

SOUTH AUSTRALIA

NON-METROPOLITAN RAILWAYS (TRANSFER) ACT 1997

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SCHEDULE

NON-METROPOLITAN RAILWAYS (TRANSFER) ACT 1997

being

Non-Metropolitan Railways (Transfer) Act 1997 No. 53 of 1997
[Assented to 31 July 1997]¹

¹ Came into operation 11 September 1997: *Gaz.* 11 September 1997, p. 703.

An Act to provide for the implementation of a Commonwealth-State agreement relating to the privatisation of non-metropolitan railways; to make a related amendment to the Wrongs Act 1936; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Non-Metropolitan Railways (Transfer) Act 1997*.

Commencement

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

Interpretation

3. (1) In this Act—

"**Railways Agreement**" means the agreement set out in the schedule to this Act.

(2) A word or expression used in this Act that is defined in the Railways Agreement has the same meaning in this Act as in the Railways Agreement unless the contrary intention appears.

Railways Agreement

4. (1) The Minister's execution of the Railways Agreement on behalf of the State is authorised and ratified.

(2) The Railways Agreement is binding on the State.

(3) The Minister and other instrumentalities and agencies of the State are authorised and required to do anything necessary to give effect to the Railways Agreement.

The Ground Lease and Passenger Facilities Lease

5. (1) The Minister is authorised to approve and enter into the Ground Lease and the Passenger Terminal Site Lease on behalf of the State.

(2) The Ground Lease and the Passenger Terminal Site Lease are, when executed on behalf of the State, binding on the State.

(3) The Minister must, within six sitting days after executing the Ground Lease or the Passenger Terminal Site Lease, have copies of the lease laid before Houses of Parliament.

(4) The Minister and other instrumentalities and agencies of the State are authorised and required to do anything necessary to give effect to the Ground Lease and the Passenger Terminal Site Lease.

(5) The Minister must not give consent on behalf of the State to the removal of Track Infrastructure in accordance with the terms of clause 9.1(f) or 9.2(e) of the Railways Agreement unless the Minister is satisfied that the Track Infrastructure is no longer required for the safe, efficient and effective use of the relevant railway line.

(6) The Minister must, as soon as practicable after giving a consent in the circumstances described in subsection (5), prepare a report on the matter and have copies of the report laid before both Houses of Parliament.

Vesting of land

6. (1) The SAR Land and the Commonwealth Railways Land, when transferred to the State under the Railways Agreement, vests in the Minister for an estate of fee simple.

(2) However, this section does not operate to extinguish the interests of a third party in the land.

(3) The Registrar-General must, on application by the Minister—

(a) if land vested in the Minister under this Act has been brought under the *Real Property Act 1886*—register the Minister as the proprietor of an estate in fee simple in the land; or

(b) if land vested in the Minister under this Act has not been brought under the *Real Property Act 1886*—bring the land under the provisions of that Act and register the Minister as the proprietor of an estate in fee simple in the land.

(4) The Minister must provide the Registrar-General with surveys and plans of land that is to be brought under the *Real Property Act 1886* that the Registrar-General may reasonably require.

(5) The *Crown Lands Act 1929* does not apply in relation to land vested in the Minister under this Act.

Ministerial certificates

7. (1) A Ministerial certificate will be accepted by all courts and administrative officials of the State as evidence of the matters to which the certificate relates.

(2) A **Ministerial certificate** is a certificate signed by the Commonwealth Minister or the State Minister, or a delegate of the Commonwealth Minister or the State Minister—

(a) identifying real or personal property affected by the Railways Agreement; and

(b) stating how the property is affected by the Railways Agreement or any transaction under that Agreement.

Severance

8. Any item of Track Infrastructure transferred under the Railways Agreement is taken to be severed from the land to which it is affixed so that it may be dealt with as personal property separate from the land.

Exemption from rates and taxes

9. For a period of 5 years from the effective date of the Railways Agreement, land transferred under the Railways Agreement and used for the operation of a railway is exempt from—

(a) land tax under the *Land Tax Act 1936*; and

(b) rates and other imposts under the *Local Government Act 1934*.

Interaction between this and other Acts

10. (1) This Act (and the Railways Agreement) prevail to the extent of any inconsistency over the *Railways (Transfer Agreement) Act 1975* and the Agreement approved under that Act.

(2) This Act (and the Railways Agreement) prevail to the extent of any inconsistency over the *Tarcoola to Alice Springs Railway Agreement Act 1974* and the Agreement approved under that Act.

Liquor licensing exemption

11. For 6 months after the grant of the Passenger Terminal Site Lease, the lessee may sell and supply liquor for purposes incidental to the provision of a passenger service without any licence or authorisation apart from this section.

