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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL RAIL CORPORATION AGREEMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Graham Richardson, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
SENATE TO THE BILL AS INTRODUCED



NATIONAL RAIL CORPORATION AGREEMENT BILL 1991

GENERAL OUTLINE

The purpose of the National Rail Corporation Agreement Bill 1991 is to allow the Commonwealth to approve the Shareholders' Agreement signed by the Commonwealth, New South Wales, Victoria, Queensland, and Western Australia on 30 July 1991 relating to the establishment of the National Rail Corporation (NRC). The Agreement is set out in Schedule 1 of the Bill.

The parties to the Agreement agreed that a company would be established for the purpose of conducting interstate rail freight operations in Australia on a commercial basis in accordance with principles compatible with those set out in the Heads of Government Agreement on the National Rail Freight Corporation of 31 October 1990.

These principles are:

(a) that the company will:

- (i) operate on a strictly commercial basis, with a financially viable corporate plan, and be subject to the *Trade Practices Act 1974*;
- (ii) have access (by ownership or other appropriate arrangements) to the assets, including track infrastructure, necessary to achieve commercial viability;
- (iii) operate under labour arrangements incorporated in an enterprise award, which reflect best practice in productivity standards through efficient work and manning practices, determined by the technical capacity of its equipment and commercial considerations, with cost efficiencies being, as a minimum, in line with those identified by the National Rail Freight Initiative Task Force in its Report of 21 March 1991 to the Australian Transport Advisory Council;
- (iv) have the capacity to contract out activities where that is the most efficient approach;
- (v) provide access on a commercial basis to the NRC network and to terminal facilities for private and public sector operators;
- (vi) have the capacity to provide services to Governments, with the charging for such services being on a strictly commercial basis; and

- (vii) not be responsible, financially or in any other way, for redundancies that may arise in rail authorities resulting from its formation and transfer of functions and assets to it; and
- (b) that during the Establishment Period the current financial position of the Commonwealth and State rail authorities' interstate rail freight operations will not deteriorate as a result of the Commonwealth and the States participating in the formation and operation of the Company.

In addition the Bill establishes the operating framework for the NRC insofar as the Commonwealth is concerned.

The Bill provides that the NRC will:

- . be subject to all rates, taxes and charges;
- . not have shield of the crown; and
- . be treated as an ordinary incorporated company, including being subject to the *Trade Practices Act 1974*

The Bill provides for the transfer to the NRC of assets owned or leased by the Commonwealth or the Australian National Railways Commission (AN). It also provides for substituting the NRC for the Commonwealth or AN in cases where the legislative transfer of assets or contracts have been agreed in accordance with the Shareholders' Agreement.

The Bill provides for compensation where a transfer of assets under the proposed Act would result in the acquisition of property otherwise than on just terms as defined in s 51(xxxi) of the Constitution.

The Bill provides for the appointment of the Commonwealth Auditor General as the Company's auditor and for the tabling of the Company's official reports before each House of Parliament.

The Bill also authorises the making of regulations, not inconsistent with the proposed Act, that are necessary for carrying out or giving effect to the Agreement and to the proposed Act.

FINANCIAL IMPACT STATEMENT

The Bill does not appropriate funds. However the Commonwealth's cash equity contributions under the NRC Agreement are forecast as follows (\$ million):

1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	TOTAL
40.0	131.6	58.7	37.1	22.3	6.1	295.8

The Commonwealth's commitment to make such equity contributions is dependent on the NRC meeting the agreed principles set out above, particularly principle (a)(iii).

The establishment of the NRC will have an impact on the deficits of State Railway systems and AN. Total losses on interstate rail freight was estimated to have amounted to \$377 million in 1989/90. The NRC is expected to break even within three years and to be fully self-sufficient within five years, leading to a reduction in the call on all taxpayers, State and Federal.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short Title

This clause provides for the proposed Act to be cited as the *National Rail Corporation Agreement Act 1991*.

Clause 2 - Commencement

This clause provides for the proposed Act to commence on a day to be fixed by Proclamation. This will occur when all the parties to the Agreement have enacted legislation approving the Agreement.

Clause 3 - Interpretation

This clause provides definitions for a number of terms used in the Bill.

Clause 4 - Act binds the Crown

This clause provides that the proposed Act will bind the Crown in relation to the Commonwealth, the States and the internal Territories.

PART II - THE AGREEMENT

Clause 5 - Approval of Agreement

This clause provides that the Agreement signed by the Commonwealth, New South Wales, Victoria, Queensland, and Western Australia on 30 July 1991 relating to the establishment of the National Rail Corporation is approved by the Commonwealth.

