

1974-75

AUSTRALIA

HOUSE OF REPRESENTATIVES

RAILWAYS (TASMANIA) BILL 1975

EXPLANATORY NOTES

Circulated by the Minister for Transport.

the Hon. C. K. Jones, M.P.

GENERAL PURPOSE OF THE BILL

The main purpose of the Bill is to approve the Agreement for the transfer of the Tasmanian Government Railways to the Australian Government. The Agreement is based on "Principles to Govern the Transfer of the Tasmanian Government Railway System to the Australian Government" which were tabled in the Australian Parliament on 23 April 1975 and in the Tasmanian Parliament on 1 May 1975.

The Agreement enables Australia to take over the assets, financial liabilities and responsibility, and operations of the railway on 1 July 1975. Provision has been made in the Agreement for the Tasmanian Transport Commission to continue to operate the railway for a period of time known as "the interim period" during which final arrangements, particularly relating to the transfer of employees, will be made. This period is expected to be about 12 months.

CLAUSE 1 SHORT TITLE AND CITATION

This clause gives the short title and citation to the Act.

CLAUSE 2 COMMENCEMENT

The Act shall come into operation on 1 July 1975 subject to the Agreement being approved by the Tasmanian Parliament on or before 1 July 1975.

CLAUSE 3 INTERPRETATION

This clause defines terms used in the Act. Subclause (2) provides that expressions used in the Act have the same meaning as those expressions in the Agreement.

CLAUSE 4 APPROVAL OF AGREEMENT

This clause formally approves the Agreement contained in the schedule.

CLAUSE 5 VESTING OF PROPERTY

This clause is the legislation vesting in the Australian Commission the land and other property to which it is entitled, which is referred to in clause 2(2)(a)(i) of the Agreement.

CLAUSE 6 HYDRO-ELECTRIC COMMISSION TO EXERCISE POWERS ONLY IN ACCORDANCE WITH AGREEMENT

The Hydro-Electric Commission of Tasmania has certain powers in relation to land owned by the Tasmanian Commission. These powers have been modified by clause 4(3) of the Agreement.

CLAUSE 7 TRANSFER OF LIABILITIES

Subclause (1) relates to clause 2(2)(e) of the Agreement provides that the Australian Commission on and after the proclaimed date will be subject to all outstanding liabilities and obligations of the Tasmanian Commission before the declared date in connection with the administration, maintenance and operation of the railways and services transferred.

The Australian Commission under section 68 of the Australian National Railways Act 1917-1975 has an obligation to maintain in good order and repair the railway on any road along which it passes and if in a city or town, the surface between the rails and for 18 inches outside each rail. This maintenance is to be in keeping with the road on which the railway has been constructed. Under sub-clause (2) the maintenance of railways on roads is limited by this section.

CLAUSE 8 APPLICATION OF STATE LAWS

This clause relates to clause 2(2)(c) of the Agreement and overcomes difficulties created by section 52 of the Constitution concerning the operation of State laws to Commonwealth places.

In the event that a State law purporting to have effect in relation to Railway Land (a Commonwealth place), after the commencement date cannot have effect by virtue of section 52, the law shall have effect pursuant to the Commonwealth Places (Application of Laws) Act 1970 as amended.

Section 52 of the Constitution gives the Parliament exclusive power to make laws for the peace, order and good Government of the Commonwealth with respect to the Seat of Government and all places acquired by the Commonwealth for public purposes.

CLAUSE 9 PENDING PROCEEDINGS

This clause relates to clause 2(2)(f) of the Agreement and clarifies the position of litigants in proceedings instituted during the interim period. During this period, proceedings will be instituted against the Tasmanian Commission rather than the Australian Commission, but the Australian Commission will be responsible for any liability incurred by the Tasmanian Commission as a result of such proceedings.

On the declared date, the Australian Commission is to be substituted for the Tasmanian Commission in any outstanding proceedings.

CLAUSE 10 COMMISSION AUTHORISED TO OPERATE RAILWAYS
IN TASMANIA

This clause empowers the Australian Commission to operate the railways and services after the declared date. The clause also empowers the Commission to construct and extend railways in Tasmania and to maintain and operate those railways and services associated with them.

CLAUSE 11 TRANSFER OF EMPLOYEES

This clause relates to clause 12 in the Agreement and provides for action to be taken by the Australian Commission to transfer staff on the declared date.