Amendment of Wrongs Act 1936

12. The *Wrongs Act 1936* is amended by inserting after subparagraph (ii) of paragraph (b) of the definition of "**motor vehicle**" in section 35A(6) the following word and subparagraph:

or

(iii) a person who holds an accreditation under the *Rail Safety Act 1996*;

SCHEDULE

THE COMMONWEALTH OF AUSTRALIA

-and-

THE STATE OF SOUTH AUSTRALIA

RAILWAYS AGREEMENT

IN RELATION TO THE NON-METROPOLITAN RAILWAYS
OF THE STATE OF SOUTH AUSTRALIA

RAILWAYS AGREEMENT

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Non-Metropolitan Railways (Transfer) Act 1997

AGREEMENT made 30 June 1997

BETWEEN:

- (1) **THE COMMONWEALTH OF AUSTRALIA;** and
- (2) **THE STATE OF SOUTH AUSTRALIA.**

RECITALS:

- A. Australian National and its predecessor in law the commonwealth Railways Commissioner has with the consent of the State acquired land in the State for the purpose of the construction and extension of railways in the State.
- B. Pursuant to the Rail Transfer Agreement the right title and interest of the South Australian Railways Commissioner in all land in the State used for the non-metropolitan railways and services was with the consent of the State acquired by, and pursuant to the Railways Transfer Legislation vested in, Australian National.
- C. Since the declared date under the Rail Transfer Agreement, Australian National has administered, maintained and operated the non-metropolitan railways and services in the State.
- D. The Commonwealth proposes on the Effective Date:
 - (a) to vest in the State the Commonwealth Railways Land and the SAR Land (other than the Excluded Land);
 - (b) to vest in SAGC the Track Infrastructure on the Leigh Creek Line;
 - (c) to vest in the Freight Operator certain assets of Australian National used in connection with the non-metropolitan railways and services (other than land); and
 - (d) to vest in the Passenger Operator those assets of Australian National (other than land) used in connection with the Passenger Services,and to complete the sale by public tender of the shares in the Freight Operator and the shares in the Passenger Operator.
- E. The Commonwealth and the State have agreed to enter into this agreement for the purpose of:
 - (a) varying the Rail Transfer Agreement;
 - (b) providing for the transfer to the State of the SAR Land and the Commonwealth Railways Land (other than the Excluded Land);

- (c) providing for the long term lease by the State to the Freight Operator of the Operational Railways Land and to the Passenger Operator of the Keswick Passenger Terminal Land,

and for necessary and incidental matters.

IT IS AGREED AS FOLLOWS:

INTERPRETATION

1.1 Definitions

In this agreement unless the context otherwise requires:

"Adelaide to Crystal Brook Railway Agreement" means the agreement dated 11 August 1980 approved by the *Railway Agreement (Adelaide to Crystal Brook) Act 1980* (Commonwealth) and the *Railway Agreement (Adelaide to Crystal Brook) Act 1980* (South Australia);

"Australian National" means Australian National Railways Commission a statutory corporation established under the *Australian National Railways Act 1917* and continued in existence pursuant to the *Australian National Railways Commission Act 1983*;

"Bulk Handling Facilities" has the meaning given to that expression in section 18a(4) of the *Bulk Handling of Grain Act 1955 (South Australia)* (each a **"Bulk Handling Facility"**);

"Business Day" means a day other than a weekend or public holiday in Sydney, Canberra and Adelaide;

"Commonwealth" means the Commonwealth of Australia as a party to this agreement;

"Commonwealth Minister" means the Minister of the Commonwealth for the time being having responsibility for administration of this agreement;

"Commonwealth Railways Land" means the estate or interest of Australian National on the Effective Date in the land referred to in recital A (other than Excluded Land);

"Condition Satisfaction Date" means the date which is six months after the date of this agreement (or such later date as the Commonwealth Minister and the State Minister or their respective delegates agree in writing);

"Contamination" means affectations or degradation of land by the presence of any chemical substance (including without limitation any dangerous good, hazardous material, asbestos or any waste) where, having regard to the use of the land or of any other land in its vicinity, the chemical substance creates or may create a risk of harm to any person or to the environment;

"Effective Date" means the date on which the Sale Agreement is completed (or such other date as the Commonwealth Minister and the State Minister or their respective delegates may agree in writing);

"Excluded Land" means:

- (a) the land described in the schedule 2;
- (b) any land in respect of which Australian National has entered into a contract for sale as at the date of this agreement; and
- (c) any other land certified by the Commonwealth Minister and the State Minister to be Excluded Land for the purposes of this agreement;

"Freight Operator" means the person nominated as the Freight Operator for the purposes of this agreement by notice in writing from the Commonwealth Minister to the State Minister given at any time prior to the Effective Date;

"Ground Lease" means a lease by the State to the Freight Operator of the Operational Railways Land containing (subject to clause 9.1) such terms and conditions as the Commonwealth and the State may agree;

"Interstate Mainline Track" means the right title and interest of Australian National in, and its access transit or running rights over, the rail corridors carrying the interstate standard gauge railway line within the State comprising:

- (a) the land granted, reserved or acquired for the construction of a railway or for railway purposes on each of the line sections specified in respect of that line section in column 1 of schedule 3 as authorised by and delineated in or pursuant to the instruments specified in column 2 of schedule 3 (or in any other relevant instrument modifying or varying such corridor); and
- (b) the Track Infrastructure on or over the land referred to in (a) above;

but excluding any part of that land which is referred to in clause 5.5(b) upon its transfer to the State;

