



Queensland Rail Transit Authority Act 2013

Current as at 3 May 2013

Information about this reprint

This reprint shows the legislation current as at the date on the cover and is authorised by the Parliamentary Counsel.

A new reprint of the legislation will be prepared by the Office of the Queensland Parliamentary Counsel when any change to the legislation takes effect. This change may be because a provision of the original legislation, or an amendment to it, commences or because a particular provision of the legislation expires or is repealed.

When a new reprint is prepared, this reprint will become a historical reprint. Also, if it is necessary to replace this reprint before a new reprint is prepared, for example, to include amendments with a retrospective commencement, an appropriate note would be included on the cover of the replacement reprint and on the copy of this reprint at www.legislation.qld.gov.au.

The endnotes to this reprint contain detailed information about the legislation and reprint. For example—

- The table of reprints endnote lists any previous reprints and, for this reprint, gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it.
- The list of legislation endnote gives historical information about the original legislation and the legislation which amended it. It also gives details of uncommenced amendments to this legislation. For information about possible amendments to the legislation by Bills introduced in Parliament, see the Queensland Legislation Current Annotations at www.legislation.qld.gov.au/information.
- The list of annotations endnote gives historical information at section level.

All Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints are not continued.



Queensland

Queensland Rail Transit Authority Act 2013

Contents

		Page
Chapter 1	Preliminary	
1	Short title	7
2	Commencement	7
3	Main purpose	7
4	Extraterritorial application of Act	8
5	Dictionary	8
Chapter 2	Queensland Rail Transit Authority	
Part 1	Establishment, powers and functions	
6	Establishment of Queensland Rail Transit Authority	8
7	Powers of Authority	8
8	Authentication of documents	9
9	Functions of Authority	10
10	Functions to be carried out commercially	11
11	Powers and functions in or out of Queensland	11
12	Ministerial directions	11
13	Delegations	11
Part 2	Board	
Division 1	Establishment, membership and related matters	
14	Establishment and status of board	12
15	Role of board	12
16	Appointment of members	13
17	Chairperson	13
18	Deputy chairperson	14
19	Terms and ending of appointments	14
20	Vacation of office	15
21	Casual vacancy	15

Contents

Division 2	Business	
22	Conduct of business	16
23	Time and place of meetings	16
24	Quorum	16
25	Presiding at meetings	16
26	Conduct of meetings	17
27	Minutes	17
28	Disclosure of interests	17
Part 3	Senior employees	
Division 1	Chief executive officer	
29	Appointment of chief executive officer	19
30	Term of appointment.	19
31	Conditions of appointment	20
32	Qualifications for appointment	20
33	Chief executive officer's responsibilities	20
34	Things done by chief executive officer	21
Division 2	Senior executives	
35	Appointment of senior executives.	21
Part 4	Reporting and accountability	
Division 1	Application of other Acts	
36	Application of financial Acts	21
37	Application of Crime and Misconduct Act 2001	22
Division 2	Reporting generally	
38	Quarterly reports	22
39	Board to keep responsible Ministers informed	22
40	Reporting to department	23
41	Other reporting requirements.	23
Division 3	Annual reports	
42	Definition for div 3.	24
43	Deletion of commercially sensitive matters from annual report	24
44	Annual report may include a summary of a matter.	24
45	Matters to be included in annual report	25
Division 4	Strategic and operational plans	
46	Interaction with the Financial Accountability Act 2009	25
47	Draft strategic and operational plans	25
48	Procedures.	25

49	Strategic or operational plan pending agreement.	26
50	Strategic or operational plan on agreement.	26
51	Compliance with strategic and operational plans.	27
52	Modifications of strategic or operational plan.	27
53	Content of operational plan.	27
Part 5	Directions about equity and dividends	
Division 1	Direction about equity	
54	Giving direction.	28
Division 2	Direction about dividends	
55	Giving direction.	28
56	Amount of dividend.	28
Part 6	Community service obligations	
57	Meaning of community service obligations.	29
58	Community service obligations to be stated in operational plan .	30
Part 7	Acquisition and disposal of assets and subsidiaries	
59	Direction not to dispose of stated asset.	30
60	Disposal of main undertakings.	31
61	Acquiring and disposing of subsidiaries.	31
Part 8	Commonwealth tax equivalents	
62	Liability for Commonwealth tax equivalents.	31
Part 9	Matters relating to change of name of Authority	
63	Change of name of Authority to Queensland Rail.	33
64	Change of name does not affect legal personality, etc.	33
65	References to Queensland Rail Transit Authority.	33
Chapter 3	Provisions for restructure of declared entities	
Part 1	Interpretation	
66	Declared entities.	34
Part 2	Transfer of shares and change of status of Queensland Rail Limited	
67	Transfer of shares.	35
68	Change of status of Queensland Rail Limited.	35
Part 3	Application of IRA	
69	Application of IRA to the Authority and its employees.	35
Part 4	Transfer of employees of Queensland Rail Limited	
70	Definitions for pt 4.	36
71	Matters for transfer of employees to Authority.	37

Contents

72	Preservation of rights of employees	37
73	Federal enterprise agreements taken to be certified agreements	38
74	Interpretation of particular clause in federal enterprise agreement	39
75	Negotiations for replacement of particular certified agreement . .	39
76	Applicable award	40
77	Individual contracts of employment	41
Part 5	Transfer notices and restructure directions	
78	Transfer notice	41
79	Restructure direction	44
Part 6	Other matters for restructure	
80	Effect of changes to Queensland Rail Limited	45
81	Non-liability for duty	46
82	Preservation of rights of transferred employees	46
83	Disposal of public records	47
84	Application of instruments	47
85	Registering authority to note transfer or other dealing	48
86	Act applies despite other laws and instruments	49
87	Excluded matter for Corporations Act	49
88	Effect on legal relationships	49
89	Things done under this Act.	51
90	Decisions not reviewable	51
91	Severability	52
Part 7	Miscellaneous	
92	Delegations	52
93	Regulation-making power.	52
Chapter 4	Transitional provisions for Queensland Rail Transit Authority Act 2013	
94	Appointment of board members	53
95	Appointment of chief executive officer and senior executives . . .	53
96	Authority's first strategic and operational plans	54
97	Authority's first quarterly report	54
98	Authority's first plans under Financial Accountability Act 2009 . .	54
99	Dividend for 2012–2013 financial year	55
100	Application of Transport (Rail Safety) Act 2010 to Queensland Rail Limited and the Authority	55
101	Existing certified agreements	56

102	References to Queensland Rail Limited in documents.	57
103	Effect of regulation amendment	57
104	Transitional regulation-making power.	57
Schedule 1	Dictionary	59

Endnotes

1	Index to endnotes.	62
2	Date to which amendments incorporated.	62
3	Key	63
4	Table of reprints	63
5	List of legislation.	64
6	List of annotations	64
7	Forms notified or published in the gazette	64

Queensland Rail Transit Authority Act 2013

[reprinted as in force on 3 May 2013]

An Act to establish the Queensland Rail Transit Authority, and for related purposes

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Rail Transit Authority Act 2013*.

2 Commencement

Chapter 5, part 1 commences immediately after the commencement of this section.

