framework for transport in Victoria outlined in the Transport Integration Act 2010 (the Transport Integration Act). That framework aspires to meet the vision of an integrated and sustainable transport system that contributes to an inclusive, prosperous and environmentally responsible State.

The Bill continues the establishment of an integrated and sustainable transport system in Victoria by integrating and improving the management of the State's land and assets used for tourist and heritage railway operations into the framework provided under the Transport Integration Act.

The Tourist and Heritage Railways Bill forms part of an overall structure for transport policy and legislation in Victoria being generated by the Government's Transport Legislation Review.

Diagram 1 shows the current structure of transport legislation in Victoria. It depicts the current Transport Act 1983 at the centre of a legislative structure which lacks a policy theme.
Diagram 1

Current structure of transport legislation

Diagram 2 sets out the target structure for Victoria's transport legislation. The framework represents a major policy driven renewal and restructure of the current framework. Achieving the settings outlined in the structure establishes clearer accountabilities for all those involved in the planning, delivery, management and regulation of transport services and infrastructure in Victoria.
Tourist and heritage railways were previously governed by the **Transport Act 1983**, under which the Governor in Council was empowered to make Orders in Council granting persons the right to occupy, operate and maintain tourist railway services.

Importantly, this regulatory scheme only covered a narrow range of matters affecting the sector and did not provide sufficient clarity or make appropriate provision for the occupation and use of Victorian railways and railway infrastructure.
The Bill repeals the scheme in the Transport Act 1983 (to be renamed the Transport (Compliance and Miscellaneous) Act 1983 by section 199 of the Transport Integration Act 2010) and introduces a new best practice scheme which will improve the sustainability of tourist and heritage rail operations in Victoria by—

- establishing a register of assets used, controlled or managed by tourist and heritage railway operators;
- providing improved land tenure and asset management schemes for tourist and heritage railway operators; and
- establishing a voluntary registration scheme for tourist and heritage railway operators.

Clause Notes

PART 1—PRELIMINARY

Part 1 provides for preliminary matters, including purpose, commencement, objective, definitions and the Bill's application.

Clause 1 sets out the purpose of the Bill, which is to promote the long term viability of the tourist and heritage railway sector and promote an improvement in the operations of that sector as part of an integrated and sustainable transport system by—

- establishing a register of assets used, controlled or managed by tourist and heritage railway operators;
- providing for improved land tenure and asset management schemes for tourist and heritage railway operators; and
- establishing a voluntary registration scheme for tourist and heritage railway operators.

The overarching framework for the provision of an integrated and sustainable transport system in Victoria is provided in the Transport Integration Act 2010. That Act prescribes a vision, transport system objectives and decision making principles aimed at promoting a transport system which contributes to an inclusive, prosperous and environmentally responsible State.

The register of assets will be known as the Tourist and Heritage Rail Asset Register. The voluntary registration scheme will enable certain tourist and heritage railway operators to be registered on the Tourist and Heritage Railway Group Register.
Clause 2 deals with commencement of the Bill.

Subclause (1) provides that subject to subclause (2), the provisions of the Bill come into operation on a day or days to be proclaimed.

Subclause (2) provides that if a provision of the Bill does not come into operation before 1 December 2011, that provision will come into operation on that day.

The reason for the default commencement date of 1 December 2011 is that it is anticipated the transition to the new land and asset lease arrangements will require this period of time to implement.

Clause 3 sets out definitions for the purposes of the Bill.

Key definitions used in the Bill include—

custodian of an asset which means the tourist and heritage railway operator that uses, controls or manages the asset.

The term custodian applies to tourist and heritage railway operators only. There will be no more than one custodian in relation to each asset at any point in time.

description of an asset which means a description of the asset that includes the following information—

- the name of the asset;
- the asset type;
- the make and model of the asset;
- the current condition of the asset relative to its original condition;
- the serial number (if any) of the asset; and
- any other information prescribed by the regulations.

