

South Australia

Railways (Transfer Agreement) Act 1975

An Act to approve and give effect to an Agreement between the State and the Commonwealth of Australia relating to the acquisition with the consent of the State of certain railways of the State; to refer to the Parliament of the Commonwealth certain matters relating to or arising out of the Agreement; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Railways (Transfer Agreement) Act 1975*.

2—Commencement

- (1) This Act other than section 11 of this Act shall come into operation on a day to be fixed by proclamation.
- (2) Section 11 of this Act shall come into operation on the declared date.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—
the Agreement means the agreement a copy of which is set out in the Schedule to this Act;
proceeding includes any action;
property includes cash, rights and interests of any kind (including contractual rights) and things in action.
- (2) Where an expression used in this Act is defined in Clause 1 of the Agreement that expression shall for the purposes of this Act and unless the contrary intention appears bear the meaning assigned to it by that Clause.

4—Approval and carrying out of the Agreement

- (1) The Agreement is approved.
- (2) The State consents to the acquisition, provided for by the Agreement, of the railways of the State.
- (3) The consent expressed in subsection (2) of this section shall be deemed to have been given immediately before the commencement date.
- (4) The State and each State Authority are authorised and required to perform and observe any provisions of the Agreement that are required by the Agreement to be performed or observed by the State or a State Authority respectively.

5—Vesting of land

Any land in the State to which the Commission would have been entitled on the commencement date under the Agreement if the Agreement had been in force on that date is by force of this section vested in the Commission and shall be deemed to have become so vested on that date.

6—Vesting of property other than land

- (1) Any property (other than land) to which the Commission would have been entitled on the commencement date under the Agreement if the Agreement had been in force on that date otherwise than by an apportionment referred to in Clause 5 of the Agreement is by force of this subsection vested in the Commission and shall be deemed to have become so vested on that date.
- (2) Where after the commencement date any property (other than land) is apportioned as provided for by Clause 5 of the Agreement, any of that property that is declared by that Clause to be property to which the Commission is entitled pursuant to that Clause on the commencement date is by force of this subsection vested in the Commission and shall be deemed to have become so vested on that date.

7—Transfer of liabilities

On and from the declared date the State and each State Authority is, by force of this section, freed and discharged from all liabilities and obligations incurred by it, and not discharged before that date, in connection with the administration, maintenance and operation of the non-metropolitan railways and of any services that are principally or mainly incidental or supplementary to, or are principally or mainly operated in association with, those railways, to the extent to which the Commission becomes subject to those liabilities and obligations on and from that date.

8—Application of certain laws of the State

All laws of the State that but for this Act or the Agreement would have applied at any time during the interim period to and in relation to the administration, maintenance and operation of the non-metropolitan railways or the services that are principally or mainly incidental or supplementary to, or that are principally or mainly operated in association with, those railways shall have effect and shall be deemed always to have been expressed to have effect, in relation to the administration, maintenance and operation of those railways and services as if this Act had not been enacted and the Agreement had not been made.

9—Certain proceedings may be instituted

Until the declared date and notwithstanding anything in section 5 or section 6 of this Act any proceedings that but for this section could be instituted or continued by or against the Commission, in respect of any land or property referred to in either of those sections, may be instituted or continued as the case may be by or against the Crown in right of the State of South Australia or a State Authority as the case requires as if those sections had not been enacted.

10—Reference of matter to the Parliament of the Commonwealth

On and from the declared date the following matters are referred to the Parliament of the Commonwealth, namely:

- (a) the administration, maintenance and operation in the State of the railways and services vested in the Commission pursuant to the Agreement; and
- (b) the administration, maintenance and operation in the State of any railways constructed or extended by the Commonwealth or the Commission with the consent of the State and of any services principally or mainly incidental or supplementary to or associated with the railways referred to in this paragraph.

11—Consent by the State to future construction

The State consents to the construction of railways by the Commonwealth or the Commission both in the non-metropolitan area and in the metropolitan area but in the case of the metropolitan area only to the extent that those railways are constructed—

- (a) on the lands described in the Second Schedule to the Agreement; or
- (b) as sidings or crossing loops connected to a non-metropolitan railway.

12—Certificates

- (1) For the purposes of the *Real Property (Commonwealth Titles) Act 1924* and for the purposes of any other law of the State a certificate in writing signed by—
 - (a) the Minister or his delegate; and
 - (b) the State Minister or his delegate,stating that the right, title and interest of the State or a specified State Authority in the land referred to in the certificate vested in the Commission on the commencement date is admissible in any proceedings and is conclusive evidence of the matter stated in the certificate.
- (2) A certificate in writing (not being a certificate referred to in subsection (1) of this section) signed by—
 - (a) the Minister or his delegate; and
 - (b) the State Minister or his delegate,in relation to any matter arising out of this Act or the Agreement is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in the certificate.
- (3) A reference in this section to a delegate of the Minister or of the State Minister is a reference to a person appointed by the Minister or by the State Minister, as the case may be, as the delegate of the Minister or of the State Minister for the purposes of the Agreement.
- (4) A document purporting to be a certificate given under this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

13—Powers of Commission

On and from the declared date and notwithstanding any Act or law of the State the Commission is authorised and empowered—

- (a) to administer, maintain and operate in the State the railways and services acquired under the Agreement; and
- (b) to construct and extend railways in the State in accordance with the Agreement and to administer, maintain and operate railways so constructed or extended and services principally or mainly incidental or supplementary to, or associated with, those railways.

