

Rail Freight System Bill 1999

CONTENTS

Part 1 — Preliminary

1 .	Short title	2
2 .	Commencement	2
3 .	Definitions	3
4 .	References to things belonging to the State	3
5 .	References to disposal of things belonging to the State	3
6 .	References to things on land	4
7 .	Property in things on land	4
8 .	Effect on <i>Government Railways Act 1904</i>	4
9 .	Relationship with other Acts	5
10 .	Act binds the Crown	5

Part 2 — Disposal and related matters

Division 1 — Disposal, generally

11 .	Minister may prepare proposal	6
12 .	Limitations on disposal of land	6
13 .	Minister to negotiate disposal	7
14 .	Agreement may deal with certain matters	7

Contents

15 .	Approval under <i>Land Administration Act 1997</i> section 18	7
16 .	Functions of Commission	7
17 .	Ministerial directions and access to information	8
18 .	Auditor General may disclose information	9
19 .	Saving	9
20 .	State indemnities and guarantees	9
21 .	Regulations	10
	Division 2 — Assignment and related matters	
22 .	Definitions	10
23 .	Minister may make transfer orders	11
24 .	Consequences of transfer order	12
25 .	Completion of necessary transactions	13
26 .	Contracts arising from certain internal arrangements of Commission	14
27 .	Arrangements for custody and use of records	14
28 .	Registration of documents	14
29 .	Rectifying error in transfer order	15
30 .	Applying proceeds of disposal	16

Part 3 — Railway corridors

**Division 1 — Preliminary and administrative
matters**

31 .	Definitions	17
32 .	Rail Corridor Minister	17
33 .	Use of government staff and facilities	18

**Division 2 — Ordering land to be, or be no longer,
corridor land**

34 .	Designating government railway land as corridor land or land other than corridor land	18
35 .	Corridor land order to be published before disposing of land	18
36 .	Additional land for corridor land	19

37 .	Ordering land to be no longer corridor land	19
38 .	Identifying land in an order	19
39 .	Rectifying error in order	19
40 .	When order comes into operation	20
41 .	Notation on title to corridor land	20

Division 3 — Dealing with corridor land and things on it

42 .	Functions in respect of corridor land and certain things on it	21
43 .	Conveying interest to give effect to agreement for disposal	23
44 .	Commission and other State agencies to give effect to disposal under this Part	23

Division 4 — Regulatory and other matters to do with corridor land

45 .	Dividing fences	24
46 .	Corridor land not subject to certain rates or taxes	24
47 .	No construction on corridor land without consent	24
48 .	Other restrictions on corridor land	24
49 .	Delegation by Rail Corridor Minister	25
50 .	Certain matters that regulations may deal with	26
51 .	Power of entry	26
52 .	Assistants and equipment	26
53 .	General procedure for entering property	27
54 .	Notice of entry	27
55 .	Entry under warrant	27
56 .	Entry in an emergency	28
57 .	Purpose of entry to be given on request	29

Part 4 — Miscellaneous

58 .	Civil penalty	30
59 .	Regulations	30

**Part 5 — Amendments to, or modification of,
other Acts**

**Division 1 — *Government Railways (Access)
Act 1998***

60 .	The Act amended	31
61 .	Long title amended	31
62 .	Section 1 amended	31
63 .	Section 3 amended	31
64 .	Sections 3A and 3B inserted	34
65 .	Section 4 amended	35
66 .	Section 6 amended	35
67 .	Section 7 amended	35
68 .	Section 11A inserted	36
69 .	Section 12 amended	36
70 .	Section 15 amended	36
71 .	Section 20 amended	37
72 .	Section 21 amended	37
73 .	Sections 22A to 22D inserted	37
74 .	Section 23 amended	39
75 .	Heading to Part 4 amended	39
76 .	Section 24 amended	39
77 .	Section 25 amended	39
78 .	Section 28 amended	40
79 .	Section 29 amended	40
80 .	Section 30 amended	41
81 .	Section 31 amended	41
82 .	Section 32 amended	41
83 .	Section 33 amended	42
84 .	Section 34 amended	42
85 .	Section 36 amended	42
86 .	Section 37 amended	42

Division 2 — <i>Government Railways Act 1904</i>		
87 .	The Act amended	43
88 .	Section 13 amended	43
89 .	Section 19 inserted	43
90 .	Section 61 amended	44
Division 3 — <i>Hire-Purchase Act 1959</i>		
91 .	The Act amended	44
92 .	Section 2A amended	44
Division 4 — <i>Land Administration Act 1997</i>		
93 .	The Act amended or modified	45
94 .	Heading amended	45
95 .	Section 159 amended	45
96 .	Section 160 amended	45
97 .	Sections 187-191 not to apply	46
98 .	Taking of land to be as if for the conferral of rights	46
Division 5 — <i>Land Tax Assessment Act 1976</i>		
99 .	Schedule Part 1 clause 1 amended	46
Division 6 — <i>National Rail Corporation Agreement Act 1992</i>		
100 .	The Act amended	47
101 .	Section 5B amended	47
Division 7 — <i>Town Planning and Development Act 1928</i>		
102 .	Section 20	47

Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Rail Freight System Bill 1999

A Bill for

An Act to provide for —

- **the disposal of the rail freight business of the Western Australian Government Railways Commission and things associated with that business and the assignment of things to give effect to a disposal;**
- **the identification of railway land corridors and the creation of a State agency that is a body corporate to manage them,**

to amend or modify the operation of —

- **the *Government Railways (Access) Act 1998*;**
- **the *Government Railways Act 1904*;**
- **the *Hire-Purchase Act 1959*;**
- **the *Land Administration Act 1997*;**
- **the *National Rail Corporation Agreement Act 1992*; and**
- **the *Town Planning and Development Act 1928*,**

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Rail Freight System Act 1999*.