"Keswick Passenger Terminal Land" means that part of the SAR Land which is used on the Effective Date in connection with the Passenger Services (being the land leased to the Passenger Operator pursuant to and more particularly described in the Passenger Terminal Site Lease);

"land" includes:

- (a) a legal or equitable estate in land; and
- (b) a right, power or privilege over, or in connection with, land

but does not include Track Infrastructure severed from land as contemplated by clause 6.1;

"Leigh Creek Line" means the right title and interest of Australian National in all land granted, reserved or acquired for the construction of the railway on the rail corridors specified in schedule 5 (or in any other relevant instrument modifying or varying such corridor) excluding any part of those corridors which constitutes Interstate Mainline Track;

"Loss or Claim" means, in relation to any person, a damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgment made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;

"Operational Railways Land" means that part of the SAR Land and Commonwealth Railways Land (other than the Leigh Creek Line) which is used on, or intended by the Freight Operator to be used after, the Effective Date in connection with the Railway Services (being the land to be leased to the Freight Operator pursuant to the Ground Lease);

"Passenger Terminal Site Lease" means a lease by the State to the Passenger Operator of the Keswick Passenger Terminal Land containing (subject to clause 9.2) such terms and conditions as the Commonwealth and the State may agree;

"Passenger Operator" means the person nominated as the Passenger Operator for the purposes of this agreement by notice in writing from the Commonwealth Minister to the State Minister given at any time prior to the Effective Date;

"Passenger Services" means the passenger rail services known as the *Indian Pacific*, *The Ghan* and *The Overland* as operated by Australian National on the Effective Date;

"Property Identification Folder" means the folder initialled by the parties for the purposes of identification and marked "A" containing copies of plans of the Excluded Land or parts thereof;

"Railway Services" means services provided in association with the Operational Railways Land including the handling, storage and carriage of freight by rail (and incidentally by road), the storage, servicing and maintenance of rolling stock, the maintenance and replacement of Track Infrastructure and the maintenance and operation of signalling and communication equipment (but excluding the Passenger Services);

"Rail Transfer Agreement" means the agreement dated 21 May 1975 a copy of which is set out in the schedule to the Railways Transfer Legislation;

"Railways Transfer Legislation" means the *Railways Agreement (South Australia) Act 1975 (Commonwealth)* and the *Railways (Transfer Agreement) Act 1975 (South Australia)*;

"Remediation Program" means the program for the remediation of certain parcels of land to be transferred to the State under clause 5.1 identified as such by agreement in writing signed by the Commonwealth Minister and the State Minister or their respective delegates;

"SACBH" means South Australian Co-operative Bulk Handling Limited (ACN 007 556 256) a company limited by guarantee;

"SAGC" means SA Generation Corporation (trading as Optima Energy) a statutory authority established pursuant to the *Electricity Corporations Act 1996 (SA)*;

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"**Sale Agreement**" means an agreement for the sale by the Commonwealth of its shares in the Freight Operator and the Passenger Operator (or if more than one, each such agreement);

"**SAR Land**" means the estate or interest of Australian National on the Effective Date in the land referred to in recital B (other than Excluded Land);

"**South Eastern Lines**" means the rail corridors carrying the broad gauge lines (including yards, sidings, crossing loops and goods loops) from Wolseley to Mount Gambier, Millicent to Mount Gambier and Mount Gambier to the Victorian border;

"**the State**" means the Crown in right of the State of South Australia as a party to this agreement;

"**State Minister**" means the Minister of the State for the time being having responsibility for administration of the *Rail Safety Act 1996*;

"**Tarcoola to Alice Springs Railway Agreement**" means the agreement dated 10 April 1974 approved by the *Tarcoola to Alice Springs Railway Act 1974* (Commonwealth) and the *Tarcoola to Alice Springs Railway Act 1974* (South Australia);

"**Track Infrastructure**" has the meaning given in schedule 4.

1.2 **General**

In this agreement, unless the context otherwise requires:

- (a) a reference to any law or legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) a reference to a recital, clause or schedule is to a recital, clause or schedule in this agreement;
- (c) a reference to a person includes a corporation, partnership, joint venture, association, authority, trust, state or government;
- (d) the singular includes the plural and vice versa;
- (e) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
- (f) a reference to "amendment" includes addition, alteration, deletion, extension, modification and variation;

1.3 Successor to Australian National

Subject to any law or regulation to the contrary, if Australian National is dissolved or otherwise ceases to exist, the rights and obligations of Australian National under this agreement will upon such dissolution become the rights and obligations of the Commonwealth, and all references to Australian National are to be read and construed as references to the Commonwealth.

1.4 Ministerial Delegates

Any act, notice, instrument or agreement required or permitted to be performed, given or signed by the Commonwealth Minister or the State Minister may be performed, given or signed on their behalf by their respective delegates duly authorised in writing either generally or specifically to do so.

1.5 Headings

In this agreement, headings are for convenience of reference only and do not affect interpretation.