14—Vacation of offices by officers and employees

On the declared date every officer and employee appointed pursuant to section 25 of the *South Australian Railways Commissioner's Act 1936* in office immediately before that date shall by force of this section vacate his office.

15—Additional powers of the Trustees of the South Australian Superannuation Fund Investment Trust

- (1) In addition to and not in derogation of the powers conferred on them by or under the *Superannuation Act 1974* the Trustees are authorised and required to transfer to the Superannuation Board of Australia or any substituted body such of the investments of the Fund as are appropriate to comply with the Agreement.

- (2) In this section the expressions *the Trustees* and *the Fund* bear the same respective meanings as are assigned to them pursuant to the *Superannuation Act 1974*.

16—Regulations

- (1) The Governor may make such regulations as are necessary or expedient for the purpose of giving effect to the provisions or objects of this Act.
- (2) Without limiting the generality of subsection (1) of this section the Governor may by regulation dispense with, suspend or vary, so far as is necessary, for the purpose of carrying out or giving effect to the Agreement any provision of any Act, by-law, rule or regulation or other provision having the force of law (under whatever authority made) and which in the opinion of the Governor prevents or impedes or would prevent or impede the carrying out or giving effect to the Agreement and any such regulation shall apply and have effect as if it were enacted in this Act.

Schedule

(Section 4)

AN AGREEMENT made the twenty-first day of May, One thousand nine hundred and seventy-five between the COMMONWEALTH OF AUSTRALIA (in this agreement called "Australia") of the one part and THE STATE OF SOUTH AUSTRALIA (in this agreement called "the State") of the other part.

WHEREAS:—

- (a) Provision is made by paragraphs (xxxiii) and (xxxiv) of section 51 of the Commonwealth of Australia Constitution for the Parliament of Australia to make laws with respect to the acquisition, with the consent of a State, of any railways of the State on terms arranged between Australia and the State and for railway construction and extension in any State with the consent of that State.
 - (b) The railways of the State both metropolitan and non-metropolitan are vested in, and are operated by, the South Australian Railways Commissioner pursuant to the South Australian Railways Commissioner's Act 1936 as amended, subject to control and direction by the State Transport Authority pursuant to the State Transport Authority Act 1974.
 - (c) Australia and the State desire—
 - (i) that pursuant to paragraph (xxxiii) of section 51 of the Constitution the non-metropolitan railways shall be acquired on the first day of July 1975 by Australia, with the consent of the State, on the terms contained in this agreement to the intent that on that date the non-metropolitan railways shall be vested in the Australian National Railways Commission;
 - (ii) that the State Transport Authority and the South Australian Railways Commissioner shall administer, maintain and operate the non-metropolitan railways in accordance with the provisions of this agreement until a date to be declared;
- and
- (iii) that the Australian National Railways Commission shall assume full administration maintenance and control of the non-metropolitan railways on the declared date.

NOW IT IS HEREBY AGREED as follows:—

PART I—PRELIMINARY

1. Interpretation

- (1) In this agreement, unless the contrary intention appears—

"arbitration" means arbitration pursuant to clause 23;

"Australian National Railways" means the railways of the Commission;

"clause" means a clause of this agreement;

"commencement date" means the first day of July 1975;

"declared date" means the date to be declared as provided in clause 14;

"interim period" means the period beginning on the commencement date and ending on the day immediately preceding the declared date;

"interest", in relation to land, means—

(a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, or in connection with, the land;

"land" includes an interest in land;

"metropolitan area" means the area of the State delineated by the Commonwealth Statistician for the purposes of a census taken in the year 1971 as the Adelaide Statistical Division together with, or subject to, any extensions or reductions of that area from time to time agreed by the parties;

"non-metropolitan area" means all areas of the State other than the metropolitan area;

"metropolitan railways" means the railways of the S.A.R. Commissioner, the lines of which railways are referred to in the First Schedule, but does not include the railways, the land of which railways is referred to in clause 5;

"non-metropolitan railways" means all railways of the S.A.R. Commissioner other than the metropolitan railways and includes the railways, the land of which railways is referred to in clause 5;

"party" means a party to this agreement and "the parties" means the two parties to this agreement;

"railways" includes all land, railway lines, bridges, culverts, wharves, buildings, structures, roads, depot and barrack facilities for employees, facilities for storage, servicing and maintenance of rolling stock, signalling, road protection and communication facilities, cranes, weighbridges, locomotives, wagons, carriages, and other rolling stock and vehicles, including road and shunting vehicles, machinery, plant, equipment, tools, and other works, matters and things used, associated, or connected with or appurtenant to the railway system vested in the S.A.R. Commissioner;

"schedule" means a schedule to this agreement;

"services" means services, including freight and passenger road services, that are principally or mainly incidental or supplementary to, or are principally or mainly operated in association with, the non-metropolitan railways;

"the Australian Minister" means the Minister who has for the time being the administration of the Australian Railways Act;

