

SOUTH AUSTRALIA

ALICE SPRINGS TO DARWIN RAILWAY ACT 1997

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **16 December 1999**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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ALICE SPRINGS TO DARWIN RAILWAY ACT 1997

being

Alice Springs to Darwin Railway Act 1997 No. 23 of 1997
[Assented to 10 April 1997]¹

as amended by

Alice Springs to Darwin Railway (Financial Commitment) Amendment Act 1999 No. 76 of 1999 [Assented to
2 December 1999]²

¹ Came into operation 28 August 1997: *Gaz.* 28 August 1997, p. 456.

² Came into operation 16 December 1999: *Gaz.* 16 December 1999, p. 3328.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

An Act to authorise an agreement between the South Australian and the Northern Territory governments for the construction of a railway between Alice Springs and Darwin; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Alice Springs to Darwin Railway Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions

3. In this Act—

"**authorised project**" means the project defined in clause 1.1 of the preliminary agreement;

"**GST**" means the tax payable under the GST law;

"**GST law**" means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth; and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

"**preliminary agreement**" means the agreement set out in the Schedule to this Act.

Ratification of preliminary agreement

4. The preliminary agreement is ratified.

Authorisation of legally enforceable agreement

5. (1) The Minister is authorised to enter into a legally enforceable agreement, on behalf of this State, with a Minister of the Crown in the right of the Northern Territory to give effect to the preliminary agreement and facilitate implementation of the authorised project.

- (2) The agreement may involve other contracting parties.

Extent of financial commitment

6. The Minister is authorised, on behalf of the State (and despite anything previously contained in the preliminary agreement)—

- (a) to make funds available for the performance of certain works in connection with the authorised project at times determined by the Minister up to a total amount of \$125 million plus the amount of any GST that may be payable in relation to the payment of those funds; and
- (b) to give a guarantee or guarantees of any debt incurred in connection with the authorised project up to a principal amount of \$25 million plus the amount of any GST, interest or costs that may be payable in respect of such debt and the giving of such a guarantee or guarantees; and

- (c) to give a guarantee or guarantees in connection with the performance by the AustralAsia Railway Corporation of its obligations under any contract entered into by it in connection with the authorised project; and
- (d) to enter into other contractual obligations for the implementation of the authorised project; and
- (e) to pay or contribute to other costs and expenses incurred in connection with the activities of the AustralAsia Railway Corporation or the authorised project,

and the money required for these purposes, and for any other purposes associated with the legally enforceable agreement referred to in section 5, and for any other legal obligation that may arise out of a matter referred to in a paragraph appearing above, is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

Statutory corporation

7. (1) The Minister may exercise any powers conferred by the law of the Northern Territory on the South Australian Government or a representative of the South Australian Government related to a statutory corporation established (or to be established) to facilitate or supervise the authorised project or any aspect of the authorised project.

(2) The nominees of the South Australian Government on the statutory corporation must report annually to the Minister on the activities of the corporation and on progress with the authorised project.

(3) The Minister must have copies of the report laid before both Houses of Parliament as soon as practicable after receiving it.

Facilitation of authorised project

8. The Minister and other instrumentalities and agencies of the State are authorised and required to do anything reasonably necessary to facilitate implementation of the authorised project and, despite any other Act or law, no other statutory inquiry, authorisation or report need be conducted, obtained or provided before money can be applied by the Minister for the purposes of the authorised project.

Building and development work regarded as complying

9. All building and development work carried out on the railway between Tarcoola and the Northern Territory border—

- (a) before the commencement of this section; or
- (b) after the commencement of this section if carried out by or on behalf of the Commonwealth,

will be regarded as complying with the statutory and regulatory requirements applicable at the time of the work.