The original condition of the asset may include the asset's condition when new or the asset's condition when a tourist and heritage railway operator first obtained use, control or management of the asset, or both, as appropriate.

history of an asset which includes the following information in relation to the asset—

- the manufacturer of the asset;
- the date the asset was manufactured;
• details regarding the previous use of the asset; and
• where known, details of any maintenance, repairs or modifications carried out on the asset including who carried out and who funded the maintenance, repairs or modifications, as the case may be.

The previous use may include the use immediately prior to the current use only or the use immediately prior to the current use and any use prior to that.

owned by the State which means owned by a State entity or vested in a State entity. For this purpose, a State entity is defined to mean the State, the Secretary to the Department of Transport, a State owned enterprise (within the meaning of the State Owned Enterprises Act 1992), a statutory corporation or a subsidiary of a State owned enterprise or a statutory corporation.

The definition therefore includes assets owned by VicTrack and V/Line Passenger Pty Ltd.

person which includes an unincorporated body or association and a partnership.

rail asset which refers to—
• the rail infrastructure listed under this definition;
• rolling stock within the meaning of section 3(1) of the Rail Safety Act 2006; and
• anything prescribed by the regulations to be a rail asset.

tourist and heritage rail asset which means a rail asset used, controlled or managed by a tourist and heritage railway operator in connection with historical and heritage related rail services provided by the operator.

tourist and heritage railway operator which means a non-profit entity that—
• provides historical and heritage related rail services primarily as a tourist activity and predominantly in Victoria; and
• is an accredited rail operator within the meaning of the Rail Safety Act 2006, or is an entity which provides those services with rolling stock that are operated on behalf of the entity by an accredited operator.

The regulations may prescribe an entity as not being a tourist and heritage railway operator.
A non-profit entity is an entity which does not exist for the purpose of making profit or financial gain. An entity which exists for multiple purposes including to make profit or financial gain is not a non-profit entity.

Clause 4 provides that the Bill does not apply in relation to—

- a railway that involves only static or non-operational rail assets;
- a railway in a mine that is underground, or chiefly underground, and that is used in connection with mining operations;
- a railway that is operated solely within an amusement park or theme park; or
- the narrow-gauge steam railway, known as the Puffing Billy railway, referred to in section 2(1) of the Emerald Tourist Railway Act 1977.

Puffing Billy railway is regulated by the Emerald Tourist Railway Act 1977.

Clause 5 provides that the Bill will be transport legislation for the purposes of the Transport Integration Act 2010.

The effect of this is that decisions made under the Act must have regard to the decision making principles and transport system objectives as defined in the Transport Integration Act 2010.

PART 2—ADMINISTRATION

Part 2 establishes the Tourist and Heritage Railway Registrar, sets out the functions of the Registrar and provides for the establishment of an advisory committee.

Clause 6 provides that the Director must appoint a person employed under Part 3 of the Public Administration Act 2004 to be the Tourist and Heritage Railway Registrar.

Clause 7 sets out the functions of the Tourist and Heritage Railway Registrar. These are to compile and maintain—

- the Tourist and Heritage Rail Asset Register;
- a register of lease agreements granted by VicTrack under Part 4 of the Bill; and
- the Tourist and Heritage Railway Group Register.
The first two functions have been conferred on the Registrar to provide certainty regarding the location of rail assets and the proprietary interests in land used in connection with historical or heritage related rail services. The final function has been conferred to facilitate productive cooperation among members of the tourist and heritage railway sector and government entities.

The register of lease agreements will include all leases granted by VicTrack to tourist and heritage railway operators under clauses 19 and 20 of the Bill.

Clause 8 deals with the advisory committee.

Subclause (1) gives the Director of Public Transport power to establish an advisory committee to provide advice to the Director in relation to—

- the voluntary scheme for the registration of tourist and heritage railway operators in the Tourist and Heritage Railway Group Register; and
- other matters relating to the provision of historical and heritage related rail services.

Subclause (2) provides that the number of members and composition of the advisory committee must be in accordance with the regulations.