3 Main purpose

The main purpose of this Act is to establish the Queensland Rail Transit Authority and to facilitate the restructure of its rail business to deliver significant benefits to the community, including—

- (a) improved operation and management of rail services; and
- (b) more efficient delivery of rail services; and
- (c) enhanced customer service for rail passengers; and
- (d) a clearer accountability framework for rail services.

[s 4]

4 Extraterritorial application of Act

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

5 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

Chapter 2 Queensland Rail Transit Authority

Part 1 Establishment, powers and functions

6 Establishment of Queensland Rail Transit Authority

- (1) The Queensland Rail Transit Authority (the *Authority*) is established.

Note—

See section 63 for when the Authority's name is changed to Queensland Rail.

- (2) The Authority is not a body corporate.
- (3) The Authority does not represent the State.

7 Powers of Authority

- (1) The Authority has all the powers of an individual and may, for example—
 - (a) enter into contracts; and

-
- (b) acquire, hold, dispose of, and deal with property; and
 - (c) employ staff; and
 - (d) appoint agents and attorneys; and
 - (e) engage consultants; and
 - (f) fix charges, and other terms, for services and other facilities it supplies; and
 - (g) do anything else necessary or convenient to be done for its functions.
- (2) Without limiting subsection (1), the Authority has the powers given to it under an Act.
- (3) However, the Authority's powers are subject to any limitations under an Act.
- (4) The Authority may sue and be sued in the name it is given under section 6(1).

Note—

When the Authority's name changes under section 63 to Queensland Rail, it may sue and be sued in its new name. See also section 64.

8 Authentication of documents

- (1) A document made by the Authority, other than a document required to be sealed, is sufficiently made if it is signed by the chief executive officer, the chairperson of the board or another person authorised by the board.

Example of a document—

an instrument under section 13 delegating a function of the Authority

- (2) A document made by the Authority that is required to be sealed is sufficiently made if it is sealed in the way authorised by the board and signed by the chief executive officer, the chairperson of the board or another person authorised by the board.

[s 9]

9 Functions of Authority

- (1) The Authority has the following functions to the extent they are consistent with its operational and strategic plans—
 - (a) managing railways;
 - (b) controlling rolling stock on railways;
 - (c) providing rail transport services, including passenger services;
 - (d) providing services relating to rail transport services, including—
 - (i) engineering services; and
 - (ii) services for operating or maintaining infrastructure; and
 - (iii) business management services; and
 - (iv) consultancy and training services;
 - (e) establishing, constructing, maintaining, operating and arranging for the provision of transport infrastructure, including rail transport infrastructure and other rail infrastructure;
 - (f) using or managing its land in ways that benefit the State or the community;
 - (g) providing advice to the responsible Ministers about its functions or the rail industry, if requested by the responsible Ministers;
 - (h) doing anything else likely to complement or enhance a function mentioned in paragraphs (a) to (g);
 - (i) another function conferred under an Act.
- (2) The Authority may carry out its functions directly, or indirectly through its subsidiaries.
- (3) In this section—

other rail infrastructure see the *Transport Infrastructure Act 1994*, schedule 6.

rail transport infrastructure see the *Transport Infrastructure Act 1994*, schedule 6.

transport infrastructure see the *Transport Infrastructure Act 1994*, schedule 6.

10 Functions to be carried out commercially

- (1) The Authority must carry out its functions as a commercial enterprise.
- (2) Subsection (1) does not apply to the Authority to the extent it is required under this Act to perform a community service obligation other than as a commercial enterprise.

11 Powers and functions in or out of Queensland

The Authority may exercise its powers and perform its functions inside or outside Queensland.

12 Ministerial directions

- (1) The responsible Ministers may give the Authority a written direction in relation to the Authority and its subsidiaries.
- (2) The Authority must comply with the direction.
- (3) The board must ensure the direction is complied with in relation to the Authority and must, as far as practicable, ensure it is complied with in relation to its subsidiaries.

13 Delegations

- (1) The Authority may delegate any of its functions under this Act or another Act to—
 - (a) the chief executive officer; or
 - (b) an appropriately qualified employee of the Authority; or

[s 14]

- (c) an appropriately qualified employee of a subsidiary of the Authority.
- (2) A person delegated a function under subsection (1) may subdelegate the function to an appropriately qualified person.
- (3) In this section—
 - appropriately qualified* includes having qualifications, experience or standing appropriate for the function.
 - function* includes power.

Part 2 Board

Division 1 Establishment, membership and related matters

14 Establishment and status of board

- (1) The Authority must have a board.
- (2) However, the Authority is not constituted by the members of the board.

15 Role of board

- (1) The board is responsible for the way the Authority performs its functions and exercises its powers.
- (2) The board's role includes—
 - (a) deciding the strategies and the operational, administrative and financial policies to be followed by the Authority; and
 - (b) ensuring the Authority performs its functions and exercises its powers in a proper, effective and efficient way; and

- (c) ensuring that, so far as practicable, the Authority acts under, and achieves the objects in, its strategic and operational plans; and
- (d) accounting to the responsible Ministers, as required by an Act, for the Authority's performance; and
- (e) reviewing annually the performance of the chief executive officer.

16 Appointment of members

- (1) The board is to consist of not fewer than 3, and not more than 7, members appointed by the responsible Ministers.
- (2) In deciding whether to appoint a person as a member, the responsible Ministers must have regard to the person's ability to contribute to the implementation of the Authority's strategic and operational plans.
- (3) A person may not be appointed as a member if the person—
 - (a) is an insolvent under administration; or
 - (b) has a conviction, other than a spent conviction, for an indictable offence.
- (4) Subject to section 19, a member holds office for the term, not more than 3 years, decided by the responsible Ministers.
- (5) If otherwise qualified, a member is eligible for reappointment.

17 Chairperson

- (1) The responsible Ministers must appoint 1 of the members of the board as its chairperson.
- (2) Subject to section 19, the chairperson holds office for the term, ending not later than his or her term of appointment as a member, decided by the responsible Ministers.

[s 18]

18 Deputy chairperson

- (1) The responsible Ministers may appoint 1 of the members of the board as its deputy chairperson.
- (2) Subject to section 19, the deputy chairperson holds office for the term, ending not later than his or her term of appointment as a member, decided by the responsible Ministers.
- (3) The deputy chairperson is to act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

19 Terms and ending of appointments

- (1) This section applies to a person's appointment to the office of member of the board or chairperson or deputy chairperson of the board.
- (2) For matters not provided for under this Act, the person holds the office on the terms of appointment decided by the responsible Ministers.
- (3) Except as decided by the responsible Ministers, the person is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—
 - (a) by way of remuneration as holder of the office; or
 - (b) in connection with retirement from the office or other ending of the office.
- (4) The appointment ends if the office of the member becomes vacant under section 20.
- (5) A person's appointment as member of the board does not end only because the person's appointment as chairperson or deputy chairperson of the board has ended.

20 Vacation of office

- (1) The office of a member of the board becomes vacant if—
 - (a) the member completes the member's term of office and is not reappointed; or
 - (b) the member resigns from office by signed notice of resignation given to the responsible Ministers; or
 - (c) the member becomes an insolvent under administration; or
 - (d) the member is convicted of an indictable offence; or
 - (e) the member is absent, without the board's permission and without reasonable excuse, from 3 consecutive meetings of the board; or
 - (f) the member's appointment is ended by the responsible Ministers under subsection (2).
- (2) The responsible Ministers may, at any time, end the appointment for any reason or none.