2. Commencement

- 5 (1) Except as otherwise stated in this section, this Act comes into operation on a day fixed by proclamation.
- (2) Part 5 Divisions 1 and 6 come into operation on a day fixed by proclamation, being a day that is after the day fixed under subsection (1).
- 10 (3) If the day fixed under subsection (2) is after the day on which a provision would come into operation under subsection (5) or (7), the provision comes into operation on the day fixed under subsection (2) and the subsection fixing when it would otherwise come into operation does not apply.
- 15 (4) If the day fixed under subsection (1) is after the day on which section 88(1)(b) would come into operation under subsection (6), section 88(1)(b) comes into operation on the day fixed under subsection (1) and subsection (6) does not apply.
- 20 (5) Section 88(1)(a) comes into operation immediately after section 43(2) of the *Government Railways (Access) Act 1998* comes into operation.
- (6) Section 88(1)(b) comes into operation immediately after section 43(2) of the *Government Railways (Access) Act 1998* comes into operation.
- 25 (7) Section 90 comes into operation immediately after section 43(7) of the *Government Railways (Access) Act 1998* comes into operation.

3. Definitions

In this Act, unless the contrary intention appears —

“**Commission**” has the meaning given by section 2 of the
Government Railways Act 1904;

5 “**Commission’s rail freight business**” means the business and
operations of the Commission involved in the carriage of
freight by rail and the provision and maintenance of
facilities for the operation of railways for the carriage of
freight, and it includes the carriage of freight by road and
10 other activities of the Commission that the business and
operations involve;

“**corridor land**” means land that is designated as corridor land
under Part 3;

15 “**corridor land order**” means an order made under Part 3 to
designate land as corridor land or land other than corridor
land (whether or not the order has come into operation).

4. References to things belonging to the State

20 A reference in this Act to any land or thing belonging to the
State includes a reference to any land or thing belonging to the
State whether held by the Minister for Western Australian
Government Railways established under section 4 of the
Government Railways Act 1904, the Commission, any other
State agency, or otherwise.

5. References to disposal of things belonging to the State

25 For the purposes of this Act, requiring any land or thing
belonging to the State to be conveyed to a different holder in
such a way that it would still belong to the State is to be
regarded as disposing of it, and accordingly a power to dispose
of any land or thing belonging to the State includes a power to
30 give the holder of the land or thing a requirement of that kind.

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6. References to things on land

Anything that is placed in, on, or over, or is buried in, land is on that land for the purposes of this Act.

7. Property in things on land

5 Anything that is on land which, or an interest in which, is capable of being disposed of under Part 2 or any other corridor land —

- (a) is not a part of the land, regardless of whether it is of the nature of a fixture;
- 10 (b) is capable of being assigned separately from the land; and
- (c) is capable of being removed from the land by, or with the authority of, the owner of that thing.

8. Effect on *Government Railways Act 1904*

- 15 (1) If anything that is part of a Government railway is disposed of under Part 2, it ceases to be part of a Government railway when the right to occupy or possess it passes.
- (2) If land that becomes corridor land or anything on it is part of a Government railway the land or thing ceases to be part of a Government railway upon the land becoming corridor land unless the Minister orders otherwise under subsection (3).
- 20 (3) Before land becomes corridor land, the Minister may, in writing, order that anything described in the order that is on the land does not cease to be part of a Government railway because of the land becoming corridor land.
- 25 (4) The Minister is to give a copy of an order under subsection (3) to each of the Commission and the Rail Corridor Minister.

(5) Nothing in this section prevents anything that has ceased to be part of a Government railway from again being part of a Government railway except that corridor land cannot be part of a Government railway.

5 (6) In this section —

“**Government railway**” means a “railway” or “Government railway” for the purposes of the *Government Railways Act 1904*,

10 and a reference to being part of a Government railway includes a reference to being a Government railway.

(7) Despite subsections (1) and (2), section 62 of the *Government Railways Act 1904* applies to the leasing of any corridor land or any other land that is capable of being disposed of under Part 2, except that the conditions described in paragraphs (1) to (5) of that section do not apply to the leasing of that land.

9. Relationship with other Acts

If anything in this Act or regulations made under it is inconsistent with anything in —

- 20 (a) the *Rail Safety Act 1998* or subsidiary legislation made under it; or
- (b) the *Government Railways (Access) Act 1998* or subsidiary legislation made under it,

the legislation described in paragraph (a) or (b) prevails.

10. Act binds the Crown

25 This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

Part 2 — Disposal and related matters

Division 1 — Disposal, generally

11. Minister may prepare proposal

- 5 (1) The Minister may prepare and submit to the Treasurer a proposal to dispose of the Commission's rail freight business, and anything associated with that business, in whole or in part.
- (2) The power given by subsection (1) extends to —
- 10 (a) any of the Commission's rail freight business that was not included in an earlier proposal under that subsection, whether or not it was established after the earlier proposal was made;
- (b) anything associated with any business to which the power extends; and
- 15 (c) anything associated with any business that has been disposed of in accordance with an earlier proposal under that subsection.
- (3) The power given by subsection (1) is limited to things belonging to the State.
- 20 (4) The proposal prepared by the Minister is to include an unambiguous description of the business and other things that are to be disposed of.

12. Limitations on disposal of land

- 25 (1) A proposal to dispose of land cannot be approved by the Treasurer until a corridor land order has been published in the *Gazette* under Part 3.
- (2) A proposal to dispose of land that is, or is to be, corridor land cannot be approved if the interest to be disposed of is greater than a leasehold interest.

13. Minister to negotiate disposal

The Minister may enter into any agreement on behalf of the State to give effect to a proposal under section 11 that is approved by the Treasurer.

5 **14. Agreement may deal with certain matters**

Without limiting the other things that an agreement under section 13 may deal with —

- 10 (a) an agreement under that section for the disposal of anything necessary for, or associated with, the operation of a railway for the carriage of freight may include provisions about the continued availability of that thing for that purpose, and its being maintained in a condition suitable for that purpose; and
- 15 (b) an agreement under that section for the disposal of any business may include provisions about the continuation of, and the nature and extent of, the services provided through the business.

15. Approval under *Land Administration Act 1997* section 18

20 Approval under section 18 of the *Land Administration Act 1997* is not required for anything that is contained in, or done to give effect to, an agreement entered into under section 13 of this Act unless that approval is required because of section 178(5) of that Act.

16. Functions of Commission

- 25 (1) It is a function of the Commission —
- (a) to facilitate the Minister's entering into an agreement under section 13 and the fulfilment of the State's obligations under it; and
- (b) to deal with incidental and related matters.