PART 3—TOURIST AND HERITAGE RAIL ASSET REGISTER

Part 3 sets out provisions relating to the operation of the Tourist and Heritage Rail Asset Register.

Clause 9 provides for the establishment of the Tourist and Heritage Rail Asset Register.

Subclause (1) provides that the Director must establish a register of tourist and heritage rail assets, to be known as the Tourist and Heritage Rail Asset Register.

Subclause (2) provides that the asset register must comprise three divisions, namely—

- Division 1, listing all the tourist and heritage rail assets that are owned by the State;
• Division 2, listing those tourist and heritage rail assets that are owned by the custodian of the asset and which the custodian has elected to be included in the register; and

• Division 3, listing those tourist and heritage rail assets that are owned by persons other than the State and other than the custodian of the asset and which the owner has elected to be included in the register.

Clause 10 sets out the information which is to be included in the Tourist and Heritage Rail Asset Register.

Subclause (1) provides that the Registrar must assign a unique asset number to each tourist and heritage rail asset listed in the Tourist and Heritage Rail Asset Register. This is to facilitate better identification of assets.

Subclause (2) provides that the Registrar must record in the Tourist and Heritage Rail Asset Register the following information against each listed asset—

• the asset number assigned under subclause (1);
• a description of the asset;
• the location of the asset;
• the owner of the asset;
• the custodian of the asset;
• the history of the asset;
• details of any insurance arrangements relating to the asset; and
• any other information about the asset that the Registrar considers should be included in the register.

The history and description of an asset are defined terms.

Clause 11 describes the form of the Tourist and Heritage Rail Register and provides details regarding access.

Subclause (1) provides that the Tourist and Heritage Rail Asset Register may be wholly or partly in the form of a computer database, in documentary form or in any other form that the Registrar considers appropriate.
Subclause (2) provides that Division 1 of the asset register must be available for inspection, free of charge, to the public. Division 1 will contain information about State owned rail assets.

Subclause (3) provides that Division 2 and Division 3 of the asset register must be available for inspection, free of charge, to a registered operator. These divisions will contain information about assets that are owned by the tourist and heritage railway operator or other persons.

Subclause (4) provides that a tourist and heritage railway operator that is the custodian of a tourist and heritage rail asset listed in Division 2 or 3 must be given access to the information recorded against the asset on the asset register.

Subclause (5) provides that subclause (4) applies regardless of whether or not the custodian is a registered operator. This is to ensure that if the custodian of assets is not a registered operator, the custodian will still have access to information on the register about those assets.

Clause 12 deals with the collection and compilation of information about rail assets owned by the State for inclusion on the Tourist and Heritage Rail Asset Register.

This process will provide clarity about the rail assets, their location and who the custodian is at any given time.

Subclause (1) provides that the Registrar may request a tourist and heritage railway operator to provide the following information relating to each State owned asset in relation to which the operator is the custodian—

- a description of the asset;
- the location of the asset;
- the history of the asset;
- details of insurance arrangements relating to the asset;
- any other information about the asset that the Registrar considers should be included in the register.

Subclause (2) provides that a request made under subclause (1) must be in writing and must state that the purpose of the request is to include in the asset register information about each State owned tourist and heritage rail asset.
Subclause (3) provides that where a tourist and heritage rail asset is not owned by the State, but the owner of the asset has elected to have the asset included in the asset register, the custodian must provide—

- the information specified above in subclause (1)(a) to (e) in relation to the asset; and
- the name of the person that the custodian believes is the owner of the asset.

This is to ensure that any information provided to the Registrar for inclusion on the register is kept up-to-date.

Clause 13 deals with tourist and heritage rail assets which are not owned by the State or the asset's custodian.

Subclause (1) limits the scope of the clause to tourist and heritage rail assets not owned by the State or by the custodian of the asset.