21 Casual vacancy

- (1) This section applies if the office of a member, chairperson or deputy chairperson of the board becomes vacant before the end of the member's, chairperson's or deputy chairperson's term of office.
- (2) The responsible Ministers may appoint a person to the office for the remaining part of the term.
- (3) A person appointed under subsection (2) is eligible for reappointment at the end of the term.
- (4) This section is subject to sections 16 to 18.

Division 2 Business

22 Conduct of business

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

23 Time and place of meetings

- (1) Board meetings are to be held at the times and places the board decides.
- (2) The board must meet at least once every 3 months.
- (3) The chairperson of the board may, at any time, call a meeting of the board.
- (4) The chairperson of the board must call a meeting of the board if asked, in writing, to do so by at least 2 members of the board.

24 Quorum

A quorum for the board is 3 members.

25 Presiding at meetings

- (1) The chairperson of the board is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting and the deputy chairperson is present, the deputy chairperson is to preside.
- (3) If the chairperson and deputy chairperson are both absent from a board meeting (including because of a vacancy in the office), a member chosen by the members present is to preside at the meeting.

26 Conduct of meetings

- (1) A question at a board meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Examples of use of technology—

teleconferencing, videoconferencing

- (5) A member who takes part in a meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
 - (a) notice of the resolution is given under procedures approved by the board; and
 - (b) a majority of the board members give written agreement to the resolution.

27 Minutes

- (1) The board must keep minutes of its meetings.
- (2) The board must keep a record of any resolutions made under section 26(6).

28 Disclosure of interests

- (1) This section applies to a member of the board (the *interested member*) if—

[s 28]

- (a) the interested member has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
 - (b) the interest could conflict with the proper performance of the interested member's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the interested member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board about the issue.
- (4) The interested member must not be present when the board is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
 - (a) be present when the board is considering whether to give a direction under subsection (3) about the interested member; or
 - (b) take part in making the decision about giving the direction.
- (6) If—
 - (a) because of this section, a board member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the member were present; the remaining members present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

- (7) If there are no members who may remain present for considering or deciding an issue, the responsible Ministers may, by each signing consent to a proposed resolution, consider and decide the issue.
- (8) A disclosure under subsection (2) must be recorded in the board's minutes.

Part 3 Senior employees

Division 1 Chief executive officer

29 Appointment of chief executive officer

- (1) The Authority must have a chief executive officer.
- (2) The chief executive officer is to be appointed by the board with the prior written approval of the responsible Ministers.
- (3) The chief executive officer is an employee of the Authority.

30 Term of appointment

- (1) Subject to this section, the chief executive officer holds office for the term, not more than 5 years, stated in his or her contract of employment.
- (2) If otherwise qualified, the chief executive officer is eligible for reappointment.
- (3) The board may, at any time, end the appointment for any reason or none.
- (4) The ending of the appointment under subsection (3) does not affect any rights to compensation to which the chief executive officer is entitled under the contract of employment.

[s 31]

- (5) The chief executive officer may resign by giving a signed notice of resignation to the board at least the required period before the notice is to take effect.
- (6) The chief executive officer's appointment ends if he or she stops being qualified to be the chief executive officer.
- (7) In this section—
required period means the period stated in the chief executive's contract of employment or otherwise agreed with the board.

31 Conditions of appointment

For matters not provided for under this Act or stated in the contract of employment, the chief executive officer holds office on the terms of appointment decided by the board.

32 Qualifications for appointment

A person may not be appointed, or continue in office, as the chief executive officer if the person—

- (a) is an insolvent under administration; or
- (b) has a conviction, other than a spent conviction, for an indictable offence; or
- (c) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (d) is named in the register held by ASIC under the Corporations Act, section 1274AA.

33 Chief executive officer's responsibilities

The chief executive officer is responsible for managing the Authority's affairs under—

- (a) this Act and other relevant legislation; and
- (b) the board's policies.

34 Things done by chief executive officer

Anything done in the name of, or for, the Authority by the chief executive officer is taken to have been done by the Authority.

Division 2 Senior executives

35 Appointment of senior executives

- (1) The senior executives of the Authority are to be appointed by the board.
- (2) One of the senior executives of the Authority must be the chief finance officer.
- (3) The chief finance officer is the person responsible for the financial administration of the Authority.

Part 4 Reporting and accountability

Division 1 Application of other Acts

36 Application of financial Acts

- (1) The Authority is—
 - (a) a statutory body under the *Financial Accountability Act 2009*; and
 - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the Authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

[s 37]

37 Application of Crime and Misconduct Act 2001

The Authority is a unit of public administration under the *Crime and Misconduct Act 2001*.

Division 2 Reporting generally

38 Quarterly reports

- (1) The board must give the responsible Ministers a report on the Authority's operations for each quarter in a financial year.
- (2) A quarterly report must be given to the responsible Ministers—
 - (a) within 4 weeks after the end of the quarter; or
 - (b) if another period after the end of the quarter is agreed between the board and the responsible Ministers—within the agreed period.
- (3) A quarterly report must—
 - (a) contain the information required to be given in the report under the Authority's operational plan; and
 - (b) be signed by the chairperson of the board.
- (4) In this section—

quarter, in a financial year, means the following periods in the year—

 - (a) 1 July to 30 September;
 - (b) 1 October to 31 December;
 - (c) 1 January to 31 March;
 - (d) 1 April to 30 June.

39 Board to keep responsible Ministers informed

The board must—

- (a) keep the responsible Ministers reasonably informed of the Authority's operations, financial performance and financial position and its achievement of the objectives in its strategic and operational plans; and
- (b) give the responsible Ministers reports and information that they need to enable them to make informed assessments of matters mentioned in paragraph (a); and
- (c) immediately inform the responsible Ministers of any matters that arise that, in the board's opinion, may—
 - (i) prevent, or significantly affect, achievement of the objectives in the Authority's strategic and operational plans; or
 - (ii) significantly affect the Authority's performance in delivering the outputs under its operational plan.

40 Reporting to department

- (1) The responsible Ministers may act under this section for the purpose of monitoring, assessing or reporting on the Authority's performance of its functions.
- (2) The responsible Ministers may require the Authority or the board to report to a department administered by a responsible Minister by, for example, giving stated information at stated times to the chief executive of that department.
- (3) The Authority or the board must comply with the requirement.

41 Other reporting requirements

Sections 39 and 40 do not limit the matters of which the board is required to keep the responsible Ministers informed, or limit the reports or information that the board is required, or may be required, to give under another Act.

[s 42]

Division 3 Annual reports

42 Definition for div 3

In this division—

annual report means the Authority's annual report under the *Financial Accountability Act 2009*.

43 Deletion of commercially sensitive matters from annual report

- (1) This section applies if the board asks the responsible Ministers to delete from the copies of an annual report (and accompanying documents) that are to be made public a matter that is of a commercially sensitive nature.
- (2) The responsible Ministers may delete the matter from the copies of the annual report (and accompanying documents) that are laid before the Legislative Assembly or otherwise made public.