ENABLING LEGISLATION**2.1 Commonwealth Legislation**

The Commonwealth will take all practical steps to seek the enactment of legislation:

- (a) authorising the Commonwealth Minister to approve and enter into this agreement on behalf of the Commonwealth;
- (b) authorising the performance and observance of this agreement by the Commonwealth;
- (c) making such provision as is necessary or appropriate for the implementation by the Commonwealth of this agreement and the transactions contemplated by this agreement including provisions facilitating:
 - (i) the termination or variation of the Rail Transfer Agreement;
 - (ii) the vesting in the State the SAR Land and the Commonwealth Railways Land;
 - (iii) the vesting in SAGC the Track Infrastructure on the Leigh Creek Line; and
 - (iv) the issuing of certificates by the Commonwealth Minister and the State Minister or their respective delegates identifying the SAR Land or the Commonwealth Railways Land (or any part thereof).

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2.2 State Legislation

The State will take all practical steps to seek the enactment of legislation:

- (a) authorising the State Minister to approve and enter into this agreement on behalf of the State;
- (b) authorising the performance and observance of this agreement by the State;
- (c) authorising the State Minister to approve and enter into the Ground Lease and the Passenger Lease on behalf of the State;
- (d) authorising the performance and observance by the State of the Ground Lease and the Passenger Lease;
- (e) giving effect for the purposes of the laws of the State (including without limitation the *Real Property Act 1886* and the *Crown Lands Act 1929*) to the transfer to the State of the legal estate in fee simple in the SAR Land and the Commonwealth Railways Land;
- (f) authorising the registration of the Ground Lease and the Passenger Lease under the provisions of the *Real Property Act 1886*;
- (g) providing for such exemptions as may be appropriate for the owner or occupier for the time being of the Operational Railways Land from the laws of the State in relation to:
 - (i) fencing;
 - (ii) State taxes and charges; and
 - (iii) municipal rates, taxes and charges;
- (h) providing for such exemptions as may be appropriate from the laws of the State in relation to the sale of liquor and the conduct of gaming activities on the Passenger Services;
- (i) making such provision as is necessary or appropriate for the implementation by the State of this agreement and the facilitation of the operation of the Railway Services and the Passenger Services including:
 - (i) varying the Rail Transfer Agreement;
 - (ii) issuing of certificates by the Commonwealth Minister or the State Minister or their respective delegates as to the identification of the SAR Land and the Commonwealth Railways Land (or any part thereof) for the purposes of the *Real Property Act 1886* or otherwise;
 - (iii) facilitating the severance and separate ownership of the Track Infrastructure from the SAR Land and the Commonwealth Railways Land (including the Leigh Creek Line).

CONDITIONS**3.1 Conditions Precedent**

The obligations of the parties under this agreement (other than under clauses 2.1 and 2.2) do not become binding and no party is under an obligation to any other party unless:

- (a) the legislation referred to in clauses 2.1 and 2.2 comes into operation; and
- (b) the conditions precedent specified in the Sale Agreement are satisfied or waived,

before the Condition Satisfaction Date.

3.2 Effect of Non-Fulfilment

If the conditions referred to in clause 3.1 are not fulfilled (or waived under clause 3.3) on or before the Condition Satisfaction Date, then this agreement is at an end as to its future operation except for the enforcement of any right or claim which arises on or has arisen before this agreement comes to an end.

3.3 Fulfilment by Waiver

A condition referred to in clause 3.1 is waived if, and only if, the parties agree in writing to waive the condition.

3.4 Obligation to Satisfy Conditions

The parties must do anything needed on their part to ensure that the conditions referred to in clause 3.1 are fulfilled on or before the Condition Satisfaction Date. No party is under any express or implied obligation to procure fulfilment of any condition referred to in clause 3.1, and is not liable to any other party for any Loss or Claim whatever arising out of, or in connection with, or relating to the non-fulfilment of any condition.

3.5 Extent of Obligation to Fulfil Conditions

The obligation imposed on the parties by clause 3.4 does not require a party to waive any condition under clause 3.3.

3.6 Effective Date

Subject to satisfaction or waiver of the conditions referred to in clause 3.1, this agreement takes effect on the Effective Date.

RAIL TRANSFER AGREEMENT**4.1 Waiver of Rights as from Effective Date**

Subject to clause 4.2, the State unconditionally waives and forever relinquishes its rights under the Rail Transfer Agreement and the Adelaide to Crystal Brook Railway Agreement as from the Effective Date to the extent necessary:

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- (a) to permit the Freight Operator to operate the Railway Services;
- (b) to permit the Passenger Operator to operate the Passenger Services; and
- (c) to facilitate the transfer to or vesting in the Freight Operator, the Passenger Operator and SAGC of the Track Infrastructure,

freed and discharged from any obligation to consult with or obtain the consent or approval of the State in relation to any matter which prior to the Effective Date required the consent or approval of, or conferred any rights on, the State.

