

# ***Public Transport Authority Bill 2003***

## **Explanatory Memorandum**

### **Introduction**

The establishment of the Public Transport Authority will result in a clear separation of the functions of the Department of Planning and Infrastructure as a land and transport planning agency and consolidate the delivery of public transport into a single-focussed agency. This is consistent with the State Government's commitment to public transport and is in line with recommendations of the Machinery of Government.

The Public Transport Authority will be dedicated service agency that will have as its focus the delivery of rail, bus and ferry services in the Perth metropolitan area, and road coach, bus and rail services in regional Western Australia. It will also have responsibility for providing the infrastructure to deliver public transport services, which will result in an effective and integrated approach to the provision of transport services.

The Public Transport Authority will not only benefit from operational efficiencies and best practice initiatives, but will facilitate major synergies in services planning, ticketing, contract and asset management, and infrastructure development.

Importantly, the confusion in the marketplace regarding operators of public transport in Western Australia will be rectified with a single agency approach.

Security on public transport will remain a major issue and the establishment of the Public Transport Authority will allow for an integrated response to providing security for all modes of public transport.

### **Long title**

The long title sets out the purpose of the Bill, which is the establishment of a statutory authority responsible for:

- the operation of all government owned public transport services in Western Australia;
- the management of the rail freight corridor under the *Rail Freight Sale Act 2000*; and
- residual rail issues under the *Government Railways Act 1904* including the construction and maintenance of government railways.

### **Part 1 - Preliminary**

#### **Clause 1            Short title**

This is a formal clause titling the Bill.

## **Clause 2                    Commencement**

As regulations will need to be developed and administrative mechanisms for the transfer of staff and assets be put in place prior to the legislation coming into operation, subclause (1) provides that the legislation (other than Part 7 Division 1) will come into effect upon proclamation.

Part 7 Division 1 of the Bill provides for the transfer to the Authority of assets previously held under the *Transport Co-ordination Act* in relation to the provision of public transport in the metropolitan area. The mechanism to achieve this transfer will be by a transfer order to be published in the *Government Gazette*. (See clause 72.) To facilitate the orderly transfer of assets, this order will need to be made prior to the remainder of the Bill coming into operation. To enable this to occur, those provisions together with this clause will come into operation on the day the Bill is assented to by the Governor.

## **Clause 3                    Meanings of terms used in this Act**

**“authorised person”** – An “authorised person” will be appointed by the chief executive officer of the Authority under clause 56. These officers will be empowered to issue infringement notices and prosecute alleged offenders for breaches of the Act and regulations.

**“Authority”** - References in the Bill to the “Authority” are references to the Public Transport Authority created under clause 5.

**“chief executive officer”** - References in the Bill to the “chief executive officer” are references to the person appointed under Part 3 Division 2 of the *Public Sector Management Act 1994* as the chief executive officer of the Authority.

**“Crown Land”** -Where used in the Bill, this expression will have the same meaning that it has under the *Land Administration Act 1997*, that is, all land, except land held in freehold.

**“operational plan”** - References in the Bill to the “operational plan” are references to the plan required under Part 5 Division 1 (clause 20). The operational plan will set out the Authority’s “Key Performance Indicators” and financial targets for the upcoming year.

**“prescribed means of public passenger transport”** -This definition is referred to in the definition of “public passenger transport service” and includes buses, trains and ferries. In addition, to provide for any future forms of public transport that may be developed that would fall outside this definition, provision is made to expand the definition by way of regulation.

**“public”** -This definition refers to any section of the public. The Authority will be responsible for the operation of school buses which, while performing a community service, fall outside of the normal understanding of “public transport”. This definition will expand the concept of “public transport” to include these and similar services.

**“public passenger transport service”** - Clause 12 of the Bill provides as the main purpose of the Authority, the operation of “safe and reliable public transport services” on behalf of the Government. This definition draws on the definition of a “prescribed means of passenger transport”, and will encompass traditional public bus, train and ferry services as well as school bus services. In addition, the definition allows the

making of regulations to expand the type of services that Government may require the Authority to provide in the future, and to exclude other services.

**“security officer”** - Clause 56 of the Bill empowers the chief executive officer to appoint suitably trained persons as “security officers”. These officers will have all the powers of an authorised officer together with some limited powers of arrest. These officers will perform similar functions to “special constables” currently appointed under section 74 of the *Government Railways Act 1904*.

**“train”** - Where used in the Bill, this expression will have the same meaning as it has under the *Rail Safety Act 1998*, that is, one or more units of rolling stock coupled together, at least one of which is a locomotive or other self-propelled unit.

**“Treasurer”** - Where used in the Bill, this is a reference to the Treasurer of Western Australia.

#### **Clause 4                    Relationship with other Acts**

This clause is intended to ensure that, to the extent of any conflict between the provisions of this Bill, the *Rail Safety Act 1998* and the *Railways (Access) Act 1998*, the provisions of the latter two Acts will have precedence over the provisions of the Bill.

It is required to ensure that the Authority and its operations will be subject to the requirements of those two Acts.

### **Part 2 - Public Transport Authority of Western Australia**

#### **Clause 5                    Authority established**

This clause establishes the Public Transport Authority of Western Australia as a body corporate with perpetual succession, that is, having the capacity to continue indefinitely, by means of an infinite succession of natural persons. The Authority will be capable of suing and being sued.

#### **Clause 6                    Status**

The Authority will be an agent of the State entitled to the status, immunities and privileges of the State.

#### **Clause 7                    Management**

The Authority will consist only of the chief executive officer who will be empowered to perform all of the functions of the Authority under this Bill or any other written law. Examples of other written laws under which the Authority will have a function include the *Government Railways Act 1904*, and the *Rail Freight System Act 2000*.

The concept of the Authority being governed by the chief executive officer is not unique. For example, see also section 8 of the *Government Railways Act 1904*.

### **Part 3 - Staff and contractors**

#### **Clause 8 Authority to be an SES organisation**

Officers employed by the Authority whose salary exceeds the amount prescribed for the purposes of section 43 of the *Public Sector Management Act 1994* (currently Level 9 and above) will be members of the Senior Executive Service.

#### **Clause 9 Chief executive officer**

Section 43 of the *Public Sector Management Act 1994* empowers the Minister responsible for the administration of that Act, by notice published in the Public Service Notices, to exclude the holder of an office from the Senior Executive Service.

This clause provides that this power cannot be exercised in respect of the position of chief executive officer of the Authority.

Subclause (2) ensures that the chief executive officer will have all of the powers necessary to effectively manage the Authority's day to day operations.

#### **Clause 10 Other staff and contractors**

In addition to the powers given to the Authority by virtue of section 100 of the *Public Sector Management Act 1994* to engage persons by way of contracts of service or as casual employees, the Authority will have a general power to "hire and manage" staff.

The Authority will also be empowered to employ contractors who are employed by another employer. These contractors are generally employed to perform specific short-term projects that cannot be resourced "in-house".

#### **Clause 11 Use of government staff and facilities**

The Authority will be able to second the services of an employee of another public sector agency on such terms and conditions as may be agreed.

Similarly, it may enter into an arrangement with a department or other State agency to make use of its facilities on such terms and conditions as may be agreed.

### **Part 4 - Functions of the Authority**

#### **Clause 12 Functions**

Subclause (1) provides that the main purpose of the Authority is to provide and **operate safe and reliable public transport services** on behalf of the Government. The Authority will discharge this obligation by operating services in its own right, as in the case of the metropolitan rail system, or through contractors, as in the case of the metropolitan bus service.

The Authority will be responsible for the provision of these services throughout the whole of the State.

Whilst operating or ensuring the operation of these services will be the responsibility of the Authority, the provision of public transport will remain an essential element of the Government's integrated transport planning process under the responsibility of the Department for Planning and Infrastructure. Issues that will fall within the

responsibility of the Department will include strategic policy and planning, funding issues and the setting of service levels.

All public transport services, with the exception of rail, are required to be licensed under the *Transport Co-ordination Act 1966* and services provided by the Authority will continue to be subject to this requirement. Subclause (2) ensures that other licensed operators, such as country road bus service operators, will not be prevented from providing public transport services.

In order to minimise the cost to Government of providing a world class passenger transport service for the benefit of all Western Australians, subclause (3) provides the Authority with a secondary purpose, that of earning revenue by engaging in commercial activities.

The Bill clearly provides that the “commercial activities” of the Authority must either be connected with the performance of its functions, or be authorised by regulation. In addition to these controls, the accountability mechanisms contained in Part 5 provide a further means by which the Government of the day can control the activities of the Authority.

The commercial activities the Authority is likely to engage in are: contracts for the display of advertising in/on trains and buses used to provide public transport services, billboards and tickets, and the leasing of small retail premises (for coffee shops, snack bars, newsagents and other convenience items/services) in railway and bus stations.

### **Clause 13 Powers generally**

The Authority will have the powers necessary to perform its functions under this Act or any other Act, including the power to:

- deal in, and develop real and personal property ;
- employ agents;
- act as an agent and provide consultancy to other parties;
- with the approval of the Minister and Treasurer, hold shares or other interests in a business concern;
- carry out reviews, investigations and feasibility studies;
- carry out and publish the results of research associated with its functions;
- produce and deal in equipment associated with its functions;
- develop and deal in intellectual property associated with its functions; and
- promote and market the Authority and its activities.

The Authority will also be able to make gifts to charity or for the benefit of the community, make *ex gratia* payments which are in the Authority’s interest, and receive gifts, given either unconditionally or subject to conditions which the Authority will be able to satisfy, such as in the case of a Commonwealth Government grant given to the Authority for the construction of a railway, for example.

### **Clause 14 Use of certain Crown land by Authority**

Unless the Minister for Lands expressly excludes the operation of this clause, where the Authority is given care, control and management of Crown Land under section 46 of the *Land Administration Act 1997*, the Authority may use the land for commercial purposes envisaged in clause 12(3), however, that commercial use must not be

inconsistent with the purpose for which the land was placed under the care, management and control of the Authority.

#### **Clause 15            Dealing with certain Crown land**

The Authority can grant a lease, licence or easement in relation to any Crown land it has in its care, control or management unless the grant would be inconsistent with the provisions of the *Government Railways Act 1904*, or the instrument under which the Authority holds the land. The grant must be for a term of less than 50 years, including options, and on terms which comply with requirements set out in the regulations.

The grant of such a lease, licence or easement of Crown land or anything on the land is granted on the condition that the land is not to be used in a manner that is inconsistent with anything that is on corridor land in accordance with the *Rail Freight System Act 2000*.

A further condition is that the land is not to be used in a way that will interfere with the exercise of future rights conferred in relation to corridor land under Part 3 of the *Rail Freight System Act 2000*.

If the lease, licence or easement does not comply with the criteria set out in the regulations, then the Minister's approval must be sought by the Authority prior to entering into an agreement. Similar approval is required where the agreement is in relation to land in the DBNGP (Dampier to Bunbury Natural Gas Pipeline) corridor; the Authority must seek the approval of the DBNGP Land Access Minister.

#### **Clause 16            Restriction on certain dealings in other land**

Unless regulations made provide otherwise, the Minister's written approval is required before the Authority can sell land other than that is held in freehold by the Authority.

#### **Clause 17            Authority may operate on corridor land under the *Rail Freight System Act 2000***

This clause mirrors section 19 of the *Government Railways Act 1904*, which is to be repealed by clause 107. Where the Commission needs to perform functions under the *Government Railways Act 1904*, that section permits it to use land that is corridor land under the *Rail Freight System Act 2000* by agreement with the person having the management and control of that land.

As the Authority will be taking over the functions of the Rail Corridor Minister which currently manages and controls the corridor land (see Part 8 Division 4 of the Bill), these powers are required to be conferred upon the Authority in order to enable it to carry out its functions. They will empower the Authority to enter into an arrangement with a company having management of a *rail freight corridor* for the use of the corridor land or facility on that land.

#### **Clause 18            Use of names for Authority and its operations**

To assist in the promotion of public transport, the Authority will be able to use trading names such as Transperth, Smart Ticket, etc. as part of its advertising and marketing strategies.

## **Clause 19            Delegation by the Authority**

With the exception of its powers under the *Public Works Act 1902* and the *Rail Freight System Act 2000*, the Authority will be empowered to delegate a power or duty under this or any other Act to another person.

The delegation must be in writing and if the delegate is not an employee of the Authority it must be approved by the Minister.

A delegate may not sub-delegate and in the absence of proof to the contrary is taken to be acting in accordance with the delegation.

A delegation will not affect the Authority's ability to perform its functions through its staff or agents.