- (2) The Commission may enter into an agreement in order to provide for —
- (a) the Commission or any other person to have access to anything disposed of under this Act;
 - 5 (b) any person to have access to anything that is under the management and control of the Commission as provided by section 13 of *Government Railways Act 1904*;
 - 10 (c) the sharing of facilities or the joint use of services to enable the Commission to effectively perform its functions under the *Government Railways Act 1904* and to enable another party to the agreement to effectively operate freight services as the agreement contemplates.
- (3) The Commission may do anything else necessary or convenient to be done for the purpose of performing a function under this Act.
- 15 (4) This section does not limit any power that the Commission has under the *Government Railways Act 1904*.
- (5) The Minister may direct the Commission —
- 20 (a) to allow the whole or part of its functions under this Act to be performed on its behalf by; and
 - (b) in performing its functions under this Act, to act in accordance with any instructions of,
- a committee of persons appointed by the Minister and given responsibility for matters to do with the administration of this Act.
- 25

17. Ministerial directions and access to information

Sections 8C and 8D of the *Government Railways Act 1904* apply as if this Act were a part of that Act.

18. Auditor General may disclose information

5 Despite section 91 of the *Financial Administration and Audit Act 1985*, the Auditor General may for the purpose of facilitating a disposal under this Part, disclose to any person, or provide any person with access to, information in his or her possession or under his or her control.

19. Saving

10 The operation of a provision of this Part is not to be regarded as —

- 10 (a) a breach of contract or confidence or any other civil wrong;
- (b) a breach of a contractual provision prohibiting, restricting, or regulating the assignment or transfer of assets or liabilities or the disclosure of information;
- 15 (c) giving rise to a remedy by a party to an instrument, or causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability;
- (d) causing any contract or instrument to be void or
20 otherwise unenforceable; or
- (e) releasing, or allowing the release of, any surety.

20. State indemnities and guarantees

- 25 (1) The Treasurer may, in the name and on behalf of the State, give any indemnity or guarantee in respect of a matter arising under or related to —
 - (a) an agreement under section 13; or
 - (b) the assignment of anything in accordance with an agreement under section 13.

- (2) The payment of any money under an indemnity or guarantee given under subsection (1) is to be made by the Treasurer and charged to the Consolidated Fund, which this section appropriates to the necessary extent.

5 **21. Regulations**

Regulations may provide for —

- (a) anything for which it is necessary or convenient to make provision in order to give effect to an agreement under section 13;
- 10 (b) anything that it is necessary or convenient to deal with as a consequence of anything in, or anything done under, this Part.

Division 2 — Assignment and related matters

22. Definitions

15 In this Division, unless the contrary intention appears —

“**asset**” means property of any kind whether tangible, intangible, real, or personal and, without limiting that meaning, includes —

- (a) any chose in action or goodwill; or
- 20 (b) any right, interest, or claim of any kind, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

25 “**assignee**” means the person specified in a transfer order as —

- (a) the person to whom anything is assigned; or
- (b) the person a reference to whom has to be treated as being substituted for a reference to the Commission

in an agreement or instrument in order to give effect to section 24(1)(b);

“liability” means any liability, duty or obligation —

- 5 (a) whether actual, contingent or prospective, liquidated or unliquidated; or
- (b) whether owed alone or jointly or jointly and severally with any other person;

10 **“right”** means any right, power, privilege or immunity whether actual, contingent or prospective, but does not include any privilege or immunity enjoyed as an agent of the Crown except in so far as it relates to anything done or omitted to be done before the transfer time;

15 **“transfer order”** means an order under section 23, as amended under that section or corrected under section 29 if applicable;

“transfer time” means the transfer time specified in a transfer order.

23. Minister may make transfer orders

- 20 (1) To give effect to an agreement under section 13, the Minister may make and publish in the *Gazette* an order that —
- (a) specifies a time, being not before the day the order is published, to be the transfer time for that order;
- 25 (b) specifies any asset or liability that, by operation of section 24, is to be assigned to the person specified in the order;
- (c) specifies proceedings in which the person specified in the order is to be substituted for the Commission as a party; and
- 30 (d) specifies any agreement or instrument relating to anything assigned that, by operation of section 24, is to

have effect as if, unless otherwise expressly specified in the order, references to the assignee were substituted for references in it to the Commission.

- 5 (2) If the transfer time is specified by reference to when anything is done, the Minister is to cause notice to be published in the *Gazette* of the time when that thing was done.
- (3) The transfer order may specify things by reference to schedules which —
- 10 (a) need not be published in the *Gazette*; but
- (b) must be available for public inspection,
- and anyone or anything specified in a schedule is to be taken to be specified in the order.
- (4) Anyone or anything may be specified in a transfer order by describing the person or thing as a member of a class.
- 15 (5) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to a relevant official under section 28, the Minister is to consult as to the form and content of the schedule with the relevant official (or each relevant official if there is more than one).
- 20 (6) The transfer order, or a schedule to which it refers, may, with the consent of the assignee, be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.

24. Consequences of transfer order

- 25 (1) If a transfer order is made then, except as may be otherwise agreed between the Minister and the assignee —
- (a) at the transfer time —
- (i) an asset that is specified is, by operation of this section, assigned to the assignee;

- (ii) a liability that is specified is, by operation of this section, assigned to and becomes a liability of the assignee; and
 - (iii) the assignee is, by operation of this section, substituted for the Commission as a party to any specified proceedings;
 - (b) an agreement or instrument that is specified has effect, by operation of this section, as if, unless otherwise expressly specified, a reference to the assignee were, at the transfer time, substituted for a reference to the Commission in the agreement or instrument;
 - (c) any proceedings or remedy that might have been commenced by, or available against or to, the Commission in relation to an asset or liability assigned by paragraph (a) may be commenced by, or are available against or to, the assignee of the asset or liability; and
 - (d) anything relating to an asset or liability assigned by paragraph (a) that was done or omitted to be done by, to, or in respect of, the Commission before the assignment and is of any effect is to be taken to have been done or omitted by, to, or in respect of, the assignee of the asset or liability.
- (2) In subsection (1) —
“**specified**” means specified in the transfer order.

25 **25. Completion of necessary transactions**

If section 24 cannot, to any extent, have effect as described in this Division (whether because a matter is governed otherwise than by the law of the State, or for any other reason), the Minister and the Commission are each to take all practicable steps for the purpose of securing that the effect sought to be

achieved by the transfer order and this Division is achieved as soon as possible after the transfer time.