"the Australian Railways Act" means the Australian National Railways Act 1917-1975;

"the Australian Superannuation Fund" means the fund established under the Superannuation Act 1922 as amended or any fund established by any Act substituted for that Act;

"the Commission" means the Australian National Railways Commission, being the body corporate established by the Australian Railways Act;

"the S.A.R. Commissioner" means the South Australian Railways Commissioner, being the body corporate constituted by the S.A. Railways Act;

"the S.A. Railways Act" means the South Australian Railways Commissioner's Act 1936 as amended;

"the State Authorities" means the Transport Authority and the S.A.R. Commissioner;

"the State Minister" means the Minister who has for the time being the administration of the S.A. Railways Act and the State Transport Authority Act 1974 as amended;

"the State Superannuation Fund" means the South Australian Superannuation Fund continued in existence under the Superannuation Act 1974 as amended of the State;

"the Transport Authority" means the State Transport Authority, being the body corporate constituted by the State Transport Authority Act 1974 as amended.

- (2) Where in this agreement a Minister is referred to, the reference shall be deemed to include any other Minister of the Australian Government or of the State Government, as the case may be, who is for the time being acting for or on behalf of the relevant Minister.
- (3) Where in this agreement an Act, or an Act as amended, is referred to, the reference shall mean that Act as amended from time to time, and any Act substituted for that Act and, where appropriate or necessary, shall include all regulations, by-laws and proclamations from time to time made under the Act or the substituted Act, as the case may be.
- (4) Headings and marginal notes in this agreement shall not affect its meaning.

2. **Approving and implementing legislation and consents**

- (1) This agreement, other than this clause, shall have no force or effect until the Prime Minister of Australia and the Premier of the State have jointly certified that the Parliament of Australia and the Parliament of the State have enacted such legislation as is necessary to enable this agreement to enter into force, whether or not that legislation has come into operation.
- (2) The parties will take all practicable steps to seek the enactment, as soon as possible, of legislation as follows:
 - (a) legislation by the Parliament of Australia and the Parliament of the State to approve this agreement and to make such provision as shall be necessary or appropriate on the parts of those Parliaments respectively for the implementation of this agreement including legislation—
 - (i) vesting in the Commission on the commencement date the land (other than land not within the State) and other property, to which the Australian Commission is entitled under this agreement;
 - (ii) authorising and requiring Australia, the State and their respective Authorities and Instrumentalities to perform and observe the provisions of this agreement on their part to be performed and observed;

- (iii) providing to the effect that a joint certificate given by the Australian Minister and the State Minister, or their respective delegates, that the right, title and interest of the State or the State Authorities in the land referred to in the certificate vested in the Commission under legislation enacted pursuant to this agreement is conclusive evidence that such right, title and interest so vested;
 - (iv) providing to the effect that a joint certificate given by the Australian Minister and the State Minister, or their respective delegates, in relation to any matters not referred to in subparagraph (iii) arising under the legislation or this agreement is admissible in evidence in any action or proceeding, and shall be *prima facie* evidence of the matters stated in the certificate for the purposes of such action or proceeding; and
 - (iv) authorising the making of regulations or by-laws that are necessary or convenient for carrying out or giving effect to this agreement and to the legislation for the implementation of this agreement;
- (b) legislation by the Parliament of the State to the effect that the laws of the State that, but for this agreement, would have applied at any time during the interim period to and in relation to the administration, maintenance and operation of the non-metropolitan railways or services have the effect, and shall be deemed to be expressed to have the effect, in relation to the administration, maintenance and operation, of those railways or services that they would have if this agreement had not been made;
- (c) legislation by the Parliament of Australia to the effect that—
- (i) to the extent that the laws of the State referred to in paragraph (b) of this sub-clause as purporting to have the effect referred to in that paragraph by virtue of legislation of the State enacted in accordance with that paragraph, cannot, by reason of section 52 of the Constitution, have that effect as laws of the State, the provisions of those laws shall have that effect by virtue of, and in accordance with, the Commonwealth Places (Application of Laws) Act 1970 as amended of the Parliament of Australia;
 - (ii) it is the intention of the Parliament of Australia that nothing contained in a law of Australia shall prevent any law of the State from having effect, as a law of the State, as referred to in paragraph (b) of this sub-clause; and
 - (iii) paragraph (a) of sub-section (2) of section 4 of the Commonwealth Places (Application of Laws) Act 1970 as amended does not apply in relation to the application of laws of the State in accordance with sub-paragraph (i) of this paragraph;
- (d) legislation by the Parliament of the State discharging the State Authorities on and after the declared date from all liabilities and obligations incurred in connection with the administration, maintenance and operation of the non-metropolitan railways before the declared date to the extent that those liabilities and obligations have not been discharged before that date;