4.2 Preservation of Other Rights

Nothing in clause 4.1 operates to relinquish or vary the rights of the State:

- (a) under clause 11(8) of the Rail Transfer Agreement and under clause 25(2) of the Adelaide to Crystal Brook Railway Agreement in respect of that portion of the Interstate Mainline Track which comprises SAR Land;
- (b) under clause 11(8) of the Rail Transfer Agreement in respect of the Islington Freight Terminal (being the land described in item 2 of schedule 2); and
- (c) under any other provision of the Rail Transfer Agreement or the Adelaide to Crystal Brook Railway Agreement other than those expressly waived or relinquished under clause 4.1.

4.3 Waiver of Reversionary Rights to AN House

The State agrees that it will on the Effective Date without any further instrument and by force of this clause unconditionally waive its rights under clause 11(8) of the Rail Transfer Agreement in respect of that part the Excluded Land referred to in item 7 of schedule 2;

4.4 Cessation of Services by the Commonwealth

The State consents to the cessation by the Commonwealth and Australian National of Railway Services in the State on and from the Effective Date and releases Commonwealth and Australian National from all obligations howsoever arising to administer, maintain and operate or otherwise work the railways of the State (other than the Interstate Mainline Track).

4.5 Variation of Tarcoola to Alice Springs Railway Agreement

The Tarcoola to Alice Springs Railway Agreement is varied as from the Effective Date by deleting clause 5 of that agreement.

TRANSFER OF RAILWAYS LAND**5.1 Agreement to Transfer**

The Commonwealth agrees that it will transfer or will procure the transfer to the State on the Effective Date of:

- (a) the SAR Land (other than any Excluded Land)
- (b) the Commonwealth Railways Land (other than any Excluded Land).

5.2 **Satisfaction by Statutory Vesting**

The obligation of the Commonwealth under clause 5.1 may be satisfied by the vesting of those assets in the State by Ministerial declaration pursuant to the Commonwealth legislation referred to in clause 2.1.

5.3 **Extent of Interest in Railways Land**

The land referred to in clause 5.1 is to be transferred to the State without reservation of minerals and unlimited as to depth.

5.4 **Certificates as to Railways Land**

A certificate signed by the Commonwealth Minister and the State Minister or their respective delegates identifying:

- (a) the land referred to in clause 5.1 or any part thereof;
- (c) the land referred to in clause 5.5(b) or any part thereof; or
- (b) the Excluded Land or any part thereof; or

shall be conclusive evidence for any purpose as to whether a parcel of land specified in the certificate forms part of the SAR Land, the Commonwealth Railways Land or the Excluded Land (as the case may be).

5.5 **Subdivisions**

If:

- (a) any Excluded Land is included in the title to a parcel of land to be transferred to the State under clause 5.1; or
- (b) the parties agree after the date of this agreement that any land forming part of the Interstate Mainline Track is surplus to that reasonably required or likely to be required for the purposes of providing a corridor and associated access, storage and communications facilities for interstate rail transport,

the Commonwealth will arrange at its cost for a subdivision of the relevant land to be carried out. The State will render and will procure that its authorities render all such assistance as may be reasonably necessary to facilitate that subdivision.

5.6 **Transfer of Subdivided Land**

Upon completion of the subdivision and issue of titles, an instrument of transfer in registrable form will be signed and delivered to the State in respect of the land referred to in clause 5.5 which is to be transferred to the State. Property and (subject to clause 8) risk in that land shall pass to the State:

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- (a) in the case of land referred to in clause 5.5(a), upon vesting under clause 5.2 notwithstanding that separate titles have not been issued; and
- (b) in the case of land referred to in clause 5.5(b), upon the date of transfer.

TRACK INFRASTRUCTURE**6.1 Severance**

It is the intention of the commonwealth and the State that to the extent that any item of Track Infrastructure is affixed to the Operational Railways Land, the Keswick Passenger Terminal Land or the Leigh Creek Line then that item shall first be deemed to be severed from the land to which it is affixed and may be transferred to or vested by the Commonwealth in the Freight Operator, the Passenger Operator or SAGC respectively as personal property capable of separate ownership from the land.

6.2 Interstate Mainline Track and Other Land

For the avoidance of doubt, nothing in this agreement shall constitute a severance or any agreement to sever the Track Infrastructure from the Interstate Mainline Track or from any land other than the Operational Railways Land, the Keswick Passenger Terminal Land or the Leigh Creek Line.

6.3 Track Infrastructure on Leigh Creek Line

The Commonwealth agrees that it will transfer or will procure the transfer to SAGC on the Effective Date of the Track Infrastructure on, over or under the Leigh Creek Line. The obligation of the Commonwealth under this clause may be satisfied by the vesting of that Track Infrastructure by ministerial declaration pursuant to the Commonwealth legislation referred to in clause 2.1.

6.4 Track Infrastructure on South Eastern Lines

If the South Eastern Lines do not form part of the Operational Railway Land:

- (a) the State may for a period of 3 months after the Effective Date endeavour to procure an offer for the purchase from the Commonwealth of all or any part of the South Eastern Lines; and
- (b) the Commonwealth shall be at liberty (for a period commencing 3 months and ending 12 months after the Effective Date) to remove or authorise the removal of any item of Track Infrastructure on those lines and redeploy that Track Infrastructure on any part of the Operational Railway Land on such terms and conditions as the Commonwealth shall determine. The Commonwealth and its agents and contractors shall have such access to the relevant land as may be necessary to dismantle and remove that Track Infrastructure.

