

South Australia

ALICE SPRINGS TO DARWIN RAILWAY ACT 1997

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.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **21 December 2000**.*

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.

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

Alice Springs to Darwin Railway (Miscellaneous) Amendment Act 2000 No. 42 of 2000 [Assented to 13 July 2000]³

Alice Springs to Darwin Railway (Special Provisions) Regulations 2000 No. 282 of 2000 [Gaz. 21 December 2000, p. 3755]⁴

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.

³ **Came into operation 21 December 2000: *Gaz.* 21 December 2000, p. 3688.**

⁴ **Came into operation 21 December 2000: reg. 2.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

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SCHEDULE

**APPENDIX
LEGISLATIVE HISTORY**

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 associated with the proposed railway between Alice Springs and Darwin, and the railway between Tarcoola and Alice Springs;

"**Concession Deed**" means the Concession Deed (and any associated or related documents) in respect of the construction, operation and maintenance of a railway as part of the authorised project entered into by the State, the Northern Territory, the AustralAsia Railway Corporation and the consortium, as amended and in force from time to time;

"**consortium**" means the person or group of persons responsible for constructing and operating a railway as part of the authorised project and includes—

- (a) if the consortium is a person—the successors and assignees of the person;
- (b) if the consortium is a group of persons—a member of the group and the successors and assignees of the group and of a member of the group;
- (c) a contractor or other person acting for or on behalf of the consortium or a member of the consortium in connection with the railway;

"**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.

Implementation of Concession Deed

- 5A. (1) The implementation of the Concession Deed is authorised.

(2) For the purposes of the law of the State, the conferral of rights on the consortium by the Concession Deed is not to be taken to be a grant of a monopoly.

Extent of financial commitment

6. (1) The Minister, or a designated instrumentality, 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) —
 - (i) to make a loan or loans in connection with the authorised project up to a total principal amount of \$25 million plus the amount of any GST or costs that may be payable in respect of the making of such a loan, with the arrangements for the payment of any interest or other amounts in connection with such a loan, and for the repayment of any principal, to be determined or approved by the Minister after consultation with the Treasurer and, despite paragraph (a), the Minister is authorised, if satisfied that it is necessary or desirable to do so in order to facilitate implementation of the authorised project, after consultation with the Treasurer, on behalf of the State, to forgive the repayment of the whole or any part of any principal, or the payment of any other amount, under or in connection with such a loan (even if the loan was made by a designated instrumentality); or
 - (ii) in addition to paragraph (a), if the Minister is satisfied that it is necessary or desirable to do so in order to facilitate implementation of the authorised project, after consultation with the Treasurer, to make funds available in connection with the authorised project at times determined by the Minister up to a total amount of \$25 million plus the amount of any GST that may be payable in relation to the payment of those funds; 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 to grant indemnities 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 or the Concession Deed, 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).

(2) The Minister, and any designated instrumentality, may act under subsection (1)—

- (a) on terms and conditions determined by the Minister after consultation with the Treasurer; and
- (b) without any further authorisation or conferral of power.

(3) In this section—

"designated instrumentality" means an instrumentality or agency of the Crown designated by the Treasurer for the purposes of this section.

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

9. (1) 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 and all relevant consents, approvals, authorisations, certificates, reports and other things required by or under the *Development Act 1993* are to be taken to have been obtained or issued in respect of that work or the use of that work, and in respect of any building or structure associated with that work.

(2) A relevant authority under the *Development Act 1993* cannot, as a condition to approving an application for development approval under that Act with respect to work to be carried out on any part of the railway between Tarcoola and the Northern Territory border, require the upgrading of, or the performance of other work in relation to, another part of the railway.

(3) In subsection (2)—

"railway" includes railway track and other installations or equipment used or available for use in connection with the operation of a railway but does not include a building that falls within a classification under Part A3 of the *Building Code of Australia*.

Interests and rights in land modified

10. (1) An interest or right in or in relation to land forming any part of the rail corridor established between Tarcoola and the Northern Territory border (being an interest or right unrelated to the railway within that corridor or the operation of railway services) is modified in the manner, and to the extent, necessary to enable the consortium to construct, operate and maintain a railway within that corridor.