- (e) legislation by the Parliament of Australia making the Commission subject on and after the declared date to all the liabilities and obligations to which paragraph (d) of this sub-clause relates, and requiring the substitution of the Commission for the State or the State Authorities, or any of them, in any action or proceeding pending at the declared date in respect of such liabilities or obligations;
 - (f) legislation by the Parliament of Australia and the Parliament of the State under which an action or proceeding in respect of land or other property that vests in the Australian Commission pursuant to this agreement shall be instituted or continued during the interim period by or against the State or the State Authorities as if that land or other property had not so vested, and that on and from the declared date any such action or proceeding that is not completed shall be continued by or against the Australian Commission;
 - (g) legislation by the Parliament of the State giving the Commission a general power to administer, maintain and operate in the State railways constructed by Australia or the Commission with the consent of the State or acquired by Australia or the Commission and any services that are incidental, or supplementary to, or are operated in association with, such railways;
 - (h) legislation by the Parliament of the State giving a general consent to the construction of railways by Australia or the Commission both in the non-metropolitan area and in the metropolitan area but, in the case of the metropolitan area, only to the extent that those railways are constructed—
 - (i) in the areas described in the Second Schedule; or
 - (ii) as sidings or crossing loops connected to a non-metropolitan railway; and
 - (j) legislation by the Parliament of the State referring to the Parliament of Australia the matter of the administration, maintenance and operation in the State of the railways and services vested in the Commission pursuant to this agreement, of any railways constructed or extended by Australia or the Commission in the State with the consent of the State and of any services principally or mainly incidental or supplementary to, or principally or mainly associated with, those last mentioned railways.
- (3) The parties will take all practicable steps to obtain any necessary consents of the States of New South Wales and Victoria to enable this agreement to be implemented.

3. **Urban railways**

Nothing in this agreement shall prevent the construction, extension, administration, maintenance and operation by the State or a State Authority of a passenger railway system within an urban area outside the metropolitan area.

4. **Compliance with agreement**

Each party, so far as its power extends, will provide for and secure compliance with this agreement in accordance with the legislation by which it is approved and is to be implemented.

PART II—TRANSFER AND INTERIM ADMINISTRATION, MAINTENANCE AND OPERATION OF NON- METROPOLITAN RAILWAYS

5. Assets and liabilities

- (1) In consideration of the financial arrangements between the parties contained in this agreement—
- (a) the Commission shall on the commencement date be entitled to the right, title and interest of the State Authorities and the Crown in right of the State in—
- (i) all land used exclusively for the purposes of the non-metropolitan railways and services;
 - (ii) the land described in the Second Schedule, whether or not such land is used exclusively for the purposes of the non-metropolitan railways;
- and
- (iii) all minerals in the land referred to in sub-paragraphs (i) and (ii) of this paragraph in so far as the minerals are part of land of the Crown in right of the State or part of land vested in the State Authorities for an estate in fee simple,
- and in every case referred to in sub-paragraphs (i) (ii) and (iii) of this paragraph without any limitations as to depth;
- (iv) the land in the State of New South Wales referred to in the Third Schedule, subject to the reservations and limitations specified in the Certificates of Title to that land;
- and
- (v) the leasehold land in the State of Victoria referred to in the Fourth Schedule;
- (b) the Commission shall, on the commencement date, be entitled to the right, title and interest of the S.A.R. Commissioner in—
- (i) all rolling stock, vehicles, plant, machinery and general equipment used exclusively for the purposes of the non-metropolitan railways and services;
- and
- (ii) in the case of any items used partly for the purpose of non-metropolitan railways and services, such of those items as shall be apportioned on an equitable basis by agreement between the parties;
- (c) on the commencement date—

- (i) the current assets, being all other property, rights and interest (whether contractual or non-contractual), including cash in hand or in bank, and the current liabilities in respect of the metropolitan and non-metropolitan railways and services as will be recorded in the balance sheet relating to those railways as at the thirtieth day of June 1975 (compiled in a manner similar to the balance sheet for the financial year ended on the thirtieth day of June 1974) will be apportioned between those railways on an equitable basis to be agreed between the Treasurer of Australia and the Treasurer of the State;
 - (ii) the Commission shall be entitled to such of those current assets as are apportioned in respect of the non-metropolitan railways and services, and will accept responsibility for such of those current liabilities as are apportioned in respect of those railways and services; and
 - (iii) if there are any contractual or non-contractual rights and interests, and things in action, not included in the balance sheet referred to in sub-paragraph (i) of this paragraph the Commission shall be entitled to such of those rights, interest and things in action as relate solely to the non-metropolitan railways and services, and such of those rights, interests and things in action as relate to both the metropolitan railways and the non-metropolitan railways shall be apportioned on an equitable basis to be agreed between the Treasurer of Australia and the Treasurer of the State, and the Commission shall be entitled to such of those rights, interests and things in action as are apportioned to the non-metropolitan railways and services.
- (2) If land is owned by the Crown in right of the State or by either of the State Authorities and is used or held for use for both the metropolitan railways and the non-metropolitan railways, the State Authorities will permit the Commission to use and enjoy such land on reasonable terms and conditions (but not to the extent that the land becomes a place acquired by Australia for public purposes) and failing agreement the matter shall be determined by arbitration.

6. Interim administration maintenance and operation of railways

The State Authorities will, during the interim period, so far as they lawfully may, by virtue of the legislation to be enacted pursuant to this agreement continue to administer, maintain and operate the non-metropolitan railways and services, but in so doing will comply with any directions of the Commission.

