

# Rail Corporations Act 1996

Act No. 79/1996

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Victoria

No. 79 of 1996

# Rail Corporations Act 1996<sup>†</sup>

[Assented to 17 December 1996]

**The Parliament of Victoria enacts as follows:**

## **PART 1—PRELIMINARY**

### **1. *Purpose***

The main purpose of this Act is to establish V/Line Freight and Victorian Rail Track and to provide for the transfer of property, rights and liabilities to them.

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**2. Commencement**

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 January 1998, it comes into operation on that day.

**3. Definitions**

- (1) In this Act—

**"declared railway service"** means a railway service declared by an Order under section 16;

**"liabilities"** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**"Office"** means Office of the Regulator-General established under the **Office of the Regulator-General Act 1994**;

**"property"** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

**"railway"** does not include a railway on which rolling stock is propelled by electricity from an overhead power supply, other than such a railway declared under sub-section (2) to be a railway for the purposes of this Act;

**"rail corporation"** means V/Line Freight or Rail Track;

**"rail infrastructure"** means the facilities that are used to operate a railway and includes, but is not limited to, railway track, associated track structures and works (such as cuttings, tunnels, bridges, stations, platforms, excavations, land fill, track support earthworks and drainage works), over-track structures, under-track structures, service roads, signalling systems, rolling stock control systems, communications systems, notices and signs, overhead electrical power supply systems and associated buildings, workshops, depots, yards, plant, machinery and equipment, but does not include rolling stock;

**"Rail Track"** means Victorian Rail Track established by Division 2 of Part 2;

**"rights"** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**"rolling stock"** means a vehicle that operates on or uses a railway track, and includes a locomotive, carriage, rail car, rail motor, train, road/rail vehicle, trolley, wagon or monorail vehicle.

- (2) The Governor-in-Council, by Order published in the Government Gazette, may declare a railway on which rolling stock is propelled by electricity from an overhead power supply to be a railway for the purposes of this Act.
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**PART 2—RAIL CORPORATIONS**

**Division 1—V/Line Freight**

**4. *Establishment***

- (1) V/Line Freight is established.
- (2) V/Line Freight—
  - (a) is a body corporate with perpetual succession;
  - (b) has an official seal;
  - (c) may sue and be sued;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (2) All courts must take judicial notice of the seal of V/Line Freight affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (3) The official seal of V/Line Freight must be kept in such custody as V/Line Freight directs and must not be used except as authorised by V/Line Freight.

**5. *V/Line Freight not to represent the Crown***

V/Line Freight is a public authority but does not represent the Crown.

**6. *Objective***

The principal objective of V/Line Freight is to perform its functions in an efficient and commercial manner.

**7. Functions and powers**

- (1) The functions of V/Line Freight are—
    - (a) to operate rail freight services;
    - (b) to operate services ancillary or incidental to its rail freight services;
    - (c) any other functions conferred on V/Line Freight by this or any other Act.
  - (2) V/Line Freight—
    - (a) may enter into contracts, agreements, leases and licences for the carrying out of its functions;
    - (b) may engage agents or consultants;
    - (c) may act as agent of another person;
    - (d) may do all things necessary or convenient to be done for, or in connection with, carrying out its functions or achieving its objectives.
  - (3) Without limiting the generality of the functions and powers conferred on it, V/Line Freight—
    - (a) may form, or participate in the formation of, or be a member of companies;
    - (b) may form, or participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
    - (c) may act as trustee;
    - (d) may engage in any business, undertaking or activity incidental to the performance of its functions;
    - (e) may make its staff and property vested in or managed by it available for engagement or
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use by other service providers, including providers of rail passenger services.

**Division 2—Victorian Rail Track**

**8. *Establishment***

- (1) Victorian Rail Track is established.
- (2) Rail Track—
  - (a) is a body corporate with perpetual succession;
  - (b) has an official seal;
  - (c) may sue and be sued;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (2) All courts must take judicial notice of the seal of Rail Track affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (3) The official seal of Rail Track must be kept in such custody as Rail Track directs and must not be used except as authorised by Rail Track.

**9. *Rail Track not to represent the Crown***

Rail Track is a public authority but does not represent the Crown.

**10. *Objective***

The principal objective of Rail Track is to perform its functions in an efficient and commercial manner.