Example of a matter that might be deleted—

pricing information given to the Authority in response to an unfinished tender process

44 Annual report may include a summary of a matter

An annual report may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and
- (b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

45 Matters to be included in annual report

The annual report for a financial year must include copies of all directions given to the Authority by the responsible Ministers under this chapter during the financial year.

Division 4 Strategic and operational plans

46 Interaction with the Financial Accountability Act 2009

- (1) If something is required to be done under this division and the same thing, or something to the same effect, is required to be done under the *Financial Accountability Act 2009*, compliance with this division is sufficient compliance with the *Financial Accountability Act 2009*.
- (2) Otherwise, the requirements under this division are in addition to the requirements under the *Financial Accountability Act 2009*.
- (3) If there is an inconsistency between this division and the *Financial Accountability Act 2009*, this division prevails to the extent of the inconsistency.

47 Draft strategic and operational plans

- (1) Before 31 March each year, the board must prepare, and give to the responsible Ministers for their agreement, a draft strategic plan and a draft operational plan for the next financial year.
- (2) The board and the responsible Ministers must try to reach agreement on the draft plans as soon as possible and, in any event, not later than the start of the financial year.

48 Procedures

- (1) The responsible Ministers may return the draft strategic or operational plan to the board and ask the board—

[s 49]

- (a) to consider, or further consider, a stated thing and deal with the thing in the draft plan; and
 - (b) to revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as a matter of urgency.
- (3) If the draft plan has not been agreed to by the responsible Ministers by 1 month before the start of the financial year, the responsible Ministers may, by written notice, direct the board—
 - (a) to take stated steps in relation to the draft plan; or
 - (b) to make stated modifications of the draft plan.
- (4) The board must immediately comply with the direction and include a copy of the direction in the plan.

49 Strategic or operational plan pending agreement

- (1) This section applies if the responsible Ministers and the board have not agreed to the draft strategic or operational plan before the start of the relevant financial year.
- (2) The draft plan given, or last given, by the board to the responsible Ministers before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the responsible Ministers, is taken to be the Authority's strategic or operational plan.
- (3) Subsection (2) applies until a draft strategic or operational plan becomes the Authority's strategic or operational plan under section 50.

50 Strategic or operational plan on agreement

When the draft strategic or operational plan has been agreed to in writing by the responsible Ministers, it becomes the Authority's strategic or operational plan for the relevant financial year.

51 Compliance with strategic and operational plans

The Authority must comply with its strategic and operational plans for a financial year.

52 Modifications of strategic or operational plan

- (1) The board may modify the Authority's strategic or operational plan only with the written agreement of the responsible Ministers.
- (2) The responsible Ministers may, by written notice, direct the board to modify the Authority's strategic or operational plan.

53 Content of operational plan

The Authority's operational plan for a financial year must include—

- (a) the Authority's objectives; and
- (b) the Authority's capital structure; and
- (c) an outline of the following matters—
 - (i) the nature and scope of the activities proposed to be undertaken by the Authority during the financial year;
 - (ii) the Authority's main undertakings for the financial year;
 - (iii) an outline of the borrowings made or proposed to be made by the Authority;
 - (iv) an outline of the Authority's policies for minimising or managing any risk of investments and borrowings that may adversely affect its financial stability; and
- (d) an outline of the major infrastructure investments proposed to be undertaken by the Authority during the financial year; and
- (e) the matters required under section 58.

Part 5 **Directions about equity and dividends**

Division 1 **Direction about equity**

54 **Giving direction**

- (1) The responsible Ministers may, at any time, give the Authority a written direction about payment or transfer of an asset or liability to, or withdrawal or transfer of an asset or liability from, the Authority's equity.
- (2) The Authority must comply with the direction.
- (3) The board must ensure the direction is complied with in relation to the Authority.
- (4) The responsible Ministers must, before giving the direction, consult with the board about the proposed direction.

Division 2 **Direction about dividends**

55 **Giving direction**

- (1) The responsible Ministers may give the Authority a written direction to pay to the State, for a financial year, a dividend of the amount decided under this part.
- (2) If the responsible Ministers give a direction under subsection (1), the Authority must pay the dividend within 6 months after the end of the financial year for which it is payable or a longer period allowed by the responsible Ministers.

56 **Amount of dividend**

- (1) During the period from 1 to 15 May in a financial year the Authority must give the responsible Ministers—

-
- (a) an estimate of its profit for the financial year; and
 - (b) a recommendation about the amount of the dividend that may be required to be paid for the financial year.
- (2) Before the end of the financial year, the responsible Ministers may—
- (a) approve the recommendation and give the Authority a direction to pay a dividend of that amount; or
 - (b) give the Authority a direction to pay a dividend of a different stated amount.
- (3) The amount of the dividend for a financial year must not be more than the amount that would be allowed to be paid by a company under the Corporations Act, part 2H.5 if the Authority were a company.

Part 6 Community service obligations

57 Meaning of *community service obligations*

The *community service obligations* of the Authority are the obligations to perform activities that—

- (a) the board establishes to the satisfaction of the responsible Ministers—
 - (i) are not in the Authority's commercial interests to perform; and
 - (ii) arise because of a request or direction under section 48 or a direction under section 12 or 52; or
- (b) are stated in the operational plan as community service obligations of the Authority.

[s 58]

58 Community service obligations to be stated in operational plan

- (1) The community service obligations that the Authority is to perform are to be stated in its operational plan.
- (2) The costings of, funding for, or other arrangements to make adjustments relating to, the Authority's community service obligations are also to be stated in its operational plan.
- (3) The Authority's operational plan is conclusive, as between the government and the Authority, of—
 - (a) the nature and extent of the Authority's community service obligations; and
 - (b) the ways in which, and the extent to which, the Authority is to be compensated by the government for performing its community service obligations.

Part 7 Acquisition and disposal of assets and subsidiaries

59 Direction not to dispose of stated asset

- (1) The responsible Ministers may, after consultation with the board, give the board a written direction requiring the Authority or a subsidiary of the Authority not to dispose of a stated asset.
- (2) The board must ensure the direction is complied with in relation to the Authority and must, as far as practicable, ensure it is complied with in relation to any relevant subsidiary.
- (3) The responsible Ministers must publish a copy of the direction in the gazette within 21 days after it is given.

60 Disposal of main undertakings

(1) The Authority may dispose of any of its main undertakings only with the prior written approval of the responsible Ministers.

(2) In this section—

main undertakings, of the Authority, means the undertakings stated to be its main undertakings in its strategic or operational plan.

61 Acquiring and disposing of subsidiaries

The Authority may not, without the prior written approval of the responsible Ministers—

- (a) form, or participate in the formation of, a company that will become a subsidiary of the Authority; or
- (b) acquire shares or participate in any other transaction that will result in a body corporate becoming or ceasing to be a subsidiary of the Authority.

Part 8 Commonwealth tax equivalents

62 Liability for Commonwealth tax equivalents

(1) The Treasurer may issue a manual (the *tax equivalents manual*) about deciding the tax equivalents to be paid by the Authority and its subsidiaries.