Subclause (2) provides that the custodian of the asset must only provide the information specified in clause 12(3) to the Registrar after obtaining a written election from the owner of the asset to have the asset included in the Tourist and Heritage Rail Asset Register. This is to protect owners from having information about their assets included on the register if they do not want that information included.

Subclause (3) provides that, upon request by the owner of the tourist and heritage rail asset, the custodian of the asset must—

- provide the owner with an extract of the asset register containing the information recorded against the asset; and
- if necessary, notify the Registrar of any change or correction required to that information.

This is to enable the owner to confirm that information provided is accurately recorded and to maintain the currency of that information.

If the asset owner requests an extract of the asset register containing information recorded against the asset owned, it is the responsibility of the custodian to obtain that extract.

Clause 14 deals with accuracy of information recorded in the Tourist and Heritage Rail Asset Register.

Subclause (1) provides that the Registrar must not include a tourist and heritage rail asset in the asset register unless the Registrar is satisfied that—
• the asset is owned by the State; or
• if the asset is not owned by the State, the owner of the asset has elected to have the asset included in the asset register.

This ensures that information about assets that are not owned by the State is only included on the Register if the owner has elected for that information to be included.

Subclause (2) provides that the Registrar must not include information in relation to a tourist and heritage rail asset in the Register unless the Registrar is satisfied that the information is accurate.

Subclause (3) provides that, in determining the accuracy of information relating to the ownership of a tourist and heritage rail asset, the Registrar must have regard to any documentary evidence and other relevant material relating to the asset.

Subclause (4) provides that if the Registrar is not satisfied as to the accuracy of the information in relation to an asset, the Registrar may request the custodian who provided that information to provide further information.

Subclause (5) provides that VicTrack, being responsible for State owned rail assets, must provide the Registrar with any information or assistance required to verify information in relation to a rail asset.

Clause 15 provides mechanisms to ensure that the Tourist and Heritage Rail Asset Register remains current.

Subclause (1) provides that the Registrar must use his or her best endeavours to ensure that the information recorded in the asset register is up to date.

Subclause (2) provides that the custodian of a rail asset listed on the Tourist and Heritage Rail Asset Register must notify the Registrar of any change to the information recorded against the rail asset in the asset register. Changes must be notified in writing.

Subclause (3) provides that the Registrar must amend the Tourist and Heritage Rail Asset Register accordingly if—
• the Registrar has been advised of any changes by the custodian; and
• the Registrar is satisfied that the advice is accurate.
Subclause (4) provides that the Registrar may request that the custodian of a rail asset check that the information recorded against the rail asset in the asset register is up-to-date and, if it is not, to advise the Registrar of the required change.

Subclause (5) provides that the Registrar may not make a request under subclause (4) more than once every 12 months.

Subclauses (4) and (5) will enable the Registrar to update information contained in the register without imposing an undue burden on custodians. In the event that the Registrar is not satisfied as to the accuracy of information contained in the asset register, the Registrar may request further information from the tourist and heritage railway operator who provided that information under subclause 14(4).

Clause 16 allows the Registrar to conduct on-site inspections in respect of certain premises in order to compile or maintain the Tourist and Heritage Rail Asset Register.

Subclause (1) provides that the Registrar may conduct an on-site inspection of railway premises where the Registrar reasonably believes tourist and heritage rail assets owned by the State are held. This power is given to the Registrar for the purposes of compiling and maintaining the information in the asset register.

*Railway premises* is defined in clause 3 as any land or building used by a tourist and heritage railway operator in connection with the provision of historical and heritage related rail services. It does not include residential premises.

Subclause (2) provides that the Registrar may authorise another person to conduct an on-site inspection.

Subclause (3) provides a safeguard against the Registrar or authorised person arriving at the premises unannounced. The clause requires the tourist and heritage railway operator—

- to be notified in writing of the proposed date and time of the inspection; and
- to have given written consent to the inspection and confirmed the date and time of the inspection.