## **Part 5 – Accountability and financial provisions**

### **Division 1 – Accountability**

#### **Clause 20            Draft operational plan to be submitted to Minister**

By 1 May each year, the Authority will be required to have prepared and submitted to the Minister for approval, a draft operational plan. The Minister must have the concurrence of the Treasurer before approving the plan, but once approved it becomes the operational plan for the Authority for the financial year commencing on 1 July.

What is required to be in an operational plan and the Authority's requirement to observe the plan is contained in clauses 21 and 24 respectively.

Where the draft operational plan has not been approved by 1 July, the latest draft operational plan submitted for approval, together with any amendments made by the Authority at the direction of the Minister, will be the operational plan until the draft operational plan is approved by the Minister.

#### **Clause 21            Content of operational plan**

The operational plan is to cover the ensuing financial year and address the functions of the Authority has under this and any other Act.

The plan must:

- (a) set out the Authority's objectives for the coming financial year;
- (b) specify and quantify the Key Performance Indicators in respect to those objectives;
- (c) identify the resources that will be used to meet those objectives;
- (d) detail the nature and scope of the functions to be performed;
- (e) detail the authorities budget;
- (f) address any other matter the Minister requires to be addressed.

Improving customer outcomes is to be a principal consideration of the Authority when preparing its operational plan.

**Clause 22            Minister’s powers in relation to draft operational plan**

Where the Minister has concerns in relation to the content of a draft operational plan, the Minister may return it to the Authority for further consideration. The Authority must deal with such a request as soon as possible. If the Minister has returned the draft operational plan to the Authority for further consideration and by 2 June the plan still has not been approved, the Minister may direct the Authority to make specific modifications to the plan and the Authority must deal with such a direction as soon as possible.

**Clause 23            Modifications of operational plan**

The Authority may, with the approval of the Minister and where the amendment has significant financial implications the Treasurer, modify its operational plan.

**Clause 24            Duty to observe operational plan**

The operational plan will be the principal accountability mechanism by which the Government will manage the Authority, and once approved, the Authority must comply with the plan.

**Clause 25            Consultation**

There will be a formal requirement for the Minister and the Authority, or their representatives, to meet at the request of either party.

There will also be a requirement for the Authority to consult with the Minister before it embarks on a major initiative and in respect of any matter which is likely to be of significant public interest.

Before approving an operational plan or modification to an operational plan, the Minister must consult with the Minister responsible for the administration of any other Act under which the Authority is performing a function.

**Clause 26            Minister to be kept informed**

In line with normal accountability mechanisms for the conduct of statutory authorities, the Authority will have a statutory obligation to keep the Minister informed of its operations, financial position, the performance of its operational plan and any other matters in relation to which the Minister requests information.

**Clause 27            Minister may give directions**

As the Authority remains an agent of the State, it is appropriate for the Minister to be empowered to direct the Authority in the performance of its functions.

This clause places an obligation on the Authority to comply with a direction given by the Minister, however section 17 of the *Statutory Corporations (Liability of Directors) Act 1996* excludes from this requirement any direction which is unlawful.

The Authority is required to publish the text of any direction in its annual report.



**Clause 28 Minister to have access to information**

Upon request, the Authority is required to provide to the Minister any information or documents in its possession.

**Clause 29 Deletion of commercially sensitive information**

The Authority will be empowered to request that the Minister delete any matter that is of a commercially sensitive nature from any report that is required to be, or might be, tabled or made public.

Where the Minister accedes to a request, when published, the document must contain a notation outlining the reasons for the deletion and be accompanied by an opinion from the Auditor General that the information is commercially sensitive.

**Clause 30 Protection for disclosure or compliance with directions**

The Authority and its employees cannot be held liable for disclosing information or for doing or omitting to do something in pursuance of an obligation under the Act.

This clause will not affect the Chief Executive Officer's responsibility to act honestly and with due care and diligence as required by sections 9 and 10 of the *Statutory Corporations (Liability of Directors) Act 1996*.

**Division 2 – Financial provisions**

**Clause 31 Authority's funds**

The Authority's funds will consist of money borrowed under clause 33 together with other money lawfully received by, or made available to, the Authority.

Other money lawfully received by, or made available to, the Authority will consist of:

- fares;
- other revenue earned by the Authority under clause 12(3);
- grants (eg Commonwealth); and
- government funding provided through the Department for Planning and Infrastructure.

**Clause 32 Public Transport Authority Account**

Money received, and payments made by the Authority must be transacted through an account maintained by Treasury as part of the Trust Fund or, with the approval of the Treasurer in an account maintained at a bank.

**Clause 33 Borrowing**

The Authority, with the approval of the Treasurer, will be empowered to borrow money to facilitate its capital works program, including the construction of public transport facilities and the purchase of replacement vehicles.

Projected borrowings will be shown in the Authority's operational plan (clause 21(1)(e)), and will form part of the State's overall capital works budget. In line with

good business practice, the Authority will be required to maintain a register of its borrowings.

#### **Clause 34 Guarantees**

Notwithstanding the status of the Authority as an agent of the State, given it is a body corporate, there will be a need to provide lenders with some certainty that debts incurred by the Authority will be met by the State.

This clause will enable the Treasurer, on the recommendation of the Minister to provide a State guarantee in respect of loans to the Authority, and any money that would become payable under such guarantee is to be charged to the Consolidated Fund. If the Treasurer is required to pay any monies under a guarantee, any monies that are subsequently recovered from the Authority are also to be paid to the credit of the Consolidated Fund.

#### **Clause 35 Charges for guarantee**

Where the Treasurer makes a payment to a third party under a guarantee given pursuant to clause 34, the Treasurer may impose a charge to be paid by the Authority to the Consolidated Fund. Payment of this charge is to be made by the Authority to the Treasurer at times and in instalments, the amount of which are determined by the Treasurer.

#### **Clause 36 The Authority may extend credit to customers or suppliers**

In the course of its normal operations, the Authority is often required to provide customers and suppliers with credit. A typical example of such a transaction relates to the sale of multi rider tickets and other ticketing products through newsagents and other suppliers.

This clause will enable the Authority to continue to provide those credit arrangements which may be either secured or unsecured as the Authority considers appropriate.

#### **Clause 37 Notice of financial difficulty**

If the Authority forms the opinion that it is or is likely to be insolvent, it must notify the Minister in the manner to be prescribed in regulation.

Within 7 days of receiving such notification the Minister must confer with the Treasurer and initiate such action as necessary to ensure that the Authority is able to meet its obligations. This action may include a direction under clause 27 that the Authority cease or limit the performance of any function.

Providing for the manner of the notification to be prescribed in regulation will enable Government to select appropriate methods to ensure timeliness of this notification.

### **Division 3 – *Financial Administration and Audit Act 1985***

#### **Clause 38 Application of *Financial Administration and Audit Act 1985***

The *Financial Administration and Audit Act 1985* will apply to the Authority and its operations.

## **Part 6 – Miscellaneous**

### **Division 1 – Protection of people dealing with the Authority**

#### **Clause 39 People dealing with the Authority may make assumptions**

To provide persons dealing with the Authority with the certainty that the person with whom they are dealing is appropriately authorised, they will have a statutory entitlement to assume those matters listed in clause 41, and the Authority will not be able to plead in any legal proceedings that those assumptions were incorrect.

#### **Clause 40 Third parties may make assumptions**

The assumptions available to a person dealing with the Authority under clause 40 extend to a third party who has acquired, or has purported to acquire, title to any property from the Authority.

#### **Clause 41 Matters that can be assumed**

This clause provides that in dealings with the Authority, people are entitled to assume:

- that the Authority is acting in accordance with the Act;
- that persons held out by the Authority to be the chief executive officer, member of staff or agent have been properly appointed and authorised;
- that a member of staff or agent of the Authority issuing or certifying documents on behalf of the Authority has authority to do so;
- that documents bearing the seal of the Authority have been properly sealed; and
- that the chief executive officer, staff and agents of the Authority have properly performed their duties.

#### **Clause 42 When those matters cannot be assumed**

A person will not be entitled to rely on a statutory assumption where they know, or because of their relationship with the Authority, should know, that the assumption is incorrect.

In these circumstances, the Authority would be able to plead in any legal proceedings that such an assumption was incorrect.

### **Division 2 – Infringement notices**

#### **Clause 43 Infringement notices**

Where “prescribed” is used in this Division it means “prescribed by regulations”.

#### **Clause 44 Giving of notice**

Infringement notices offer an administratively expedient process whereby alleged offenders can have minor matters disposed of without the need for more costly and time consuming court action.

Infringement notices will be able to be issued by authorised persons (see clause 56), security officers (see clause 56) or a member of the Police Force.

To ensure consistency in relation to the monetary penalties imposed by infringement notices, and to ensure that only minor matters are dealt with in this manner, this provision limits the offences for which infringements can be issued to offences which are not punishable by imprisonment and to those in which no discretion in relation to the applicable modified penalty exists.

#### **Clause 45           Content of notice**

The form of infringement notices is to be prescribed by regulation and must:

- contain a description of the alleged offence;
- advise that rather than paying the penalty, the alleged offender may have the matter heard and determined by court;
- detail where and to whom payment of the modified penalty may be made;
- advise that the modified penalty amount must be paid to an authorised person within the period of 28 days; and
- specify the penalty as being the amount that was the prescribed modified penalty at the time the alleged offence was committed.

Modified penalties are required to be prescribed by regulation and cannot exceed 20% of the maximum penalty that could be imposed by a court.

#### **Clause 46           Extension of time**

To facilitate the payment of infringement notices, particularly in cases of financial hardship, an authorised person will be empowered to extend the time for payment of the infringement notice beyond the period of 28 days.

#### **Clause 47           Withdrawal of notice**

Notwithstanding that a person may have paid an infringement notice, where special circumstances exist that would warrant the Authority not proceeding with the charge or determining that the charge should in fact proceed to a hearing and determination by a court, an authorised person will be empowered to withdraw an infringement notice, and where the penalty had previously been paid the amount of the penalty is to be refunded.

#### **Clause 48           Benefit of paying modified penalty**

Where an infringement notice has been paid and not subsequently withdrawn, the Authority will not be empowered to bring proceedings or impose further penalties in respect of that offence. Payment of an infringement notice cannot be regarded as an admission in any legal proceedings.

#### **Clause 49           Application of penalties collected**

As with penalties imposed by courts for offences under this Act and regulations made under this Act, amounts paid in respect of infringement notices will be retained by the Authority.

### **Division 3 – Other provisions**

#### **Clause 50 Authority exempt from certain rates and taxes**

Land held by the Authority for the purpose of performing its functions under this or any other Act will not be subject to local government rates or charges, or water charges. This exemption will not extend to land that is leased or rented to a third party.

#### **Clause 51 Execution of documents by Authority**

As with any body corporate, the Authority will be required to have a corporate seal that can only be used with the authorisation of the Authority

For a document to be properly executed by the Authority, the common seal must be affixed in the presence of the chief executive officer or an authorised member of staff who must sign the document to attest that the common seal was affixed.

In the absence of any proof to the contrary a document bearing the common seal is to be taken as having been properly executed.

#### **Clause 52 Contract formalities**

In addition to the mechanisms available under clause 51, for administrative convenience, the Authority will be able to authorise a person to make, vary or discharge contracts in the name of or on behalf of the Authority which will have the effect of binding the Authority.

#### **Clause 53 Assignment of benefit of contract**

Where a party enters into a contract with the Authority, that party's rights and benefits cannot be assigned to another party without the Authority's consent.

The purpose of this provision is to enable the Authority to ensure that parties carrying out its functions pursuant to agreements or assignments have the capacity and infrastructure to fulfil their obligations under the contract, and carry out the functions to the requisite standard.

The Authority can withhold its consent until any candidate for assignment who is proposed by the party to the contract enters into an agreement which is acceptable to the Authority. Such a contract can be a contract directly with the Authority, with someone else specified by the Authority, or between the Authority and a person it specifies.

#### **Clause 54 Protection from liability for wrongdoing**

In line with common practice, employees of the Authority will be protected from legal action for anything they do in good faith in the performance, or purported performance of their functions under this or any other Act.

This protection will not extend to the Authority or the State who will remain vicariously responsible for the acts and omissions of its employees.

This provision will not provide protection to the chief executive officer for non-compliance with the requirements of the *Statutory Corporations (Liability of Directors) Act 1996*.

#### **Clause 55            Exchange of information**

Given the nature of the functions to be performed by security officers, including the arrest of offenders and the execution of warrants, it is appropriate for information to be freely exchanged between the Authority and the Police Service. This clause will facilitate that exchange.

The exchange of information will be strictly limited to enforcement matters. The use of information by the Authority for probity checks on employees and other matters not related directly to enforcement will be prohibited.