**11. *Functions and powers***

- (1) The functions of Rail Track are—
- (a) to establish, manage and maintain railways and rail infrastructure;
  - (b) to direct, control and charge for access to, and movement of rolling stock on, railways;
  - (c) any other functions conferred on Rail Track by this or any other Act.
- (2) Rail Track—
- (a) may enter into contracts, agreements, leases and licences for the carrying out of its functions;
  - (b) may acquire and operate rolling stock for the purpose of carrying out its functions;
  - (c) may engage agents or consultants;
  - (d) may act as agent of another person;
  - (e) may do all things necessary or convenient to be done for, or in connection with, carrying out its functions or achieving its objectives.
- (3) Without limiting the generality of the functions and powers conferred on it, Rail Track—
- (a) may form, or participate in the formation of, or be a member of companies;
  - (b) may form, or participate in the formation of, and may participate in, partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
  - (c) may act as trustee;
  - (d) may engage in any business, undertaking or activity incidental to the performance of its functions;
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- (e) may make land and other property vested in or managed by it available for use by other persons.

**12. *Clearance of trees etc***

- (1) Rail Track, by written notice, may require the owner or occupier of any land to fell and remove any tree or wood on that land that is within 60 metres of a railway track and that could obstruct or endanger the railway track or obstruct a view of a signal box from any portion of the railway track.
- (2) Notice under sub-section (1) may be served on an owner or occupier—
- (a) personally; or
  - (b) by sending it by post to the owner or occupier at that person's usual or last known residential or business address; or
  - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
  - (d) in a manner prescribed by any other Act or law for service on a person or class of persons of the same type as the owner or occupier; or
  - (e) if the identity or address of the owner or occupier is not known—
    - (i) by displaying it on the land; and
    - (ii) by publishing a copy of it and a description of the land in a newspaper circulating generally in Victoria.
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- (3) If the owner or occupier of the land does not comply with the notice within the time specified in the notice, Rail Track may—
- (a) enter the land at any reasonable time and carry out the work specified in the notice; and
  - (b) recover the cost of carrying out the work from the owner or occupier as a debt.

**13. *No obligation to fence***

- (1) Despite any Act or rule of law to the contrary, Rail Track—
- (a) is not required to fence or contribute to the fencing of any portion of a railway; and
  - (b) is not liable for any damage that may be caused by reason of any railway not being fenced in or fenced off.
- (2) Rail Track may, but is not obliged to, erect and maintain such fences in connection with a railway as it thinks proper.

**14. *Application of Office of the Regulator-General Act 1994***

- (1) This Division is relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**.
- (2) For the purposes of Part 3 of the **Office of the Regulator-General Act 1994** the railways and rail infrastructure managed by Rail Track are a regulated industry.

**15. *Objective of the Office of the Regulator-General***

The objective of the Office in relation to the regulated industry is, in addition to the objectives under section 7 of the **Office of the Regulator-General Act 1994** (but subject to section 4(2) of

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that Act), to ensure users have fair and reasonable access to declared railway services.

**16. Declaration of railway services**

- (1) The Governor in Council on the recommendation of the Minister, by Order published in the Government Gazette, may declare a railway service to be a declared railway service for the purposes of this Act.
- (2) The Minister may make a recommendation under sub-section (1) in relation to a railway service only if he or she is satisfied that it is necessary to do so to promote competition in relation to that service.

**17. Obligations of Rail Track in relation to declared railway services**

- (1) Rail Track must provide access to declared railway services on fair and reasonable terms and conditions.
- (2) Rail Track must—
  - (a) use all reasonable endeavours to meet the requirements of a person seeking access to declared railway services; and
  - (b) make a formal proposal of terms and conditions for access within 30 days after receiving a request or within such longer period as is allowed by the Office.
- (3) The terms and conditions of access may vary according to the actual and opportunity costs to Rail Track, but must not vary simply because of the identity of the person seeking access.

**18. Procedure if disputes arise**

- (1) If Rail Track has not made a formal proposal in accordance with section 17(2)(b), the person seeking access to a declared railway service may

apply in writing to the Office for the making of a determination in accordance with section 26 of the **Office of the Regulator-General Act 1994** specifying the terms and conditions, including the price, on which access is to be provided.