26. Contracts arising from certain internal arrangements of Commission

- 5 (1) An instrument that provides for arrangements between different parts of the Commission's business and operations may be specified in a transfer order as if it created contractual rights and liabilities.
- 10 (2) An instrument specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal entities.
- 15 (3) The definitions of "liability" and "right" in section 22 include contractual liabilities and rights that are to be regarded as arising because of subsection (2), and those liabilities and rights are accordingly assignable under this Division.

27. Arrangements for custody and use of records

20 The Commission and an assignee are to make arrangements for the delivery or sharing of, and access to, registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded, or stored) relating to any asset, liability, proceedings, agreement, or instrument specified under section 23(1) in a transfer order.

28. Registration of documents

- 25 (1) The Minister is to cause a copy of each transfer order, any schedule to which it refers, and any notice under section 23(2) relating to the transfer time, to be delivered to each relevant official and the Commission.
- (2) The relevant officials are to take notice of this Part, any transfer order, including a schedule to which the order refers, and any

notice under section 23(2), and are to record and register in the appropriate manner the documents necessary to show the effect of the transfer order and this Part.

5 (3) Without limiting subsection (2), a statement in an instrument executed by the assignee that any estate or interest in land or other property has been assigned to it by section 24 is evidence of that fact.

10 (4) In this section —
 “relevant official” means the Registrar of Titles, the Registrar of Deeds, the Minister administering the *Mining Act 1978* or any other person authorized by a written law to record and give effect to the registration of documents relating to transactions affecting relevant property;

15 **“relevant property”** means property of a kind affected by the transfer order, whether it is an estate or interest in land or any other property.

29. Rectifying error in transfer order

20 (1) The Minister may by order published in the *Gazette* make any provision that is necessary to correct any error in a transfer order or a schedule to which a transfer order refers.

 (2) An order under this section may be made so as to have effect from the transfer time under the transfer order.

25 (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 24 does not, as a result of that provision, operate so as —

 (a) to affect, in a manner prejudicial to any person (other than the State, the Commission, the assignee, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or

Rail Freight System Bill 1999

Part 2 Disposal and related matters

Division 2 Assignment and related matters

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- (b) to impose liabilities on any person (other than the State, the Commission, the assignee, or a Minister, officer or agency of the State), in respect of anything done or omitted to be done before the day of publication.

5 **30. Applying proceeds of disposal**

The proceeds of any disposal under this Part are to be applied by paying them to the Treasurer or otherwise as the Treasurer determines.

Part 3 — Railway corridors

Division 1 — Preliminary and administrative matters

31. Definitions

In this Part, unless the contrary intention appears —

5 **“Act Minister”** means the Minister for the time being responsible for the administration of this Act;

“government railway land” means —

10 (a) land that is, or is part of, a “Government railway” as defined in section 2 of the *Government Railways Act 1904*; or

 (b) other land that is used by or under the control of the Commission;

“Rail Corridor Minister” means the body corporate established by section 32(1).

15 **32. Rail Corridor Minister**

(1) The Minister for the time being appointed under this section by the Governor, by order published in the *Gazette*, is a body corporate named “the Rail Corridor Minister” with perpetual succession and a common seal.

20 (2) The Rail Corridor Minister is a State agency.

(3) The Rail Corridor Minister has the functions given by this Act, and may do anything necessary for, or incidental to, the performance of those functions.

(4) The Rail Corridor Minister is to inform the Act Minister at least 25 30 days before —

- (a) making any order under section 36; or
- (b) disposing of anything under section 42.

- (5) If the Act Minister is appointed to be the Rail Corridor Minister subsection (4) does not apply.

33. Use of government staff and facilities

- 5 (1) The Rail Corridor Minister may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;
 - (b) in a State agency; or
 - (c) otherwise in the service of the Crown in right of the State.
- 10 (2) The Rail Corridor Minister may by arrangement with —
- (a) a department of the Public Service; or
 - (b) a State agency,
- make use of any facilities of the department or agency.
- 15 (3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

Division 2 — Ordering land to be, or be no longer, corridor land

34. Designating government railway land as corridor land or land other than corridor land

- 20 The Act Minister may, by order notice of which is published in the *Gazette*, designate government railway land identified by the order as corridor land or land other than corridor land.

35. Corridor land order to be published before disposing of land

- 25 (1) For the purpose of assisting the Act Minister to prepare a proposal under section 11 that includes a proposal to dispose of land, the Commission is to give to the Act Minister a description of the land sufficient to identify it.

- (2) If any of the land is not land in respect of which a corridor land order has been published in the *Gazette* under this Part, the Act Minister, by order notice of which is published in the *Gazette*, is to designate the land as corridor land or land other than corridor land.

5 **36. Additional land for corridor land**

If the State makes any land that is not government railway land available to be corridor land, the Rail Corridor Minister may, by order notice of which is published in the *Gazette*, designate the land as corridor land.

10 **37. Ordering land to be no longer corridor land**

- (1) The Rail Corridor Minister may, by order notice of which is published in the *Gazette*, cancel the designation as corridor land of any land that is no longer required to be corridor land.
- (2) Land the designation of which is cancelled by the order becomes part of a Government railway for the purposes of the *Government Railways Act 1904*.

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38. Identifying land in an order

An order under this Division may identify land by reference to a schedule that is not published in the *Gazette* but is available for public inspection.

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39. Rectifying error in order

- (1) The Rail Corridor Minister may by order published in the *Gazette* make any provision that is necessary to correct any error in an order under this Division (in this section called “**the initial order**”) or a schedule to which it refers.
- (2) Subsection (1) applies whether the initial order was made by the Rail Corridor Minister or by the Act Minister.
- (3) An order under this section may be made so as to have effect from the time when the initial order had effect.

25

(4) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, it does not operate so as —

- 5 (a) to affect, in a manner prejudicial to any person (other than the State, the Commission, the Rail Corridor Minister, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or
- 10 (b) to impose liabilities on any person (other than the State, the Commission, the Rail Corridor Minister, or a Minister, officer or agency of the State), in respect of anything done or omitted to be done before the day of publication.

40. When order comes into operation

- 15 (1) An order under this Division comes into operation at the beginning of the day on which notice of it is published in the *Gazette* unless the order specifies another time when it is to come into operation.
- 20 (2) If the time when an order is to come into operation is specified by reference to when anything is done, the Minister is to cause notice to be published in the *Gazette* of the time when that thing was done.
- (3) Nothing in subsection (1) limits section 39(3).