#### **Clause 56            Authorised persons and security officers**

To ensure the safety and convenience of passengers on bus and ferry services provided by the Authority, the chief executive officer of the Authority will be empowered to appoint authorised persons and security officers to enforce the provisions of this Act and issue infringement notices for offences. Security officers will have limited powers of arrest as set out in clauses 58 and 59.

The Bill specifically requires “security officers” to be employees of the Authority and suitably trained to perform their functions.

These officers will operate in a manner similar to the Transit Guards and Special Constables who currently patrol the metropolitan rail system.

Each authorised person and security officer will be issued with a certificate of appointment, which they will be required to produce upon request.

#### **Clause 57            Obtaining details of certain offenders**

A “security officer” or an “authorised person” will be empowered to rely on the provisions of the *Criminal Investigation (Identifying People) Act 2002* to require the name, age and address of any person he reasonably suspects has committed or is committing or is about to commit an offence, or may be able to assist in the investigation of an offence or a suspected offence.

A person who refuses to give or gives a false name, age or address will be liable to a penalty of up to 12 months imprisonment and pursuant to the powers contained in Chapter LX of the *Criminal Code*, may be arrested and taken before a justice to be dealt with according to the law.

#### **Clause 58            Offenders may be taken into custody in some circumstances**

Where it appears to a security officer or a police officer that a person is likely to continue or repeat an offence of:

- disorderly conduct (section 54 of the *Police Act 1892*) in or on an Authority vehicle or premises;
- being unlawfully in or upon any premises of the Authority or its curtilage (section 66(13) of the *Police Act 1892*);

- wilfully damages or destroys any property of the Authority (section 80(1) of the *Police Act 1892*,

the officer will be empowered to arrest the person and take them to a police station or other place to be dealt with according to the law.

A similar power of arrest will also apply where a person having been warned by an officer repeats an act that is an offence under this legislation.

#### **Clause 59            Security officer may help execute certain warrants**

In the course of carrying out their primary role of keeping good order on the metropolitan rail system, "special constables" regularly come into contact with persons who are the subject of bench warrants and warrants in the first instance. Between 1 July 2001 and 30 June 2002 special constables executed 335 warrants.

The clause will enable this valuable assistance to the Police Service and contribution to law enforcement generally to be continued by similarly empowering security officers to execute these warrants and deliver the persons to the police.

#### **Clause 60            Searching persons taken into custody**

Whenever a person is taken into custody it is necessary to search the person to ensure they are not in possession of anything that may be used to harm themselves or other persons.

This clause will provide such a power for security officers who take persons into custody under clauses 58 and 59 of the Bill.

#### **Clause 61            Search without warrant**

Graffiti, weapons and the illicit consumption of alcohol and drugs on public transport not only affects the convenience of other passengers but can place the personal safety of passengers and staff at risk.

Clause 69(3) will enable the making of regulations to prohibit certain things being carried on public transport. It is envisaged that the regulations will cover items such as weapons, illegal drugs, dangerous substances, alcohol in open containers etc.

Where a security officer or member of the Police Force suspects on reasonable grounds that a person is in possession of a prohibited item the officer will be empowered to stop, detain and search the person.

#### **Clause 62            Provisions about searching a person**

Any search conducted under clause 60 or 61 will be required to be conducted by either an officer of the same sex as the alleged offender or a person who is of the same sex as the alleged offender and who is acting under the direction of an officer.

The Bill will not authorise searches of an intimate nature, however where an offender fails to co-operate, officers will be empowered to use reasonable force to effect the search.

### **Clause 63            Seizure of property**

A security officer or member of the Police Force will be empowered to seize any prohibited items which, unless forfeited or dealt with under another law and which are not required for legal proceedings can later be released to the owner.

Where an officer seizes an item, he or she must record details of the seizure.

### **Clause 64            Unclaimed property**

A justice may order that property seized under clause 63 be forfeited to the State.

Property that has been found or otherwise come into the possession of the Authority which is not claimed within 30 days (or 24 hours for perishable goods) will be forfeited to the Authority, which may dispose of it in the manner it considers most appropriate.

Even though property may have technically been forfeited to the Authority, any items which have not been disposed of or destroyed may still be returned to the owner.

### **Clause 65            Ejecting people from Authority property**

Rather than relying on “hard” enforcement options such as prosecution or arrest, this clause will allow a security officer, member of the Police Force or authorised person to resolve potentially difficult situations worsening by empowering them to direct a person to leave an Authority vehicle or premises. Failure to comply with a direction will be an offence.

After having warned an offender, officers will be empowered to use reasonable force to physically remove the person. Should the person continue to fail to comply, he or she could be arrested pursuant to clause 58(3).

### **Clause 66            Prosecutions**

Unlike the general position where legal proceedings can be instituted by any interested person, legal proceedings for offences against this Act, including regulations, can only be instituted by a police officer, security officer or an authorised person. This measure is intended to prevent vexatious criminal actions and to ensure consistency of enforcement.

Security officers will also be empowered to prosecute offenders arrested under clause 58 for offences under the *Police Act 1892*.

### **Clause 67            Young offenders**

To ensure a consistent approach across Government approach to the management of juvenile offenders, security officers and authorised officers will have the same obligations under the *Young Offenders Act 1994* as a member of the Police Force.

### **Clause 68            Proof of certain matters**

Where a complaint states that a person is an authorised person, and that a person has not paid the appropriate fare for using a service, this will be taken to be proved in the absence of proof to the contrary. This alleviates the need for the prosecution to bring evidence to establish these facts on every prosecution.



Where a person is charged with having not paid the appropriate fare, the obligation will rest on the defendant to establish a defence.

#### **Clause 69            Regulations**

To address administrative and operational issues with the administration of the Act, the Governor will be empowered to make regulations covering those matters listed in subclauses (2) and (3).

Where the regulations create offences, the maximum fine cannot exceed \$2,000.

#### **Clause 70            Review of Act**

To ensure the continued relevance and efficiency of the legislation, the Minister will be required to carry out a review every 5 years as to its effectiveness and table a report in each House of the Parliament within 12 months.

### **Part 7 – Transitional matters**

#### **Division 1 – Metropolitan passenger transport functions from Minister to Authority**

As the Authority is to assume responsibility for the provision of public transport in the metropolitan area, this Division transfers to the Authority the assets and liabilities of the Transport Co-ordination Ministerial Body relating to the performance of functions under Part II Division 4 of the *Transport Co-ordination Act 1966* (which is to be repealed by clause 195).

#### **Clause 71            Terms used in this Division**

**“asset”** – Reference to an asset in this Division means property that is held by or which arises and exists for the benefit of the Transport Co-ordination Ministerial Body or any other person on behalf of the State for the purpose of providing public transport services, prior to the transfer time.

**“former holder”** - Reference to this phrase in this Division means the Transport Co-ordination Ministerial Body or any other person holding an asset or who was subject to any liability in relation to the provision of passenger services prior to the transfer time.

**“liability”** – Reference to liability in this Division includes any liability, duty or obligation that arises and exists immediately prior to the transfer time.

**“property”** - A reference to property in this Division means property of any kind, and includes any claim, interest, right to bring legal action or goodwill.

**“right”** – A reference to a right in this Division includes any power, privilege, right or immunity whether actual, contingent or prospective.

**“transfer time”** – “Transfer time” is when Part II Division 4 of the *Transport Co-ordination Act 1966* is repealed and the function of the provision of public passenger transport services is consequently transferred to the Authority.

**“Transport Co-ordination Ministerial Body”** refers to the Transport Co-ordination Ministerial Body which was created by section 6 of the *Transport Co-ordination Act 1966*.

## **Clause 72            Minister may make transfer order**

To give effect to the provisions of this Act, the Minister can make an order which:

- (a) provides for the transfer of assets or liabilities that are to be assigned to the Authority;
- (b) specifies proceedings in which the Authority is to replace the former holder as a party; and
- (c) specifies agreements that were entered into by the Minister for the purposes of the provision of public transport services prior to the transfer time, that have effect as if the Authority entered into the agreement instead of the former holder.

The transfer order can make reference to things specified in schedules which need not be published in the *Government Gazette*, however such schedules need to be made available to the public.

The Minister must consult as to the form and content of a schedule with each of the Registrar of Titles, the Registrar of Deeds, the Minister administering the *Mining Act 1978* or any other person authorised by law to give effect to the registration of property transactions, depending on the circumstances.

The transfer order must be published in the *Government Gazette*, and an order or schedule to which it refers can only be made or amended prior to the transfer time.

## **Clause 73            Consequences of transfer order**

If a transfer order is made, at the transfer time any asset or liability specified in the order will be transferred to the Authority, including any asset previously held on behalf of the State.

Any right to commence proceedings or a right to a remedy which the Transport Co-ordination Ministerial Body or other former holder had in relation to such an asset or liability will also be assigned to the Authority. The Authority will become liable for any act or omission of the Transport Co-ordination Ministerial Body and other former holders which occurred prior to the transfer time.

At the transfer time, the Authority is substituted in the place of the Transport Co-ordination Ministerial Body or other former holder as a party to any proceedings specified in the order, and references to the Transport Co-ordination Ministerial Body or other former holder in any agreement specified in the order are to be read as if they have been substituted by a reference to the Authority, unless the order expressly provides otherwise.

## **Clause 74            Completion of necessary transactions**

This provision requires that all reasonable steps be taken to effect the terms of the transfer order in the event that the effect of transfer order prescribed in section 73 cannot occur. This provision anticipates circumstances where for example, another law would prevent such a transfer.

## **Clause 75            Registration of documents**

A copy of each transfer order (including any schedule) must be provided by the Minister to relevant officials and to the Authority.

Relevant officials are defined in this provision to include the Registrar of Titles, the Registrar of Deeds, the Minister administering the *Mining Act 1978*, or any other person authorised by a written law to record and give effect to property transactions.

Each relevant official is required to take notice of any transfer order (including any schedule) and the requirements and effect of this Division, and must record and register the documents necessary to show the effect of the transfer order.

#### **Clause 76            Rectifying error in transfer order**

If it comes to light that an error has been made in a transfer order or its schedule, the Minister may correct the error by publishing a notice with a corrective provision in the *Government Gazette*.

The correction can come into operation from the time of transfer, however if the transfer date occurs before the correction notice is published, section 66 will not operate to negatively affect the rights of a person (other than the State, the Authority, or a Minister, officer or agency of the State) which existed before the publication, or to impose liabilities on any person (other than the State, the Authority or a Minister, officer or agency of the State) in respect of anything done before the date of publication.

#### **Clause 77            Certain Crown land**

Crown land which immediately before the transfer time, is under the care and control of the Minister administering the *Transport Co-ordination Act 1966* Part II Division 4 is to be regarded as if it had been reserved to the Crown under the *Land Administration Act 1997* for the purpose of performing the Authority's functions under this Act and the *Government Railways Act 1904*.

It is also to be regarded, in accordance with the *Land Administration Act 1997*, as having been placed under the care, control and management of the Authority to fulfil those purposes.

#### **Clause 78            Metropolitan Passenger Transport Fund**

All of the funds contained in the Metropolitan Passenger Transport Fund are to be transferred to the Public Transport Authority Account.

### **Division 2 – Transition from former *Government Railways Act 1904* bodies to Authority**

#### **Clause 79            Meanings of terms used in this Division**

**“asset”** in this Division means a reference to property of any kind which before the commencement time belongs to a former body. The definition includes property whether tangible or intangible, real or personal and includes the right to bring legal proceedings, goodwill and any right, interest or claim of any kind, regardless of whether it arises under or is created by an instrument.

**“commencement time”** in this Division means the time when this Division comes into operation.

**“former body”** in this Division means the Minister for Western Australian Government Railways or The Western Australian Government Railways Commission.

**“liability”** in this Division means any liability, duty or obligation that a former body had immediately before the day when this Division comes into operation.

**“Minister for Western Australian Government Railways”** means the former body corporate named the Minister for Western Australian Government Railways established under section 4 of the *Government Railways Act 1904*.

**“right”** in this Division means any right, privilege power or immunity that a former body had immediately before the day when this Division comes into operation.

**“The Western Australian Government Railways Commission”** means the former body corporate with this name which was incorporated under the *Government Railways Act 1904*.

#### **Clause 80 Authority is successor of former bodies**

The Authority will succeed the body corporate named the “Minister for Western Australian Government Railways” and the body corporate named “The Western Australian Government Railways Commission”.

#### **Clause 81 Transitional provisions**

At the commencement time the Authority:

- is assigned the assets and assumes the liabilities of the Minister for Western Australian Government Railways and The Western Australian Government Railways Commission;
- is to be taken as having completed any acts or omissions which are of effect in relation to an asset or liability prior to the assignment;
- becomes a party to any legal proceedings in the place of the Minister for Western Australian Government Railways and The Western Australian Government Railways Commission;
- becomes a party to agreements in the place of the Minister of Western Australian Government Railways or The Western Australian Government Railways Commission (unless it is inappropriate to make this substitution)

Any remedy that is available to the Minister for Western Australian Government Railways or The Western Australian Government Railways Commission becomes available to the Authority at the commencement time.