(2) Without limiting subsection (1), the tax equivalents manual may provide for—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and

[s 62]

- (b) the lodging of returns by the Authority and its subsidiaries; and
 - (c) assessing returns; and
 - (d) the functions and powers of the tax assessor appointed under subsection (3); and
 - (e) objections and appeals against assessments and rulings.
- (3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.
- (4) The Authority and its subsidiaries must, as required under the tax equivalents manual, pay tax equivalents to the Treasurer for payment into the consolidated fund.
- (5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.
- (6) In this section—

Commonwealth tax means tax imposed under a Commonwealth Act.

tax equivalents means amounts paid by the Authority or its subsidiaries to the Treasurer, for payment into the consolidated fund, as the value of benefits derived by the Authority or its subsidiaries because it is not liable to pay Commonwealth tax that would be payable by it if it were not a government entity.

Chapter 3 Provisions for restructure of declared entities

Part 1 Interpretation

66 Declared entities

- (1) Each of the following is a *declared entity*—
 - (a) Queensland Rail Limited;
 - (b) the Authority;
 - (c) a body corporate of which an entity mentioned in paragraph (a) or (b) is the ultimate holding company;
 - (d) a government entity declared under subsection (2).
- (2) The responsible Ministers may, by gazette notice, declare a stated government entity to be a declared entity for this Act if the responsible Ministers are satisfied it is necessary to do so in order to do a thing relating to the government entity for the restructure of a declared entity.

Example—

The responsible Ministers may be satisfied it is necessary to declare a government entity to be a declared entity so that a restructure direction may be given to the entity to enable the restructure of a declared entity to be appropriately carried out.

- (3) In this section—

ultimate holding company has the meaning given by the Corporations Act, section 9, as if section 48(2) and (3) of that Act did not apply and the Authority were a body corporate.

Part 2 Transfer of shares and change of status of Queensland Rail Limited

67 Transfer of shares

On the transfer day, Queensland Rail Limited's shares are transferred to the Authority.

68 Change of status of Queensland Rail Limited

- (1) On the transfer day, the declaration of Queensland Rail Limited as a GOC is revoked.
- (2) The revocation of the declaration of Queensland Rail Limited as a GOC does not, of itself, affect—
 - (a) the legal personality of Queensland Rail Limited; or
 - (b) its functions and powers; or
 - (c) any exception, exemption or other entitlement under an Act that would otherwise have attached to Queensland Rail Limited as a GOC.

Part 3 Application of IRA

69 Application of IRA to the Authority and its employees

- (1) To remove any doubt, it is declared that—
 - (a) the Authority is an employer for the IRA; and
 - (b) employees of the Authority are employees for the IRA; and
 - (c) the Authority is taken to be a government entity under the IRA, section 691B(2); and

[s 70]

(d) an industrial instrument that applies to the employment of persons in the Authority is taken to be an industrial instrument to which the IRA, chapter 15, part 2 applies under section 691B of that Act.

(2) In this section—

industrial instrument see the *Public Service Act 2008*, schedule 4.

Part 4 **Transfer of employees of Queensland Rail Limited**

70 **Definitions for pt 4**

In this part—

certified agreement see the IRA, schedule 5.

commission see the IRA, section 255.

corresponding provision of the IRA, to a provision of the Fair Work Act, means a provision of the IRA that is of similar effect to the provision of the Fair Work Act.

Fair Work Act means the *Fair Work Act 2009* (Cwlth).

federal enterprise agreement means any of the following in force immediately before the transfer day—

- (a) QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009;
- (b) Queensland Rail Administrative, Professional and Technical Enterprise Agreement 2011;
- (c) Queensland Rail Customer Service Enterprise Agreement 2011;
- (d) Queensland Rail Network Enterprise Agreement 2011;

-
- (e) Queensland Rail Rollingstock and Operations Enterprise Agreement 2011;
 - (f) Queensland Rail Stations Operations Enterprise Agreement 2011;
 - (g) Queensland Rail Train Control Enterprise Agreement 2011;
 - (h) Queensland Rail Transit Services Enterprise Agreement 2011.

71 Matters for transfer of employees to Authority

On the transfer day—

- (a) an employee of Queensland Rail Limited immediately before the transfer day (a *transferred employee*) becomes an employee of the Authority; and
- (b) a transferred employee ceases to be an employee of Queensland Rail Limited; and
- (c) Queensland Rail Limited's records, to the extent they relate to the employment of transferred employees, become records of the Authority; and
- (d) Queensland Rail Limited's liabilities relating to a transferred employee's accrued rights to annual, sick, long service or other leave become the liabilities of the Authority.

72 Preservation of rights of employees

- (1) The transfer of an employee of Queensland Rail Limited to the Authority does not—
 - (a) affect the employee's total remuneration; or
 - (b) prejudice the employee's existing or accruing rights to superannuation or annual, sick, long service or other leave; or

[s 73]

- (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
 - (d) constitute a retrenchment, redundancy or termination of the employee's employment at the initiative of Queensland Rail Limited; or
 - (e) entitle the employee to a payment or other benefit because he or she is no longer employed by Queensland Rail Limited; or
 - (f) require Queensland Rail Limited to make any payment in relation to the employee's accrued rights to annual, sick, long service or other leave irrespective of any arrangement between Queensland Rail Limited and the employee.
- (2) Subject to section 69, the transfer has effect despite any other contract, law or instrument.
- (3) In this section—
- employee*, of Queensland Rail Limited, does not include a member of Queensland Rail Limited's board or a director of Queensland Rail Limited.

73 Federal enterprise agreements taken to be certified agreements

- (1) On the transfer day—
- (a) a federal enterprise agreement is taken to be a certified agreement that has been certified by the commission under the IRA, section 156; and
 - (b) each certified agreement is taken to bind the Authority, and its employees and any State employee organisation affiliated with a federal employee organisation that was a party to the federal enterprise agreement.

(2) The nominal expiry date in a federal enterprise agreement that is taken to be a certified agreement under subsection (1) is taken to be the nominal expiry date in the certified agreement.

(3) In this section—

federal employee organisation means an association of employees registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

State employee organisation means an employee organisation registered under the IRA.

74 Interpretation of particular clause in federal enterprise agreement

For applying a clause or term about dispute resolution in a federal enterprise agreement that is, under section 73, taken to be a certified agreement—

- (a) a reference in the agreement to Fair Work Australia (however described) is taken to be a reference to the commission; and
- (b) a reference in the agreement to a provision of the Fair Work Act is taken to be a reference to a corresponding provision of the IRA.

Example of a clause about dispute resolution—

clause 25 (Disputes procedure) of the Queensland Rail Stations Operations Enterprise Agreement 2011

75 Negotiations for replacement of particular certified agreement

- (1) This section applies to the federal enterprise agreement, QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009, that under section 73 is taken to be a certified agreement (a *State agreement*) on the transfer day.
- (2) For the making under the IRA of a new certified agreement to replace the State agreement, the requirements under the IRA,

[s 76]

section 143 for the proposed new certified agreement are taken to be satisfied.