Clause 6 - Parties to give effect to Agreement

This clause provides that parties and authorities of the parties may do anything authorised by the Agreement and must observe the provisions of the Agreement so far as they are applicable.

This clause has effect only to the extent that each Parliament has the power to provide in relation to the party or authority.

PART III - THE COMPANY

Clause 7 - Commonwealth may hold shares in the Company

This clause provides that the Commonwealth may acquire, dispose of, or deal with shares in the Company in accordance with conditions set out in the Agreement.

Clause 8 - Company is not the Crown

This clause provides that the Company (or its subsidiaries) is subject to the same restraints, taxes and charges of ordinary companies and does not have shield of the Crown. In particular it is subject to all Commonwealth, State and Local Government taxes like any ordinary company. It is required to abide by the provisions of Commonwealth law affecting companies, such as the Trade Practices Act. It is similarly obliged to abide by State and Local Government legislation, such as environmental and planning requirements.

Clause 9 - Minister may vest Commonwealth Rail Freight Assets in Company

This clause provides one method (viz. Ministerial direction) for the transfer of Commonwealth rail freight (i.e. Australian National Rail Commission) assets and contracts to the Company, with the agreement of the Company. Recompense for assets so transferred will be in accordance with the Agreement or as determined by the Minister in the specific case. If assets or contracts are transferred in accordance with the Agreement the value of these assets or contracts will be taken into account when additional shares are issued to shareholders within the first five years.

Proposed subsection (9)4 provides for the transfer of rights, liabilities, etc. associated with the transferred assets or contracts. The provisions of the proposed paragraphs (a) to (d) are subject to relevant Ministerial direction.

Clause 10 - Registration etc. of change in title to assets vested under section 9

This clause provides that an authorised person may register, record or otherwise do whatever is necessary to recognise the change in title of assets vested under Clause 9.

Clause 11 - Stamp duty etc. in relation to instruments under section 9

This clause provides that a State or Territory may impose a liability on the Company to pay stamp duty on assets transferred to the Company under section 9 as if these assets had been transferred as a normal commercial transaction.

Clause 12 - Minister may substitute Company as party to Commonwealth rail freight agreements

This clause provides that the Minister may direct, with the Company's consent that the Company is substituted for a specified party in rail freight agreements. In the case of such directions (except as provided under the direction) the Company will assume rights and liabilities in relation to the agreement and all proceedings in relation to the agreement pending immediately before the transfer will be taken to be proceedings by or against the Company.

Clause 13 - Auditor-General to be Company's auditor

This clause provides that the Commonwealth Auditor-General is appointed as the Company's auditor for as long as the Commonwealth is the largest shareholder.

Subclause 13(3) provides that the Auditor-General will not be liable for prosecution for any acts or omissions as auditor. This is a standard provision.

Subclause 13(4) provides that the auditor holding office prior to this clause coming into effect will cease to hold office at the commencement of operation of this clause.

Proposed subsections 13(5) 13(6) and 13(7) provide that no amount is payable to any person as a result of an auditor ceasing to hold office because of subclause 13(4), except as payment for services provided prior to the commencement of that section or in accordance with clause 14.

Clause 14 - Compensation for acquisition of property

This clause provides that where a transfer of assets under the proposed act (particularly under proposed sections 9 and 12) would result in the acquisition of property otherwise than on just terms the Commonwealth must pay a reasonable amount of compensation to the affected person. The level of compensation will be agreed between the Commonwealth and the person, or failing agreement, will be determined by a court of competent jurisdiction.

Proposed subsection 14(2) provides that the amount of compensation is to take into account any damages or compensation recovered, or other remedy given, to the claimant in another proceeding.

Proposed subsection 14(3) provides that the terms 'just terms' and 'acquisition of property' have the same respective meanings in this clause as in paragraph 51(31) of the Constitution. It also provides that the Australian National Railways Commission or any other authority of the Commonwealth cannot be a party to an action under this clause.

PART IV - MISCELLANEOUS

Clause 15 - Act does not appropriate money

This clause provides that moneys payable by the Commonwealth under the Agreement be paid out of funds lawfully available for the purpose. The proposed Act will not appropriate money.

Clause 16 - Company's financial statement and reports to be laid before Parliament

This clause provides that documents which must be laid before a particular Annual General Meeting of the Company under the Corporations Law of the ACT must be laid before each House of Parliament, within 15 sitting days of the particular Annual General Meeting.

Clause 17 - Regulations

This clause provides that the Governor-General may make regulations to give effect to the Act.

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