Similarly, any proceedings that might have been commenced by the Minister for Western Australian Government Railways or The Western Australian Government Railways Commission can be commenced by the Authority.

Crown land held by Minister for Western Australian Government Railways immediately before the commencement time is to be regarded as if it had at that time been reserved under the *Land Administration Act 1997* for the purposes of performing the Authority’s functions under this Act and the *Government Railways Act 1904* and as if it had been placed under the care, control and management of the Authority for those purposes.

Any government railways land that was held by the Minister for Western Australian Government Railways immediately before the commencement time (other than Crown land or anything on Crown land) becomes at that time the property of the Authority.

Despite this provision, any Crown land belonging to the Minister for Western Australian Government Railways or The Western Australian Government Railways Commission will transfer to the Authority at the commencement time.

#### **Clause 82            Completion of necessary transactions**

In the event that any of the transitional provisions in clause 81 cannot have effect, this provision is intended to ensure that relevant parties take all practicable steps to ensure that the effect sought by this Division is achieved as soon as possible after the commencement time.

Despite the repeal of section 4 and Part II of the *Government Railways Act 1904*, each of the former bodies (the Minister for Western Australian Government Railways and The Western Australian Government Railways Commission) are preserved for the purposes of ensuring that the effect of this Division is secured. To that end, the Minister can execute documents for each of those bodies.

#### **Clause 83            Registration of documents**

The Authority is required to deliver a schedule of information to each relevant official. The schedule must be in a form acceptable to the official and supply information required by the official to effect the changes prescribed in this Division.

Relevant officials are defined in this provision to include the Registrar of Titles, Registrar of Deeds, the Minister administering the *Mining Act 1978*, and any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions. The official to be dealt with depends on who has responsibility in relation to the property sought to be registered.

The relevant official is required take notice of this Division and record and register the documents in a manner necessary to show the effect of the Division.

#### **Clause 84            By-laws under Government Railways Act 1904 section 23 continue**

Any by-laws which were made under the *Government Railways Act 1904* prior to the commencement of this Division continue under this provision as if they had been made by the Authority.

#### **Clause 85            References in written laws to former bodies**

Any legislation which is in force immediately before the commencement of this division which refers to the Minister for Western Australian Government Railways or the Western Australian Railways Commission, should after the commencement of this division, be read as a reference to the Authority, unless in the context it would be inappropriate.

### **Division 3 - Transition from Rail Corridor Minister to Authority**

#### **Clause 86 Meanings of terms used in this Division**

**“asset”** means property of any kind which belongs to the Rail Corridor Minister and includes any right to bring legal proceedings, goodwill and any right or interest, regardless of whether it has arisen under or been created by an instrument

**“commencement time”** in this Division means the day that this Division comes into operation.

**“liability”** where referred to in this Division means any liability, duty or obligation that the Rail Corridor Minister had immediately prior to the commencement of this Division.

**“Rail Corridor Minister”** means the former body corporate established by the *Rail Freight System Act 2000*.

**“right”** means any right, power, privilege or immunity that the Rail Corridor Minister had immediately before the commencement time.

#### **Clause 87 Transitional provisions**

At the commencement time the Authority:

- is assigned the assets and assumes the liabilities of the Rail Corridor Minister;
- is to be taken as having completed any acts or omissions which are of effect in relation to an asset or liability prior to the assignment;
- becomes a party to any legal proceedings in the place of the Rail Corridor Minister; and
- becomes a party to agreements in the place of the Rail Corridor Minister (unless it is inappropriate to make this substitution).

Any remedy that is available to the Rail Corridor Minister becomes available to the Authority at the commencement time.

Similarly, any proceedings that might have been commenced by the Rail Corridor Minister can be commenced by the Authority.

#### **Clause 88 Completion of necessary transactions**

In the event that the transitional provisions referred to in clause 87 cannot have effect, this provision is intended to ensure that the relevant parties take all practicable steps for the purpose of ensuring that the effect of those transitional provisions is achieved as soon as possible after the commencement date.

Despite the fact that the provision in the *Rail Freight System Act 2000* which creates the position of Rail Corridor Minister will be repealed, the body corporate will be preserved for the purposes of facilitating these transitional provisions, and the Minister is empowered to execute documents for and on behalf of the body for the purposes of this provision.

## **Clause 89            Registration of documents**

The Authority is required to deliver a schedule of information to each relevant official. The schedule must be in a form acceptable to the official and supply information required by the official to effect the changes prescribed by this Division.

Relevant officials are defined in this provision to include the Registrar of Titles, Registrar of Deeds, the Minister administering the *Mining Act 1978*, and any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions.

The relevant officials are required take notice of this Division and are to record and register the documents in a manner necessary to show the effect of the Division.

## **Clause 90            References in written law to Rail Corridor Minister**

This clause deals with references to the Rail Corridor Minister in other Acts. It provides that any legislation in force immediately before the commencement of this Division, which refers to the Rail Corridor Minister, is to be read after the commencement of this Division as a reference to the Authority unless it would be inappropriate to do so.

Where this Act has made other provision, however, the other legislation shall not be construed in the above manner.

## **Division 4 - Abolition of Metropolitan (Perth) Passenger Transport Trust**

### **Clause 91        Winding up of affairs of Metropolitan (Perth) Passenger Transport Trust**

The Minister responsible for the administration of the *Transport Co-ordination Act 1966* is required to wind up the affairs of the Metropolitan (Perth) Passenger Transport Trust as soon as possible after the repeal of the *Metropolitan (Perth) Passenger Transport Trust Act 1957*. That Act is repealed by clause 156.

Unless this Act provides otherwise, the following will occur upon the winding up of the Trust:

- property held in the Trust will be transferred to the State, and the State will assume all of the rights, liabilities and obligations of the Trust;
- records and data of the Trust will be held by the Minister, and all contracts, agreements and undertakings made by the Trust (which are in effect prior to the commencement time) may be enforced by or against the State;
- legal proceedings or any remedies that might have been commenced or continued by or against the Trust may be commenced or continued by the State;
- reference to the Trust in legislation in force immediately before the repeal, or in a document in existence immediately before the repeal, is to be construed after the repeal as a reference to the State or the Minister acting on behalf of the State, unless it would be inappropriate to do so.

## **Division 5 – State tax implications of transitions**

### **Clause 92 Exemptions from State Tax**

This provision provides an exemption from the requirements to pay stamp duty and any other tax, duty, fee or levy which arises in relation to the transfer of property or anything done in accordance with Part 7 of this Act.

## **Division 6 – Other provisions**

### **Clause 93 Certain contributions by former body suffice**

The Western Australian Government Railways Commission is required by section 11 of the *Agriculture Protection Board Act 1950* to pay \$6,000 to the Board's Protection Fund each year, for the purpose of assisting in meeting expenditure in respect of the control of, and the prohibition and regulation of the introduction of, declared plants and declared animals, and the general expenses of the Board.

Clause 140 of this Bill amends section 11 of the *Agriculture Protection Board Act 1950* to transfer the responsibility for such a contribution to the Authority. This clause provides that where The Western Australian Government Railways Commission has already made this contribution in respect of a particular year, the Authority will not be liable in respect of that same year.

### **Clause 94 Tourist railways**

Clause 123 of this Act repeals section 66A of the *Government Railways Act 1904*, and inserts a new provision.

If, prior to the commencement of Division 9 of this Bill, a person was authorised under section 66A to occupy land for the purpose of operating a tourist railway, then at the commencement time, the land is to be regarded as having been reserved under the *Land Administration Act 1997* for that purpose, and as having been placed under the care, control and management of that person for that purpose by an order under *the Land Administration Act 1997* containing the same conditions as applied under the former order authorising its use.

### **Clause 95 Saving**

This clause is a protective clause which limits legal action which can be brought as a direct result of the transfer of land to the Authority, the transfer of contractual arrangements to the Authority, and other transactions and acts done in giving effect to the provisions of Part 7.

This provision ensures, for example, that former bodies are not pursued for breach of contract or breach of confidence, and that contracts are not void as a result of the requirements of Part 7.



## **Part 8                      Other Acts**

### **Division 1 - *Government Railways Act 1904* and related provisions**

#### **Clause 96                      *Government Railways Act 1904* amended**

This clause confirms that all amendments in this Division are to the *Government Railways Act 1904*.

#### **Clause 97                      Section 2 amended**

The definitions section of the *Government Railways Act 1904* is amended as follows:

- in line with the creation of the Authority, the definitions of the Commission and the Commissioner are deleted and substituted with those for the Authority and the chief executive officer of the Authority respectively;
- the definition of Minister is deleted as section 4 of the *Government Railways Act 1904*, which creates the body corporate Minister for Railways, is being repealed, with the Authority assuming the Minister's powers and functions under that section;
- the definition of "Department" is replaced with a more modern definition; and
- the definition of 'the Account' is deleted, as the Commission is to be abolished and financial and accountability provisions are no longer required therefore in respect of its operations.

#### **Clause 98                      Section 2AA inserted**

Section 8B(7) of the *Government Railways Act 1904* is to be repealed by clause 103, which repeals Part II in its entirety. That Part creates The Western Australian Government Railways Commission and will no longer be required as the Authority is to assume the powers and functions of the Commission pursuant to this Act.

As the provisions of the current section 8B(7) will be necessary for the Authority's operations, however, this clause inserts a new section 2AA into the Act that is similar to the current section 8B(7). It will enable the Authority to lease land as part of its commercial activities, while providing that the land will remain part of a government railway.

#### **Clause 99                      Section 3 replaced**

This clause repeals section 3 of the *Government Railways Act 1904* and replaces it with a new provision which provides that anything on Crown land which is part of a Government railway:

- (a) is not part of the land, even if it has the nature of a fixture;
- (b) can be assigned separately from the land; and
- (c) can be removed from the land with the authority of the owner.

This clause is intended to enable the Authority to lease land to one party and a fixture upon that land, such as a factory, for example, to another party, if desired.

**Clause 100      Section 4 replaced**

Section 4 of the *Government Railways Act 1904* creates the body corporate “Minister for Railways” to own railway infrastructure and have rail reserves vested in it, while section 8 of the Act creates The Western Australian Government Railways Commission to manage and control government railways.

As the Authority will replace both of these bodies, and assume their powers and responsibilities, section 4 is to be repealed.

(See clause 103 for the repeal of section 8.)

**Clause 101      Section 5 repealed**

Section 5 of the *Government Railways Act 1904* deals with district railways. This is of historical interest only as the Commission no longer operates district railways. This section is therefore to be repealed.

**Clause 102      Section 7 amended**

Section 7 of the *Government Railways Act 1904* establishes a mechanism to provide satisfactory evidence, by certificate signed by the Minister, that land is included as portion of a railway or that a railway is open for traffic.

This amendment removes the requirement for the Minister to sign such a certificate, and transfers this function to the chief executive officer of the Authority. As this is largely an administrative function, it is considered more appropriate that it be performed by the chief executive officer.

**Clause 103      Part II repealed**

This clause repeals Part II of the *Government Railways Act 1904* (Direction and management of the Western Australian Government Railways), which contains sections 8, 8A, 8B, 8C, 8D and 9 to 12 inclusive.

Section 8 currently establishes the Commission and provides for the Governor to appoint a person to the position of Commissioner of the Western Australian Government Railways. The repeal of section 8 is consistent with the Bill’s objective of replacing the Commission with the Authority and replacing the Commissioner of the Western Australian Government Railways with the chief executive officer of the Authority.

The appointment and conditions attaching to the office of the chief executive officer are dealt with, in accordance with modern practice, under the *Public Sector Management Act 1994*.

Section 8A currently permits the Commission to become a member of or shareholder in, and contribute funds to, any body within the Commonwealth that has as its principal object the improvement of railway systems within the Commonwealth. This power is to be repealed as a similar power is granted to the Authority in the proposed new section 14 of the *Government Railways Act 1904* (see clause 105 of the Bill).

Section 8B gives various powers to the Commission that, given the abolition of the Commission and the creation of the Authority, are now to be given to the Authority (see clauses 13 and 14 and Part 5 Division 2).

Section 8C currently permits the Minister administering the *Government Railways Act 1904* to give directions in writing to the Commission. This section is to be repealed, as a corresponding provision appears in the Bill (see clause 27).

Section 8D currently provides that the Minister administering the *Government Railways Act 1904* is entitled to have information in the possession of the Commission and to obtain copies of documents. This section is to be repealed as it is being replaced with a corresponding provision in the Bill which will apply in respect of all of the Authority's functions, not merely its railway functions. (See clause 28 of the Bill.)