CLAUSE 12 CERTIFICATES BY MINISTERS

This clause relates to clause 2(2)(a)(iii) and (iv) of the Agreement.

A certificate by the State and Australian Ministers that the right, title and interest in land vested in the Tasmanian Commission is vested in the Australian Commission is conclusive evidence of the matters stated in the certificate.

A certificate by the State and Australian Ministers in relation to other matters arising under this Act or the Agreement shall be prima facie evidence of the matters contained in the certificate.

This will overcome difficulties regarding the interpretation of the Agreement that may arise.

CLAUSE 13 AUSTRALIA AND COMMISSION TO CARRY OUT AGREEMENT

This clause relates to clause 2(2)(a)(ii) of the Agreement and provides that the provisions of the Agreement shall be performed and observed by Australia and the Australian Commission.

CLAUSE 14 EFFECT OF OTHER ACTS

This clause provides that nothing in other legislation will prevent the operation of the Agreement.

CLAUSE 15 CAPITAL OF THE COMMISSION

This is a machinery provision to satisfy the requirements of section 55 of the Australian National Railways Act 1917-1975 relating to the capital of the Commission to be calculated under that Act.

CLAUSE 16 APPROPRIATION

This clause relates to clause 14 of the Agreement and provides for the appropriation of \$5 million that was agreed to be paid to Tasmania under the Agreement.

CLAUSE 17 REGULATIONS

This clause relates to clause 2(2)(a)(v) of the Agreement and is the usual regulation making power.

THE SCHEDULE

The Schedule to the Bill embodies the Agreement signed by the Prime Minister of Australia and the Premier of Tasmania.

RECITALS

The recitals explain what is intended to be achieved by the Agreement.

PART I

CLAUSE 1 OF THE AGREEMENT

DEFINITIONS

This clause contains definitions of terms used in the Agreement. Two definitions should be noted:

- (1) "commencement date" - this is the day on which the railway will become vested in Australia and is 1 July 1975;
- (2) "declared date" - this is the date when the interim arrangements are concluded and the responsibility for the present Tasmanian Government Railways will vest absolutely with the Australian Government.

Subclauses 2, 3 and 4 are usual clauses simplifying terms in the Agreement and assisting in clarifying its interpretation.

CLAUSE 2 OF THE AGREEMENT

APPROVING AND IMPLEMENTING LEGISLATION

In addition to a number of pieces of legislation being passed, the Agreement is expressed not to come into effect until a certificate has been completed pursuant to sub-clause (1). The effect of the certificate is to

enable the Agreement to come into effect as soon as legislation approving it has been passed by the Australian and State Parliaments.

Sub-clause (2) sets out the legislation required to approve the Agreement and other legislation to give effect to it. This legislation provides for:

1. The approving of the Agreement.
2. Vesting in the Australian Commission land and other property under the Agreement.
3. Authorisation and requirement for the parties to perform and observe the provisions of the Agreement.
4. A certificate by Ministers that the right, title and interest of the Tasmanian Commission in land is vested in the Australian Commission, is conclusive evidence of this vesting.
5. A certificate by Ministers in relation to other matters not covered by 4 above arising under the legislation or the Agreement is prima facie evidence of the matters contained in the certificate.
6. Authorisation of making of regulations or by-laws.
7. State legislation concerning application of State laws during the interim period in relation to the administration, maintenance and operation of railways and services.
8. Application of State laws by virtue of Commonwealth Places (Application of Laws) Act 1970 as amended, which may have become invalid under section 52 of the Constitution.

Note: Section 52 of the Constitution provides inter alia "The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to -

- (i) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes".

9. State legislation discharging the State and the Tasmanian Commission on and after the declared date from outstanding liabilities and obligations before the declared date.
10. Australian Commission to become subject on and after the declared date to all liabilities and obligations referred to in (9) above - and for the Australian Commission to be substituted for the Tasmanian Commission in any action or proceeding.
11. Australian and State legislation concerning proceedings with respect to land or other property. Any proceedings which are commenced against the Tasmanian Commission during the interim period should be continued against the Australian Commission at the conclusion of this period.
12. State legislation giving a general power to the Australian Commission to administer, maintain and operate in the State railways constructed or acquired by Australia, and any services incidental, or supplementary to or operated in association with the railways. (This clause relates to principle 7 - set out below.)

Note: There are some services operated by Tasmanian Railways which may not come within the definition of "railways" in the Constitution. As a consequence it is necessary for the State to confer this power.