Subclause (4) provides that *operator* of a railway premises means, in clause 16, the tourist and heritage railway operator who is using the railway premises in connection with the provision of historical and heritage related rail services.
Clause 17 provides that the Tourist and Heritage Rail Asset Register does not provide evidence of ownership of any rail asset listed on the register. The fact that a person is identified as the owner of an asset on the asset register will not, of itself, constitute evidence that the person is in fact the owner of that asset.

Clause 18 clarifies that the Tourist and Heritage Rail Asset Register and the Victorian Heritage Register will operate separately. Subclause (1) provides that any information included in the Tourist and Heritage Rail Asset Register does not affect, add to or detract from the Victorian Heritage Register established under the **Heritage Act 1995**.

Subclause (2) provides that the inclusion of a tourist and heritage rail asset on the Tourist and Heritage Rail Asset Register does not imply that the asset has any cultural heritage significance.

**PART 4—LEASE AGREEMENTS**

Part 4 deals with leases of land and assets granted to tourist and heritage railway operators.

Clause 19 allows VicTrack to grant leases in respect of land used, or proposed to be used, in connection with the provision of historical and heritage related rail services.

Subclause (1) provides that VicTrack may grant a lease to a tourist and heritage railway operator in respect of any land vested in VicTrack that is used, or proposed to be used, by the operator in connection with the provision of historical and heritage related rail services.

Subclause (2) requires the inclusion of the following in a lease of land granted under subclause (1)—

- a description of the land;
- a list of all fixtures to the land;
- the term of the lease;
- the process for renewing the lease;
- the amount of annual rent (if any) payable;
- for any tourist and heritage rail assets that are owned by the State and listed as fixtures to the land, the insurance arrangements for those rail assets and the maintenance responsibilities for those rail assets;
- a holding over provision to enable the lease to continue if not renewed at the end of the lease's term;
the reclamation rights of the lessor including the notice that must be given to the lessee and any compensation payable; and
the circumstances under which the land may be sub-let and the procedures for doing so.

Subclause (3) provides that the amount of rent payable under a lease granted under subclause (1) must not be more than a nominal amount.
A nominal amount is required as consideration in order for the contract to be enforceable.

Clause 20 allows VicTrack to grant leases to tourist and heritage railway operators in respect of rail assets.

Subclause (1) provides that this clause applies to rail assets owned by the State other than rail assets that are fixtures to land leased to a tourist and heritage railway operator under clause 19.

Subclause (2) provides that VicTrack may grant a lease to a tourist and heritage railway operator that entitles the operator to use, control or manage such rail assets in connection with the provision of historical and heritage related rail services. Such leases are granted by VicTrack on behalf of a State entity.

The term State entity is defined in clause 3 as meaning the State of Victoria, the Secretary to the Department of Transport, a State owned enterprise, a body corporate or a wholly owned subsidiary of a State owned entity or a body corporate.

Subclause (3) provides that clause 20 applies despite section 118 of the Transport Integration Act 2010. The effect of this subclause is that VicTrack may represent the Crown in the State of Victoria for the purpose of granting leases to tourist and heritage operators in respect of rail assets.

Subclause (4) provides that a lease of rail assets granted under subclause (2) must include the following—

• a description of each asset leased;
• the term of the lease;
• the process for renewing the lease;
• the amount (if any) payable under the lease;
• for each rail asset that is the subject of the lease, the insurance arrangements and maintenance responsibilities;
• a holding over provision to enable the lease to continue if not renewed at the end of the lease's term;

• the reclamation rights of the lessor including the notice required to be given to the lessee and any compensation payable;

• the process for the transfer of any rail assets that are the subject of the lease to another tourist and heritage railway operator or the process for sharing those assets with another tourist and heritage railway operator; and

• the circumstances under which any rail assets may be sub-let and the procedures for doing so.

The contractual provisions described in subclause (3)(h) may not empower the lessor to require the lessee to assign the assets.

Subclause (5) provides that the amount payable under a lease granted under subclause (2) must not be more than a nominal amount.

A nominal amount is required as consideration in order for the contract to be enforceable.