Section 9 currently protects the Minister and the Commissioner from personal liability where they have acted in good faith in the exercise of their powers. This section is to be repealed as it is being replaced with a corresponding provision in the Bill extending to the exercise of all of the Authority's functions under all Acts, including the *Government Railways Act 1904*. (See clause 54 of the Bill.)

Section 10 currently creates an offence if the Commissioner, without the Minister's consent, participates in any profit, commission or other benefit arising from any contract made by or on behalf of the Government. This provision is to be repealed in light of the application of the provisions of the *Statutory Corporations (Liability of Directors) Act 1996* to the chief executive officer of the Authority.

Section 11 deals with the application of various statutes to the terms of employment of the Commissioner. As the office of the Commissioner of Western Australian Government Railways is being repealed, section 11 is no longer required and is therefore to be repealed.

Section 12 is a transitional provision which was enacted in 1948, at which time the body corporate Commissioner of Railways was abolished and the functions of that body corporate divided between the Minister for Railways, as to matters of policy, and the Commission, as to matters of administration. Those bodies corporate are to be abolished by this Bill, so section 12 of this Act is no longer relevant. It is therefore to be repealed.

#### **Clause 104      Section 13 amended**

Section 13(1a)(b) currently provides that the Commission has management and control of every government railway, subject to the Commission honouring any arrangement it has entered into, pursuant to section 18E of the *Transport Co-ordination Act 1966*, with the Minister for Planning and Infrastructure regarding the provision of rail passenger services in the metropolitan area.

Section 18E of the *Transport Co-ordination Act 1966* is being repealed by clause 179 of the Bill, as arrangements for the provision of bus, ferry and rail services are all to be assumed by the Authority. (See clause 12 of the Bill.) Reference to its provision in section 13 of the *Government Railways Act 1904* is therefore no longer required and is to be repealed.

#### **Clause 105      Section 14 replaced**

Section 14 currently empowers the Commission, with the approval of the Minister, to make additions and improvements to any railway and in the performance of such duties to have the powers of the Minister under the provisions of the *Public Works*

*Act 1902*. As this power is to be conferred upon the Authority by clause 13, section 14 is no longer required and is to be repealed.

This clause will insert a new section 14 into the Act, which mirrors the provisions of the current section 8A of the *Government Railways Act 1904* but in respect of the operations of the new Authority. Section 8A is to be repealed by clause 103, as part of the abolition of The Western Australian Government Railways Commission and the associated repeal of Part II of the Act, however the powers conferred by section 8A will be required by the new Authority.

**Clause 106      Section 16 repealed**

Section 16 contains a delegation from the Minister for Railways to the Commission, for the construction of a railway and the exercise of powers granted to the Minister for Railways under Part VI of the *Public Works Act 1902*. It is no longer required, as the power to construct a railway under the *Public Works Act 1902* is to be granted directly to the Authority (see clause 155).

**Clause 107      Section 19 repealed**

Section 19 currently permits the Commission to use land that is corridor land under the *Rail Freight System Act 2000* by agreement with the person having the management and control of that land, where the Commission needs to perform a function under the *Government Railways Act 1904*.

It is no longer required as the Authority will be taking over the functions of the Rail Corridor Minister which currently manages and controls the corridor land. (See Part 8 Division 4 of the Bill.)

**Clause 108      Section 21 repealed**

Section 21 currently empowers the Commission to:

- construct, purchase and otherwise acquire and maintain any motor or other vehicle; and
- use them for the purpose of conveying passengers and goods on any public highway and on railway land.

This power is no longer required given the functions conferred upon the Authority by the Bill to operate rail, bus and ferry operations (see clauses 13 and 14) and this section is therefore to be repealed.

**Clause 109      Section 23 amended**

Section 23 sets out the matters in respect of which the Commission may make by-laws. The only substantive amendment proposed is to delete section 23(1)(15), which is no longer relevant to the Commission's or the future Authority's operations. It permits the Commission to make by-laws regulating the admission of any vessels to any wharf, jetty, berth or mooring connected with and forming part of a railway, and is no longer required as none of these items form part of any government railway.

**Clause 110      Section 24 amended**

Section 24(7) is amended in a minor respect. It currently refers to “the Account”, which is the Western Australian Government Railways General Fund Account created by section 54(2) of the *Government Railways Act 1904*. As the Commission is to be abolished, this section is to be repealed (see clause 118). Reference in section 24(7) to “the Account” is therefore to be substituted with reference to “an account maintained by the Authority”.

**Clause 111      Sections 28, 28A and 29 repealed**

Sections 28 and 28A granted certain powers to the Commission necessary for the operation of its rail freight service. As such services are no longer operated, however, and are not intended to be operated by the Authority, these sections are now redundant and are to be repealed.

Section 29 creates a penalty for giving a false consignment note or way-bill in relation to a rail freight service. As the Commission no longer operates such services, this section is to be repealed.

**Clause 112      Section 33 amended**

Section 33 is amended in a minor respect. It currently refers to “the Account”, which is the Western Australian Government Railways General Fund Account created by section 54(2) of the *Government Railways Act 1904*. As the Commission is to be abolished, this section is to be repealed (see clause 118). Reference in section 33 to “the Account” is therefore to be substituted with reference to “an account maintained by the Authority”.

**Clause 113      Section 37 amended**

This amendment deletes references in section 37 of the *Government Railways Act 1904* to sections 17 and 28A of that Act. These references are no longer required as section 17 was repealed by Act No. 32 of 1998 and section 28A is to be repealed by clause 111 of this Bill.

It also amends reference to the Commission with reference to the Authority.

**Clause 114      Section 44 amended**

Section 44 currently empowers the removal of a person from a railway carriage if the person is travelling in the wrong class of carriage (ie. superior class instead of second class), travelling in a sleeping carriage without the appropriate ticket, and travelling in a carriage set apart for any particular person or class of persons but does not fall within that class of persons.

As urban passenger rail services operated by the Commission, and to be operated by the Authority, no longer distinguish between classes of carriage, section 44 is to be repealed.

**Clause 115      Section 45 amended**

Section 45 prescribes penalties in relation to tickets. Section 45(4) creates an offence where someone who is not authorised by the Commission sells or attempts to sell tickets for transport services. This subsection is to be repealed and replaced

with a clause which creates a similar offence in relation to the sale of tickets for travel on a service provided by the Authority.

**Clause 116      Section 46(4) amended**

Section 46(4) creates an offence where a person has paid a fare for or been the holder of a free pass for a certain class of carriage and travels in a superior class of carriage without paying or tendering the difference in the fare. As urban passenger rail services operated by the Commission, and to be operated by the Authority, do not distinguish between classes of carriage, this offence provision is to be repealed.

**Clause 117      Section 52 repealed**

Section 52 currently makes employees of the Commission responsible for any damage caused by their wrongdoing or neglect and the loss occasioned by their wrongdoing or neglect may be deducted from their salary or wages. There is an appeal procedure that may be utilised by the aggrieved employee if a deduction from their salary or wages is proposed.

The Commission has not used this provision for many years and its retention is considered unnecessary, given other avenues of disciplinary action available through other human resource management policies. It is therefore proposed that section 52 be repealed.

**Clause 118      Part IV repealed**

Part IV of the *Government Railways Act 1904* sets out the Commission's powers and responsibilities in relation to financial matters and accountability. As the Commission will cease to exist and responsibility for its functions be conferred upon the Authority, these provisions are no longer required. Part 5 of this Bill sets out the Authority's powers and responsibilities in respect of these matters.

**Clause 119      Section 61 amended**

Section 61 deals with the use of railways by other rail service operators and is used to enable third party access to portions of the metropolitan rail network to be provided to trains such as the Indian Pacific and the Hotham Valley Tourist Railway.

To remove confusion as to the operation of these provisions, as distinct from the general powers of the Authority to enter into agreements, this section has been amended to clarify that it does not apply to "public passenger transport services" as defined under the Bill.

It is also amended to change references from the Commission to the Authority.

**Clause 120      Sections 62, 63 and 64 repealed**

These sections currently set out the limited circumstances in which the Commission may lease railways or railway buildings and railway land, and are no longer required in light of the powers granted to the Authority in the Bill (see in particular clause 14). They are therefore to be repealed.

Sections 63A and 63B also relate to the leasing of land, however are to be retained. These sections were enacted to enable the Commission to grant leases of a duration greater than that permitted by sections 62 and 64, and concern the leasing of railway

land to accommodate the Subiaco redevelopment area and the Joondalup railway tunnel, and the lease of land to Co-operative Bulk Handling in various country locations, respectively.

**Clause 121          Section 64 inserted**

The proposed new section 64 clarifies for anyone reading the *Government Railways Act 1904* in isolation that the power to lease government railway land as set out in the *Government Railways Act 1904* is also supplemented by leasing provisions in the Bill.

**Clause 122          Sections 65 and 66 repealed**

These sections currently grant powers to the Commission to enter into agreements in relation to the use of buildings, wharves and jetties, constructed and used in connection with the railway. These powers were relevant to the Commission when it operated its rail freight business but are no longer relevant to its operations. These sections are therefore to be repealed.

**Clause 123          Section 66A replaced**

Section 66A currently empowers the Governor, by order published in the *Government Gazette*, to designate a portion of railway no longer required by the Commission to be a tourist railway. The railway then ceases to be government railway for the term of the tourist railway order.

The new section 66A will make tourist railway orders more consistent with the types of orders issued under the *Land Administration Act 1997*, and has been discussed with and approved by the Department of Land Administration. In essence, it provides for the order declaring the railway to be a tourist railway to be made by the Minister for Lands under the *Land Administration Act 1997*, reserving the land for the purpose of a tourist railway, “on request from the Authority”.

**Clause 124          Section 67 repealed**

Section 67 of the *Government Railways Act 1904* permits the Commission to grant easements, permits and other concessions in respect of railway land. This power is granted to the Authority in clause 15. To avoid duplication, section 67 is to be repealed.

**Clause 125          Section 71 repealed**

Section 71 permits the Commission to cause the removal of any tree on land adjacent to a railway that obstructs or interferes with traffic or endangers the travellers on the railway. This section is no longer required as such matters are dealt with by the *Rail Safety Act 1998* and is therefore to be repealed.

**Clause 126          Section 73 amended**

Section 73 currently sets out the Commission’s power to appoint, dismiss or take other action against certain officers. This clause repeals the power to appoint given in section 73(1), as this power is to be conferred by clause 10 of the Bill.

The remaining provisions of section 73, and sections 77 to 84 of the *Government Railways Act 1904*, which contain dismissal and appeal procedures, will continue to

apply in respect of a small number of the Authority's workforce, being those employees employed under the *Government Railways Locomotive Enginemen's Award 1973-1990 No. 13 of 1990* and the *Railway Employees' Award No. 18 of 1969*.

**Clause 127          Section 74 amended**

The proposed new subsection (1a) will clarify that a special constable's power to take a person into custody includes the power to take the person in custody into a police station or other place as required for the purpose of the being dealt with according to the law. This is to address the situation that special constables currently find themselves in, whereby they are unable to wait for a police officer to attend to take a person into custody and the police request the special constable to take them into police custody or to a hospital en route to a place of police custody.

**Clause 128          Section 75 repealed**

Section 75 currently provides that a statement in writing endorsed on an employee's wages or salary pay sheet, to the effect that the employee has been paid the amount of wages or salary set out against their name, is prima facie evidence of a payment. This provision was more appropriate when the Commission paid salary or wages by cash and therefore required the employee's signature, acknowledging receipt. As all salary and wages are now directed to employees' bank accounts and these matters are adequately covered in regulations made under the *Industrial Relations Act 1979* and the *Public Sector Management Act 1994*, it is proposed to repeal section 75.

**Clause 129          Section 76 replaced**

Section 76 deals with an endowment and provident fund for employees of the Commission. This clause replaces the existing section 76 with a provision which essentially mirrors it, subject to the following changes.

References to the Commission are substituted with references to the Authority.

Subsections 76(2)(c) and 76(3) are deleted, as they contain provisions relating to the transition in 1989 from the Western Australian Government Railways Employees' Provident Fund Incorporated and the Western Australian Government Railways Employees' Endowment Fund Incorporated to the Western Australian Government Railways Employees' Endowment and Provident Fund. As that transition is now complete, these provisions are no longer required.

The funds held in trust in the name of the Western Australian Government Railways Employees' Endowment and Provident Fund are now held by West Super Plus Pty Ltd. Reference to the former fund is replaced with reference to this company.

**Clause 130          Section 77 amended**

The definition of a person being "permanently employed" is to be amended to refer to someone who has been continuously employed for 6 months, rather than 3 months as currently provided. The 6-month period is in line with the Commission's enterprise agreements agreed with the unions.