SCHEDULE
ARRANGEMENTS RELATING TO THE DEVELOPMENT OF THE
ALICE SPRINGS TO DARWIN RAILWAY

AGREEMENT made the 13th day of November 1996

BETWEEN

SHANE LESLIE STONE as the Chief Minister for and on behalf of the Northern Territory Government ("the NT Government")

AND

DEAN CRAIG BROWN as Premier for and on behalf of the South Australian Government ("the SA Government")

RECITALS

- A. The NT Government and the SA Government seek the development of a railway between Alice Springs and Darwin.
- B. The NT Government is actively seeking the involvement of the private sector in the development and operation of the Railway.
- C. The SA Government and the NT Government recognise that the successful implementation of the project will require the involvement and facilitation of the Governments (including but not limited to the financial assistance referred to in this Agreement).
- D. Subject to certain terms and conditions the NT Government wishes to provide assistance (including but not limited to financial assistance) for the development of the Alice Springs to Darwin railway.
- E. Subject to certain terms and conditions the SA Government wishes to provide financial assistance for the development of the Alice Springs to Darwin railway.
- F. The NT Government and the SA Government wish to record in this Agreement the scope and extent of the negotiations between them at the date of this Agreement for the proposed development of the Alice Springs to Darwin railway.

AGREEMENT

1. **INTERPRETATION**

- 1.1 In the construction of this Agreement (including the Recitals) the following words and expressions shall have the meanings set opposite them respectively:

"**Governments**" means all Governments of Australia that are a party to the project including but not limited to the NT Government and the SA Government;

"**practical completion of development**" means the date upon which a commercial rail service commences operation on the Railway;

"**private sector participants**" includes those parties to the project other than the Governments.

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"**the project**" means the private sector Build, Own, Operate and Transfer project for the Railway;

"**the Railway**" means the proposed railway linking Alice Springs to Darwin;

"**NT Government Funding Contribution**" means the financial contribution to the project by the NT Government to be paid by way of capital grants together with the other monetary and non-monetary contributions by the NT Government; and

"**SA Government Funding Contribution**" means the financial contribution to the project by the SA Government to be paid by way of capital grants.

2. NORTHERN TERRITORY GOVERNMENT'S ACKNOWLEDGMENTS

The NT Government acknowledges that:

- 2.1 it is seeking development of a railway between Alice Springs and Darwin and that funding will be actively sought from both private and public sector sources;
- 2.2 that the NT Government, will at its expense, complete the acquisition of the rail corridor between Alice Springs and Darwin whether the relevant parts of the corridor are acquired by it or by the Commonwealth of Australia at the request of both the NT Government and the SA Government;
- 2.3 that the NT Government Funding Contribution shall be \$100 million in 1995 dollars, such contributions to be made on terms reasonably determined by the NT Government, but being no less advantageous to the project than those set out in this Agreement for the payment by the SA Government of the SA Government Funding Contribution;
- 2.4 that the NT Government shall complete Stage 1 of the Port at Darwin as soon as reasonably possible, and shall apply the principles established under the National Competition Policy to the operation of that port with the objective of providing a seamless integrated world's best practice transport service;
- 2.5 that the NT Government shall also do the following:
 - 2.5.1 complete the route survey for the Alice Springs to Darwin railway;
 - 2.5.2 carry out preliminary geotechnical and hydrological work;
 - 2.5.3 carry out all necessary archaeological and heritage clearance work;
 - 2.5.4 carry out all necessary environmental assessment work;
 - 2.5.5 generally do such things as are within its power to provide the rail corridor and ensure that the private sector participants have sufficient access to the corridor and to necessary construction materials to enable the Railway to be built.

3. SOUTH AUSTRALIAN GOVERNMENT'S ACKNOWLEDGMENTS

The SA Government acknowledges:

- 3.1 the need for a railway between Alice Springs and Darwin;

- 3.2 the economic benefits of the project to Australia and in particular to the Northern Territory and South Australia;
- 3.3 that to enable the NT Government to undertake the project, it will be necessary for funding assistance to be provided by the Governments as well as by the private sector participants;
- 3.4 the maximum level of SA Government Funding Contribution is to be \$100 million in 1996 dollars;
- 3.5 each progress payment of the SA Government Funding Contribution will be based on the achievement by the project of certain identified milestones to be agreed between the Governments;
- 3.6 each progress payment will be no greater than \$25 million in 1996 dollars;
- 3.7 the progress payment frequency will be no greater than one payment per year;
- 3.8 the final payment will be paid on practical completion of the development;
- 3.9 if the Commonwealth Government makes a contribution to the tasks to be undertaken by the NT Government and described in subclause 2.5, the SA Government will contribute out of the of SA Government Funding Contribution described in subclause 3.4 an amount equal to the Commonwealth contribution up to a maximum of \$400,000.

