

South Australia

Railways (Operations and Access) (Miscellaneous) Amendment Act 2010

An Act to amend the *Railways (Operations and Access) Act 1997*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Railways (Operations and Access) Act 1997*

- 4 Amendment of section 3—Objects
 - 5 Amendment of section 4—Interpretation
 - 6 Repeal of section 21
 - 7 Amendment of section 22—Segregation of accounts and records
 - 8 Amendment of section 31—Access proposal
 - 9 Insertion of Part 5A
 - Part 5A—Confidential information
 - 33A Confidential information
 - 10 Amendment of section 38—Principles to be taken into account
 - 11 Insertion of section 50A
 - 50A Time limit for arbitration
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Railways (Operations and Access) (Miscellaneous) Amendment Act 2010*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Railways (Operations and Access) Act 1997*

4—Amendment of section 3—Objects

Section 3(c)—after "railway services" insert:

through the promotion of the economically efficient use and operation of, and investment in, those services

5—Amendment of section 4—Interpretation

- (1) Section 4, definition of *pricing principles*—delete the definition and substitute:

pricing principles—

- (a) relating to the fixing of floor and ceiling prices—see section 27;
- (b) relating to the price of access to a railway service—see section 38(2);

- (2) Section 4, definition of *railway infrastructure*—delete the definition and substitute:

railway infrastructure means—

- (a) fixed railway infrastructure; and
- (b) other installations, plant and equipment (whether fixed or moveable) used or available for use in connection with the operation of the railway network to the extent that it is brought within the ambit of this Act by proclamation,

but does not include a private siding within the meaning of the *Rail Safety Act 2007*, other than a private siding prescribed by the regulations to be railway infrastructure for the purposes of this Act;

6—Repeal of section 21

Section 21—delete the section

7—Amendment of section 22—Segregation of accounts and records

Section 22—after subsection (1) insert:

- (1a) An operator whose railway service business includes providing (or providing and operating) railway infrastructure for another industry participant must keep accounts and records of that part of its railway service business so as to give a true and fair view of that part of the business as distinct from the remainder of its railway service business.

8—Amendment of section 31—Access proposal

Section 31—after subsection (3) insert:

- (3a) Despite subsection (3)(a), notice is not required to be given to the regulator if the contract giving access to the service would, if executed—
 - (a) be of an annual value of less than \$50 000; or

- (b) be for a term of less than 2 months.

9—Insertion of Part 5A

After Part 5 insert:

Part 5A—Confidential information

33A—Confidential information

- (1) Information obtained under section 29 or Part 5 that—
- (a) could affect the competitive position of a proponent or a respondent; or
 - (b) is commercially valuable or sensitive for some other reason, is to be regarded as *confidential information*.
- (2) A person who obtains confidential information must not disclose that information unless—
- (a) the disclosure is reasonably required for the purposes of this Act; or
 - (b) the disclosure is made with the consent of the person who supplied the information; or
 - (c) the disclosure is required or authorised by law; or
 - (d) the disclosure is required by a court or tribunal constituted by law; or
 - (e) the disclosure is in prescribed circumstances.

Maximum penalty: \$15 000.

- (3) A person who obtains confidential information must not (unless authorised by the person who supplied the information) use the information for a purpose which is not authorised or contemplated by this Act.

Maximum penalty: \$15 000.

- (4) Subsections (1), (2) and (3) do not prevent or restrict the disclosure of information to the regulator.
- (5) Despite subsections (1), (2) and (3), the regulator may, if the regulator considers it is in the public interest to do so, disclose confidential information to either or both of the following:
- (a) the Minister;
 - (b) the public.

- (6) A person who obtains confidential information must not use the information for the purpose of securing an advantage for himself or herself or for some other person in competition with the person who provided the information.

Maximum penalty: \$100 000.

- (7) An operator must, in connection with the operation of this section, develop and maintain a policy to ensure that confidential information obtained by the operator is not disclosed or used except as authorised by this section.
- (8) The operator must provide a copy of a policy developed under subsection (7) to the regulator and to any other person who requests a copy from the operator.

10—Amendment of section 38—Principles to be taken into account

- (1) Section 38(1)—delete paragraph (g) and substitute:
 - (g) the pricing principles—
 - (i) relating to the fixing of floor and ceiling prices specified in section 27; and
 - (ii) relating to the price of access to a railway service specified in subsection (2); and
- (2) Section 38(1)—after paragraph (m) insert:
 - and
 - (n) other matters the arbitrator considers appropriate.
- (3) Section 38(2)—delete subsection (2) and substitute:
 - (2) The pricing principles relating to the price of access to a railway service are as follows:
 - (a) that access prices should allow multi-part pricing and price discrimination when it aids efficiency;
 - (b) that access prices should not allow a vertically integrated operator to set terms and conditions that would discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others would be higher;
 - (c) that access prices should provide incentives to reduce costs or otherwise improve productivity.

11—Insertion of section 50A

Before section 51 insert:

50A—Time limit for arbitration

- (1) An award must be made within the period of 6 months from the date on which the dispute is referred to arbitration (the *standard period*).
- (2) However, if after the commencement of the standard period the arbitrator exercises a power under this Part in relation to the provision of information or documents, any period between the date of the exercise of the power and the date of compliance is not to be taken into account when determining the end date of the standard period.