2. State legislation conferring power on Australia and the Australian Commission to construct and extend railways in the State. (This clause relates to principle 6 - set out below.)

1. Legislation by the State conferring power on Australia to administer, maintain and operate railways and other services acquired by Australia and of any railways constructed or extended by Australia.

This sub-clause is required because of the provision of section 51 (xxxvii) of the Constitution, which provides:

"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:-

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:"

Principle (6):

"The power to construct or extend railways in the State will be conferred on Australia so that the consent of the State will not be required in individual cases."

Principle (7):

"The State will confer a general power to operate services ancillary to the railways, and will transfer to Australia the non-rail ancillary services currently being provided by the railways."

CLAUSE 3 OF THE AGREEMENT

COMPLIANCE WITH AGREEMENT

This is a usual provision securing compliance by the parties with the Agreement.

PART II

CLAUSE 4 OF THE AGREEMENT

ASSETS

This is the major operative clause in the Agreement, and provides that in consideration of the financial arrangements agreed to, the Australian Commission shall be entitled to the land and other property, rights and assets of the State and Tasmanian Commission used or held for use of the railways or intended or reserved for the purposes of railways.

Sub-clause 2 contains a number of exceptions to this provision, in particular certain land consisting of roads, land and cottages separated from railway land by land not vested in the Tasmanian Commission, cottages on other land vested in the Tasmanian Commission which have been sold and the plant, equipment and materials in the Precision Tool Annexe.

Sub-clause 3 sets out the rights of the Tasmanian Hydro-Electric Authority in respect of railway land to be transferred.

CLAUSE 5 OF THE AGREEMENT

INTERIM ADMINISTRATION, MAINTENANCE AND OPERATIONS
OF RAILWAYS AND SERVICES

This clause relates to principle 1 - set out below.

It was not possible for all necessary arrangements, particularly those related to employees, to be made by the commencement date, and it was necessary to provide for a period of time, expected to be about 12 months, during which the Tasmanian Commission would continue to operate the railway to be transferred on Australia's behalf.

During this period the Tasmanian Transport Commission will comply with all directions of the Australian Commission. The provision also defines the action the Tasmanian Transport Commission can take with respect to dealing with land and property to be vested in Australia or the acquisition of other land and property.

Principle (1):

"An Agreement will be prepared as a matter of urgency to formally transfer the State's railway system, and full financial responsibility therefor, to Australia, with effect from 1 July 1975. The Agreement will make provision for an interim arrangement whereby the operation of the railways will remain under the existing State railway administration, with the railway staff remaining subject to State conditions of employment until it is possible to complete arrangements for the transfer of employees to Commonwealth Railways employment. During this period the State railway management will act as "agent" for and be responsible to the Australian Government,

which will have full power of decisions concerning operation of the railway including the services to be provided, fares and freight rates, etc. (subject to the qualifications referred to below)."

CLAUSE 6 OF THE AGREEMENT

CONSULTATION REGARDING OPERATION OF RAILWAYS

This clause relates to principle 3 - set out below.

The Australian Government has agreed to consult with Tasmania when requested to do so, on matters considered to be of concern to the State, concerning the operation of existing and new railways.

Principle (3):

"The Australian Government will agree to consult with the Tasmanian Government, at the request of that Government, on matters concerning the operation of the railways that are considered to be of concern to Tasmania."

CLAUSE 7 OF THE AGREEMENT

RATES AND CHARGES

This clause relates to principle 4 - set out below.

The Australian Government has agreed that the Australian Commission will continue to grant concessional rates and charges when requested by the State. The State will, however, be required to maintain its present level of subsidies for concessions.

Principle (4):

"Concessional rates and charges currently provided by the railway, will continue to be provided following transfer on request by that State. If the State is subsidising the railway for some or all of these concessions at present, it will continue to do so after transfer. If a subsidy is provided by railway revenue at present, this practice will be continued after transfer."

CLAUSE 8 OF THE AGREEMENT

DISPUTES REGARDING CESSATION OF SERVICES OR CONCESSIONS

This clause relates to principle 5 - set out below.

The Australian Government has agreed that where, following consultation, there is a dispute regarding cessation of any railway services or payments for concessions, the matter will be referred to Arbitration.

Principle (5):

"Where, following consultation, there is dispute between the two Governments concerned regarding cessation of services or payments to be made for concessions which are currently provided by the railway and which it is agreed are to be continued, the matter shall be determined by arbitration."