- (2) If Rail Track and a person seeking access cannot agree on the terms and conditions on which access is to be provided, Rail Track or the person seeking access may apply in writing to the Office for the making of a determination in accordance with section 26 of the **Office of the Regulator-General Act 1994** specifying the terms and conditions, including the price, on which access is to be provided.
  - (3) Within 20 days after receiving an application under sub-section (1) or (2), the Office must give notice in writing to the person making the application or to any other person from whom the Office is entitled to require information under the **Office of the Regulator-General Act 1994** specifying—
    - (a) any information that the Office requires the person to give so that the Office can make a determination; and
    - (b) a reasonable time within which the information must be provided.
  - (4) The Office must not make a determination if the Office considers that the making of the determination would substantially impede the existing right of access of another person unless that person has been given an opportunity to make a submission to the Office in respect of the application.
  - (5) In making a determination the Office must consider the matters specified in paragraphs (i)
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and (j) of clause 6(4) of the Competition Principles Agreement made on 11 April 1995 between the Commonwealth and all of the States and Territories of the Commonwealth.

- (6) A person who is bound by a determination may apply in writing to the Office for the amendment or revocation of the determination on the ground that there has been a material change in circumstances.
- (7) Subject to sub-section (8), the Office must determine an application under this section within 90 days after receiving it, excluding the period of time between the day on which notice is given under sub-section (3) and the day on which the required information is received by the Office.
- (8) The Office may refuse to make a determination under this section if the Office considers that the dispute is vexatious.
- (9) The costs of the Office in making a determination under this section are to be paid equally by Rail Track and the person seeking access.

### **Division 3—Rail corporations generally**

#### **19. *Schedule 1***

Schedule 1 applies to each rail corporation.

#### **20. *Extra-territoriality***

A rail corporation may carry out its functions and exercise its powers within or outside Victoria and outside Australia.

#### **21. *Delegation***

- (1) A rail corporation, by instrument under its official seal, may delegate to 2 or more directors of the corporation, to an officer or employee of the

corporation or, with the consent of the Minister, to another person any function or power of the corporation, other than—

- (a) this power of delegation; and
  - (b) any other power that is prescribed for the purposes of this section.
- (2) The Governor in Council may make regulations prescribing powers for the purpose of sub-section (1)(b).

### ***22. Borrowing and investment by rail corporations***

A rail corporation has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

### ***23. Duties of directors***

- (1) A director of a rail corporation must at all times act honestly in the performance of the functions of his or her office.
  - (2) A director of a rail corporation must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
  - (3) A director, or former director, of a rail corporation must not make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the rail corporation.
  - (4) A director of a rail corporation must not make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the rail corporation.
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- (5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

**24. *Rail corporation or Minister may bring proceedings***

If a person contravenes section 23 in relation to a rail corporation, the rail corporation or the Minister, in the name of the rail corporation, may recover from the person as a debt due to the rail corporation by action in a court of competent jurisdiction either or both of the following—

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;
- (b) if the rail corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

**25. *Rail corporation not to make loans to directors***

- (1) The powers of a rail corporation do not include a power, whether directly or indirectly—
    - (a) to make a loan to a director of the rail corporation, a spouse of such a director, or a relative (as defined in the Corporations Law) of such a director or spouse; or
    - (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director, spouse or relative referred to in paragraph (a).
  - (2) Nothing in sub-section (1) prohibits a rail corporation entering into an agreement or arrangement with a person referred to in sub-section (1) if similar agreements or arrangements
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are entered into by the rail corporation with members of the public on the same terms and conditions.

**26. *Indemnity***

The powers of a rail corporation do not include a power to exempt, whether directly or indirectly, a director of a rail corporation from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of the rail corporation against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to the rail corporation.

**27. *Corporate plan***

- (1) The board of each rail corporation must prepare a corporate plan for each financial year.
  - (2) The board must give a copy of the proposed plan to the Minister on or before 31 May in each year.
  - (3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and must include—
    - (a) a statement of corporate intent in accordance with section 28;
    - (b) a business plan and financial statements containing such information as the Minister requires.
  - (4) The board must consider any comments on the proposed plan that are made to it by the Minister within 2 months after the plan was submitted to the Minister.
  - (5) The board must consult in good faith with the Minister following communication to it of the comments, must make such changes to the plan as
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are agreed between the Minister and the board and must deliver the completed plan to the Minister within 2 months after the commencement of the financial year.