**Clause 131      Sections 85, 86 and 87 repealed**

Section 85 currently empowers the Commission to commence proceedings for offences against the *Government Railways Act 1904*. This section is now redundant due to the insertion of a new section 94 in the *Government Railways Act 1904* by clause 135 of the Bill, and is therefore to be repealed.

Section 86 currently prohibits an officer or servant of the department engaging in employment outside the duties of his office, except with the approval of the Commission. It also prohibits the officer or servant from participating in any profits arising from any contract or agreement made by or on behalf of the Government and from acquiring any Crown Land without the approval of the Minister. It is considered that this provision is no longer appropriate as these matters are covered by section 102 of the *Public Sector Management Act 1994* and by the Public Sector Code of Ethics.

Section 87 currently permits the Commission to remove any person who continues to occupy railway premises after ceasing to be employed by the railway. This provision was intended to enable the removal of ex-employees from government railway houses let or rented to government railway employees. As the Commission no longer makes any accommodation available to railway employees, this section is to be repealed.

**Clause 132      Section 88 amended**

Section 88 of the *Government Railways Act 1904* exempts government railways from the requirement to pay rates and taxes, but requires the payment of shire rates in respect of land leased by the Commission under sections 63 and 63A (except when it is leased to Co-operative Bulk Handling Limited).

This clause reflects that, upon establishment of the new Authority, the Authority will be entering into such leases.

It also removes reference to land leased under section 63, as that section is to be repealed (see clause 120).

**Clause 133      Section 90 repealed**

Section 90 currently requires the Commission, in the first month of each quarter of every year, to report in writing to the Minister on the state of traffic returns, together with the approximate earnings of trains per train kilometre, during the previous quarter.

This requirement was imposed when the Commission operated a rail freight business with substantial returns based on carriage of goods per train kilometre. As these services are no longer operated, however, the requirement for these reports is obsolete and the section is to be repealed.

**Clause 134      Sections 93 and 93A repealed**

Section 93 prescribes the manner in which the Commission may authenticate documents. It is no longer required as such matters have been dealt with in respect of the Authority in clause 52 of the Bill.

Section 93A enables a statutory declaration, made for the purposes of verifying the loss or destruction of a railway ticket, to be made by the declarant before any classified government railway officer. This is considered unnecessary, given the provisions of the *Evidence Act 1906* permitting statutory declarations to be made in front of justices of the peace and various other classes of person. It is therefore to be repealed.

**Clause 135      Section 94 replaced**

This clause repeals section 94, which sets out the Commission's power to direct prosecutions, and replaces it with a provision which clarifies that proceedings for an offence may be instituted by members of the Police Force or a person authorised by the Authority.

**Clause 136      Section 95 replaced**

Section 95 of the *Government Railways Act 1904* provides that persons authorised by the Commissioner for that purpose may represent the Commission in prosecutions in the Court of Petty Sessions.

The replacement provision inserted by this clause changes references from an "officer of the Commission", appointed by the Commissioner, to an "employee" of the Authority, appointed by the Authority.

**Clause 137      Section 96 amended**

Section 96 of the *Government Railways Act 1904* sets out facts which must be taken as proved by a court in a prosecution against the provisions of the Act. These include the constitution of the Commission, any order of the Commission to prosecute and the powers of the officer to prosecute.

As such proceedings will become the responsibility of the Authority, this provision repeals section 96(1) and provides that no proof is required in proceedings brought by the Authority in relation to a person's appointment or authority to institute proceedings, or the appointment of the chief executive officer or any employee of the Authority.

**Clause 138      Section 97 repealed**

Section 97 provides that all documents issued or written by or under the direction of the Commission and purporting to be signed by the Commissioner or an officer of the Commission are to be received as evidence in all courts. As a corresponding provision is contained in the Bill and applies in respect of all of the Authority's functions, there is no need to retain section 97.

**Clause 139      Various references to Commission amended**

This clause makes consequential changes to the *Government Railways Act 1904* by replacing references to the "Commission" with references to the "Authority".

**Clause 140      *Agriculture Protection Board Act 1950* amended**

Section 11 of this Act places an obligation on The Western Australian Government Railways Commission to contribute \$6,000 per annum to the Protection Fund established under that Act.

The work of the Board, in respect of which this contribution is made, relates principally to the management of declared plants and animals in the rail corridor. As the Commission is to be abolished and responsibility for management of the corridor given to the Authority, this clause transfers obligation for that contribution to the Authority.

**Clause 141      *Alumina Refinery Agreement Act 1961* amended**

Section 5 of this Act provides that when the portion of the Coogee-Kwinana Railway ceased to operate, the cost of that portion of the railway could be omitted from the accounts prepared by the Commission under the *Government Railways Act 1904*. These actions are complete and the section is no longer required.

**Clause 142      *Anglo-Persian Oil Company Limited's (Private) Act 1919* amended**

This Act deals with the storage and supply of oil and liquid fuel in Fremantle by the Anglo-Persian Oil Company Limited, subject to certain obligations in favour of the local Council, the Commission and the Fremantle Port Authority. These arrangements have continued to date, with Anglo-Persian Oil Company Limited's rights and obligations having been assumed by its successors, namely BP.

Section 3 of this Act refers to land vested in the Minister for Railways or in the Minister for the time being administering the *Government Railways Act 1904*. As the Authority will have the care, management and control of rail reserves, section 3 is being amended to reflect this position.

In addition, the definition of "Local Authority" in this Act is being amended to replace references to the "Commissioner of Railways" with references to the Authority.

**Clause 143      *Armadale Redevelopment Act 2001* amended**

Subsection 24(1)(c) permits the Armadale Redevelopment Authority to delegate any of its powers or duties under the *Armadale Redevelopment Act 2001* to various persons or agencies, including the Commission.

This amendment will replace reference to the Commission with reference to the Authority.

**Clause 144      *British Imperial Oil Company Limited (Private) Act 1925* amended**

This Act deals with the storage and supply of oil, liquid fuel, petroleum spirits, kerosene and petroleum products by the British Imperial Oil Company, Limited.

This clause amends sections 2 and 3 of the Act, as follows.

Reference in section 2 to the Commissioner of Railways in the definition of "Local authority" is replaced with reference to the Authority.

Section 3 sets out the area in respect of which the Act applies and currently includes Crown lands or lands "vested in the Minister for Railways or the Minister administering the *Government Railways Act 1904*". This reference is replaced with reference to land belonging to or under the care, control and custody of Authority.

**Clause 145 *Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960* amended**

This section amends the Act by inserting a subsection 4(4) that provides that the reference in subsection 4(3)(d) to The Western Australian Government Railways Commission is to include a reference to the Authority.

**Clause 146 *Bunbury Railway Lands Act 1985* repealed**

This Act vested certain lands in the Crown, enabled the grant of certain lands to the Commission, closed certain roads and extinguished certain reserves for the purpose of redeveloping areas of land in Bunbury no longer required for rail purposes. The redevelopment and sale of that land has been completed. As this Act has no ongoing effect, so the opportunity is being taken to repeal it.

**Clause 147 *Industrial Relations Act 1979* amended**

This clause amends the *Industrial Relations Act 1979* in the following ways.

Part IIA Division 3 of the Act creates a Railways Classification Board which is to have jurisdiction in respect of industrial matters relating to railway officers (effectively, employees of The Western Australian Government Railways Commission).

Section 80M of the Act contains definitions relevant to the provisions of Part IIA Division 3. Subclause (2) amends that section by deleting the definitions of "Minister for Railways" and "Railways Commission", as these entities will cease to exist (see clauses 100 and 103), and by inserting definitions of the "Public Transport Authority" and the "transport Minister".

It also corrects the definition of "railway officer" by replacing reference to a "person" with reference to a "specified award employee" in line with the provisions of section 73 of the *Government Railways Act 1904*.

Section 80N of the Act provides for the establishment of the Railways Classification Board. Subsection 80N(2) provides that the Minister for Railways is to be consulted on the appointment of Board members. Subclause (3) amends that subsection to replace reference to the Minister for Railways, which entity will cease to exist, with reference to the "transport Minister" (the Minister responsible for administration of the *Public Transport Authority Act 2003*).

Subsection 80O(7) of the Act provides that the Chief Commissioner of the Industrial Relations Commission must consult with the Minister for Railways regarding the appointment of a Chairman for the Railways Classification Board. Subclause (4) amends this subsection by replacing reference to the "minister for Railways", which entity will cease to exist, with reference to the "transport Minister" (the Minister responsible for administration of the *Public Transport Authority Act 2003*).

Subclause (5) provides that all references to The Western Australian Government Railways Commission (referred to in the Act as the "Railways Commission") listed in the table are to be replaced with references to the "Public Transport Authority", to reflect the abolition of the Commission and the creation of the Authority as the relevant employer.

**Clause 148      *Jetties Act 1926* amended**

Section 5(1)(c) of the *Jetties Act 1926* provides that regulations made under the Act shall not apply to jetties forming part of any government railway or under the control of the Commissioner of Railways, unless the Act provides otherwise.

This clause replaces reference in that section to the Commissioner of Railways with reference to the Authority.

**Clause 149      *Kalgoorlie-Parkeston Railway Act 1959* amended**

The railway that this Act refers to was discontinued by the *Railway (Kalgoorlie-Parkeston) Discontinuance and Land Revestment Act 1973*. This Act is of no further relevance and the opportunity is therefore being taken to repeal it.

**Clause 150      *Land Administration Act 1997* amended**

Clause 159(ba) of the *Land Administration Act 1997* empowers the Minister administering that Act to delegate any of his or her powers to the Rail Corridor Minister. As the functions of the Rail Corridor Minister are to be taken over by the Authority, this provision is to be repealed.

Section 160(1) of the Act provides that, by notice in the *Government Gazette*, the Minister can delegate certain functions to the Rail Corridor Minister, the chief executive officer of his/her department, the Commission or any officer of the Commission.

As these powers will no longer be necessary, this provision proposes to delete section 160(ba) and 160(db) and insert a provision which allows the Minister (when delegating to the Minister administering the *Government Railways Act 1904*) to delegate such functions to the Authority.

**Clause 151      *Liquor Licensing Act 1988* amended**

Section 6 of the *Liquor Licensing Act 1988* provides that the provisions of the Act do not apply where liquor is sold by, or under the authority of, the Commissioner of Railways under the *Government Railways Act 1904*. This enables liquor to be sold on country rail services, together with other food and beverage refreshments. This clause amends the Act by replacing reference to the Commissioner of Railways in subsection 6(1)(e) with reference to the Authority.

**Clause 152      *Railways (Access) Act 1998* amended**

This Act imposes obligations on the Commission, as a railway owner, regarding the observation of competition policy principles when granting rights of access to its rail infrastructure. The amendments proposed reflect that the Authority will replace the Commission as a railway owner for the purposes of this Act.

**Clause 153      *State Superannuation (Transitional and Consequential Provisions) Act 2000* amended**

Sections 47 and 75 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*, which have yet to be proclaimed, will have the effect of deleting reference to the *Superannuation and Family Benefits Act 1938-1947* in section 11(1) of the *Government Railways Act 1904*.

This clause provides that:

- if section 47 has not come into operation when this clause becomes operational, section 47 is to be repealed; and
- if section 75 has not come into operation when this clause becomes operational, the reference in its table to section 11 of the *Government Railways Act 1904* is to be deleted.

**Clause 154      *Subiaco Redevelopment Act 1994* amended**

Section 28(2)(d) of the *Subiaco Redevelopment Act 1994* permits the Subiaco Redevelopment Authority to delegate any of its functions to the Commissioner of Railways. Reference in this section to the Commissioner is to be replaced with reference to the Authority.

**Clause 155      *Weights and Measures Act 1915* amended**

Section 8 of the *Weights and Measures Act 1915* permits the chief executive officer of the department administering the Act, by arrangement with the Commissioner of Railways, to examine and test any weighing instrument used on government railways.

This clause replaces reference to the Commissioner of Railways with reference to the Authority.

**Division 2 – *Metropolitan (Perth) Passenger Transport Trust Act 1957* and related provisions**

**Clause 156      Repeal**

This provision repeals the *Metropolitan (Perth) Passenger Trust Act 1957*, as the provision of public transport services in the metropolitan area is to be undertaken by the Authority pursuant to the provisions of this Bill.

**Clause 157      *Disposal of Uncollected Goods Act 1970* amended**

Section 6 of this Act provides that the Act does not apply to the bailment, possession or other custody of goods pursuant to those Acts set out in the Schedule to the Act.

The Schedule currently includes reference to the *Metropolitan (Perth) Passenger Transport Trust Act 1957*. As that Act is to be repealed, this clause deletes reference to it from the Schedule.