CLAUSE 9 OF THE AGREEMENT

STATE REPRESENTATION ON THE AUSTRALIAN NATIONAL RAILWAYS COMMISSION AND THE AUSTRALIAN SHIPPING COMMISSION

This clause relates to principle 2 - set out below.

This clause concerns the entitlement by the State to nominate a representative to serve as a part-time Commissioner for an initial term of five years on the Australian National Railways Commission and also a representative on the Australian Shipping Commission for a term of five years, both subject to acceptance of the nominee by the Australian Minister for Transport.

Principle (2):

"The State will be able to nominate a representative to be appointed to a position of part-time Commissioner of the proposed Australian National Railways Commission, for an initial term and to the Australian Shipping Commission for one term, both nominations to be subject to Australian Government approval."

CLAUSE 10 OF THE AGREEMENT

ADDITIONAL PROVISIONS REGARDING LAND AND MINERALS

Sub-clauses (1), (2) and (3) are an extension of the general power to be conferred on the Australian Commission by the State, in relation to the construction and extension of railways. The effect of the clause is to enable the Australian Commission to obtain the land required for construction or extension which is State Crown Land, free of charge. Other land required would be purchased in the usual way.

Sub-clause (4) relates to surveys that are considered necessary.

Sub-clause (5) relates to principle 8 - set out below - and provides that the State will have the right of first refusal to land which vests in the Australian Commission but which is no longer required for the purposes of Australia, the Australian Commission, or any other Authority or Instrumentality of Australia.

Principle (8):

"All land currently used for railway purposes will be transferred to Australia in fee simple, without reservation for minerals and unlimited as to depth, together with that land currently vested in the railways Commission for railway purposes, but not currently used for such purposes, provided such land can be seen to be required for railway purposes in the foreseeable future. If following the transfer the Australian Government including Australian Government Statutory Authorities determine that any part of the land transferred is not required, such land will not be disposed of without the Tasmanian Government being given the right of first refusal on such terms as are agreed between the two Governments and having regard to the basis on which that land was transferred to the Australian Government."

CLAUSE 11 OF THE AGREEMENT

TAXES REGARDING SERVICES

This clause provides that the Australian Commission shall not be liable to pay fees, taxes or other charges in connection with the operation of the services which are incidental or supplementary to or are operated in association with railways. (See principle 7 - set out below Clause 2).

PART III

CLAUSE 12 OF THE AGREEMENT

TRANSFER OF EMPLOYEES

This clause will enable the occupants of positions of the Tasmanian Transport Commission who will be transferred to the Australian Commission to be identified and on the declared date to be transferred to employment in the Australian Commission.

There are a number of employees in the Tasmanian Commission who have a railway function but who are not actually employed on the railways - for example, the Tasmanian Commission provides accounting, legal and economic services to the Tasmanian Government Railways. Sub-clause 2 provides that their future employment shall be determined by agreement between them, the Tasmanian Commission, the Australian Government and the Australian Commission.

CLAUSE 13 OF THE AGREEMENT

DECLARED DATE

When the necessary arrangements for employees have been completed it will be possible to conclude the interim arrangements in clause 5. This will be achieved by a declaration in the Australian Gazette by the Australian Minister after consultation with the State Minister and will mark the date on which the Australian Commission assumes full control over the transferred railway. The date is expected to be about 12 months from the commencement date.

CLAUSE 14 OF THE AGREEMENT

PAYMENT

This clause relates to principle 12 - set out below.

This clause provides that Australia will pay to the State the sum of \$5 million.

Principle (12):

"Subject to ratification of the proposed Agreement by the two Parliaments before the end of 1974/75, the State shall be paid in that year an amount of \$5 million as a first contribution in consideration for land, minerals and other assets."

CLAUSE 15 OF THE AGREEMENT

DEBTS AND LIABILITIES

This clause relates to principle 14 - set out below.

The amount of debt to be taken over is set out in the schedule. The schedule was agreed between the Australian and State Treasuries.

The revised Financial Agreement will set out arrangements for sinking fund payments but it will not be practical to relieve the State of sinking fund payments in 1975/76 on the debt to be transferred on 1 July 1975. The State will however, be relieved of sinking fund payments for subsequent years. An assurance has been given that the Tasmanian Government will, during the interim period, be reimbursed for the relevant sinking fund charges for 1975/76.

The State will also be relieved of its obligations under the Railway Agreement Act 1971 relating to the construction of the Bell Bay railway.