- (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the board and the Minister.
- (7) The plan may be modified at any time by the board with the agreement of the Minister.
- (8) If the board, by written notice to the Minister, proposes a modification to the plan, the board may make the modification unless the Minister, by written notice within 14 days, directs the board not to make it.
- (9) From time to time, the Minister, by written notice, may direct the board to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.
- (10) Before giving a direction under this section, the Minister must consult with the board as to the matters referred to in the notice.
- (11) The board must comply with a direction under this section.
- (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for a rail corporation are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

**28. *Statement of corporate intent: contents***

Each statement of corporate intent must specify for the rail corporation and its subsidiaries (if any), in respect of the financial year to which it

relates and each of the 2 following financial years, the following information—

- (a) the business objectives of the rail corporation and of its subsidiaries;
- (b) the main undertakings of the rail corporation and of its subsidiaries;
- (c) the nature and scope of the activities to be undertaken by the rail corporation and its subsidiaries;
- (d) the accounting policies to be applied in the accounts;
- (e) the performance targets and other measures by which the performance of the rail corporation and of its subsidiaries may be judged in relation to their stated business objectives;
- (f) the kind of information to be provided to the Minister by the rail corporation during the course of those financial years;
- (g) such other matters as may be agreed on by the Minister and the board of the rail corporation from time to time.

**29. *Corporate plan to be followed***

A rail corporation must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister to do otherwise.

**30. *Nothing void merely because of non-compliance***

Nothing done by a rail corporation is void or unenforceable merely because the rail corporation has failed to comply with section 27, 28 or 29.

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**31. Board to give notice of significant events**

If the board of a rail corporation forms the opinion that matters have arisen—

- (a) that may prevent, or significantly affect, achievement of the business objectives of the rail corporation and its subsidiaries (if any) under the corporate plan; or
- (b) that may prevent, or significantly affect, achievement of the targets under the plan—

the board must immediately notify the Minister of its opinion and the reasons for the opinion.

**32. Non-commercial functions**

- (1) The Minister, with the approval of the Treasurer, may direct the board of a rail corporation—
    - (a) to perform certain functions that the Minister considers to be in the public interest but that may cause the rail corporation to suffer financial detriment; or
    - (b) to cease to perform functions of a kind referred to in paragraph (a); or
    - (c) to cease to perform certain functions that the Minister considers not to be in the public interest.
  - (2) The board of the rail corporation must comply with a direction given under sub-section (1).
  - (3) If the rail corporation satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given under sub-section (1), the rail corporation may be reimbursed by the State an amount determined by the Minister, with the approval of the Treasurer, and the Consolidated Fund is appropriated to the necessary extent accordingly.
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- (4) The reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the direction were not complied with.

**33. *Determination of initial capital***

- (1) The Minister must determine the amount of initial capital of each rail corporation.
- (2) In making the determination, the Minister must have regard to any relevant advice that the board of the rail corporation has given to the Minister.
- (3) The determination must be in writing.
- (4) The value of the capital is the value specified in the determination or, if the Minister and the board of the rail corporation agree that the value so specified does not correctly represent the value, the value agreed by the Minister and the board.

**34. *Capital***

The capital of each rail corporation is equal to the sum of—

- (a) the amount of the rail corporation's initial capital under this Act in accordance with section 33(1); and
- (b) any part of the rail corporation's liabilities that is converted into capital at the direction of the Minister; and
- (c) any amounts paid to the rail corporation out of money appropriated by the Parliament for the purpose of providing capital; and
- (d) any part of the rail corporation's reserves that is converted into capital at the direction of the Minister after consultation with the board—

less any amount of capital repaid under section 35.

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**35. *Repayment of capital***

- (1) The capital of a rail corporation is repayable to the State at such times, and in such amounts, as the Minister directs in writing after consultation with the board of the rail corporation.
- (2) In giving such a direction, the Minister must have regard to any advice that the board of the rail corporation has given to the Minister in relation to the rail corporation's affairs.

**36. *Dividends***

A rail corporation must pay to the State such amounts, at such times and in such manner, as are determined by the Treasurer after consultation with the board of the rail corporation and the Minister.

**37. *Reports to Minister***

The Minister may, in writing, require the board of a rail corporation to give the Minister such information as he or she requires.