76 Applicable award

- (1) On the transfer day—
 - (a) the Queensland Rail Award—State 2003 made under the IRA by the commission is repealed; and
 - (b) the Rail Industry Award 2010, made by the Fair Work Commission under the Fair Work Act and in force immediately before the transfer day, is taken to be an award made under the IRA, section 125.
- (2) For applying a clause or term about dispute resolution in the Rail Industry Award 2010—
 - (a) a reference in the award to Fair Work Australia (however described) is taken to be a reference to the commission; and
 - (b) a reference in the award to a provision of the Fair Work Act is taken to be a reference to a corresponding provision of the IRA.
- (3) Despite anything to the contrary in a federal enterprise agreement that under section 73 is taken to be a certified agreement, clause 8 of the Rail Industry Award 2010 as in force immediately before the transfer day applies to—
 - (a) the Authority; and
 - (b) employees to whom the certified agreement applies; and
 - (c) any relevant employee organisation registered under the IRA.

Editor's note—

clause 8 (Consultation regarding major workplace change) of the Rail Industry Award 2010

- (4) Clause 8 of the Rail Industry Award 2010 is taken to be a TCR provision for the IRA, section 691D.

Note—

The Rail Industry Award 2010 is taken to be a relevant industrial instrument for the IRA, section 691D. See section 69(1)(d).

77 Individual contracts of employment

- (1) This section applies if an employee of Queensland Rail Limited immediately before the transfer day (a *transferred employee*) is not employed under a federal enterprise agreement but instead has an individual contract of employment with Queensland Rail Limited.
- (2) The transferred employee's individual contract of employment with Queensland Rail Limited is, on the transfer day, taken to be an individual contract of employment between the employee and the Authority and applies with any necessary changes to give effect to the contract.

Part 5 Transfer notices and restructure directions

78 Transfer notice

- (1) For the purpose of the restructure of a declared entity, the responsible Ministers may, by gazette notice (a *transfer notice*), do any of the following—
 - (a) transfer shares in a declared entity to another declared entity or the State;
 - (b) transfer a business, asset or liability—
 - (i) of a declared entity to another declared entity or the State; or
 - (ii) of the State to a declared entity;
 - (c) make provision about the consideration for shares or a business, asset or liability transferred under paragraph (a) or (b);

[s 78]

- (d) grant a lease, easement or other right from a declared entity or the State to a declared entity or the State;
- (e) vary or extinguish a lease, easement or other right held by a declared entity or the State;
- (f) in relation to a lease held under the *Land Act 1994*—
 - (i) transfer the lease; or
 - (ii) change a purpose for which the lease is issued; or
 - (iii) change a condition imposed on the lease; or
 - (iv) grant a sublease;
- (g) in relation to a reserve under the *Land Act 1994*—
 - (i) change a community purpose for which the reserve is dedicated; or
 - (ii) remove a trustee of the reserve; or
 - (iii) appoint a trustee of the reserve, subject to conditions or without conditions;
- (h) provide whether and, if so, the extent to which—
 - (i) a declared entity is the successor in law of another declared entity or the State; or
 - (ii) the State is the successor in law of a declared entity;
- (i) make provision for a legal proceeding that is being, or may be, taken by or against a declared entity or the State to be continued or taken by or against another declared entity or the State;
- (j) make provision for or about the issue, transfer or application of an instrument to a declared entity or the State;
- (k) make provision for the transfer, other than a transfer under section 71, or secondment of an employee—
 - (i) of a declared entity to another declared entity or the State; or

- (ii) of the State to a declared entity;
 - (l) make provision about the employees of a declared entity or the State and their rights;
 - (m) make provision about the records of a declared entity or the State, including records and agreements relating to the employment of employees transferred or seconded under a transfer notice;
 - (n) make provision for the change of status of Queensland Rail Limited from a GOC to a subsidiary of the Authority;
 - (o) make provision about an incidental, consequential or supplemental matter the responsible Ministers consider necessary or convenient for effectively carrying out the restructure of the declared entity.
- (2) A transfer notice may include conditions applying to something done or to be done under the notice.
 - (3) If the responsible Ministers are satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the responsible Ministers may provide for the matter by including a reference in the transfer notice to another document that is—
 - (a) signed by the responsible Ministers; and
 - (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
 - (4) The transfer of a liability of a declared entity or the State under a transfer notice discharges the entity or the State from the liability, except to the extent stated in the notice.
 - (5) A transfer notice has effect despite any other law or instrument.
 - (6) A transfer notice has effect on the day it is published in the gazette or a later day stated in it.

[s 79]

- (7) If a transfer notice makes provision for a matter under subsection (1)(j) in relation to an instrument, the responsible entity for the instrument must take the action necessary to register or record the effect of the transfer notice, including—
- (a) updating a register or other record; and
 - (b) amending, cancelling or issuing an instrument.
- (8) In this section—

authority includes accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.

employee, of a declared entity, does not include a member of the entity's board or a director of the entity.

responsible entity, for an instrument, means the entity required or authorised by law to register or record matters in relation to the instrument.

79 Restructure direction

- (1) The responsible Ministers may give a direction (a *restructure direction*) to a declared entity or its board requiring the entity or board to do something the responsible Ministers consider necessary or convenient for effectively carrying out the restructure of a declared entity.
- (2) Without limiting subsection (1), a restructure direction may be about—
- (a) forming a company for the purpose of transferring a business, asset or liability to the company; or
 - (b) winding up or deregistering a company; or
 - (c) making or executing an instrument; or
 - (d) making a particular decision about disposing of an interest held in a declared entity or a business, asset or liability; or

- (e) making a particular decision for the purpose of returning the proceeds of a disposal mentioned in paragraph (d) to the State; or

Example—

a decision about a dividend or return of capital

- (f) disclosing information.
- (3) A restructure direction must be in writing, signed by the responsible Ministers.
- (4) A declared entity must comply with a restructure direction given to it.
- (5) A declared entity's board must—
- (a) if a restructure direction is given to the board—comply with the direction; or
- (b) if a restructure direction is given to the entity—take the action necessary to ensure the entity complies with the direction.
- (6) A declared entity's employees must help the entity or board to comply with a restructure direction given to the entity or board.

Part 6 Other matters for restructure

80 Effect of changes to Queensland Rail Limited

The transfer of Queensland Rail Limited's shares and employees to the Authority does not, of itself, affect—

- (a) the legal personality of Queensland Rail Limited; or
- (b) its functions and powers; or
- (c) any exception, exemption or other entitlement under an Act that would otherwise have attached to Queensland

[s 81]

Rail Limited had its shares and employees not been transferred.

81 Non-liability for duty

No duty under the *Duties Act 2001* is payable in relation to—

- (a) the transfer of shares in Queensland Rail Limited to the Authority; or
- (b) anything done under a transfer notice.

82 Preservation of rights of transferred employees

- (1) This section applies to the transfer of an employee of a declared entity (the *former employer*) to another declared entity (the *new employer*) under a transfer notice.
- (2) The transfer does not—
 - (a) affect the employee's total remuneration; or
 - (b) prejudice the employee's existing or accruing rights to superannuation or annual, sick, long service or other leave; or
 - (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
 - (d) constitute a retrenchment, redundancy or termination of the employee's employment by the former employer; or
 - (e) entitle the employee to a payment or other benefit because he or she is no longer employed by the former employer; or
 - (f) require the former employer to make any payment in relation to the employee's accrued rights to annual, sick, long service or other leave irrespective of any arrangement between the former employer and the employee.

-
- (3) The transfer has effect despite any other contract, law or instrument.
 - (4) In this section—
employee, of a declared entity, does not include a member of the entity's board or a director of the entity.