Clause 21 deals with reporting and record keeping.

Subclause (1) provides that where VicTrack grants a lease under clauses 19 or 20, a copy of that lease must be provided to the Registrar within 14 days after the execution of the lease.

Subclause (2) provides that the Registrar must keep a register of all leases granted under clauses 19 and 20 and include the term and renewal dates in respect of each lease in the register.

PART 5—VOLUNTARY REGISTRATION SCHEME

Part 5 sets out details regarding a scheme for the voluntary registration of tourist and heritage railway operators on the Tourist and Heritage Railway Group Register.

Clause 22 stipulates the obligation to establish the scheme and the register and the purpose of the scheme.

Subclause (1) provides that the Director of Public Transport must establish—

• a voluntary scheme for the registration of tourist and heritage railway operators; and
• a register for that purpose to be known as the Tourist and Heritage Railway Group Register.

Subclause (2) stipulates the purpose of the scheme, which is to enable a tourist and heritage railway operator to register with the scheme in order to—
• demonstrate its commitment to business best practice and continuous improvement of its operations; and
• access programs made available under the scheme.

Clause 23 deals with the content and form of the Tourist and Heritage Railway Group Register.

Subclause (1) provides that the Registrar must record certain information against each tourist and heritage railway operator who participates in the registration scheme, namely—
• the operator's business name;
• the operator's trading name;
• the historical and heritage related rail service or services being provided by the operator;
• the operator's contact details, including the postal address, physical address and telephone number of the operator;
• the person nominated by the tourist and heritage railway operator to be the contact for the operator;
• a registration number assigned to the operator by the Registrar; and
• any other information prescribed by regulation.

Subclause (2) provides that the Tourist and Heritage Railway Group Register may be wholly or partly in the form of a computer database, in documentary form or in any other form considered appropriate by the Registrar.

Clause 24 deals with applications for registration on the Tourist and Heritage Railway Group Register.

Subclause (1) provides that a tourist and heritage railway operator may apply to be included in the Tourist and Heritage Railway Group Register.
Subclause (2) provides that the application of a tourist and heritage railway operator for registration must be made in a form approved by the Director of Public Transport and be accompanied by the fee prescribed by regulation.

Subclause (3) provides that the Registrar must, no later than 28 days after the application for registration is received by the Director—

- register the operator;
- refuse to register the operator; or
- request more information from the operator.

Subclause (4) provides that the Registrar must inform the tourist and heritage railway operator that applied for registration, of a decision made by the Registrar under subclause (3)(a) or (b). The operator must be informed in writing within a reasonable after the decision has been made.

Subclause (5) provides that if the Registrar has decided to refuse to register the operator, the notice under subclause (4) must—

- state the reasons for that refusal; and
- advise the operator that the decision is reviewable by VCAT under clause 29.

Clause 25 deals with successful applications for registration on the Tourist and Heritage Railway Group Register.

Subclause (1) provides that the Registrar must register a tourist and heritage railway operator in the Tourist and Heritage Railway Group Register if the operator meets the prescribed registration criteria.

The registration criteria will be prescribed by regulation.

Subclause (2) stipulates that the Registrar must provide the operator with a certificate of registration within a reasonable time following registration.

Clause 26 provides for notification by registered operators of a change of details.

A registered operator must notify the Registrar in writing of any change to the details listed in relation to that operator on the Tourist and Heritage Railway Group Register. This must occur within 28 days of the change taking place.
Clause 27 provides for deregistration from the Tourist and Heritage Railway Group Register upon request.

Subclause (1) provides that the Registrar must remove a registered operator from the Tourist and Heritage Railway Group Register upon the written request of that operator.

Clause 28 provides for deregistration from the Tourist and Heritage Railway Group Register where the relevant criteria is no longer met.

Subclause (1) provides that if the Registrar is of the opinion that a registered operator no longer meets the prescribed criteria for registration, the Registrar may remove the registered operator in accordance with this clause.