41. Notation on title to corridor land

- 25 (1) The person making an order under this Division is to cause a copy of the order and any schedule to which it refers to be delivered to each relevant official and the Commission.
- 30 (2) The person delivering a copy of the order to a relevant official is to also provide the relevant official with any further information requested by the relevant official, in the form, if any, specified in the request.

- 5 (3) If the Act Minister makes the order, the Act Minister is to also cause a copy of the order and any schedule to which it refers to be delivered to the Rail Corridor Minister, and if the Rail Corridor Minister makes the order, the Rail Corridor Minister is to also cause a copy of the order and any schedule to which it refers to be delivered to the Act Minister.
- 10 (4) Each relevant official is to make any entry in, or endorse or note, any relevant title, plan, map, land register or record to give a person searching the title to that land notice that it is corridor land or that the designation of the land as corridor land has been cancelled.
- (5) A statement in writing signed by the Rail Corridor Minister that land is corridor land is evidence of the fact stated.
- 15 (6) In this section —
“**relevant official**” means —
- (a) the Registrar of Titles;
 - (b) the Registrar of Deeds; or
 - (c) the Minister administering the *Mining Act 1978*, according to which, if any, of them has responsibility for a register relating to the affected land.
- 20

Division 3 — Dealing with corridor land and things on it

42. Functions in respect of corridor land and certain things on it

- 25 (1) The Rail Corridor Minister may, for the purposes of facilitating the use of corridor land for the carriage of freight by rail or for any other purpose that is compatible with that use —
- (a) dispose of an interest in corridor land that is no greater than a leasehold interest and, if it is for a term, is not for a term that is, or is capable of being, more than 50 years;

Rail Freight System Bill 1999

Part 3 Railway corridors

Division 3 Dealing with corridor land and things on it

s. 42

- 5
- (b) dispose of anything, or an interest in anything, belonging to the State that is on corridor land, is associated with the provision of a rail freight service, and is not part of a Government railway for the purposes of the *Government Railways Act 1904*;
- (c) generally manage, and do anything else in relation to —
- 10
- (i) corridor land; and
- (ii) anything belonging to the State that is on corridor land, is associated with the provision of a rail freight service, and is not part of a Government railway for the purposes of the *Government Railways Act 1904*.
- 15
- (2) For the purposes of the restriction in subsection (1)(a), any term for which there is an option to renew an interest is to be regarded as part of the term of the interest.
- (3) The powers given by subsection (1) apply to land and things belonging to the State even if they are not held by the Rail Corridor Minister.
- 20
- (4) Without limiting what else the Rail Corridor Minister may do, the Rail Corridor Minister may do, in relation to former Government railway land or anything on it that is associated with the provision of a rail freight service and is not part of a Government railway for the purposes of the *Government Railways Act 1904*, anything that the Act Minister or the Commission could have done had the land
- 25
- not become corridor land.
- (5) Without limiting what else the Rail Corridor Minister may do, Part VI of the *Public Works Act 1902* applies, so far as it is consistent with the other provisions of this Act for it to do so, as if —
- 30
- (a) a reference in it to a railway referred to a railway that is on corridor land; and

(b) in relation to a railway that is on corridor land, a reference to the Minister referred to the Rail Corridor Minister, but the regulations may modify or exclude the application of any provision of that Part under this subsection.

5 (6) Nothing in subsection (1)(b) or (c)(ii) or subsection (4) or (5) limits the power of the Rail Corridor Minister to dispose of, manage, or do anything else in relation to, anything, whether or not it is on corridor land or former Government railway land, if it belongs to the Rail Corridor Minister.

10 (7) In this section —

“**former Government railway land**” means corridor land that was, before it became corridor land, part of a “Government railway” for the purposes of the *Government Railways Act 1904*.

15 **43. Conveying interest to give effect to agreement for disposal**

The Rail Corridor Minister is to perform any function given by this Act as may be necessary to fulfil the State’s obligations under an agreement under section 13.

20 **44. Commission and other State agencies to give effect to disposal under this Part**

The Commission or any other person holding anything disposed of, or anything an interest in which is disposed of, under this Part by the Rail Corridor Minister is to convey what it was that the Rail Corridor Minister disposed of.

**Division 4 — Regulatory and other matters to do with
corridor land**

45. Dividing fences

5 The *Dividing Fences Act 1961* does not apply to a fence
separating corridor land from any other land, whether the other
land is also corridor land or not.

46. Corridor land not subject to certain rates or taxes

- (1) Corridor land is exempt from —
- 10 (a) any rate under the *Local Government Act 1995*; and
(b) any other rate, tax, or charge specified by the Treasurer
by an order published in the *Gazette* under this section.
- (2) The Treasurer may, by order published in the *Gazette* under this
section, amend or revoke a previous order under this section.

47. No construction on corridor land without consent

- 15 (1) Despite anything in any Act, a person is not to construct
anything on corridor land unless the Rail Corridor Minister has
agreed in writing.
- (2) An agreement under subsection (1) is to give the Rail Corridor
20 Minister, in addition to any other remedies that may be
specified, the right to remove whatever is to be constructed, and
any material used in connection with it, from the corridor land if
any other party to the agreement breaches it.

48. Other restrictions on corridor land

- (1) Corridor land is subject to restrictions under this section.

(2) The restrictions are —

(a) that the land is not to be used in a way that is inconsistent with anything that is on, or is being done on, the land in accordance with rights conferred by the Rail Corridor Minister under this Part;

(b) that, unless the approval in writing of the Rail Corridor Minister has been obtained first —

(i) the land is not to be used; and

(ii) statutory powers under any other written law are not to be exercised on or in respect of the land,

in a way or to an extent that could reasonably be expected to materially interfere with the exercise in the future of rights that have been, or might in the future be, conferred by the Rail Corridor Minister under this Part; and

(c) such other restrictions, if any, as are prescribed by the regulations.

(3) The Rail Corridor Minister may refuse to give approval under subsection (2)(b) on the grounds of the likelihood of, or the extent of, the interference referred to in that provision or on any other grounds that the Rail Corridor Minister thinks relevant.

49. Delegation by Rail Corridor Minister

The Rail Corridor Minister may, by a signed instrument of delegation, delegate to a person having an interest in corridor land, either generally or as otherwise provided in the instrument —

(a) the power of approval given by section 48(2)(b); or

(b) any power or duty given to the Rail Corridor Minister by regulations referred to in section 48(2)(c) in respect of the land.