**38. *Annual report***

A rail corporation, in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, must include—

- (a) a copy of each direction given to it during that year under section 32 together with a statement of its response to that direction; and
  - (b) a copy of the statement of corporate intent last completed.
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**PART 3—TRANSFER OF PROPERTY**

**39. Definitions**

(1) In this Part—

**"former PTC instrument"** means an instrument (including a legislative instrument other than this Act) or an oral agreement subsisting immediately before the relevant date—

- (a) to which the PTC was a party; or
- (b) that was given to, or in favour of, the PTC; or
- (c) that refers to the PTC; or
- (d) under which—
  - (i) money is, or may become, payable to the PTC; or
  - (ii) other property is to be, or may become liable to be, transferred to or by the PTC;

**"former PTC property"** means property, rights or liabilities of the PTC that, under this Part, have vested in, or become liabilities of, a rail corporation;

**"former rail corporation instrument"** means an instrument (including a legislative instrument other than this Act) or an oral agreement subsisting immediately before the relevant date—

- (a) to which a rail corporation was a party; or
  - (b) that was given to, or in favour of, a rail corporation; or
  - (c) that refers to a rail corporation; or
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(d) under which—

- (i) money is, or may become, payable to a rail corporation; or
- (ii) other property is to be, or may become liable to be, transferred to or by a rail corporation;

**"former rail corporation property"** means property, rights or liabilities of a rail corporation that, under this Part, have vested in, or become liabilities of, another person;

**"PTC"** means Public Transport Corporation established under Part II of the **Transport Act 1983**;

**"relevant date"**, in relation to an allocation statement under section 40 or 41 or property, rights or liabilities allocated under such a statement, means the date fixed by the Minister under sub-section (2) for the purposes of that statement;

**"transferee"** means a person to whom property is allocated under an allocation statement under section 40 or 41;

**"transferor"** means the PTC or rail corporation from which property is transferred under an allocation statement under section 40 or 41.

- (2) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of an allocation statement under section 40 or 41.
- (3) Nothing in this Part enables the transfer of any Crown land.

**40. Minister may direct transfer of PTC property to rail corporation**

- (1) The Minister may give a direction in writing to the PTC directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to a rail corporation.
  - (2) A direction under sub-section (1) may include directions as to the method of valuation to be used by the PTC for the purposes of determining the value of property, rights and liabilities to be transferred.
  - (3) Within 45 days after receiving a direction under sub-section (1), the PTC must give to the Minister a statement containing the information required by the Minister relating to the property, rights and liabilities of the PTC to which the direction relates, as at the date specified by the Minister for the purposes of this section.
  - (4) A statement under this section—
    - (a) must identify and give the value of the property, rights and liabilities of the PTC to be transferred; and
    - (b) must allocate the property, rights and liabilities of the PTC shown in the statement in accordance with the directions of the Minister; and
    - (c) must be signed by the chief executive of the PTC.
  - (5) If a statement under this section is approved by the Minister—
    - (a) the Minister must sign the statement; and
    - (b) the statement is an allocation statement for the purposes of this Part.
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- (6) The Minister may at any time direct the PTC to amend a statement given to him or her under this section as specified in the direction.
  - (7) An allocation statement under this section may be amended by writing signed by the Minister.
  - (8) An amendment under sub-section (7) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement.
  - (9) In this section, "**statement**" and "**allocation statement**" include a statement or allocation statement amended in accordance with this section.

**41. *Minister may direct transfer of rail corporation property to other persons***

- (1) The Minister may give a direction in writing to a rail corporation directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to a person or persons nominated by the Minister.
  - (2) A direction under sub-section (1) may include directions as to the method of valuation to be used by the rail corporation for the purposes of determining the value of property, rights and liabilities to be transferred.
  - (3) Within 45 days after receiving a direction under sub-section (1), the rail corporation must give to the Minister a statement containing the information required by the Minister relating to the property, rights and liabilities of the rail corporation to which the direction relates, as at the
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date specified by the Minister for the purposes of this section.

- (4) A statement under this section—
    - (a) must identify and give the value of the property, rights and liabilities of the rail corporation to be transferred; and
    - (b) must allocate the property, rights and liabilities of the rail corporation shown in the statement in accordance with the directions of the Minister; and
    - (c) must be signed by the chief executive officer of the rail corporation.
  - (5) If a statement under this section is approved by the Minister—
    - (a) the Minister must sign the statement; and
    - (b) the statement is an allocation statement for the purposes of this Part.
  - (6) The Minister may at any time direct a rail corporation to amend a statement given to him or her under this section as specified in the direction.
  - (7) An allocation statement under this section may be amended by writing signed by the Minister.
  - (8) An amendment under sub-section (7) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement.
  - (9) In this section, "**statement**" and "**allocation statement**" include a statement or allocation
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statement amended in accordance with this section.

**42. *Property transferred in accordance with direction***

On the relevant date—

- (a) all property and rights of the PTC, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 40, vest in a rail corporation in accordance with the statement;
- (b) all liabilities of the PTC, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 40, become liabilities of a rail corporation in accordance with the statement;
- (c) all property and rights of a rail corporation, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 41, vest in a person or persons in accordance with the statement;
- (d) all liabilities of a rail corporation, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 41, become liabilities of a person or persons in accordance with the statement.