The Australian Government will accept financial responsibility for all liabilities other than those in sub-clause (a) and (b) of this clause incurred before the commencement date and not then satisfied, in relation to railways and services.

Principle (14):

"The assets, both fixed and current, of the railways will be transferred to the Australian Government as from 1 July 1975 and the Australian Government will accept the liabilities of the railways as at that date, with the qualification that the amount of debt to be transferred will be the amount shown in the railways accounts at 30 June 1975 plus an agreed amount representing debt previously "written off". The Australian and State Treasuries will consult as to the precise amount and composition of the debt to be transferred."

CLAUSE 16 OF THE AGREEMENT

REVENUE FROM AND COSTS OF OPERATIONS
OF THE RAILWAYS AND SERVICES

This clause contains the principles regarding the costs of operations of the railways in the interim period (see clause 5).

In essence the effect of this clause is that while the Tasmanian Commission continue to operate the railways during the interim period any losses on operations will be funded by the Australian Commission and similarly any profits will be paid to the Australian Commission.

Payments for long service leave, sick leave, workmen's compensation and employer contributions will be charged as current expenditure - see principle 15 - set out below.

Principle (15):

"Payments in respect of long service leave, retiring allowances, sick leave, workmen's compensation and employer contributions towards superannuation shall continue to be charged as current expenditures during the interim arrangement and shall be taken into account in estimating the appropriate costs of operations.

In respect of employee contributions to the Tasmanian Superannuation Fund and the Retirement Benefits Fund an agreed transfer of investments will be made to the Australian Superannuation Fund. The investments transferred shall be related to an equitable division of the total investments of the two State Funds. The object of the transfer will be to disadvantage neither the State employees to be transferred nor the members of the Australian scheme. The details of the transfer are to be worked out by representatives of the Treasuries."

CLAUSE 17 OF THE AGREEMENT

TRANSFER OF INVESTMENTS TO AUSTRALIAN SUPERANNUATION FUND

This clause relates to principle 15 - set out below clause 16.

This clause provides for the principles to be observed in respect of the transfer of investments from the State to the Australian superannuation funds. These are

1. investments transferred shall be related to an equitable division of total investments of the State Superannuation Fund and the Retirement Benefits Fund:
2. transfer of investments shall not operate to disadvantage employees to be transferred or contributors to the Australian Superannuation Fund.

CLAUSE 18 OF THE AGREEMENT

ACCOUNTS INFORMATION ETC

Sub-clause (1) provides that as soon as practicable after the commencement date the Tasmanian Commission will prepare a statement of assets and liabilities of the Commission.

Sub-clause (2) provides that during the interim period proper accounts and records will be kept and be audited by the State Auditor-General.

Sub-clause (3) provides that the Australian Auditor-General may submit reports on the acceptability of the financial statements referred to in sub-clause (2).

Sub-clause (4) provides for access by Australia or the Australian Commission to financial and other records and documents of the Tasmanian Commission.

PART V

CLAUSE 19 OF THE AGREEMENT

REMOVAL OF ANNEXE

This clause relates to principle 17 - set out below.

The Precision Tool Annexe is a commercial engineering enterprise operated by the Tasmanian Transport Commission and located in the Launceston Railway Yard.

It has been agreed that the plant, equipment and materials of the annexe should be moved within 10 years or agreed longer period and will not be transferred to the Australian Government. Until the annexe is moved the Tasmanian Transport Commission will be responsible for its upkeep.

Principle (17):

"The tool annexe operated by the Tasmanian Transport Commission on railway land at Launceston will be moved off railway land within 10 years. During this period, or such longer period as the two Governments agree to, the State will be allowed access to the annexe on such terms and conditions as are agreed, and will be responsible for the upkeep and maintenance of the annexe."

MISCELLANEOUS

PART VI

CLAUSE 20 OF THE AGREEMENT

ARBITRATION

When the agreement provides for a matter to be referred to arbitration it shall be in accordance with this clause.

The clause provides for an independent arbitrator, acceptable to both parties. He is to act as an independent expert or adjudicator and will not be bound by any law relating to arbitration.

CORRIGENDUM
TO
EXPLANATORY NOTES
ON
RAILWAYS (TASMANIA) BILL 1975

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Clause 18 of the Agreement

Accounts and information etc.

Delete note on sub clause (3) and insert
following

Sub clause (3) provides that the State Auditor-
General may submit reports on the Audit referred to in
sub clause (2), relating to the interim period.