(2) For the purposes of subsection (1), an interest or right in or in relation to land includes any right of access under the *Mining Act 1971*, the *Opal Mining Act 1995*, or the *Petroleum Act 1940*.

(3) For the purposes of subsection (1), an interest or right does not include an interest or right granted to or by the AustralAsia Railway Corporation or the consortium.

(4) Without limiting subsection (1), the modification of interests and rights under that subsection operates so as to enable the consortium to construct, operate and maintain a railway over a road that intersects with the rail corridor.

(5) Despite any other Act or law, if a road intersecting the rail corridor established between Tarcoola and the Northern Territory is permanently closed, the land comprising that part of the road that intersects the rail corridor merges with the corridor and becomes subject to any lease or sublease over that part of the corridor.

(6) Despite any other law, fixed railway infrastructure within the rail corridor established between Tarcoola and the Northern Territory border does not merge with the land to which it is affixed and may be dealt with and disposed of as personal property.

Relief against forfeiture

11. (1) For the purposes of any registered lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory, but subject to this section—

(a) sections 136 to 140 (inclusive) of the *Law of Property Act* of the Northern Territory (as enacted as Act No. 1 of 2000 of the Northern Territory without amendment) apply as part of the laws of South Australia, subject to such modifications that may be necessary for the purpose, or that may be made to, or that may apply in relation to, those provisions by virtue of this section, or by regulations made under this Act; and

(b) sections 9 to 12 (inclusive) of the *Landlord and Tenant Act 1936* do not apply.

(2) Relief against forfeiture of a lease (whether under section 138 or 139 of the applied provisions or any other law of the State, including the common law and the law of equity) is not available if the lease is being terminated as a consequence of the lawful termination of the Concession Deed.

(3) On an application for relief against forfeiture of a registered lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 138 of the applied provisions, subject to subsections (2) and (11), the court must grant the relief unless the court is satisfied—

(a) that there has been a material breach of the lease; and

- (b) that written notice of the breach has been given to the lessee, any sublessee under a registered sublease and the holder of any registered security over the lease or any registered sublease requiring—
 - (i) in the case of a remediable breach, including a breach for non-payment of rent, the breach to be remedied; or
 - (ii) in the case of a non-remediable breach, the payment of reasonable compensation; or
 - (iii) in the case of a breach which is partly remediable and partly non-remediable, the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation; and
- (c) that a reasonable period of time to comply with the requirements set out in the notice under paragraph (b) has been given; and
- (d) in the case of a breach which is remediable or partly remediable, that the breach has not been remedied and none of the lessee, any sublessee under a registered sublease or the holder of any registered security over the lease or any registered sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
- (e) in the case of a breach which is non-remediable or partly non-remediable, that reasonable compensation has not been paid.

(4) If a lessee under a registered lease is not entitled to relief under subsection (3), subject to subsection (2), the court may grant the lessee relief in accordance with section 138(2) and (3) of the applied provisions.

(5) Section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to operate as if the section included a provision allowing a sublessee under a registered sublease or the holder of any registered security over a registered sublease to make application under that section in relation to the registered headlease (and such an application may be made even though the headlessee has not applied for relief under that section).

(6) Section 139 of the applied provisions is to operate as if the section included a provision allowing the holder of any registered security over a registered sublease to make application under that section as if the holder of the security were a sublessee.

(7) On an application in relation to a registered headlease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 139 of the applied provisions by a sublessee under a registered sublease or the holder of any registered security over a registered sublease, the court must, subject to subsections (8) and (11), grant the application unless—

- (a) the granting of the application would be inconsistent with a decision on an application under section 138 of the applied provisions; or
- (b) the court is satisfied, in respect of any breach of the headlease, that the headlessee has not had a reasonably opportunity—
 - (i) to remedy the breach or to pay reasonable compensation or both; or