**43. *Allocation of property etc. subject to encumbrances***

Unless an allocation statement under this Part otherwise provides, where, under this Part—

- (a) property and rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with a direction under section 40 or 41—

- (c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (d) the rights to which the transferor was entitled in respect of those liabilities immediately before they ceased to be liabilities of the transferor vest in the transferee.

**44. *Payments in respect of financial obligations***

(1) If—

- (a) an Order has been made under section 36D(1) or 36E(1) of the **Treasury Corporation of Victoria Act 1992** relating to financial obligations of a rail corporation; and
- (b) responsibility for those financial obligations has become the responsibility of a transferee under an allocation statement under section 41—

then—

- (c) the transferee must pay to the Treasury Corporation of Victoria such amounts, and at such times, as the rail corporation would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the transferee agree; and
  - (d) the Corporation must pay to the transferee such amounts, and at such times, as the rail corporation would have been entitled to receive in respect of those financial obligations if the Order had not been made,
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except in so far as the Corporation and the transferee otherwise agree.

- (2) An amount payable under sub-section (1) may be recovered in a court of competent jurisdiction as a debt due to the Treasury Corporation of Victoria or the transferee, as the case requires.

**45. Certificate of chief executive or CEO**

- (1) A certificate signed by the chief executive of the PTC or the chief executive officer of a rail corporation that is a transferor certifying that property, rights or liabilities of the transferor specified in the certificate have been allocated under an allocation statement in accordance with section 40 or 41 (as the case may be) is, unless revoked under sub-section (2), conclusive evidence—
- (a) that the property, rights or liabilities have been so allocated; and
  - (b) that the property, rights or liabilities vested in, or become the property, rights or liabilities of, the transferee on the relevant date.
- (2) If the Minister so directs the chief executive or chief executive officer in writing, the chief executive or chief executive officer must revoke a certificate given under sub-section (1) by issuing another certificate in place of the first certificate.
- (3) The chief executive or chief executive officer of a transferor—
- (a) must keep a register of certificates issued under this section; and
  - (b) must make the register reasonably available for inspection by a transferee or other interested person.

**46. *Value of transferred property***

The value to a transferee as at the relevant date of property, rights and liabilities of the transferor that are allocated to it under an allocation statement is the value shown in the relevant allocation statement.

**47. *Substitution of party to agreement***

Where, under an allocation statement, the rights and liabilities of a transferor under an agreement are allocated to a transferee in accordance with a direction under section 40 or 41—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and
- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

**48. *Former PTC and rail corporation instruments***

- (1) Each former PTC instrument relating to former PTC property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the PTC were a reference to the transferee.
- (2) Each former rail corporation instrument relating to former rail corporation property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the rail corporation were a reference to the transferee.

**49. *Proceedings***

If, immediately before the relevant date, proceedings relating to former PTC property or

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former rail corporation property (including arbitration proceedings) to which a transferor was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights in the proceedings as the transferor had.

**50. *Interests in land***

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former PTC property or former rail corporation property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the transferor had.

**51. *Easements***

- (1) If a rail corporation acquires any right in the nature of an easement (whether as a result of an allocation under this Part or otherwise), that right must be taken to be an easement even though there is no land vested in the rail corporation which is benefited or capable of being benefited by that right.
- (2) If a transferee other than a rail corporation acquires any right in the nature of an easement as a result of an allocation under this Part, that right must be taken to be an easement even though there is no land vested in the transferee which is

benefited or capable of being benefited by that right.

- (3) A transferee may, subject to and in accordance with any agreement entered into with another transferee, exercise such rights in respect of easements to which the other transferee is entitled as are reasonably necessary to enable the first-mentioned transferee to carry out its functions in a manner similar to the manner in which the transferor carried out corresponding functions before the relevant date.
- (4) A transferee must pay such reasonable charges for the exercise of rights under sub-section (3) in respect of easements to which another transferee is entitled as are determined by the other transferee and agreed by the first-mentioned transferee or, if there is no agreement, as are determined by the Minister.