4. MUTUAL ACKNOWLEDGMENTS

The NT Government and SA Government mutually acknowledge:

- 4.1 that the funding contributions of the SA Government and the NT Government as set out in this Agreement are subject to binding arrangements being made between the Governments and private sector participants on or before 31 December 1998 which are satisfactory to both the SA Government and the NT Government providing for:
 - 4.1.1 an opportunity for businesses within South Australia and the Northern Territory to provide the goods and services required for the project;
 - 4.1.2 the liability of the SA Government and the NT Government to be limited to the financial contributions referred to in subclause 3.4 and 2.3 respectively and neither the SA Government nor the NT Government will be liable for nor will guarantee any liabilities incurred during the build, own and operate phases of the project;
 - 4.1.3 any equity contribution to the project by the private sector participants to be, at the minimum, equal to the SA Government Funding Contribution;
 - 4.1.4 a reasonable and equitable distribution of any extraordinary/abnormal profits and/or government revenues generated from the project to be made to the SA Government and the NT Government having regard to the extent of their respective contributions to the project;
 - 4.1.5 the transfer of the Railway corridor and other assets of the project to the SA Government and the NT Government in shares commensurate with their respective funding contribution on completion of the operation phase of the project;

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- 4.1.6 asset management arrangements ensuring that the Railway is maintained to a standard agreed between the SA Government and the NT Government.
- 4.1.7 the build, own, operate phases of the project being undertaken by and being the responsibility of the private sector participants.
- 4.2 that the funding contributions of the SA Government and the NT Government as set out in this Agreement are also subject to:
 - 4.2.1 the SA Government and the NT Government being satisfied that the project is commercially viable given the expected level of funding contributions from the Governments;
 - 4.2.2 the Governments reaching further agreement on the project structure and project documentation;
 - 4.2.3 the project being consistent with the Competition Principles Agreement made between the Commonwealth of Australia, the States of Australia and the self-governing territories; and
 - 4.2.4 the passage of any necessary enabling legislation by the Governments.
- 4.3 that it is the intention of the SA Government and the NT Government that the NT Government will establish a statutory corporation for the purpose of obtaining and holding title to the rail corridor and of carrying out such functions and exercising such powers in relation to the project as the SA Government and the NT Government agree are necessary for the project to be completed by the private sector participants;
- 4.4 that at the request of the SA Government the NT Government will appoint nominees of the SA Government as members of the statutory corporation;
- 4.5 that the NT Government and SA Government shall jointly approach the Commonwealth Government with a view to securing:
 - 4.5.1 such binding commitments from it as are necessary to complete the acquisition of the rail corridor and the transfer of ownership of the Tarcoola to Alice Springs railway line in accordance with undertakings already made by the Commonwealth Government so as to enable the private sector participants to undertake the project; and
 - 4.5.2 such other matters as may reasonably require the intervention and assistance of the Commonwealth Government;
- 4.6 that the NT Government and SA Government shall review and discuss all State and Territory taxes and charges which may apply to or be relevant to the project;
- 4.7 that the NT Government and SA Government will approach the Commonwealth Government for financial support and assistance in completing the tasks as listed in subclause 2.5.

5. **MISCELLANEOUS**

- 5.1 It is acknowledged by the parties that this Agreement is entered into by both the SA Government and the NT Government in good faith on the understanding that they are undertaking further negotiation and documentation of the project in the manner contemplated by this Agreement.
- 5.2 It is recognised that both the NT Government and SA Government, in facilitating the project are subject to the relevant laws of the Northern Territory and South Australia.

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EXECUTION

SIGNED by **SHANE LESLIE STONE** as)
)
 Chief Minister for and on behalf of)
)
THE NORTHERN TERRITORY OF)
)
AUSTRALIA in the presence of:)

.....
 The Hon BF Coulter MLA, Minister for the Railway

SIGNED by **DEAN CRAIG BROWN** as)
)
 Premier for and on behalf of)
)
THE STATE OF SOUTH AUSTRALIA)
)
 in the presence of:)

.....
 The Hon DV Laidlaw MLC, Minister for Transport

APPENDIX

LEGISLATIVE HISTORY

Section 3:	definitions of "GST" and "GST law" inserted by 76, 1999, s. 3
Section 6:	substituted by 76, 1999, s. 4
Sections 8 and 9:	inserted by 76, 1999, s. 5