7. Standards of operation

The non-metropolitan railways shall be operated, on and after the commencement date, in accordance with standards in all respects at least equal to those obtaining at the date of this agreement, and the Commission will pursue a program of improvements which it considers to be economically desirable to ensure standards of service and facilities at least equivalent, in general, to those at any time current in respect of the remainder of the Australian National Railways and the railways of States other than South Australia.

8. Rates and charges

- (1) The Commission will ensure that, in general, fares, freight rates and other charges in respect of the non-metropolitan railways and services shall be maintained, on and after the commencement date, at levels not less favourable to users than those levels generally applying on the railways of States other than South Australia and where, in general, fares, freight rates and other charges at the commencement date have established a relative advantage to the users, that advantage shall not be diminished.
- (2) Passenger concessions that exist in respect of the non-metropolitan railways at the date of this agreement shall continue after the declared date so far as they lawfully may do so.
- (3) The State will reimburse the Commission the reasonable cost to the Commission as agreed between the parties, of the passenger concessions continued pursuant to sub-clause (2).
- (4) Failing agreement on any matter to which this clause relates it shall be determined by arbitration.

9. Line closures and reductions in services

- (1) The Australian Minister will obtain the prior agreement of the State Minister to—
 - (a) any proposal for the closure of a railway line of the non-metropolitan railways; or
 - (b) the reduction in the level of effectively demanded services on the non-metropolitan railways,

and failing agreement on any of these matters the dispute shall be determined by arbitration.

- (2) The arbitrator shall, in addition to the factors referred to in sub-clause (2) of clause 23, take into account the level of public demand and the need for the railway line and services referred to in sub-clause (1) of this clause.

10. State representation on the Commission

- (1) The State shall be entitled to nominate a representative from time to time as a part-time Commissioner of the Commission during two consecutive terms each of five years as from the commencement date.
- (2) The Australian Minister will ensure that a person who is nominated by the State for the purposes of sub-clause (1) and is acceptable to the Australian Minister is appointed as a part-time Commissioner of the Commission in accordance with the provisions of the Australian Railways Act.

11. Additional provisions regarding land and minerals

- (1) The State or the S.A.R. Commissioner or the Transport Authority, as appropriate, will, as soon as practicable after the commencement date, execute a transfer or assignment to the Commission of the land to which the Commission shall be entitled under this agreement and which is not within the State, and will take all necessary action to procure any necessary registration of the transfer or assignment.
- (2) The State will grant to Australia or the Commission, free of charge, an estate in fee simple, without reservation of minerals and unlimited as to depth, in any Crown lands that are certified by the Australian Minister or his delegate to be required for or in connection with the construction, extension, administration, maintenance or operation of any new or existing railways of the Commission, including any leased lands of the Crown which have become Crown lands by virtue of—
 - (a) the surrender by the lessees of their estates in the land to the Crown; or
 - (b) the surrender of those estates to the Crown after they have been acquired by Australia or the Commission,

and if there is a dispute as to whether the quantity of land so certified is reasonable the matter shall be determined by arbitration.

- (3) The State will also grant to Australia or the Commission, free of charge, any stone, soil, and gravel in or on any Crown lands or lands leased by the Crown from which the State has a right to take the same, that are certified by the Australian Minister or his delegate to be required for or in connection with the construction, extension, maintenance or operation of any new or existing railways of Australia or the Commission in the non-metropolitan area.
- (4) For the purposes of this clause "Crown lands" has the same meaning as in the Crown Lands Act 1929 as amended of the State.
- (5) The Commission will arrange for such surveys as they consider necessary in respect of land comprised in the non-metropolitan railways, and the State Authorities will give reasonable assistance to the Commission in the carrying out of the surveys.
- (6) The Commission will not use the land and minerals within the State to be vested in the Commission pursuant to this agreement for other than railways purposes without the approval of the State Minister.
- (7) The State Authorities will give to the Commission the right of first refusal in respect of a grant or transfer of any other land vested in the State or the State Authorities for the purposes of the non-metropolitan railways and services, and not currently used for railways purposes on the same terms and conditions as those on which it was acquired by the State or a State Authority or Instrumentality whichever was the earlier acquisition.
- (8) The Commission will transfer to the State free of charge land within the State which is vested in the Commission pursuant to this agreement and is no longer required for railways purposes.

12. **Reciprocal transit rights**

The Commission and the State Authorities shall have the right to run their rolling stock over the railways of each other subject to reasonable terms and conditions, to be agreed between them, including a term or condition relating to apportionment of costs, and failing agreement the matter shall be determined by arbitration.

13. **Services associated with non-metropolitan railways**

- (1) The land and other property, rights and interests (whether contractual or non-contractual), and things in action, to which the Commission shall be entitled under this agreement on the commencement date, and the liabilities to which the Commission shall become subject pursuant to this agreement and the legislation to be enacted in accordance with this agreement, shall include the land and other property, rights and interests (whether contractual or non-contractual) and things in action, and liabilities, as the case may be, of the State Authorities in or in relation to the services in respect of the non-metropolitan railways.
- (2) Nothing in this clause shall operate to restrict the introduction of new freight or passenger road services or the extension of those freight or passenger road services which exist on the commencement date by Australia, the Commission, the State or the State Authorities.
- (3) The Commission will, as a matter of policy, act in conformity with the relevant State legislation affecting the operation of the passenger road services, except where there is a conflict between the law of Australia and the law of the State, in which case the provisions of the law of Australia shall prevail.
- (4) If in addition to the passenger road services Australia or the Commission require a new passenger road service for which the approval of the Transport Authority of the State would be required by any person proposing to operate a similar service, then Australia or the Commission will apply to the Transport Authority for approval to operate the service, and if any such application is refused the matter may be referred by Australia or the Commission for determination by arbitration.
- (5) Australia or the Commission shall not be liable to pay any fees, taxes or other charges in respect of the application or approval referred to in sub-clause (4) or in connection with the operation of the road services referred to in this clause.