#### **52. Amendment of Register**

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the chief executive or chief executive officer of the transferor of former PTC property or former rail corporation property, must make any amendments in the Register that are necessary because of the operation of this Part.
  - (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are necessary because of the operation of this Part.
  - (3) If any land allocated under an allocation statement under this Part is not under the operation of the **Transfer of Land Act 1958**, the transferee of the former PTC property or former rail corporation
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property (as the case may be) must, as soon as practicable after the land vests in accordance with the allocation statement, cause a memorial of the certificate of the chief executive or chief executive officer of the transferor (that complies with Part I of the **Property Law Act 1958**) to be delivered to the office of the Registrar-General and, for the purposes of that Part, that certificate must be taken to be an instrument affecting land.

**53. Taxes**

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with—

- (a) the transfer of property, rights or liabilities of the PTC or a rail corporation; or
- (b) a lease entered into between the PTC and Rail Track in accordance with a direction under section 56.

**54. Evidence**

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to former PTC property or former rail corporation property if this Part had not been enacted is admissible for or against the interests of the transferee.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of the PTC or a rail corporation and to entries made in those books of account before the relevant date, whether or not they relate to former

PTC property or former rail corporation property  
(as the case may be).

**55. *Validity of things done under this Part***

Nothing effected or to be effected by this Part or  
done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
  - (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
  - (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
  - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
  - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract;  
or
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(g) releases any surety or other obligee wholly or in part from any obligation.

**56. Minister may direct PTC to lease land to Rail Track**

The Minister, after consultation with the Minister administering Part II of the **Transport Act 1983**, may in writing direct the PTC to lease any land vested in it to Rail Track, on the terms and conditions specified in the direction.

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**PART 4—AMENDMENT OF OTHER ACTS**

No. 13/1987.  
Reprinted to  
No. 106/1995  
and  
subsequently  
amended by  
Nos 4/1996  
and 11/1996.

**57. *Borrowing and Investment Powers Act 1987***

- (1) In Schedule 1 to the **Borrowing and Investment Powers Act 1987** after item 23 insert—

"23AA. Victorian Rail Track 5, 8, 10, 11, 11AA,  
11AB, 13, 14, 14A,  
15, 20, 20A and 21."

- (2) In Schedule 1 to the **Borrowing and Investment Powers Act 1987** after item 23A insert—

"23B. V/Line Freight 5, 8, 10, 11, 11AA,  
11AB, 13, 14, 14A,  
15, 20, 20A and 21."

No. 9921.  
Reprinted to  
No. 107/1995.

**58. *Transport Act 1983***

- (1) In section 47(2)(b) of the **Transport Act 1983**, after "National Rail Corporation Limited" insert "or a rail corporation (within the meaning of the **Rail Corporations Act 1996**)".

- (2) In section 82(3)(aa) of the **Transport Act 1983**, after "public statutory authority" insert "(other than a rail corporation (within the meaning of the **Rail Corporations Act 1996**))".

No. 80/1992.  
Reprinted to  
No. 100/1995.

**59. *Treasury Corporation of Victoria Act 1992***

- (1) In section 36A of the **Treasury Corporation of Victoria Act 1992**, in the definition of "public authority", after "Victorian Channels Authority," insert "Victorian Rail Track, V/Line Freight,".

- (2) At the end of Schedule 1 to the **Treasury Corporation of Victoria Act 1992** insert—

"Victorian Rail Track **Rail Corporations Act 1996**  
V/Line Freight **Rail Corporations Act 1996**".

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**SCHEDULE 1**

Section 19

**PROVISIONS APPLYING TO RAIL CORPORATIONS**

**1. Board of directors**

- (1) Each rail corporation must have a board of directors consisting of not less than 3, and not more than 5, directors appointed in accordance with this Schedule.
- (2) The board of directors of a rail corporation—
  - (a) is responsible for the management of the affairs of the rail corporation; and
  - (b) may exercise the powers of the rail corporation.

**2. Constitution of board**

The board of a rail corporation consists of—

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) subject to clause 1, such number of other directors as are appointed by the Governor in Council in accordance with this Schedule.

**3. Appointment of directors**

- (1) The chairperson, deputy chairperson and other directors of a rail corporation shall be appointed by the Governor in Council.
- (2) The **Public Sector Management Act 1992** does not apply to a director of a rail corporation in respect of the office of director.

**4. Terms and conditions of appointment**

A director of a rail corporation holds office, subject to this Act—

- (a) for such term, not exceeding 3 years as is specified in the instrument of appointment, but is eligible for re-appointment; and
- (b) on such terms and conditions as are determined by the Minister.