83 Disposal of public records

- (1) This section applies if—
 - (a) a thing is done under a transfer notice, restructure direction or section 71; and
 - (b) the thing is, or involves, a disposal of a public record under the *Public Records Act 2002*.
- (2) To remove any doubt, it is declared that, for the purpose of section 13 of that Act, the public record is disposed of under legal authority, justification or excuse.

84 Application of instruments

- (1) This section applies if a transfer notice provides for an instrument that applied to a declared entity (the *transferor*) to apply to another declared entity (the *transferee*) in place of the transferor.
- (2) Without limiting the application of the transfer notice to the instrument—
 - (a) any right, title, interest or liability of the transferor arising under or relating to the instrument is taken to be transferred from the transferor to the transferee; and
 - (b) if the instrument, including a benefit or right provided by the instrument, is given to, by or in favour of the transferor, the instrument is taken to have been given to, by or in favour of the transferee; and
 - (c) the transferee is taken to be a party to the instrument in place of the transferor; and

[s 85]

- (d) a reference in the instrument to the transferor is, to the extent possible and if the context permits, taken to be a reference to the transferee; and
- (e) if an application was made for the instrument in the name of the transferor, the application is taken to have been made in the name of the transferee; and
- (f) if the instrument is an instrument under which an amount is or may become payable to or by the transferor, the instrument is taken to be an instrument under which the amount is or may become payable to or by the transferee, in the way the amount was or might have been payable to or by the transferor; and
- (g) if the instrument is an instrument under which property, other than money, is or may become liable to be transferred, conveyed or assigned to or by the transferor, the instrument is taken to be an instrument under which the property is or may become liable to be transferred, conveyed or assigned to or by the transferee, in the way it was or might have been liable to be transferred, conveyed or assigned to or by the transferor.

85 Registering authority to note transfer or other dealing

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
 - (a) may, without formal application, register or record in the appropriate way a transfer or other dealing affecting an asset or liability under a transfer notice; and
 - (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity.
- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor

in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.

- (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.

- (4) In this section—

transferee entity means the entity to which an asset or liability is transferred under a transfer notice.

transferor entity means the entity from which an asset or liability is transferred under a transfer notice.

86 Act applies despite other laws and instruments

A thing may be done under this Act despite any other law or instrument.

87 Excluded matter for Corporations Act

A direction given by the responsible Ministers under this Act is an excluded matter for the Corporations Act, section 5F, in relation to the Corporations Act, chapter 2D.

Editor's notes—

- Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)
- Corporations Act, chapter 2D (Officers and employees)

88 Effect on legal relationships

- (1) Nothing done under this Act—

[s 88]

- (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
 - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—
 - (i) terminates, or allows a person to terminate, an instrument or obligation; or
 - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
 - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iv) requires any money to be paid before its stated maturity; or
 - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this Act, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

Example—

A contract entered into by a declared entity provides that the entity agrees not to transfer a particular asset without a particular person's consent and that, if the consent is given, it may be subject to particular conditions. If the asset is transferred to another declared entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

-
- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under this Act, the notice is taken to have been given.
- (4) In this section—
relevant entity means—
- (a) the State or an employee or agent of the State; or
 - (b) a declared entity or an employee or agent of a declared entity.

89 Things done under this Act

To remove any doubt, it is declared that a thing is taken to be done under this Act if it is done by, or in compliance with, a transfer notice or restructure direction, even if the thing includes taking steps under another Act.

90 Decisions not reviewable

- (1) Unless there is a determination by the Supreme Court that a decision under this Act is affected by jurisdictional error, the decision—
- (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
decision includes—
- (a) a decision about making a declaration under section 66(2); and

[s 91]

- (b) a decision to give a transfer notice or restructure direction; and
- (c) a decision or conduct leading up to or forming part of the process of making a decision.

91 Severability

- (1) Subsection (2) applies if a provision of—
 - (a) this Act; or
 - (b) a transfer notice;is held by a court or judge to be beyond power, invalid or unenforceable.
- (2) The provision is to be disregarded or severed and the court's or judge's decision does not affect the remaining provisions of the Act or transfer notice which continue to have effect.
- (3) This section does not affect the operation of the *Acts Interpretation Act 1954*, section 9 in any way.

Part 7 Miscellaneous

92 Delegations

The responsible Ministers may delegate their functions or powers under this Act, except section 12, 54, 55, 56, 66 or 78, to the chief executive.

93 Regulation-making power

The Governor in Council may make regulations under this Act.

Chapter 4 **Transitional provisions for Queensland Rail Transit Authority Act 2013**

94 Appointment of board members

- (1) Despite section 16, each of the members of the board of Queensland Rail Limited is appointed on the transfer day as a member of the Authority's board.
- (2) This Act applies to the appointee as if he or she had been appointed under section 16.

95 Appointment of chief executive officer and senior executives

- (1) Despite section 29(2), the chief executive officer of Queensland Rail Limited is appointed on the transfer day as the Authority's chief executive officer.
- (2) Despite section 35, each of the senior executives of Queensland Rail Limited is appointed on the transfer day as a senior executive of the Authority.
- (3) If, immediately before the transfer day, a person is acting in the office of the chief executive officer or a senior executive of Queensland Rail Limited, on the transfer day the person is taken to be acting in the office of the chief executive officer or a senior executive of the Authority.
- (4) This Act applies to the appointee as if he or she had been appointed under section 29 or 35.

Note—

Under section 71, an employee of Queensland Rail Limited immediately before the transfer day becomes an employee of the Authority.

[s 96]

96 Authority's first strategic and operational plans

- (1) This section applies to the Authority's first strategic and operational plans.
- (2) The time within which the Authority's board must prepare and give a draft of each plan under section 47 is 1 month after the Authority's establishment or another time agreed between the board and the responsible Ministers.
- (3) If a draft plan has not been agreed to within 1 month after giving it to the responsible Ministers, the responsible Ministers may give a direction under section 48(3) about the draft plan.
- (4) The period for which the strategic or operational plan applies is—
 - (a) the remainder of the financial year in which it is agreed to by the responsible Ministers; and
 - (b) if the Authority and the responsible Ministers agree the plan is also to apply for the following financial year, for that financial year.

97 Authority's first quarterly report

Section 38 does not apply to the Authority in relation to a quarter before the quarter in which its first operational plan is agreed to by the responsible Ministers.

98 Authority's first plans under Financial Accountability Act 2009

- (1) This section applies to the plans for a financial year, other than a strategic or operational plan, that the Authority is required to prepare and submit under the *Financial Accountability Act 2009*.
- (2) Having regard to when the Authority is established, and any other relevant circumstances, the responsible Ministers may agree to the first plans being prepared and submitted at a time

later than would otherwise apply under the *Financial Accountability Act 2009*.

- (3) If the responsible Ministers act under subsection (2) in relation to a plan, the period for which the plan applies is—
 - (a) the remainder of the financial year in which it is submitted; and
 - (b) if the Authority and the responsible Ministers agree the plan is also to apply for the following financial year, for that financial year.

99 Dividend for 2012–2013 financial year

- (1) This section applies if the date of assent of this Act is after 15 May 2013.
- (2) Despite section 56(1), the Authority must give the responsible Ministers the following information within 7 days after the date of assent—
 - (a) an estimate of the profit for the 2012–2013 financial year;
 - (b) a recommendation about the amount of dividend to be paid for that financial year.
- (3) In this section—

2012–2013 financial year means the financial year ending on 30 June 2013.