REMEDIATION PROGRAM

7.1 Remediation by the Commonwealth

Subject to clauses 7.2 and 7.3, the Commonwealth undertakes at its own cost to discharge the liability of the parties for remediation of identified Contamination of the land to be transferred to the State under clause 5.1:

- (a) to the environmental standards applicable generally in the State as at the date of this agreement; and
- (b) having regard to the purpose for which the land is used at the date of this agreement (or at the date on which the land was last used),

in accordance with the Remediation Program.

7.2 No Admission of Liability

The undertaking on the part of the Commonwealth in clause 7.1 is given voluntarily without any admission as to liability for the contamination and irrespective of the party or parties legally liable for such remediation.

7.3 Cessation of Commonwealth Liability

The Commonwealth's liability under clause 7.1 ceases when the moneys allocated in the Remediation Program have been fully expended in or towards:

- (a) carrying out the Remediation Program;
- (b) the issuing of acceptance certificates pursuant to clause 7.4; and
- (c) to the extent of any surplus, the discharging of any liability of the State for any Loss or Claim of the type referred to in clause 8.1 which arises from Contamination.

7.4 Completion of Remediation

A review of the Remediation Program shall be carried out in such manner as the Commonwealth Minister and the State Minister agree. The State agrees that the Commonwealth will be released from any further liability under clause 7.1 in respect of a parcel of land on the State Minister confirming in writing that the Remediation Program on that land has been satisfactorily completed to the standard required by that clause.

7.5 Disputes

Any party may refer a dispute under this clause to arbitration in accordance with clause 12.7.

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INDEMNITIES**8.1 Liabilities Associated with Land Ownership**

Subject to this clause 8, nothing in this agreement relieves any party from or indemnifies it against any Loss or Claim arising from injury, loss or damage suffered, or from events or circumstances occurring, at any time which Loss or Claim arises from or is associated with the ownership, occupation, use, state or condition of any land (including any Contamination) or the consequences thereof.

8.2 Commonwealth Indemnity

The Commonwealth indemnifies the State against any Loss or Claim of the type referred to in clause 8.1 for which the Commonwealth is liable except to the extent that it was caused or contributed to by the State.

8.3 State Indemnity

The State indemnifies the Commonwealth against any Loss or Claim of the type referred to in clause 8.1 for which the State is liable except to the extent that it was caused or contributed to by the Commonwealth.

8.4 Reduction of Liability

The liability of a party for a Loss or Claim of the type referred to in clause 8.1 shall be reduced to the extent to which it is satisfied pursuant to the Remediation Program.

8.5 Employee Liabilities

Notwithstanding clause 8.1, the State and its instrumentalities and agencies have no liability for any Loss or Claim by or in respect of a person who became an officer or employee of the Commonwealth or Australian National by operation of the Railways Transfer Legislation.

LEASES**9.1 Ground Lease**

The State agrees that it will on the Effective Date sign and deliver to the Freight Operator the Ground Lease. The Ground Lease will contain such terms and conditions as may be agreed between the parties, including provisions:

- (a) for an initial term of 50 years;
- (b) entitling the State to terminate the lease in respect of all or any part of the Operational Railways Land if:
 - (i) the lessee becomes insolvent;
 - (ii) within the first 5 years of the term of the lease the lessee fails to provide for a continuous period of six months the minimum services nominated by the lessee and specified in the lease; or

- (iii) the Operational Railways Land or that part ceases to be used for Railway Services for a continuous period of eighteen months;
- (c) for the transfer to the State at its option of the Track Infrastructure on any part of the Operational Railways Land in respect of which the lease has terminated:
 - (i) where that termination occurs within 5 years of the commencement of the lease, at no consideration; and
 - (ii) in any other case, at valuation on the basis of continued railways usage;
- (d) for rental to be charged:
 - (i) for rail corridors, at a nominal rent; and
 - (ii) for other land, at a nominal rent for the first 5 years and at commercial rates thereafter;
- (e) for the excision from the Operational Railways Land of any land which is or subsequently becomes a Bulk Handling Facility so as to facilitate the lease of that land to SACBH; and
- (f) that the Track Infrastructure on that land will not be removed without the prior written consent of the State.

9.2 **Passenger Terminal Site Lease**

The State agrees that it will on the Effective Date sign and deliver to the Passenger Operator the Passenger Terminal Site Lease. The Passenger Terminal Site Lease will contain such terms and conditions as may be agreed between the parties, including provisions:

- (a) for an initial term of 50 years;
- (b) entitling the State to terminate the lease in respect of all or any part of the Keswick Passenger Terminal Land if:
 - (i) the lessee becomes insolvent; or
 - (ii) the Keswick Passenger Terminal Land or that part ceases to be used for Passenger Services for a continuous period of eighteen months;
- (c) for the transfer to the State at its option of the Track Infrastructure on any part of the Keswick Passenger Terminal Land in respect of which the lease has terminated:
 - (i) where that termination occurs within 5 years of the commencement of the lease, at no consideration; and

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- (ii) in any other case, at valuation on the basis of continued railways usage;
- (d) for rental to be charged at a nominal rate for the first 5 years (or for so much of this period as the specified services continue to be provided) and at commercial rates thereafter; and
- (e) that the Track Infrastructure on that land will not be removed without the prior written consent of the State.