Subclause (2) sets out the process the Registrar must undertake before removing a registered operator from the register.

The Registrar must give written notice to the operator stating—

- the Registrar's opinion that the registered operator no longer meets the prescribed criteria for registration;
- the reasons for that opinion; and
- that the operator may, within 45 days after receiving the notice, submit in writing reasons why the operator should not be removed from the register.

Subclause (3) provides that the Register must not make a decision as to whether to remove a registered operator from the register unless—

- the Register has received and considered any submission made by the operator in response to the notice given by the Registrar under subclause (2); or
- the 45 day period for making such a submission has expired.

Subclause (4) provides that the Registrar is obliged to make a decision on whether to remove the registered operator from the register no later than 28 days after the earlier of—

- the Registrar's receipt of a written submission from the registered operator; or
- the expiry of the 45 day period for making such a submission.
Subclause (5) provides that the Registrar must notify the registered operator in writing within a reasonable time after the decision has been made.

Subclause (6) provides that, where the Registrar has decided to remove the registered operator from the register, the notice under subclause (5) must—

- state the reasons for removing the operator; and
- advise the operator that the deregistration decision is reviewable by VCAT under clause 29.

Clause 29 provides for review by VCAT of decisions to refuse to register, and to remove from the register, tourist and heritage railway operators.

Subclause (1) provides that a tourist and heritage railway operator may apply to VCAT for review of—

- a decision by the Registrar under clause 24(3)(b) to refuse to register the operator on the Tourist and Heritage Railway Group Register; or
- a decision by the Registrar under clause 28(1) to remove the operator from the register.

Subclause (2) provides that the application to VCAT must be made within 90 days after the day on which either—

- the operator is notified under clause 24(4) that the Registrar has decided to refuse to register the operator; or
- the operator is notified under clause 28(5) that the Registrar has removed the operator from the register.

Subclause (3) stipulates that, to avoid doubt, sections 4 and 5 of the Victorian Civil and Administrative Tribunal Act 1998 apply for the purposes of this Bill. Those sections outline when a person makes a decision and when a person's interests have been affected by a decision for the purposes of that Act.
PART 6—GENERAL

Part 6 provides for liability matters and regulation making powers.

Clause 30 deals with the liability of tourist and heritage railway operators in relation to fencing. The clause replaces provisions which were previously in the Transport Act 1983 (to be renamed the Transport (Compliance and Miscellaneous) Act 1983) which applied to tourist railways operating by Order in Council granted under section 247 of that Act.

Subclause (1) provides that clause 30 applies if—
- a tourist and heritage railway operator has entered into a lease agreement with VicTrack under clause 19; or
- a tourist and heritage railway operator has a right to occupy a railway or part of a railway by virtue of clause 34.

Subclause (2) provides that, despite any law to the contrary, the operator—
- must not, unless the Minister so directs, be required to fence or contribute to fencing any portion of the railway that the operator uses, controls or manages; and
- is not liable for any damage which may be caused by reason of the railway not being fenced in or fenced off.

Subclause (3) provides that subclause (2) does not prevent the tourist and heritage railway operator from erecting and maintaining fences in connection with the railway as the operator considers to be proper.

Clause 31 empowers the Governor in Council to make regulations regarding stipulated subject matter and includes regulation making powers which were previously in the Transport Act 1983 (to be renamed the Transport (Compliance and Miscellaneous) Act 1983).