**Clause 158      *State Superannuation (Transitional and Consequential Provisions) Act 2000* \* amended**

Section 55 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*, which has yet to come into operation, amends the *Metropolitan (Perth) Passenger Transport Trust Act 1957*. As this Act is to be repealed (see clause 156), this clause provides that if section 55 has not come into operation when clause 156 becomes operational, section 55 is to be repealed.

### **Division 3 – *Public Works Act 1902* and related provisions**

#### **Clause 159      *Public Works Act 1902* amended**

This clause provides that the amendments in Division 3 are to the *Public Works Act 1902*.

#### **Clause 160      Section 2 amended**

This clause amends section 2 of the *Public Works Act 1902* by inserting a definition of the “Public Transport Authority.”

#### **Clause 161      Section 11 amended**

Section 11 of the *Public Works Act 1902* provides that the Governor may authorise the Minister to undertake, construct, or provide any public work, however any work done in relation to railways is to be done subject to section 96.

This clause amends section 11 by providing that the Governor may also give such authorisation to the Authority in relation to railways.

#### **Clause 162      Section 83C amended**

This clause amends subsections 83C(3) and 83C(4) of the *Public Works Act 1902* by replacing references to “local government” with references to “local authority.”

#### **Clause 163      Section 113A amended**

Section 113A of the *Public Works Act 1902* provides that where, under the Act, the Minister causes anything to be placed in, on, over or under land, it is considered the property of the Minister unless the Minister certifies otherwise.

This clause amends section 113A by replacing the reference to Minister with the “Minister or the Public Transport Authority (in this section called the relevant person)” and after that with “the relevant person” so that it applies in respect of the placement of anything by the Authority.

#### **Clause 164      Section 116 repealed**

Section 116 of the *Public Works Act 1902* confers responsibility for the administration of the *Tramways Act 1885* upon the Minister responsible for the *Government Railways Act 1904*. As the *Tramways Act 1885* was repealed in 1966 (by Act No. 91 of 1966), section 116 is now obsolete and the opportunity is being taken to repeal it.

#### **Clause 165      Section 120 amended**

Section 120 of the *Public Works Act 1902* provides that it is an offence for any person to wilfully and unlawfully obstruct or interfere a with a person in the performance of any duty or in doing any work which he has lawful authority to do under the provisions of the *Public Works Act 1902*. It also creates an offence where a person obstructs, injures or interferes with any land taken under the provisions of this Act.

Each offence carries a maximum penalty of \$100, plus the cost of repairing or reinstating the damaged property. This clause amends section 120 to permit the

Authority to recover money spent in relation to repairing or reinstating railway property.

**Clause 166          Various references to Minister amended**

This provision amends the *Public Works Act 1902* in the sections set out in the table by replacing references to “Minister” with references to the Authority. As a result of this amendment, other amendments are required in sections 99(2), 100(3), 107 and 108 to delete references to “he/his” and replace with them with references to “it”.

**Clause 167          Land Administration Act 1997 amended**

Subsection 183(1) of the *Land Administration Act 1997* provides that where a special Act has been passed for the construction of a railway, the Minister may authorise a person to enter on to the land on which the railway is to be constructed, to do anything that the Minister is empowered to do in order to construct a railway and to do any ancillary public works.

The provision has the effect of creating a taking order as provided in Part 9 Division 3 Subdivision 2 of the *Land Administration Act 1997*.

This clause amends subsection 183(1) by deleting “the Minister is empowered under the special Act or the *Public Works Act 1902 to do*” and inserting instead “under the special Act or the *Public Works Act 1902* is authorised to be done”, and reflects the amendment to the *Public Works Act 1902* which will provide for the Authority to be so authorised.

**Clause 168          Soil and Land Conservation Act 1945 amended**

This clause amends the definition of “Public Authority” in section 4 of the *Soil and Land Conservation Act 1945* by inserting reference to the Authority.

**Division 4 – Rail Freight System Act 2000**

**Clause 169          The Act amended**

This clause provides that the amendments in this Division are to the *Rail Freight System Act 2000*.

**Clause 170          Long title amended**

The *Rail Freight System Act 2000* provides for the designation of railway land corridors, to facilitate the efficient and effective carriage of rail freight.

It creates a body corporate called the “Rail Corridor Minister”, in which railway corridor land is vested and which is charged with the responsibility of managing that land.

It also provides for a separate “Act Minister”, responsible for administering the Act, making strategic policy in relation to rail corridor matters and designating land as corridor or non-corridor land.

To date, the Western Australian Government Railways Commission has managed railway corridor land on behalf of the Rail Corridor Minister.



With the establishment of the Authority and the abolition of the Commission, it is considered appropriate to transfer the administrative responsibility for management of corridor land to the Authority.

The amendments to the long title reflect the abolition of the Commission, as the previous operator of the State's rail freight business, and of the body corporate Rail Corridor Minister responsible for management of corridor land.

#### **Clauses 171      Section 3 amended**

The *Rail Freight System Act 2000* provides for the designation of railway land corridors, to facilitate the efficient and effective carriage of rail freight.

It creates a body corporate called the "Rail Corridor Minister", in which railway corridor land is vested and which is charged with the responsibility of managing that land.

It also provides for a separate "Act Minister", responsible for administering the Act, making strategic policy in relation to rail corridor matters and designating land as corridor or non-corridor land.

To date, the Western Australian Government Railways Commission has managed railway corridor land on behalf of the Rail Corridor Minister.

With the establishment of the Authority and the abolition of the Commission, it is considered appropriate to transfer the administrative responsibility for management of corridor land to the Authority.

The amendments to section 3 reflect the abolition of the Commission, the creation of the Authority and the transfer of responsibility for management of corridor land to the Authority.

#### **Clause 172      Section 4 amended**

The *Rail Freight System Act 2000* provides for the designation of railway land corridors, to facilitate the efficient and effective carriage of rail freight.

It creates a body corporate called the "Rail Corridor Minister", in which railway corridor land is vested and which is charged with the responsibility of managing that land.

It also provides for a separate "Act Minister", responsible for administering the Act, making strategic policy in relation to rail corridor matters and designating land as corridor or non-corridor land.

To date, the Western Australian Government Railways Commission has managed railway corridor land on behalf of the Rail Corridor Minister.

With the establishment of the Authority and the abolition of the Commission, it is considered appropriate to transfer the administrative responsibility for management of corridor land to the Authority.

The amendments to section 4 reflect the abolition of the Commission, the creation of the Authority and the transfer of responsibility for management of corridor land to the Authority.

**Clause 173      Section 8 amended**

The *Rail Freight System Act 2000* provides for the designation of railway land corridors, to facilitate the efficient and effective carriage of rail freight.

It creates a body corporate called the “Rail Corridor Minister”, in which railway corridor land is vested and which is charged with the responsibility of managing that land.

It also provides for a separate “Act Minister”, responsible for administering the Act, making strategic policy in relation to rail corridor matters and designating land as corridor or non-corridor land.

To date, the Western Australian Government Railways Commission has managed railway corridor land on behalf of the Rail Corridor Minister.

With the establishment of the Authority and the abolition of the Commission, it is considered appropriate to transfer the administrative responsibility for management of corridor land to the Authority.

The amendments to section 8 reflect the abolition of the Commission, the creation of the Authority and the transfer of responsibility for management of corridor land to the Authority.

**Clause 174      Section 17 repealed**

Section 17 provides that sections 8C and 8D of the *Government Railways Act 1904* apply to the *Rail Freight System Act 2000* as if they formed part of the latter Act. Section 8C empowers the Minister to give directions to the Commission with respect to the performance of its functions, and section 8D entitles the Minister to have access to information in the Commission’s possession.

These sections of the *Government Railways Act 1904* are to be repealed by clause 103, as their subject matter is covered in clauses 27 and 28 in respect of all of the Authority’s functions, including its management of rail corridor under the *Rail Freight System Act 2000*. Section 17 of the *Rail Freight System Act 2000* is therefore no longer required and is to be repealed.

**Clause 175      Section 31 amended**

This clause will delete references to the “Act Minister” and the “Rail Corridor Minister”.

The two definitions were required to distinguish between the “Act Minister”, responsible for administering the Act and designating land as corridor land, and the “Rail Corridor Minister”, responsible for managing corridor land.

As the body corporate named the “Rail Corridor Minister” is to be abolished and the Authority is to assume its functions, the definition of “Rail Corridor Minister” is to be deleted. Accordingly, the definition of “Act Minister” is no longer required and is also to be deleted.

**Clause 176      Section 32 replaced**

Section 32 establishes the Rail Corridor Minister. As the Authority is to assume the functions currently conferred upon the Rail Corridor Minister, the body corporate named "Rail Corridor Minister" is no longer required and this section is to be repealed.

This clause also provides for the insertion of a new section 32, which will grant the Authority any ancillary powers it needs to perform its functions under the *Rail Freight System Act 2000*.

**Clause 177      Section 33 repealed**

Section 33 currently allows the Rail Corridor Minister to make use of the services of any person in the public service or a state agency and to make use of the facilities of a State department or agency. This provision was necessary as the Rail Corridor Minister had no staff or facilities of its own. When the Authority assumes the functions of the Rail Corridor Minister, section 33 will be obsolete as the Authority will have its own staff and facilities. The existing section 33 is therefore to be repealed.

This clause also provides for the insertion of a new section 33 which provides for the Minister to give the Authority guidelines as to how it is to perform its functions under the *Rail Freight System Act 2000*.

As the management of the corridor is essentially an administrative matter, it is appropriate that it be undertaken by the Authority, however this proposed provision will enable Government to ensure that the Authority performs these functions having regard to strategic Government rail policy.

Commonwealth legislation, in the areas of immigration and social security, provides precedents for the making of guidelines in relation to the performance of statutory functions.

**Clause 178      Section 34 replaced**

Section 34 of the *Rail Freight System Act 2000* permits the Minister to publish a notice in the *Government Gazette* deeming government railway land specified in the order to be corridor or non-corridor land.

This clause repeals section 34 and replaces it with a clause which allows the Minister to publish a similar notice in respect of Authority land.

**Clause 179      Section 35 amended**

This clause amends section 35 of the *Rail Freight System Act 2000* by deleting references to the "Act Minister" and replacing them with references to the "Minister".

The Act currently provides for an "Act Minister" and a "Rail Corridor Minister", in order to distinguish between the Minister responsible for administering the Act and designating land as corridor land, and the Minister responsible for managing corridor land.

As the body corporate named the "Rail Corridor Minister" is to be abolished and the Authority is to assume its functions, the definition of "Rail Corridor Minister" is to be

deleted. Accordingly, the definition of “Act Minister” is no longer required and all references to it are to be deleted.

**Clause 180      Section 36 replaced**

Section 36 of the *Rail Freight System Act 2000* provides that where the State makes land available as corridor land (excluding government railway land) the Rail Corridor Minister can publish a notice in the *Government Gazette* deeming it to be corridor land.

This provision repeals section 36, and replaces it with a similar provision which allows the Minister in the same circumstances to publish a notice in respect of land that is not Authority land.

**Clause 181      Section 39 amended**

Section 39 of the *Rail Freight System Act 2000* permits the Rail Corridor Minister to rectify an error in an order by publishing a notice in the *Government Gazette*. This power exists regardless of whether the original order was made by the Minister administering the Act or the Rail Corridor Minister. As the Authority will be taking over the functions of the Rail Corridor Minister, it is necessary to amend this provision to remove the reference to the Rail Corridor Minister.

**Clause 182      Section 41 amended**

Section 41 sets out the requirement that where a person makes an order in respect of land being corridor land, a copy of the order is to be provided to other relevant officials described in the section.

This clause amends this provision to make it a requirement that the Minister making the order under the Division provides copies to each relevant official and the Commission. This clause removes the requirement that the Minister provide a copy to the Rail Corridor Minister, as this body corporate will cease to exist.

This clause also amends subsection 41(5) to reflect the transfer of administrative responsibility for corridor land from the Rail Corridor Minister to the Authority.

**Clause 183      Section 42 amended**

Section 42 provides that the Rail Corridor Minister may, in relation to former government railway land or anything on it that is associated with the provision of a rail freight service, do anything that the Act Minister or the Commission could have done had the land not become corridor land.

This clause amends subsections 42(4) and 42(5) to remove references to the Rail Corridor Minister and the Act Minister, so that references are to the Minister responsible for administration of the Act.

This amendment reflects the abolition of the body corporate “Rail Corridor Minister”, the creation of the Authority and the transfer of administrative responsibility for corridor land from the Rail Corridor Minister to the Authority.

**Clause 184      Section 44 amended**

Section 44 of the *Rail Freight System Act 2000* provides that the Commission or any other person holding anything disposed of by the Rail Corridor Minister under this Part is to convey what it was that the Rail Corridor Minister disposed of.