PART III—EMPLOYMENT

14. **Declared date**

- (1) The Australian Minister and the State Minister will, as soon as practicable after the commencement date, by notice in writing in the Australian Government Gazette declare a date to be the declared date.
- (2) If either the Australian Minister or the State Minister so requests, the Ministers will forthwith consult together for the purposes of agreeing upon the earliest practicable date that may be declared under sub-clause (1).
- (3) If the Australian Minister and the State Minister are not able to agree in consultations in accordance with sub-clause (2) upon a date to be the declared date, the date shall be determined by arbitration.

15. **Transfer of staff**

On the declared date the Commission will appoint as officers, or engage as employees, all persons employed on the South Australian Railways immediately before that date who consent to be so appointed or engaged.

16. **Work on metropolitan railways**

On and after the declared date the Commission will, so far as is practicable, make available to the State Authorities, on such terms and conditions as are agreed between them, the services of such numbers of employees of the Commission (as from time to time agreed between the Australian Minister and the State Minister) as are, consistent with any rule, practice, award or industrial agreement, applicable or relating to the Commission, required, for the administration, maintenance and operation of the metropolitan railways.

17. **Level of employment**

The Australian Minister will obtain the prior agreement of the State Minister to the implementation of any proposals for reducing, by reason of redundancy, the general level of employment at railway workshops to be vested in the Commission pursuant to this agreement, and failing agreement the matter shall be determined by arbitration.

PART IV—FINANCIAL ARRANGEMENTS

18. **Payment**

Australia will pay to the State the sum of Ten million dollars (\$10,000,000) before the commencement date subject to this agreement coming into force.

19. **Debts and liabilities**

On the commencement date—

- (a) the debt specified in the Sixth Schedule shall be taken over from the State by Australia to the intent and effect that—
 - (i) on and from that date the State shall be completely freed and discharged from all liability, whether in respect of principal, interest, sinking fund contribution or otherwise, which liability shall, as between Australia and the State and for all other purposes, be assumed by Australia; and
 - (ii) this provision shall not affect the obligations of the State in relation to the payment of sinking fund contributions in the year ending on the thirtieth day of June 1976 under the Financial Agreement between Australia and the States; and
- (b) the State shall be completely freed and discharged from all liability in respect of payments of interest and repayments falling due after the commencement date in respect of loans for non-metropolitan railways and works made under the agreements in the Schedule of each of the following Acts:—
 - Railway Standardisation (South Australia) Agreement Act 1949;
 - Railway Equipment Agreement (South Australia) Act 1961; and
 - Railway Agreement (New South Wales and South Australia) Act 1968.

20. **Revenue and costs of operation of railways**

Subject to the provisions of this clause, during the interim period—

- (a) the State shall be entitled to receive the revenue from the operation of the non-metropolitan railways and services and will bear the costs of the administration, maintenance and operation of those railways and services, excluding from those costs the charges relating to the debt in respect of which the State will be freed and discharged pursuant to clause 19;
- (b) the Commission shall be entitled to receive any surplus of revenue over the costs ascertained in accordance with paragraph (a) of this clause and shall bear any excess of those costs over revenue;
- (c) for the purposes of determining costs of the administration, maintenance, and operation of both the metropolitan railways and the non-metropolitan railways and services, costs common to both railways and services shall be apportioned on a basis to be agreed between the Treasurer of Australia and the Treasurer of the State;
- (d) any revenue common to the operation of both such railways shall be apportioned on a basis to be agreed between those Treasurers; and
- (e) payments made by the State Authorities in respect of long service leave, sick leave, workmen's compensation and employer contributions towards superannuation shall continue to be charged as current expenditure and shall be taken into account for the purpose of ascertaining the costs of administration, maintenance and operation of the non-metropolitan railways and services.

21. **Transfer of investments to Australian Superannuation Fund etc.**

The State will, in respect of contributions made by employees to the South Australian Superannuation Fund to be transferred to the Commission pursuant to this agreement, transfer appropriate investments to the Australian Superannuation Fund to be agreed between the parties, the Superannuation Board of Australia, or any substituted body, and the Superannuation Board of the State in accordance with the following principles—

- (a) The investments transferred shall be related to an equitable division of the total investments of the State Superannuation Fund; and
- (b) the object of the transfer will be to disadvantage neither the State employees to be transferred, nor the contributors to the Australian Superannuation Fund or the State Fund.

22. **Accounts information etc.**

- (1) The State Authorities will, during the interim period, keep such financial and other records regarding the administration, maintenance and operation of both the metropolitan railways and the non-metropolitan railways, and have carried out by the State Auditor-General such audits as Australia shall reasonably require.

