



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

6847



PERTH, TUESDAY, 5 DECEMBER 2000 No. 262 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

RAIL FREIGHT SYSTEM ACT 2000

RAIL FREIGHT SYSTEM (TRANSFER) ORDER 2000

made under section 23 of the Rail Freight System Act 2000

Made by the Minister for Transport.

1. Citation

This order may be cited as the *Rail Freight System (Transfer) Order 2000*.

2. Meaning of terms

In this order—

“**Access Assets**” means all of the rights and choses in action which the Commission would but for this order have immediately after the Transfer Time against each of the parties to any Agreement or Instrument prescribed in Section G and H of Schedule 1 of this Order for which the Network Lessee Manager is being substituted as a party by this order, in respect of the subject matter of such Agreements and Instruments but does not include any right to recover a book debt owing to the Commission immediately prior to the Transfer Time.

“**Agreement**” and “**Instrument**” means an agreement or instrument described in Schedule 1 of this order.

“**Assets**” means all of the rights and choses in action which the Commission would but for this order have immediately after the Transfer Time against each of the parties to any Agreement or Instrument for which the Purchaser is being substituted as a party by this order, in respect of the subject matter of such Agreements and Instruments but does not include any right to recover a book debt owing to the Commission immediately prior to the Transfer Time.

“**Commission**” has the meaning given by section 2 of the *Government Railways Act 1904*.

“**Freight Network**” means all of the land and railway infrastructure on such land designated as Corridor Land for the purposes of the Act.

“**Network Lessees**” means the Network Lessee (Narrow Gauge) and the Network Lessee (Standard Gauge).

“**Network Lessee Manager**” means WestNet Rail Pty Ltd (ACN 094 721 301) as manager for and on behalf of the Network Lessees.

“**Network Lessee (Narrow Gauge)**” means WestNet NarrowGauge Pty Ltd (ACN 094 736 900).

“**Network Lessee (Standard Gauge)**” means WestNet StandardGauge Pty Ltd (ACN 094 819 360)

“**Purchaser**” means Australia Western Railroad Pty Ltd (ACN 094 792 275).

“**the Act**” means the *Rail Freight System Act 2000*.

“**Transfer Time**” means 12.01am on the first Sunday immediately following the Completion Time on the Completion Date as defined in the Agreement for Sale of Business between Hon. Murray Criddle MLC, Minister for Transport, exercising powers under section 13 and section 44 of the Act; the Commission; Hon. Richard Fairfax Court MLA, Treasurer, exercising power under section 20 of the Act; Westrail Freight Employment Pty Ltd; AWR Holdings WA Pty Ltd; the Purchaser; WestNet StandardGauge Pty Ltd; WestNet NarrowGauge Pty Ltd; AWR Lease Co. Pty Ltd; and Australian Railroad Group Pty Ltd.

“**Urban Network**” means all government railway land as defined in the Government Railways Act and the railway infrastructure on that land.

3. Purpose of order

This order is made for the purpose of the disposal within the meaning of the Act, of the Commission's rail freight business as a going concern, the disposal being limited to the disposal of things belonging to the State, including the Commission.

4. Disposal to the Purchaser

On and from the Transfer Time—

- (a) all of the Assets will be assigned to the Purchaser in accordance with section 23(1)(b) of the Act;

- (b) all of the Access Assets will be assigned to the Network Lessee Manager in accordance with section 23(1)(b) of the Act;
- (c) subject to the following terms of this order—
- (i) each Agreement and Instrument specified in Sections A, B, C, D, E and F of Schedule 1 to this order will have effect from the Transfer Time as if references to the Purchaser were substituted for references in it to the Commission; and
 - (ii) each Agreement and Instrument specified in Sections G and H of Schedule 1 to this order will have effect from the Transfer Time as if references to the Network Lessee Manager were substituted for references in it to the Commission;
- (d) for the purposes of section 23(1)(d) and section 24(1)(b) of the Act, it is expressly specified that neither the Purchaser, the Network Lessees, nor the Network Lessee Manager will be liable for any liability under any Agreement or Instrument which arises prior to the Transfer Time and the Commission will as between it and any such party remain liable;
- (e) for the purposes of section 23(1)(d) and section 24(1)(b) of the Act, it is expressly specified that nothing in this order will affect any right of the Commission to recover under an Agreement or Instrument which has arisen prior to the Transfer Time a liquidated amount for damages or to the extent that the Commission can set off that right against any liability to which clause 4(d) applies;
- (f) in respect of the Agreements and Instruments between the Commission and Hotham Valley Tourist Railway W.A. Inc, National Rail Corporation Limited (ACN 052 134 362) and Great Southern Railway Ltd (ACN 079 476 949), it is hereby expressly specified for the purposes of section 23(1)(d) and section 24(1)(b) of the Act that those Agreements and Instruments will from the Transfer Time have effect as between those parties and the Network Lessee Manager in respect of the Freight Network and will continue in respect of the Urban Network as between those parties and the Commission, except that the Network Lessee Manager shall be entitled to receive all access fees payable from Transfer Time;
- (g) in respect of the Agreements and Instruments between the Commission and any or all of—
- (i) John Holland Construction & Engineering Pty Ltd (ACN 004 282 268); and
 - (ii) John Holland Group Pty Ltd (ACN 050 242 147),
- (together here referred to as “**the John Holland Parties**”) consisting of or relating to Data Room Documentation numbered 63020001 to 63020023 inclusive, it is hereby expressly specified for the purposes of section 23(1)(d) and section 24(1)(b) of the Act that those Agreements and Instruments will from the Transfer Time—
- (A) have effect as between the John Holland Parties and the Network Lessee Manager in respect of the Freight Network; and
 - (B) will continue to have effect in respect of the Urban Network as between the John Holland Parties and the Commission; and
- (h) in respect of the agreement between Australian Rail Track Corporation Ltd and the Commission evidenced by letter between them accepted by the Commission on 13 October 2000, it is expressly specified that the Network Lessee Manager will not be liable for any obligation under clause 7 of the Memorandum of Understanding to which that letter refers and the Commission will (as between it and Australian Rail Track Corporation Ltd) remain liable.

5. Contracts arising from internal arrangements of the Commission

The arrangements specified in Schedule 2 are to be regarded under section 26 of the Act as contracts between the different parts of the Commission's business and operations with the parties specified in Schedule 2.

6. Lease in favour of Network Lessee (Narrow Gauge)

On and from the Transfer Time the rights created in favour of the Network Lessee (Narrow Gauge), arising under a Rail Freight Corridor Land Use Agreement and Railway Infrastructure Lease Narrow Gauge between the Rail Corridor Minister acting under section 42 of the Act, the Commission, the Treasurer, the Network Lessee (Narrow Gauge), the Purchaser and the Guarantor will be given effect to in accordance with section 23 of the Act.

7. Lease in favour of Network Lessee (Standard Gauge)

On and from the Transfer Time the rights created in favour of the Network Lessee (Standard Gauge), arising under a Rail Freight Corridor Land Use Agreement and Railway Infrastructure Lease Standard Gauge between the Rail Corridor Minister acting under section 42 of the Act, the Commission, the Treasurer, the Network Lessee (Standard Gauge), the Purchaser and the Guarantor will be given effect to in accordance with section 23 of the Act.

8. Schedules

The Schedules referred to in this order are kept by the Commission and are available for public inspection by anyone applying to the Minister for Transport or the Commission to see them.

MURRAY CRIDDLE, Minister for Transport.



2 0 0 0 0 0 2 6 2 6 6