50. Certain matters that regulations may deal with

- (1) Without limiting the regulations that may be made for the purposes of section 48(2)(c), the regulations may —
- 5 (a) make provision for the protection of the corridor land and things on it;
 - 10 (b) make provision for restricting or prohibiting entry onto corridor land or places or things on it, which may include provisions to do with the erection, maintenance, or removal of gates across public thoroughfares on corridor land;
 - 15 (c) make provision for the temporary closure or restriction on the use of a public thoroughfare, bridge, or other structure on or adjacent to corridor land for maintenance or in other circumstances.
- 15 (2) The regulations may make it an offence to contravene a restriction under section 48, and may prescribe a fine of not more than \$10 000 in respect of the offence.

51. Power of entry

20 A person authorized by the Rail Corridor Minister to exercise the powers of entry given by this Division, or any of them, may exercise those powers for doing things for the protection of corridor land and things on it.

52. Assistants and equipment

25 Entry under this Division may be made with such assistants and equipment as are considered necessary for the purpose for which entry is required.

53. General procedure for entering property

- 5 (1) Except in an emergency or if the entry is authorized by the warrant of a justice, entry by or on behalf of the Rail Corridor Minister on to any land, premises or thing is not lawful unless —
- (a) the consent of the owner or occupier has been obtained; or
- (b) notice has been given under section 54.
- 10 (2) If notice has been given under section 54, a person authorized by the Rail Corridor Minister to do so may lawfully enter the land, premises or thing without the consent of the owner or occupier unless the owner or occupier or a person authorized by the owner or occupier objects to the entry.

54. Notice of entry

- 15 (1) A notice of an intended entry is to be given to the owner or occupier of the land, premises or thing that is to be entered.
- (2) The notice is to specify the purpose for which the entry is required and continues to have effect for so long as that requirement continues.
- 20 (3) The notice is to be given not less than 24 hours before the power of entry is exercised.
- (4) Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

55. Entry under warrant

- 25 (1) In the circumstances described in subsection (2), a justice may by warrant authorize the Rail Corridor Minister, by its authorized persons, together with such other persons as are

named or described in the warrant, or a police officer, to enter any land, premises or thing using such force as is necessary.

(2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry is reasonably required but —

- 5
- (a) entry has been refused or is opposed or prevented;
 - (b) entry cannot be obtained; or
 - (c) notice cannot be given under section 54 without unreasonable difficulty or without unreasonably delaying entry.

10 (3) A warrant granted under subsection (1) —

- (a) is to be in the prescribed form;
 - (b) is to specify the purpose for which the land, premises or thing may be entered; and
 - (c) continues to have effect until the purpose for which it was granted has been satisfied.
- 15

56. Entry in an emergency

(1) In an emergency the Rail Corridor Minister, by its authorized persons, may lawfully enter any land, premises or thing immediately and without notice and do what it considers appropriate to deal with the emergency.

20

(2) For the purposes of this section, an emergency exists where the Rail Corridor Minister is of the opinion that the circumstances are such that compliance with the requirements for obtaining entry other than under this section would be impractical or unreasonable because of, or because of the imminent risk of —

25

- (a) injury or illness to any person;
- (b) a natural or other disaster or emergency; or

- (c) such other occurrence as is prescribed for the purposes of this section.
- (3) A person exercising the power of entry given by subsection (1) may use reasonable force.
- 5 (4) The power of entry given by subsection (1) may be exercised at any time while the emergency exists and for so long subsequently as is reasonably required.
- (5) Although notice of an intended entry under this section is not generally required, the Rail Corridor Minister is to give notice of an intended entry of land under this section to the owner or occupier of the land where it is practicable to do so.
- 10

57. Purpose of entry to be given on request

A person who enters or who has entered any land, premises or thing on behalf of the Rail Corridor Minister is to give particulars of the authority for that entry on being requested to do so.

15

Part 4 — Miscellaneous

58. Civil penalty

- 5 (1) An agreement under section 13 or an instrument under which a person holds an interest in corridor land under Part 3 may provide for a party to be liable to pay an amount determined under the agreement or instrument, by way of civil penalty, in respect of a breach of the agreement or instrument.
- 10 (2) The agreement or instrument may provide for an increase in the amount of the civil penalty because of each day or part of a day during which a breach continues.
- (3) A civil penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

15 **59. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Rail Freight System Bill 1999

Part 5 Amendments to, or modification of, other Acts

Division 1 Government Railways (Access) Act 1998

s. 63

- (b) by deleting the definition of “railway” and inserting instead the following definition —

“

5 **“Government railway”** means a railway, as defined in section 2 of the *Government Railways Act 1904*, that is under the management and control of the Commission as provided by section 13 of that Act; ”;

- 10 (c) in the definition of “railway infrastructure”, by deleting paragraph (h) and inserting instead the following paragraph —

“

15 (h) sidings or spur lines that are excluded by subsection (3) or (4) from being railway infrastructure associated with the railway concerned;

”;

- (d) by inserting after the definition of “railway infrastructure” the following definitions —

20 “

“railway owner” means the person having the management and control of the use of the railway infrastructure;

“railways network” means —

- 25 (a) all the railways that were Government railways when this Act received the Royal Assent;
- (b) all the railways that are on land that is corridor land as defined in the *Rail Freight System Act 1999*; and
- 30

(c) any railway declared under subsection (2) to be a part of the railways network;

”.

5 (2) Section 3 is amended by inserting before “In this Act, unless the contrary intention appears” the subsection designation “(1)”.

(3) At the end of section 3 the following subsections are inserted —

“

10 (2) If a railway (the “**new railway**”) is constructed after this Act receives the Royal Assent and the new railway is connected to a railway that is a part of the railways network, the Minister may, by order published in the *Gazette*, declare the new railway to be a part of the railways network.

15 (3) If a siding associated with a railway is managed and controlled by a different person from the person who manages and controls the use of the railway, the siding is not railway infrastructure of the railway for the purposes of this Act.

20 (4) If a spur line associated with a railway is connected to premises managed and controlled by a different person from the person who manages and controls the use of the railway, the spur line is not railway infrastructure of the railway for the purposes of this Act unless the
25 Minister, by order published in the *Gazette*, declares that it, or any of it, is railway infrastructure of the railway.

”.