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- (ii) to apply for relief against forfeiture, taking into account—
 - (iii) sections 137 and 138 of the applied provisions and this section; and
 - (iv) the principle that the preservation of the headlease (and any registered sublease) by way of orders under section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to be preferred to the making of an order under section 139 of the applied provisions; or
- (c) the court is satisfied, in respect of any breach of the headlease that is attributable to any act, omission or default of the sublessee or the holder of any registered security over the sublease—
- (i) that written notice of the breach has been given to the sublessee and the holder of any registered security over the sublease requiring—
 - (A) in the case of a remediable breach, including a breach for non-payment of rent, the breach to be remedied; or
 - (B) in the case of a non-remediable breach, the payment of reasonable compensation; or
 - (C) in the case of a breach which is partly remediable and partly non-remediable, the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation; and
 - (ii) that a reasonable period of time to comply with the requirements set out in the notice under subparagraph (i) has been given; and
 - (iii) in the case of a breach which is remediable or partly remediable, that the breach has not been remedied and neither the sublessee nor the holder of any registered security over the sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
 - (iv) in the case of a breach which is non-remediable or partly non-remediable, that reasonable compensation has not been paid.

(8) Subsection (7) does not derogate from the operation of section 139(2) and (3) of the applied provisions.

(9) If a sublessee under a registered sublease is not entitled to an order under subsection (7), subject to subsection (2), the court may grant an order in accordance with section 139 of the applied provisions.

(10) If the court makes an order under section 139(1)(d) of the applied provisions in respect of a registered lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border, the lease granted to the sublessee by virtue of the order (the "**new lease**") is to include a provision to the effect—

- (a) that despite any law to the contrary or any provisions as to the period of the new lease, the new lease will be automatically and simultaneously determined on the termination of the Concession Deed and without necessity of notice; and

- (b) that if the new lease is determined in the manner contemplated by paragraph (a), the new lease and any interests derived or dependent on the new lease will be determined for all time; and
- (c) that, for the avoidance of doubt, it is expressly acknowledged and agreed by the parties to the new lease that, on the termination of the Concession Deed, the new lease is intended to and will expire by effluxion of time, despite any law.

(11) The court must not make an order under section 138 or 139 of the applied provisions in relation to a registered headlease on the application of a sublessee under a registered sublease or the holder of any registered security over a registered sublease unless—

- (a) the headlessee; and
- (b) any sublessee under a registered sublease or holder of any registered security over a registered sublease who is not the applicant,

has had notice of the application and the court has given each of those persons who is entitled to such notice a reasonable opportunity to be heard on the application.

(12) In this section, unless the contrary intention appears—

"applied provisions" means the provisions applied by subsection (1)(a);

"lease" includes—

- (a) a sublease; and
- (b) a lease granted by virtue of an order under section 139(1)(d) of the applied provisions;

"lessee" includes—

- (a) a sublessee; and
- (b) the executors, administrators and assigns of a lessee.

Proceedings involving the Crown

12. (1) Subject to this section—

- (a) relevant proceedings may be brought and conducted by or against the South Australian Crown in a Northern Territory court; and
- (b) relevant proceedings may be brought and conducted by or against the Northern Territory Crown in a South Australian court.

(2) For the purposes of bringing or conducting relevant proceedings by or against the Northern Territory Crown in a South Australian court, and for the purposes of determining the rights and liabilities of the Northern Territory Crown in any such proceedings, the following Acts of the Northern Territory apply as laws of South Australia:

- (a) the *AustralAsia Railway (Special Provisions) Act*;
- (b) the *Crown Proceedings Act*;

(c) any other Act prescribed by the regulations for the purposes of this subsection.

(3) An Act that applies as a law of South Australia under subsection (2) will be the Act as in force from time to time unless, in the case of the *Crown Proceedings Act*, the consortium, as part of bringing or conducting relevant proceedings, elects to apply that Act in force immediately before the commencement of this section (and then that election will have effect accordingly).

(4) Subject to subsection (3), the Interpretation Act of the Northern Territory, as in force from time to time, applies as a law of South Australia in respect of the Acts referred to in subsection (2) and instruments under those Acts.

(5) The *Acts Interpretation Act 1915* does not apply in respect of the Acts referred to in subsection (2) or instruments under those Acts.