**5. Acting appointments**

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*Rail Corporations Act 1996*  
*Act No. 79/1996*

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- (1) When—
  - (a) the office of chairperson of the board of a rail corporation is vacant; or
  - (b) the chairperson is absent from Victoria or is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office—  
the deputy chairperson of the board must act as chairperson.
- (2) While the deputy chairperson is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.
- (3) The Minister may appoint a director of a rail corporation to act as deputy chairperson—
  - (a) during a vacancy in the office of deputy chairperson; or
  - (b) during any period, or during all periods, when the deputy chairperson is acting as chairperson or is unable, for any reason, to attend meetings of the board.
- (4) The Minister may appoint a person to act as a director (other than the chairperson or deputy chairperson) of a rail corporation—
  - (a) during a vacancy in the office of a director; or
  - (b) during any period, or during all periods, when a director is acting as deputy chairperson or is unable, for any reason, to attend meetings of the board.

**6. *Chief executive officer and other staff***

- (1) The board of a rail corporation, with the approval of the Minister, may appoint a person as the chief executive officer of the rail corporation.
  - (2) The chief executive officer holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the Minister and specified in the instrument of appointment.
  - (3) The chief executive officer may be a director of the rail corporation but may not be the chairperson.
  - (4) The board of a rail corporation may employ such other officers and employees as are necessary for the performance of its functions.
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**7. Vacancies, resignations, removal from office**

- (1) The office of a director of a rail corporation becomes vacant if the director—
  - (a) without the board's approval, fails to attend 3 consecutive meetings of the board; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A director may resign by writing delivered to the Minister.
- (3) The Governor in Council may remove a director, or all directors, from office.
- (4) If a director—
  - (a) is convicted of an offence relating to his or her duties as a director; or
  - (b) fails, without reasonable excuse, to comply with clause 11—

the director must be removed from office by the Governor in Council.

**8. Validity of acts or decisions**

- (1) An act or decision of the board of a rail corporation is not invalid merely because of—
  - (a) a defect or irregularity in, or in connection with, the appointment of a director; or
  - (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.
- (2) Anything done by or in relation to a person purporting to act as chairperson, deputy chairperson or as a director is not invalid merely because—
  - (a) there was a defect or irregularity in relation to the acting appointment; or

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- (b) the occasion for the person to act had not arisen or had ceased.

**9. *Proceedings of board***

- (1) Subject to sub-clause (2), meetings of the board of a rail corporation shall be held at such times and places as the board determines.
- (2) The chairperson may at any time convene a meeting, but must do so when requested by a director to do so.
- (3) A majority of the directors of the board for the time being constitutes a quorum of the board.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The board must ensure that accurate minutes are kept of its meetings.
- (6) The board may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication that does not require the physical presence of each member in the same place.
- (7) Subject to this Act, the board may regulate its own proceedings.

**10. *Resolutions without meetings***

- (1) If the directors for the time being of a rail corporation (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director to sign signs the document.
  - (2) If a resolution is, under sub-clause (1), deemed to have been passed at a meeting of the board, each director must be advised as soon as practicable and given a copy of the terms of the resolution.
  - (3) For the purposes of sub-clause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, are deemed to constitute one document.
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- (4) In sub-clause (1), "**director**", in relation to a resolution, does not include a director who, because of clause 11, is not permitted to take part in the making of the resolution.

**11. Disclosure of interests**

- (1) If—
- (a) a director of a rail corporation has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter—
- the director, as soon as practicable after becoming aware of the relevant facts, must disclose the nature of the interest at a meeting of the board.
- (2) A disclosure under sub-clause (1) must be recorded in the minutes of the meeting and, unless the Minister or the board otherwise determines, the director—
- (a) must not be present during any deliberation of the board in relation to the matter; and
  - (b) must not take part in any decision of the board in relation to the matter.
- (3) For the purpose of the making of a determination of the board under sub-clause (2) in relation to a director who has made a disclosure under sub-clause (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—
- (a) must not be present during any deliberation of the board in relation to the matter; and
  - (b) must not take part in any decision of the board in relation to the matter.
- (4) Sub-clauses (1) and (2) do not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
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*Rail Corporations Act 1996*  
*Act No. 79/1996*

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**NOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 31 October 1996*

*Legislative Council: 3 December 1996*

The long title for the Bill for this Act was "to establish V/Line Freight and Victorian Rail Track, to amend the **Borrowing and Investment Powers Act 1987**, the **Transport Act 1983** and the **Treasury Corporation of Victoria Act 1992** and for other purposes."