- (2) The State Authorities will, both during and after the interim period, permit access by Australia or the Commission to or give or deliver to Australia or the Commission, as the case may be, such financial and other reports, estimates, accounts and other records, documents and information regarding—
- (a) the administration, maintenance and operation of non-metropolitan railways and services; and
 - (b) the administration, maintenance and operation of the metropolitan railways where the subject matter is relevant to the non-metropolitan railways,
- when and in such manner as Australia or the Commission shall reasonably require.
- (3) The Commission will, both during and after the interim period permit access by the State or the State Authorities to, or give or deliver to the State, or the State Authorities, as the case may be, such financial and other reports, estimates, accounts and other records, documents and information regarding the administration, maintenance and operation of the non-metropolitan railways where the subject matter is relevant to the metropolitan railways when and in such manner as the State or the State Authorities shall reasonably require.

PART V—MISCELLANEOUS

23.

- (1) Where a reference to arbitration is provided for in this agreement the matter under reference shall be determined, as soon as practicable, by an independent arbitrator acceptable to Australia and the State.
- (2) The arbitrator shall in his deliberations take into account, amongst other things, economic, social and community factors.
- (3) The arbitrator shall not perform his functions as an arbitrator under any law relating to arbitration but shall act as an independent expert or adjudicator.

FIRST SCHEDULE—METROPOLITAN RAILWAYS

(Clause 1)

- 1. The double track line from Adelaide passenger station to Outer Harbour.
Single track branch lines from Woodville to Grange, from Woodville to Finsbury, from Albert Park to Hendon and from Glanville to Semaphore.
- 2. Double track line from Adelaide passenger station to Brighton, Marino and Christie Downs.
Single track branch line from Tonsley Junction to Tonsley.
- 3. Double track line from Adelaide passenger station to Belair.
- 4. Double track line from Adelaide passenger station to Gawler.
Single track branch line from Gawler to North Gawler.
Double track branch line from Salisbury to Penfield branch.
Single track branch line from Salisbury North to General Motors Holden at Elizabeth.
Single track branch line from Dry Creek to Northfield.

Single track branch line from Dry Creek to Port Adelaide Dock Station.

SECOND SCHEDULE—PARTICULAR LAND TO VEST IN THE COMMISSION

(Clause 5)

Mile End Freight Terminal

All that land known as Mile End Goods Yard contained within the following area: Commencing on the eastern boundary of Railway Terrace at its intersection with the northern boundary of West Beach Road thence northerly along the eastern boundary of Railway Terrace to its intersection with the northern boundary of Hilton Road thence westerly along the northern boundary of Hilton Road to its intersection with the south eastern boundary of Railway Terrace thence north easterly along the south eastern boundary of Railway Terrace to its intersection with the southern boundary of Glover Road thence easterly along the southern boundary of Glover Road to a point three metres west of the centre of the track known as the 'up south suburban' and continuing to a point one metre north of the northern edge of the passenger platform at Mile End Station thence by lines generally westerly, southerly and easterly distant one metre north, west and south respectively of the edge of the platform to a point three metres west of the centre of the aforesaid 'up south suburban' track and then southerly along a line three metres to the west of the 'up south suburban' track until a point is reached where the adjacent track in the goods yard is closer than six metres between the centre of that track and the centre of the 'up south suburban' track and from which point the boundary shall be exactly central between the two tracks until a point south of Hilton Road where the goods track will deviate more than six metres between the centre of that track and the centre of the 'up south suburban' track and from which point the boundary shall be three metres west of the centre of the aforesaid 'up south suburban' track continuing to the northern edge of the passenger platform at Keswick Passenger Station and then continuing along the northern and western edges of the platform to a point on the northern boundary of the Anzac Highway thence generally westerly along the northern boundaries of Anzac Highway and West Beach Road to the point of commencement.

Islington Workshops

All that land known as the Islington Workshops being those portions of Sections 379, 380, 381 and 382 Hundred of Yatala bounded by a line commencing at the intersection of the western boundary of Churchill Road and the northern boundary of Regency Road to its intersection with the production of the western fence alignment of Islington Workshops thence northerly by the said production of the western fence alignment of the aforesaid fence and thence northerly along the said fence to the southern fence line of the cottages facing Carroll Avenue thence easterly along that southern fence to the intersection of that fence line with the western fence line of the cottages facing Churchill Road thence southerly along that fence line to its southern extremity thence easterly along the southern fence line of the southern most cottage to its intersection with the western boundary of Churchill Road thence southerly along the western boundary of Churchill Road to the point of commencement.

Islington Goods Yard

All that land known as the Islington Goods Yard bounded by a line commencing at the intersection of the western boundary of Churchill Road and the southern boundary of Regency Road and thence southerly along the western boundary of Churchill Road to the southern boundary of Section 776 Hundred of Yatala thence westerly along the said boundary to a point equidistant from the centre of the 'up main north line' and the centre of the most westerly siding of the Islington Goods Yard thence northerly along a line equidistant from the said two lines until the distance between the centres of the said lines is six metres and the lines are diverging. From this point thence by a line northerly to a point on the southern boundary of Regency Road eleven metres east of the centre of the 'up main north line' thence easterly along the southern boundary of Regency Road to the point of commencement.