64. Sections 3A and 3B inserted

After section 3 the following sections are inserted —

“

3A. Scope of access rights clarified

- 5 (1) Without limiting the kinds of rights that can arise under an access agreement, those rights may entitle a person who has access to railway infrastructure to —
- (a) use land managed and controlled by the railway owner;
- 10 (b) construct and operate a rail or other connection to the railway infrastructure,
- for the purpose of exercising those rights.
- (2) Accordingly, the provisions of this Act about agreements and determinations to do with access
- 15 extend to the matters described in subsection (1).

3B. Access rights may bind person through whom title derives in certain cases

- 20 (1) If the right of the railway owner to manage and control the use of railway infrastructure is for a limited term or is subject to any other restriction imposed by the person through whom the railway owner derives those rights, the railway owner cannot give any right of access greater than the railway owner has.
- 25 (2) Upon the premature termination of the railway owner's right to manage and control the use of railway infrastructure (whether for default or any other reason), any right of access given by the railway owner continues as if it had been given by the person for the

time being having the right to manage and control the
use of the railway infrastructure.

”.

65. Section 4 amended

5 (1) Section 4(1) is amended by inserting after “railways” the
following —

“ to which the Code applies ”.

(2) Section 4(2)(a) is amended by deleting “Commission” in both
places where it occurs and inserting instead —

10 “ railway owner ”.

(3) After section 4(2), the following subsection is inserted —

“

(3) Provision may be made in the Code to exclude its
application to interstate services and, for that purpose,
to define what is an interstate service.

15

”.

66. Section 6 amended

Section 6(1)(b) is amended by deleting “the Commission” and
inserting instead —

20 “ a railway owner ”.

67. Section 7 amended

Section 7(a) is amended by deleting “the Commission” and
inserting instead —

“ a railway owner ”.

68. Section 11A inserted

After section 11 the following section is inserted —

“

11A. Consultation with railway owners on amendment or replacement of Code

- 5
- (1) Without limiting section 10, if the Minister considers that a proposed amendment or replacement of the Code may affect a railway owner, the Minister must consult with the railway owner and have regard to any
- 10 submissions that the railway owner makes in relation to the proposal.
- (2) If a railway owner considers that the Code, or a provision of it, has, as a result of altered circumstances, become unreasonable or inappropriate in its application
- 15 to the railway owner, the railway owner may make a submission to the Minister requesting that the Code be amended or be repealed and replaced.
- (3) The Minister must consider a submission made under subsection (2) and, if requested by the railway owner,
- 20 consult with the railway owner in relation to it.

”.

69. Section 12 amended

Section 12(2) is amended by inserting after “railways” the following —

25 “ to which the Code applies ”.

70. Section 15 amended

Section 15(a) is amended by deleting “the Commission” and inserting instead —

“ railway owners ”.

71. Section 20 amended

Section 20(2) is amended by deleting “the Commission’s” and inserting instead —
“ a railway owner’s ”.

5 **72. Section 21 amended**

(1) Section 21(1) is amended as follows:

(a) by deleting “require the Commission” and inserting instead —

“ require a railway owner ”;

10 (b) in paragraph (c), by deleting “Commission” and inserting instead —

“ railway owner ”.

(2) Section 21(2) is amended by deleting “The Commission” and inserting instead —

15 “ A railway owner ”.

(3) At the end of section 21 the following penalty provisions are inserted —

“

Penalty: \$20 000.

20 Daily penalty: \$2 000.

”.

73. Sections 22A to 22D inserted

After section 22 the following sections are inserted —

“

25 **22A. Power of entry**

(1) The Regulator may, for the purposes of this Act, enter any premises that are used in connection with the operation of a part of the railways network to which the

Code applies and inspect the premises or anything in or on the premises.

- (2) A railway owner must facilitate any entry and inspection under subsection (1).

5 Penalty: \$20 000.

22B. Obstruction and deception

- (1) A person must not hinder or obstruct the Regulator exercising any power conferred by this Division.

Penalty: \$20 000.

- 10 (2) A person must not give information to the Regulator acting under this Division that the person knows to be false or misleading in a material particular.

Penalty: \$20 000.

22C. Legal professional privilege

15 Nothing in this Division prevents a railway owner from refusing to —

- (a) send a statement or otherwise give information;
or

- (b) produce or send a book, document or record,

20 because the information would be, or the book, document or record contains, information in respect of which the railway owner claims legal professional privilege.

22D. Self-incrimination

25 An individual is not excused from complying with a requirement under section 21 on the ground that to do

so might incriminate the individual or render the individual liable to a penalty, but —

5

- (a) a statement or return sent or given by the individual that was made or brought into existence to comply with the requirement; or
- (b) the fact that a book, document, or record produced or sent by the individual to comply with the requirement was produced or sent,

10

is not admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of the information given.

”.

15

74. Section 23 amended

At the end of section 23 the following penalty provision is inserted —

“ Penalty: \$20 000. ”.

75. Heading to Part 4 amended

20

The heading to Part 4 is amended by deleting “**of the Commission**”.

76. Section 24 amended

Section 24 is amended in the definition of “relevant officer” by deleting “of the Commission” and inserting instead —

25

“ or employee of a railway owner ”.

77. Section 25 amended

Section 25 is amended by deleting “by the Commission”.

78. Section 28 amended

- (1) Section 28(1) is amended by deleting “In making arrangements under section 26 the Commission must” and inserting instead —
“ A railway owner must make arrangements to ”.
- 5 (2) Section 28(2) is amended by deleting “The Commission” and inserting instead —
“ A railway owner ”.

79. Section 29 amended

- (1) Section 29(1) is amended by deleting “the Commission” and
10 inserting instead —
“ a railway owner ”.
- (2) Section 29(2) is amended as follows:
- (a) by deleting “the Commission” in the first place where it
occurs and inserting instead —
15 “ a railway owner ”;
- (b) by deleting “Commission’s” and inserting instead —
“ railway owner’s ”;
- (c) by deleting “Commission” in the last place where it
occurs and inserting instead —
20 “ railway owner ”.
- (3) Section 29(3) is amended as follows:
- (a) by deleting “the Commission” in the first place where it
occurs and inserting instead —
“ a railway owner ”;
- 25 (b) by deleting “Commission” in the second place where it
occurs and inserting instead —
“ railway owner ”.