PINNAROO LINE**10.1 Commonwealth to Undertake Standardisation**

The Commonwealth agrees that it will at its cost complete or procure the completion within 12 months of the Effective Date (or such other period as the Commonwealth Minister and the State Minister may agree) of the conversion to standard gauge of the line from Pinnaroo to Tailem Bend to the same standard as applied on the standardisation of the Loxton to Tailem Bend line.

10.2 State Contribution

The State agrees that it will contribute to the cost of the work to be carried out under clause 10.1 in an amount being the lesser of:

- (a) \$2,000,000; and
- (b) one third of the expenditure incurred by the Commonwealth in carrying out that work (as certified in the event of a dispute by the Australian National Audit Office).

AMENDMENT**11.1 Power to Amend**

The provisions of this agreement may be amended by an agreement in writing signed by the Commonwealth Minister and the State Minister or their respective delegates. This agreement may be so amended on more than one occasion.

11.2 Amendments to be Tabled in Parliaments

A copy of an agreement under clause 11.1 shall be tabled in the Commonwealth and the State Parliaments within 15 sittings days from the date on which the agreement is made.

11.3 Effective Date of Amendments

An agreement under clause 11.1 shall, if not disallowed by any Parliament within 15 sitting days of being tabled, take effect at the expiration of 15 sitting days of the Parliament in which the agreement is last tabled.

GENERAL**12.1 Notices**

A notice, consent approval or similar communication under this agreement must be in writing signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and delivered sent by pre-paid mail or transmitted by facsimile to that person's address set out in schedule 1 or another address of which that person may from time to time give notice to each other person.

12.2 Governing Law

This agreement is governed by the law in force in the State and the parties submit to the non-exclusive jurisdiction of the courts of the State and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

12.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

12.4 Severability

Any provision in this agreement which is invalid or unenforceable in any jurisdiction:

- (a) is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; or
- (b) if the provision cannot be read down under paragraph (a), is capable of being severed to the extent of the invalidity or unenforceability,

without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

12.5 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

12.6 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

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12.7 **Disputes**

Where there is a dispute between the parties in respect of this agreement or any of its provisions (a "**Dispute**"):

- (a) any party may at any time after the Dispute arises give to the other parties a notice containing full particulars of the Dispute, including terms proposed for settlement of the Dispute;
- (b) if the Dispute is not resolved between the parties within 28 days of the giving of the notice, any party may refer the Dispute to the arbitration of an independent arbitrator appointed by the Commonwealth Minister and the State Minister;
- (c) the arbitrator shall not perform his or her functions as an arbitrator under any law relating to arbitration, but shall act as an independent expert; and
- (d) the costs of an arbitration under this clause will be shared equally by the Commonwealth and the State.

SCHEDULE 1
Address for Notices
(clause 12.1)

Party

The Commonwealth of Australia

Address

The Secretary,
Department of Transport and Regional
Development
72 Northbourne Avenue
CANBERRA 2601

Facsimile: (06) 274 7819

The State of South Australia

Chief Executive Officer,
Department of Transport
33 - 37 Warwick Street,
WALKERVILLE 5081

Facsimile: (08) 8343 2497

SCHEDULE 2
Excluded Land

Item No.	Description	Title or other particulars
1	Interstate Mainline Track	See Schedule 3
2	Islington Freight Terminal	That part of the land comprised in Certificate of title volume 5276 folio 917 and the whole of the land in certificate of title volume 4397 folio 698 marked "NRC" and delineated in yellow on page 1 of the Property Identification Folder.
3	Cooinda Complex (including ANI tennis club) Flinders Terrace Port Augusta	That part of the land in certificate of title volume 5266 folio 549 marked "Cooinda Complex" and delineated in yellow on page 2 of the Property Identification Folder.
4	ANI Bowling Club Hobby Avenue Port Augusta	The whole of the land in certificate of title volume 5253 folio 943.
5	ANI Stirling Golf Club, Stirling North	The whole of the land in certificate of title volume 4384 folio 532.
6	Seafield Towers, 7 South Esplanade Glenelg	The whole of the land in certificate of title volume 2587 folio 119.
7	AN House (including car park and associated buildings), 1 Richmond Road, Keswick	That part of the land comprised in certificate of title volume 5387 folio 966 marked "AN House", "AN Institute" and "SAMHS" and delineated in yellow on page 3 of the Property Identification Folder.