100 Application of Transport (Rail Safety) Act 2010 to Queensland Rail Limited and the Authority

- (1) The giving under this Act of functions and powers to the Authority does not, of itself, deprive Queensland Rail Limited of the effective management and control under the *Transport (Rail Safety) Act 2010* of its rail infrastructure and railway operations relating to rolling stock.
- (2) To remove any doubt, it is declared that the following rights or obligations of Queensland Rail Limited under the *Transport*

[s 101]

(Rail Safety) Act 2010 continue in force or to have effect from the transfer day as if this Act had not been enacted—

- (a) Queensland Rail Limited's accreditation for railway operations of a stated scope and nature, and any accreditation condition of the accreditation;
 - (b) any exemptions held by Queensland Rail Limited, or a related body corporate of Queensland Rail Limited, for railway operations of a stated scope and nature;
 - (c) the obligations, including a rail safety duty and other obligations relating to the safety of railway operations, imposed on Queensland Rail Limited.
- (3) Despite anything to the contrary in the *Transport (Rail Safety) Act 2010*, the Authority—
- (a) is exempt under that Act from the requirement to be accredited for railway operations unless and until Queensland Rail Limited no longer has the effective management and control of its rail infrastructure and railway operations relating to rolling stock; and
 - (b) is not required under section 61 of that Act to apply for or hold an exemption notice for railway operations.
- (4) Words defined in the *Transport (Rail Safety) Act 2010* and used in this section have the same meaning as they have in that Act.

101 Existing certified agreements

- (1) This section applies to a certified agreement under the IRA that, before the transfer day—
- (a) applied to Queensland Rail or its subsidiaries; and
 - (b) had not been terminated under the IRA, section 158, 171, 172 or 173 or replaced by another certified agreement.
- (2) Despite the IRA, section 164, the certified agreement ceases to operate and is of no effect on the transfer day.
- (3) In this section—

Queensland Rail means Queensland Rail ABN 47 564 947 264 that on 29 June 2007 under the *Government Owned Corporations Act 1993* was continued in existence under the name QR.

102 References to Queensland Rail Limited in documents

(1) A reference to Queensland Rail Limited in a document about a transferred employee may, if the context permits, be taken to be a reference to the Authority.

(2) In this section—

transferred employee means an employee of Queensland Rail Limited immediately before the transfer day.

103 Effect of regulation amendment

The amendment of a regulation by this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

104 Transitional regulation-making power

(1) A regulation (a *transitional regulation*) may provide for anything—

(a) necessary to provide for, allow or facilitate any or all of the following—

(i) any matter relating to the restructure of Queensland Rail Limited for which this Act applies;

(ii) the establishment under this Act of the Authority;

(iii) any matter relating to the transfer of employees of Queensland Rail Limited to the Authority, including a matter relating to the application of a federal enterprise agreement or certified agreement to an employee to which this Act applies;

[s 104]

- (iv) anything necessary or desirable for Queensland Rail Limited or the Authority because of a matter mentioned in subparagraph (i), (ii) or (iii); and
 - (b) for which this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 1 year after the day this section commences.
- (5) In this section—
 - certified agreement* see section 70.
 - federal enterprise agreement* see section 70.

Schedule 1 Dictionary

section 5

agent includes a financier, insurer or advisor.

annual report, for chapter 2, part 4, division 3, see section 42.

asset includes a right.

Authority means the Authority established under section 6.

board means the Authority's board.

certified agreement, for chapter 3, part 4, see section 70.

chief executive officer means the chief executive officer of the Authority appointed under section 29.

chief finance officer means the chief finance officer of the Authority appointed under section 35.

commission, for chapter 3, part 4, see section 70.

community service obligations see section 57.

corresponding provision of the IRA, for chapter 3, part 4, see section 70.

declared entity see section 66(1).

disposal includes divestment.

dividend means a dividend payable under chapter 2, part 5.

employee includes officer.

Fair Work Act, for chapter 3, part 4, see section 70.

federal enterprise agreement, for chapter 3, part 4, see section 70.

government entity see the *Public Service Act 2008*, section 24.

indictable offence includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

information includes a document.

insolvent under administration see the Corporations Act, section 9.

instrument means any document, and includes—

- (a) an oral agreement; and
- (b) an application; and
- (c) an accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit, plan and any other authority.

IRA means the *Industrial Relations Act 1999*.

lease includes any derivative under lease of the lease.

operational plan means the Authority's operational plan under section 50.

policies, of the board, means the operational, administrative and financial policies that the board must decide under section 15(2)(a).

Queensland Rail Limited means Queensland Rail Limited ACN 132 181 090.

record includes any document.

responsible Ministers means—

- (a) the Treasurer; and
- (b) the Minister administering this Act.

restructure, of a declared entity, includes the transfer of a share, business, asset, liability, instrument or employee of the declared entity to another declared entity.

restructure direction see section 79(1).

right includes power, privilege and immunity.

senior executive, of the Authority, includes the holder of an office in the Authority that reports directly to the chief executive officer and that is commensurate with an office held by a senior executive under the *Public Service Act 2008*.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

strategic plan means the Authority's strategic plan under section 50.

subsidiary, of the Authority, means a body corporate that would be a subsidiary of the Authority under the Corporations Act, part 1.2, division 6 if the Authority were a body corporate.

transfer day means the date of assent of this Act.

transfer notice see section 78(1).

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	62
3 Key	63
4 Table of reprints	63
5 List of legislation	64
6 List of annotations	64
7 Forms notified or published in the gazette	64

2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the *Queensland Rail Transit Authority Act 2013* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Current as at 3 May 2013	Amendments included 2013 Act No. 19	Notes RA ss 7 (1)(k), 37, 40, 42A
-----------------------------	--	---

5 List of legislation

Queensland Rail Transit Authority Act 2013 No. 19

date of assent 3 May 2013
commenced on date of assent
amending legislation—

Queensland Rail Transit Authority Act 2013 No. 19 ss 1–2, ch 5 pt 1

date of assent 3 May 2013
ss 1–2 commenced on date of assent
remaining provisions commenced 3 May 2013 immediately after the
commencement of s 2 (see s 2)

6 List of annotations

Dictionary

s 5 amd 2013 No. 19 s 106

CHAPTER 5—AMENDMENTS OF LEGISLATION

ch hdg om RA s 7(1)(k)

PART 1—AMENDMENT OF THIS ACT

pt 1 (ss 105–107) om RA ss 7(1)(k), 37

PART 2—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

pt 2 (ss 108–109) om RA ss 7(1)(k), 40

PART 3—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

pt 3 (ss 110–119) om RA ss 7(1)(k), 40

PART 4—CONSEQUENTIAL AND MINOR AMENDMENTS OF OTHER LEGISLATION

pt 4 (s 120) om RA ss 7(1)(k), 40

SCHEDULE 1—DICTIONARY

prev sch 1 om RA s 40
pres sch 1 (prev sch 2) renum 2013 No. 19 s 107

7 Forms notified or published in the gazette

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <www.legislation.qld.gov.au> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.