(4) At the end of section 29 the following subsection is inserted —

“

(4) If a railway owner fails to comply with —

(a) an arrangement, or varied arrangement,
approved under subsection (1);

(b) an agreement reached under subsection (2); or

(c) a direction given under subsection (3),

the railway owner commits an offence.

Penalty: \$20 000.

”.

80. Section 30 amended

Section 30 is amended by deleting “the Commission” and
inserting instead —

“ a railway owner ”.

81. Section 31 amended

(1) Section 31(1)(b) is amended by deleting “of the Commission”
and inserting instead —

“ or employees of the railway owner ”.

(2) Section 31(2) is amended in paragraph (c) of the definition of
“confidential information” by deleting “an officer” and inserting
instead —

“ a person ”.

82. Section 32 amended

Section 32 is amended as follows:

(a) by deleting “26” and inserting instead —

“ 28 ”;

Rail Freight System Bill 1999

Part 5 Amendments to, or modification of, other Acts

Division 1 Government Railways (Access) Act 1998

s. 83

(b) by deleting “an officer” in each of paragraphs (a) and (b) and inserting instead —

“ a person ”;

(c) by deleting “Commission” in paragraph (b) and inserting instead —

“ railway owner ”.

5

83. Section 33 amended

Section 33 is amended by deleting “Commission” and inserting instead —

“ railway owner ”.

10

84. Section 34 amended

Section 34 is amended as follows:

(a) by deleting “The Commission” and inserting instead —

“ A railway owner ”;

(b) in paragraph (a), by deleting “Commission’s” and inserting instead —

“ railway owner’s ”.

15

85. Section 36 amended

Section 36(1) is amended by deleting “on the Commission”.

20

86. Section 37 amended

Section 37(1) is amended by deleting “the Commission” and inserting instead —

“ a person ”.

Rail Freight System Bill 1999

Part 5 Amendments to, or modification of, other Acts

Division 3 Hire-Purchase Act 1959

s. 90

1999, use land that is corridor land under that Act, and facilities on it, for the purpose of performing any of its functions under this Act.

”.

5 **90. Section 61 amended**

Section 61(5) is amended by deleting “Government”.

Division 3 — Hire-Purchase Act 1959

91. The Act amended

10 The amendments in this Division are to the *Hire-Purchase Act 1959**.

[* Reprinted as at 5 February 1986.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 116.]

92. Section 2A amended

15 (1) Section 2A(2) is amended by inserting after “Government purposes” the following —

“ or the purpose prescribed in subsection (2a) ”.

(2) After section 2A(2) the following subsection is inserted —

“

20 (2a) The purpose referred to in subsection (2) is the purpose of providing rail freight services that are available to the public, whether or not those services are to be provided by or on behalf of the State.

”.

Division 4 — Land Administration Act 1997

93. The Act amended or modified

The amendments or modifications in this Division are to the *Land Administration Act 1997*.*.

5 [* Act No. 30 of 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 136.]

94. Heading amended

10 The heading to Part 9, Division 1, Subdivision 3 is amended by deleting “to other Ministers”.

95. Section 159 amended

Section 159 is amended by inserting after paragraph (b) the following paragraph —

15 “
 (ba) the Rail Corridor Minister established by section 32(1) of the *Rail Freight System Act 1999*;
”.

96. Section 160 amended

20 Section 160 is amended as follows:

- (a) in each of subsections (1) and (2), by inserting after “A Minister” the following —
 “ or body ”;
- (b) in subsection (1), by inserting after paragraph (b) the following paragraph —
- 25

“
 (ba) in the case of the Rail Corridor Minister established by section 32(1) of the *Rail Freight*

Rail Freight System Bill 1999

Part 5 Amendments to, or modification of, other Acts

Division 5 Land Tax Assessment Act 1976

s. 97

5 *System Act 1999*, to the chief executive officer of the department principally assisting the Rail Corridor Minister in the administration of Part 3 of that Act or to any other officer of that department;

”.

97. Sections 187-191 not to apply

Sections 187 to 191 do not apply to or in relation to corridor land.

10 **98. Taking of land to be as if for the conferral of rights**

15 When applying the Land Administration Act 1997, the taking of land for the purpose of dealing with it as corridor land under this Act is to be regarded as being for the purpose of, and the land is to be regarded as being required for the purpose of, the grant of interests in the land under this Act, whether or not interests have already been granted under this Act in respect of the land.

Division 5 — Land Tax Assessment Act 1976

99. Schedule Part 1 clause 1 amended

20 Clause 1 of Part I of the Schedule to the *Land Tax Assessment Act 1976** is amended as follows —

(a) in paragraph (b) by inserting before “Where” the subparagraph designation “(i)”;

(b) by inserting the following subparagraph —

25

“

(ii) Subparagraph (i) does not apply to or in respect of a person who, under paragraph (b) or (c) of the interpretation of “owner” in section 5, is an

owner of corridor land as defined in section 3
of the *Rail Freight System Act 1999* by reason
of holding an interest granted under section
42(1)(a) of that Act.

5

”

[* Reprinted as at 30 July 1996.

*For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, pp. 137-8.]*

10 **Division 6 — National Rail Corporation Agreement Act 1992**

100. The Act amended

The amendments in this Division are to the *National Rail
Corporation Agreement Act 1992**.

[* Act No. 56 of 1992.]

15 **101. Section 5B amended**

Section 5B(2)(a) is amended by deleting “Government”.

Division 7 — Town Planning and Development Act 1928

102. Section 20

20 Section 20(1) of the *Town Planning and Development
Act 1928** does not apply to —

- (a) a disposal of an interest in corridor land;
- (b) a disposal under Part 2; or

Rail Freight System Bill 1999

Part 5 Amendments to, or modification of, other Acts

Division 7 Town Planning and Development Act 1928

s. 102

- (c) any conveyance to give effect to a disposal described in paragraph (a) or (b).

[* *Reprinted as at 21 February 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, pp. 253-4.]

5

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Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

<i>Defined Term</i>	<i>Provision(s)</i>
Act Minister	31
asset	22
assignee	22
Commission	3
Commission's rail freight business.....	3
corridor land.....	3
corridor land order.....	3
former Government railway land	42(7)
government railway land	31
Government railway	8(6)
liability.....	22
Rail Corridor Minister	31
relevant official	28(4), 41(6)
relevant property	28(4)
right	22
specified.....	24(2)
transfer order.....	22
transfer time	22