(6) Without affecting the application of the *Crown Proceedings Act 1992* with respect to proceedings brought or conducted by or against the South Australian Crown (including proceedings to which the Northern Territory Crown is also a party), that Act does not apply in respect of relevant proceedings brought or conducted by or against the Northern Territory Crown in a South Australian court (including proceedings to which the South Australian Crown is also a party), or for the purposes of determining the rights and liabilities of the Northern Territory Crown in any such relevant proceedings.

(7) For the purposes of bringing relevant proceedings by or against the South Australian Crown in a Northern Territory court, the Parliament of the State consents to the Legislative Assembly of the Northern Territory applying the *Alice Springs to Darwin Railway Act 1997* and the *Crown Proceedings Act 1992* as laws of the Northern Territory.

(8) The doctrine of executive necessity, to the extent (if any) that it applies in the State of South Australia, does not apply to the South Australian Crown in relation to its rights and obligations under the Concession Deed.

(9) In this section—

"**Crown**" includes—

- (a) a Minister, instrumentality or agency of the Crown;
- (b) a body or person declared by the regulations to be an instrumentality or agency of the Crown for the purposes of a particular reference to the Crown in this section;

"**Northern Territory Crown**" means the Crown in right of the Northern Territory;

"**relevant proceedings**" means civil proceedings arising out of, or otherwise connected with, the authorised project;

"**South Australian Crown**" means the Crown in right of South Australia.

Remission from taxes, etc.

13. (1) The Treasurer may, by notice published in the *Gazette*, exempt from a tax, duty or other impost, to the extent specified in the notice—

- (a) transactions related to the authorised project; or

(b) instruments that arise from, are connected with or consequential on a transaction related to the authorised project.

(2) The Treasurer may, by notice published in the *Gazette*, for the purposes of the authorised project, confer exemptions from specified statutory provisions related to the imposition or administration of a tax, duty or impost.

(3) An exemption under subsection (1) or (2) will have effect according to its terms.

(4) The Treasurer may, by further notice published in the *Gazette*, vary or revoke an exemption under subsection (1) or (2).

Regulations

14. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) In addition to the power to make regulations under subsection (1), the Governor may make regulations amending, or modifying the operation of, this Act (other than this section), or any other Act, in relation to any matter arising from, connected with or consequential on any aspect of the authorised project.

(3) A provision of a regulation made under subsection (2) may, if the regulation so provides, take effect on a day earlier than the day on which the regulation is made, other than a day earlier than the day on which this section commences.

(4) The Governor may only make regulations under subsection (2) during the 12 months commencing on the day on which this section commences.

Alice Springs to Darwin Railway Act 1997

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.

"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;

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- 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;

- 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.

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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.

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

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	definition of "authorised project" substituted by 42, 2000, s. 3 definitions of "Concession Deed" and "consortium" inserted by 42, 2000, s. 3 definitions of "GST" and "GST law" inserted by 76, 1999, s. 3
Section 5A:	inserted by 42, 2000, s. 4
Section 6:	substituted by 76, 1999, s. 4; amended and redesignated as s. 6(1) by 42, 2000, s. 5(a)-(d)
Section 6(1):	amended by Regulation No. 282 of 2000, reg. 4(a)
Section 6(2) and (3):	inserted by 42, 2000, s. 5(d)
Section 8:	inserted by 76, 1999, s. 5
Section 9:	inserted by 76, 1999, s. 5; amended and redesignated as s. 9(1) by 42, 2000, s. 6(a), (b)
Section 9(2) and (3):	inserted by 42, 2000, s. 6(b)
Section 10:	inserted by 42, 2000, s. 7
Section 10(3) - (6):	inserted by Regulation No. 282 of 2000, reg. 4(b)
Section 11:	inserted by 42, 2000, s. 7
Section 11(1):	amended by Regulation No. 282 of 2000, reg. 4(c), (d)
Section 11(2) - (7):	substituted by Regulation No. 282 of 2000, reg. 4(e)
Section 11(8) - (12):	inserted by Regulation No. 282 of 2000, reg. 4(e)
Section 12:	inserted by 42, 2000, s. 7
Section 12(6):	amended by Regulation No. 282 of 2000, reg. 4(f)
Sections 13 and 14:	inserted by 42, 2000, s. 7