Subclause (1) provides that the Governor in Council may make regulations for or with respect to—
- additional information to be included in the description of a tourist and heritage rail asset for the purposes of its inclusion in the asset register;
- the appointment of members of the advisory committee including the number of members and the composition of the committee;
• additional information to be included in the Tourist and Heritage Railway Group Register;

• the criteria for registration on the Tourist and Heritage Railway Group Register;

• the application fee for registration as a registered operator;

• any matter or thing incidental to the maintenance of safety in relation to the operation of tourist and heritage railways;

• conferring on a tourist and heritage railway operator any power that a passenger transport company, within the meaning of section 2(1) of the Transport (Compliance and Miscellaneous) Act 1983, may exercise in relation to a railway under the passenger transport company's management and control;

• imposing any duty or obligation upon a tourist and heritage railway operator to which a passenger transport company, within the meaning of section 2(1) of the Transport (Compliance and Miscellaneous) Act 1983, would be subject if it were providing the rail service;

• prohibiting conduct in relation to, or regulating the conduct of anyone in or on, any rolling stock, within the meaning of section 3(1) of the Rail Safety Act 2006, or place belonging to, or under the control of a tourist or heritage railway operator;

• preventing trespass on any railway premises;

• preventing interference with or damage to any guide-post, bridge hand-rail, sign, notice, light or other fixture or equipment situated or placed on any railway premises; and

• any matter or thing required or permitted by the Bill to be prescribed or necessary to be prescribed to give effect to the Bill. For example, to prescribe rail assets or other railways for the purposes of the Bill.
Subclause (2) provides that regulations made under the Bill—

- may be of general or limited application;
- may differ according to differences in time, place or circumstance;
- may require a matter affected by the regulations to be either or both—
  - in accordance with a specified standard or specified requirement; or
  - approved by or to the satisfaction of a specified person or a specified class of person;
- may apply, adopt or incorporate any matter contained in any document whether—
  - wholly or partially or as amended by the regulations; or
  - as in force at a particular time or as in force from time to time;
- may confer a discretionary authority or impose a duty on a specified person or a specified class of person;
- may provide in a specified case or class of case for the exemption of persons or things, or a class of person or things, from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified; and
- may impose a penalty of no more than 20 penalty units for a contravention of the regulations.

Regulations will be created and relied on to enable the Bill to operate in an effective and practical manner.
PART 7—CONSEQUENTIAL AMENDMENTS AND SAVINGS

Part 7 sets out the Bill’s consequential amendments and savings provisions.

Clause 32 stipulates amendment to the Transport Integration Act 2010. The clause provides that section 67 of that Act, which outlines the functions of the Director of Public Transport, is amended to include the following function—

• to provide support to tourist and heritage railway operators, within the meaning of the Tourist and Heritage Railways Act 2010.

Clause 33 stipulates amendment to the Transport (Compliance and Miscellaneous) Act 1983. The clause provides that sections 247, 248, 249(2) and 255 of that Act are to be repealed.

These sections conferred a power on the Governor in Council to grant, by way of publication of Orders in Council, the right to occupy, manage, operate and maintain tourist railways including many of the regulation making powers noted above. They also provided for some of the limitations of liability addressed in Part 6 of the Bill.

Clause 34 provides that tourist and heritage railway operators previously granted certain rights (including occupancy) relating to the operation of a railway under section 247 of the Transport (Compliance and Miscellaneous) Act 1983, will maintain those rights until stipulated events occur.

Subclause (1) provides that clause 34 applies if, immediately before the commencement of clause 33, a tourist and heritage railway operator occupies a railway or part of a railway under an Order of the Governor in Council made under section 247 of the Transport (Compliance and Miscellaneous) Act 1983. Such an order is defined in this clause as a relevant Order.

Section 247 of the Transport (Compliance and Miscellaneous) Act 1983 allows the Governor in Council to publish Orders in Council granting the right to occupy certain railways (or parts thereof) and to manage, operate and maintain a tourist railway service. Section 247 will be repealed upon the commencement of clause 33.

Subclause (2) provides that despite the repeal of section 247 of the Transport (Compliance and Miscellaneous) Act 1983, a relevant Order remains in force and may be varied or revoked as if section 247 were still in force.
Subclause (3) provides that such a relevant Order remains in force until whichever of the following occurs first—

- a lease in respect of the railway or part of the railway is granted to the operator under clause 19;
- the right to occupy the railway or part of the railway terminates under the terms of the relevant Order; or
- the relevant Order is revoked.