This clause amends this provision by deleting reference to the Commission and replacing it with “any” so it has the effect that any person who holds any property or interest disposed of by the Rail Corridor Minister must convey to the Minister what property it has in its possession.

**Clause 185      Section 46 amended**

This amendment is intended to rectify an oversight in the provisions of the *Rail Freight System Act 2000*.

Section 46 of the Act provides that corridor land is exempt from local government rates, and any other rates and taxes which the Treasurer specifies by notice in the Government Gazette. The benefit of these exemptions was never intended to pass on to commercial tenants leasing property upon corridor land, however the effect of section 46 as currently drafted is that local shires, predominantly in country areas, has no ability to levy local government rates on such tenants.

This clause therefore amends section 46 to require persons who hold corridor land pursuant to a lease agreement, for purposes other than for the purpose of facilitating carriage of freight by rail, to pay local government rates.

**Clause 186      Section 49 amended**

Section 49(1) permits the Rail Corridor Minister to delegate certain powers to a person having an interest in corridor land, either generally or as otherwise provided in the instrument of delegation. As the Authority is to take over the functions of the Rail Corridor Minister, it is necessary to amend this provision to delete reference to the “Rail Corridor Minister” and to permit the Authority to delegate such powers by instrument of delegation signed by its chief executive officer.

**Clause 187      Various references to Rail Corridor Minister amended**

This clause amends various provisions of the *Rail Freight System Act 2000* by deleting references to the “Rail Corridor Minister” as outlined in the table and replacing them with references to the “Minister”.

**Clause 188      More references to Rail Corridor Minister amended**

This clause amends various provisions of the *Rail Freight System Act 2000* by deleting references to the “Rail Corridor Minister” outlined in the table and replacing them with references to the “Authority”.

**Clause 189      Various references to Commission amended**

This clause amends the *Rail Freight System Act 2000* in various provisions by deleting the term “Commission” and replacing each reference outlined in the table to this provision with “Authority”.

## **Division 5 – *Transport Co-ordination Act 1966***

### **Clause 190      The Act amended**

This clause provides that the amendments in Division 5 are to the *Transport Co-ordination Act 1966*.

### **Clause 191      Long title amended**

As the provisions of the *Transport Co-ordination Act 1966* which relate to the provision of public transport services will be repealed by this Act, it is necessary to amend the long title of the *Transport Co-ordination Act 1966* to remove reference to this function.

Provisions in the Act providing for the licensing of petroleum products were previously repealed, however reference to them was not removed from the long title and the opportunity is being taken to do so now.

### **Clause 192      Section 10 inserted**

This clause inserts a provision similar to 18H, which is to be repealed as part of the repeal of Part II Division 4 of the Act (see clause 195).

Section 18H permits the Minister to borrow money (with the written approval of and upon the guarantee of the State Treasurer) to purchase facilities and property to facilitate the performance of the Minister's functions under the Act, and to enable the Director General to carry out his general administrative functions under Part II Division I of the Act.

It provides the basis of the Treasurer's power to give any approval or guarantee required by this section. Before a guarantee is given, however, the Minister must provide the Treasurer with any security he requires and must first execute any instruments necessary for giving the security. The guarantee can include the guarantee of interest.

The Treasurer can permit the entering into of one loan or several loans for these purposes, and the Treasurer can specify a maximum amount of money that can be borrowed in each year for these purposes.

This clause provides that any payment of money which the Treasurer is required to make as a result of a guarantee entered into under this section is to be paid from the Consolidated Fund.

### **Clause 193      Section 15B amended**

Section 15B of the *Transport Co-ordination Act 1966* sets out the functions of the Director General under the Act. Subsection 15B(2)(j) requires the Director General to advise the Minister on the administration of the *Eastern Goldfields Transport Board Act 1984*. As the Director General will be required to provide a similar function in respect of this Bill, this clause inserts reference in subsection 15B(2)(j) to the *Public Transport Authority Act 2003*.

**Clause 194          Section 16 amended**

This clause will repeal subsection 16(5) of the *Transport Co-ordination Act 1966*.

Subsection 16(5) requires the Minister to determine all applications for licences and specify any conditions, restrictions and prohibitions applicable in relation to a licence and the relevant class of licence.

It is subject to section 18D, which allows the Minister to enter into, negotiate or receive tenders in relation to the provision of omnibus and ferry services, and empowers the Minister to enter into an agreement in which he/she agrees to grant a licence and specify any conditions applicable to the licence. This section is to be repealed (see clause 195).

It is therefore unnecessary for subsection 16(5) to be subject to the provisions of section 18D and this subsection is therefore to be repealed.

**Clause 195          Part II Division 4 repealed**

As the Authority is to assume responsibility for the provision of public transport in the metropolitan area, Part II Division 4 of the *Transport Co-ordination Act 1966*, which provides for the provision of public transport services by the Minister, is no longer required and is therefore to be repealed.

**Clause 196          Section 60 amended**

Subsections 60(2a) and (2b) of the *Transport Co-ordination Act 1966* prescribe the types of regulations the Governor may make in respect of an agreement which is made by the Minister for the provision of public transport services. As the function of the provision of public transport services is to be assumed by the Authority, it is necessary to repeal these two provisions.

**Clause 197          Section 62B repealed**

Section 62B of the *Transport Co-ordination Act 1966* establishes the Metropolitan Passenger Transport Fund. At the commencement time, the balance of this fund will be transferred in accordance with clause 73 of this Act, and this account will no longer be used. It is therefore necessary to repeal the provision creating it.

**Division 6 – Other Acts repealed**

**Clause 198          *Midland Railway Act 1919***

This Act vested the Guildford-Greenough Flats Railway in the Midland Railway Company of Western Australia Limited. The State later acquired the railway back by virtue of *The Midland Railway Company of Western Australia Limited Acquisition Agreement Act 1963*, referred to at clause 199. As this former Act has no continuing relevance, the opportunity is being taken to repeal it.

**Clause 199          *The Midland Railway Company of Western Australia Limited Acquisition Agreement Act 1963***

The *Midland Railway Company of Western Australia Limited Acquisition Agreement Act 1963* documents the transaction in 1963 between the State, the then Rural and Industries Bank and the shareholders of the Midland Railway Company. Following

financial difficulties, the State procured the R&I Bank to buy all the shares in the Midland Railway Company, the Commission to lease the railway run by the Midland Railway Company and the Commission to take a transfer of employees of the Midland Railway Company.

As the terms of this Agreement have all been completed and this Act has no continuing relevance, it is proposed to repeal it.

**Clause 200      *Perth Regional Railway Act 1972***

This Act was enacted for two purposes, both of which are no longer of any effect. Firstly, it closed the Perth to Fremantle line to traffic, an action (of the Charles Court Liberal Government) which was subsequently reversed. Secondly, it set out a plan for a railway through Perth City that was not, and is not intended to be, put into effect. The opportunity is therefore being taken to repeal this Act.

**Clause 201 – *Guildford Greenough Flats Railway Act 1886***

This Act established the Guildford-Greenough Flats Railway that was then vested in the Midland Railway Company of Western Australia Limited under the Act referred to at clause 199 above. As the *Midland Railway Act 1919* and *The Midland Railways Company of Western Australia Limited Acquisition Agreement Act 1963*, dealing with this Railway, are to be repealed, this Act is of no continuing relevance and is also to be repealed.

**Division 7 – Acts requiring minor changes**

**Clause 202      *Constitution Acts Amendment Act 1899 Schedule V amended***

The *Constitution Acts Amendment Act 1899* provides that persons holding certain offices cannot be elected members of the Legislature. Schedule 5 sets out the names of the relevant commissions, councils, boards, committees, authorities, trusts and other bodies.

This clause removes reference to the Metropolitan (Perth) Passenger Transport Trust and The Western Australian Government Railways Commission from Schedule 5, as this Bill abolishes both of these bodies.

This clause inserts the Authority into the Schedule.

**Clause 203      *Disposal of Uncollected Goods Act 1970 Schedule amended***

The *Disposal of Uncollected Goods Act 1970* is an Act which authorises the disposal in specified circumstances of certain uncollected goods.

The provisions of this Act do not apply to any bailment, possession, or other custody of goods to which an Act, or a provision of an Act, set out in the Schedule applies.

This clause inserts a reference to this Act into the Schedule in its relevant alphabetical position as clause 64 of this Bill sets out the Authority's responsibilities in relation to uncollected goods.



**Clause 204      *Financial Administration and Audit Act 1985* Schedule 1 amended**

The *Financial Administration and Audit Act 1985* makes provision for the administration and audit of the public finances of the State and certain statutory authorities and other bodies.

The Act applies to the statutory authorities set out in Schedule 1 of the Act.

This clause removes reference to the Metropolitan (Perth) Passenger Transport Trust and The Western Australian Government Railways Commission from Schedule 1, as this Bill abolishes both of these bodies and inserts the Authority as a statutory authority to which this Act applies.

**Clause 205      *Forrest Place and City Station Development Act 1985* amended**

The *Forrest Place and City Station Development Act 1985* provides for the redevelopment of land in and in the vicinity of Forrest Place and the City railway station in Perth.

The Act contains in the Schedule its “enabling agreement” which is an agreement between the State, the City of Perth, the Minister for Western Australian Government Railways and The Western Australian Government Railways Commission and which provides for the redevelopment.

This clause amends the Act by inserting a definition of the “Authority” and by deleting the definition of “Commission”. As the Bill abolishes The Western Australian Government Railways Commission, this reference is no longer required.

Section 6(2) of the Act prescribes the bodies who have power to implement the agreement set out in its schedule and development plans. As this provision refers to the Commission and the Minister for Western Australian Government Railways, it is necessary to delete these references and include a reference to the Authority.

Section 6(3) of the Act provides that such agreements shall be deemed to have had effect on and from 1 November 1985. When this Act commences, the power of the Commission and the Minister for Government Railways to implement such an agreement will disappear, therefore it is necessary that any such agreement is deemed to have been entered into by the Authority. Subclause (4) provides for this assumption.

Section 19 of the Act prescribes the power of the Minister to authorise the Commission to grant leases of land in implementation of the above agreement for a period exceeding 50 years. The power to grant easements conferred on the Commission by section 67(2) of the *Government Railways Act 1904* shall be deemed, to include the power to grant an easement of support in respect of land below the air space and an easement of support granted by the Commission over that land is not revocable by the Commission.

Subclause (5) repeals this section and replaces it with a provision which permits the Authority, rather than the Commission, to grant such leases and easements.

**Clause 206 *Protective Custody Act 2000* amended**

Section 5(1) of this Act empowers “authorized officers” under the Act to seize intoxicants from children.

Section 6(1) of the Act empowers “authorized officers” to apprehend persons they reasonably suspect are intoxicated.

These amendments provide that security officers appointed under this Bill will be “authorized officers” pursuant to the *Protective Custody Act 2000* and will have the powers given in sections 5(1) and 6(1) for the purpose of maintaining order in and on Authority property.

**Clause 207 *Public Sector Management Act 1994* Schedule 2 amended**

The *Public Sector Management Act 1994* provides for the administration of the Public Sector in Western Australia and lists in Schedule 2 those organisations to which the Act applies.

This clause removes reference in Schedule 2 to the Metropolitan (Perth) Passenger Transport Trust and The Western Australian Government Railways Commission, as this Bill abolishes both of these bodies.

The Authority will be a public sector body within the meaning of section 3 and this clause inserts the Authority into Schedule 2.

**Clause 208 *Statutory Corporations (Liability of Directors) Act 1996* Schedule 1 amended**

The *Statutory Corporations (Liability of Directors) Act 1996* sets out the duties that persons who control the affairs of a statutory corporation owe to the corporation. Schedule 1 of the Act lists those persons who are directors for the purposes of the Act.

This clause removes reference in Schedule 1 to a member of the Metropolitan (Perth) Passenger Transport Trust and the Commissioner of The Western Australian Government Railways Commission, as this Bill abolishes these bodies.

The chief executive officer of the Authority will be a person to whom the provisions of the Act will apply.

**Clause 209 *Weapons Act 1999* amended**

The *Weapons Act 1999* prohibits the use of prohibited weapons such as batons, except in the case of those classes of persons listed in section 10 of the Act, when those persons are acting in the performance of their functions.

The classes of excepted person are:

- a member of the Police Force;
- an employee of the Police Service, or a special constable appointed under the *Police Act 1892*;
- someone engaged to provide a service to the Police Force; or

- someone called to assist a member of the Police Force or a special constable appointed under the *Police Act 1892*.

This clause amends section 10 to add security officers appointed under this Bill as a class of person who may carry and use prohibited weapons in the performance of their functions.