Dry Creek Marshalling Yard

All that land known as the Dry Creek Marshalling Yard bounded by a line commencing at a point on the north western boundary of railway land one hundred metres due south of the southern boundary of High Street Dry Creek thence north easterly along the said north western boundary of railway land for the full length of the Dry Creek Marshalling Yard to the production of the common boundary of sections 2241 and 2244 Hundred of Yatala thence south easterly along the said production of the common boundary of sections 2241 and 2244 Hundred of Yatala to a point distant three metres north westerly from the centre line of the 'down main north line' thence south westerly a distance three metres from the centre line of the said 'down main north line' to a point five hundred metres north east from the north eastern end of the 'down' passenger platform at Dry Creek Station thence north westerly a distance of seven metres thence south westerly a distance ten metres from the centre line of the 'down main north line' to a point one hundred metres due south of the production of the southern boundary of High Street Dry Creek thence westerly to the point of commencement.

Port Adelaide Sidings

All that land (used exclusively for the purpose of the non-metropolitan railways) north from Bedford Street, Port Adelaide, extending to the northern extremity of the railway from Port Adelaide Goods Yard.

Gillman Marshalling Yard and Siding to Finsbury Industrial Area, Port Adelaide Goods Yard and Wharf and Industrial Sidings on Le Fevre Peninsula

All that land (used exclusively for the purpose of the non-metropolitan railways) being those parts of the areas known as Gillman Marshalling Yard and Siding to Finsbury Industrial Area, Port Adelaide Goods Yard, and Wharf and Industrial Sidings on Le Fevre Peninsula.

Together with all rights of way and other easements over any adjoining land of the State or the State Authorities or any other Authority or Instrumentality of the State which are necessary for the use and enjoyment of any land to which the Commission is entitled under this agreement.

THIRD SCHEDULE—LAND IN THE STATE OF NEW SOUTH WALES

(Clause 5)

All of that land vested in the S.A.R. Commissioner pursuant to the Broken Hill to South Australian Border Railway Agreement Act 1968-1969 of the State of New South Wales and any other land in that State vested in the State or State Authorities for the purpose of the non-metropolitan railways.

FOURTH SCHEDULE—LEASEHOLD LAND IN THE STATE OF VICTORIA

(Clause 5)

All that land at Serviceton leased by the Victorian Railways Commissioners to the S.A.R. Commissioner.

FIFTH SCHEDULE—RAILWAYS SUBJECT TO TRANSIT RIGHTS

(Clause 12)

Adelaide Passenger Station

Adelaide-Outer Harbour Line

1. Where Australian Railways' trains to and from Mile End around the Gaol Loop, cross the Outer Harbour Line (near the Torrens Bridge).
2. Where Australian Railways' trains from Gillman Yard join the Outer Harbour line to travel to Glanville.
3. Where Australian Railways' trains travel beyond Glanville to service facilities on the Le Fevre Peninsula.

Adelaide-Belair Line

1. On all quadruple tracks between Adelaide passenger station and Goodwood Junction.
2. Between Goodwood Junction and Belair.
3. Between Mile End South Junction and Goodwood Junction.

Adelaide-Gawler Junction

1. Between Adelaide passenger Station and Gawler.
2. Between Gawler and North Gawler.
3. Between Salisbury North and General Motors Holden Elizabeth.
4. Between Dry Creek and Northfield.

Islington

Where trains cross the main line to Gawler, leaving or entering Islington workshops.

Dry Creek-Port Adelaide

Where trains travel on this line between Dry Creek and Port Adelaide, Gillman Yard and Glanville.

**SIXTH SCHEDULE—DEBTS TO BE TAKEN OVER BY
AUSTRALIA**

(Clause 19)

Interest Rate	Maturity Date	Amount (in Thousands of Dollars)
8.20%	May 1977	5,000
5.90%	July 1977	6,000
5.00%	May 1978	4,000
6.80%	August 1979	6,000
5.70%	February 1982	10,000
5.40%	July 1983	3,000
8.30%	October 1983	17,000
5.25%	May 1985	20,000
5.25%	July 1988	15,000
5.25%	July 1989	3,000
6.70%	July 1991	8,000
6.50%	October 1993	5,000
7.00%	February 2001	12,000
7.00%	July 2005	10,000
	Total	124,000

IN WITNESS WHEREOF this agreement has been executed on behalf of the parties respectively as at the day and year first above written.

SIGNED by the Honourable EDWARD GOUGH WHITLAM,
Prime Minister of Australia, in the presence of—

A. ROSE

}

E.G. WHITLAM

SIGNED by the Honourable DONALD ALLAN DUNSTAN,
Premier of South Australia, in the presence of—

W. VOYZEY

}

D.A. DUNSTAN

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal Act

Year	No	Title	Assent	Commencement
1975	60	<i>Railways (Transfer Agreement) Act 1975</i>	21.8.1975	30.10.1975 (<i>Gazette</i> 30.10.1975 p2204) except s 11—1.3.1978: <i>Commonwealth of Australia Gazette</i> Special No. S 278, 6.12.1977: s 2