SCHEDULE 3
Interstate Mainline Track

Rail Corridor	Relevant agreement and/or enabling legislation authorising the construction, and establishing the route, of the railway
Kalgoorlie to Port Augusta	Construction authorised by, and the route set out in the schedule to, the <i>Kalgoorlie to Port Augusta Railway Act 1911 (Cth)</i> Land granted by South Australia and Western Australia in an agreement dated 14 November 1912 (as amended in the case of Western Australia by an agreement dated 9 September 1914) set out in the schedule to the <i>Kalgoorlie to Port Augusta Railway Lands Act 1918 (Cth)</i> and subject to the <i>Transcontinental Railway Land Grant Act 1911 (SA)</i> and the <i>Transcontinental Railway Act 1911 (WA)</i>
Tarcoola to Alice Springs	Agreement dated 10 April 1974 set out in the schedule to the <i>Tarcoola to Alice Springs Railway Act 1974 (Cth)</i> and the <i>Tarcoola to Alice Springs Railway Agreement Act 1974 (SA)</i> .
Port Augusta to Whyalla	Agreement dated 26 February 1970 set out in the schedule to the <i>Port Augusta to Whyalla Railway Act 1970 (Cth)</i> and the <i>Port Augusta to Whyalla Railway Agreement Act 1970 (SA)</i>
Port Augusta to Port Pirie	Agreement dated 29 November 1935 set out in the schedule to the <i>Port Augusta to Port Pirie Railway Act 1935</i> including the route of the railway from Port Augusta to Solomontown (a suburb of Port Pirie)
Adelaide to Crystal Brook	Agreement dated 11 August 1980 set out in the schedule to the <i>Railway Agreement (Adelaide to Crystal Brook) Act 1980 (Cth)</i> comprising a non-urban sector from Salisbury to Crystal Brook (first schedule part 1) and an urban sector from Keswick passenger terminal to Salisbury (first schedule part 2).
Dry Creek South to Outer Harbor	Agreement dated 11 August 1980 set out in the schedule to the <i>Railway Agreement (Adelaide to Crystal Brook) Act 1980 (Cth)</i> comprising the branch line from Dry Creek to Gillman and Port Adelaide (first schedule part 2 clause B1) and the connection from Gillman Yard "D" Cabin to Outer Harbor (first schedule part 3).
Port Pirie to NSW border	Authorised by and constructed pursuant to the <i>Port Pirie Railway Act 1873 (SA)</i> , the <i>Petersburg and Border Railway Act 1884 (SA)</i> , the <i>Petersburg and Border Railway Amendment Act 1886 (SA)</i> and the <i>Railway Deviation Act 1896 (SA)</i> as varied on conversion to standard gauge pursuant to the <i>Port Pirie to Cockburn Railway Deviation Act 1964 (SA)</i> .

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Adelaide to Victorian
Border

Authorised by and constructed pursuant to:

- (a) *Adelaide to Nairne Railway Act 1878 (SA)*; and
- (b) *The Nairne to Victorian Border Railway Act 1882 (SA)*,
with deviations authorised pursuant to the *Nairne to
Victorian Border Railway Deviation Act 1924 (SA)*.

SCHEDULE 4
Track Infrastructure

For the purposes of this agreement the expression "**Track Infrastructure**" means the following improvements, whether or not constituting fixtures at law, owned by Australian National on the Effective Date:

- (a) trackwork including without limitation, rail lines, crossing loops, level crossings, sleepers, ballast, fastenings, points, poles, pylons, pipes, drains, structures, supports, overhead lines, buffer stops, posts and signs;
- (b) earthworks and formations including cuttings, embankments, tunnels (including any tunnel lighting and ventilation), ditches and retaining walls;
- (c) bridges, culverts, overpasses, underbridges, viaducts, jetties and wharves;
- (d) signalling and train control and communications systems (including signal boxes, huts and telegraph and transmission lines and instruments) which are necessary for the safe and proper movement of trains;
- (e) access roads, approaches, footpaths, gates, cattle stops, and fences; and
- (f) buildings and other structures including platforms, railway stations, passenger terminals, freight sheds, freight terminals, roundhouses, workshops and associated buildings.

SCHEDULE 5
Leigh Creek Line

Rail Corridor (including land used for yards, sidings, crossing loops and goods loops)	Relevant agreement and/or enabling legislation authorising the construction, and establishing the route, of the railway
Interstate Mainline Track (lead 19) to Northern Power Station loop (lead 26)	Port Augusta Spur Agreement dated 28 June 1962 between the Commonwealth Railways Commissioner and The Electricity Trust of South Australia and subsequent arrangements set out in an unsigned Port Augusta Loop Agreement between Australian National and The Electricity Trust of South Australia.
Stirling North to Brachina	Agreement forming the schedule to the <i>Stirling North to Brachina Railway Act 1952</i> (Commonwealth)
Brachina to Leigh Creek North Coalfield	Agreement forming the schedule to the <i>Brachina to Leigh Creek North Coalfield Railway Act 1950</i> (Commonwealth) and the <i>Leigh Creek North Coalfield Railway Agreement Act 1950</i> (South Australia).

SIGNED by **THE HONOURABLE**)
JOHN RANDALL SHARP Minister)
for Transport and Regional)
Development of the Commonwealth)
in the presence of:

JOHN SHARP

.....

R GIBSON

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SIGNED by **THE HONOURABLE**)
DIANA LAIDLAW Minister for)
Transport of the State of South)
Australia in the presence of:

DIANA LAIDLAW

.....

H L WEBSTER

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